



SERVICE LEVEL AGREEMENT
FOR THE PROVISION OF
COMPLAINTS ADJUDICATION SERVICES
FOR HM REVENUE & CUSTOMS
BY THE ADJUDICATOR'S OFFICE

**THE ADJUDICATOR'S OFFICE
SERVICE LEVEL AGREEMENT**

PARTIES TO THE AGREEMENT

The Adjudicator

Signed

Name Judy Clements OBE

Date 14th September 2009

HMRC Permanent Secretary for Tax

Signed

Name Dave Hartnett CB

Date 14th September 2009

THE ADJUDICATOR'S OFFICE
SERVICE LEVEL AGREEMENT

DEFINITIONS

Agreement means this Service Level Agreement (SLA), including all appendices.
AO means the Adjudicator's Office.
AO Head of Office means the person with accountability to the Adjudicator for the administration of the Adjudicator's Office
Assistance case means cases where the Assistance Team have provided complainants and their representatives with information about how to pursue a grievance.
Conditions mean the terms and conditions in this agreement and in any amendments and variations that may be agreed from time to time between HMRC and the Adjudicator.
Hers/She the feminine, includes the male. The singular includes the plural and vice versa.
HMRC means HM Revenue & Customs.
ICD means the Individuals Customer Directorate
Service(s) means the services described in the agreement.
Service(s) Standards means the agreed HMRC service and quality standards detailed in Appendix B .
UKBA United Kingdom Border Agency

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1 INTRODUCTION

- 1.1 This agreement takes effect from 14th September 2009
- 1.2 The agreement is between
- Dave Hartnett CB, Commissioner and Permanent Secretary for Tax of HMRC
- and
- The Adjudicator, Judy Clements OBE, the Service Provider
- 1.3 The terms and conditions of the Adjudicator are set out in a separate agreement called "Adjudicator's Terms of Appointment". Under this service level agreement the Adjudicator agrees to provide the services in accordance with the conditions laid out in the agreement and shall do so in a manner wholly consistent with the agreement.
- 1.4 HMRC will provide a reasonable level of support (called the Adjudicator's Office (AO)) to the Adjudicator to enable her to deliver the services detailed in this agreement.
- 1.5 All equipment, data, including electronic instructions and intellectual property used in the delivery of the services required by this agreement, shall be the property of HMRC.
- 1.6 This agreement sets out the arrangements under which the Adjudicator and the AO will provide to HMRC an independent adjudication service into unresolved complaints about the way in which HMRC have handled a customer's affairs for Tax, Valuation, National Insurance Contributions, Tax Credits and Child Benefit, and other relevant prescribed matters within their responsibilities, with the exception of any matters arising out of a commercial or employment contract between HMRC and the complainant.
- 1.7 The Adjudicator will be accountable for the provision of the services detailed in this agreement to HMRC.
- 1.8 HMRC will be responsible for expenditure associated with the provision of the service.
- 1.9 The day to day administration of this agreement will be by the Individuals Customer Directorate (ICD), HMRC.
- 1.10 The AO Head of Office will be the Service Manager who will be accountable on a day to day basis to the Adjudicator for ensuring the delivery of the services as specified in this agreement.

Terms of Agreement

- 1.11 This agreement shall commence on 14th September 2009 and shall remain in force until and unless it is subject to possible earlier termination under the conditions set out in paragraph 1.17 of this agreement.

Variation

- 1.12 This document can be altered at any time by agreement between the Permanent Secretary for Tax and the Adjudicator to reflect changing priorities and opportunities.
- 1.13 At least 20 working days' notice must be given by either the Permanent Secretary for Tax or the Adjudicator of any proposals to vary or change the conditions of this agreement.
- 1.14 All changes must be agreed between the Permanent Secretary for Tax and the Adjudicator.
- 1.15 A timetable for the implementation of any changes will be agreed and the changes documented.

Resolution of Disputes

- 1.16 All disputes, differences or questions between the Adjudicator's Office and HMRC, relating to this agreement, other than on a matter where this agreement states that the decision is one for HMRC to make, shall initially be discussed by the AO Head of Office and ICD in consultation with relevant HMRC representatives. If agreement cannot be reached, discussions will be held between the Adjudicator and the Permanent Secretary for Tax. In the event an agreement still cannot be reached, the final decision will rest with the Permanent Secretary for Tax.

Termination of Agreement

- 1.17 The Permanent Secretary for Tax or the Adjudicator may terminate this agreement for operational or for other reasons. Such termination will take effect at the expiry of a minimum of 90 calendar days from the date of service of such notice of termination.

Business Continuity

- 1.18 Where the Adjudicator is unable to fulfil her obligations under this agreement due solely to the intervention or actions of a third party or parties or due to circumstances beyond her control, the agreement will be suspended for the duration of the difficulty. Clear alternatives for business continuity for both sites of the AO will be agreed by the AO

Head of Office and ICD, in line with HMRC security and business continuity policies.

Sub-Contracting

- 1.19 The Adjudicator shall not sub-contract any of the services without the prior written agreement of the Permanent Secretary for Tax on terms to be agreed at the time.

Printed Materials

- 1.20 AO shall be responsible for the provision of all official forms, and for all leaflets and booklets for use by the public. All costs incurred in the printing, delivery, distribution and postage shall be borne by HMRC as part of the agreed Adjudicator's budget associated with the provision of the service.

2. ADJUDICATOR'S ROLE, SCOPE & REMIT

- 2.1 The Adjudicator will provide an independent review of complaints from customers that HMRC has been unable to resolve. These complaints may arise where the complainant is unhappy with the way their affairs have been handled by HMRC. The Adjudicator will only review complaints that have not been resolved through HMRC's own internal complaints procedures.
- 2.2 When the Adjudicator accepts a case from a customer for investigation, she will look to compare what HMRC has done in respect of following a fair and consistent application of their published standards and codes of practice.
- 2.3 The Adjudicator looks at complaints about:
- mistakes;
 - unreasonable delays;
 - poor or misleading advice;
 - inappropriate staff behaviour; and
 - the use of discretion.
- 2.4 If a complaint involves the exercise of discretion by HMRC, the Adjudicator will consider the process relating to the exercise of

discretion, but will not be entitled to substitute her judgement for a reasonable judgement reached by HMRC

2.5 The Adjudicator cannot look at complaints about:

- Government or Departmental policy.
- Any matters arising from a commercial or employment contract between a complainant and HMRC.
- Any complaints from customers where there is a specific right of determination by any court, tribunal, or other body with specific jurisdiction over the matter.
- Any complaints from customers about requests under the Freedom of Information Act 2000 or the Data Protection Act 1998, or the way that HMRC has handled such requests.
- Disputes with the Valuation Office Agency (VOA) about property valuations.

2.6 When the Adjudicator is unable to mediate a solution that all parties can agree to, she will examine the relevant facts in the case and decide impartially and independently on a recommendation. To reach her decision, the Adjudicator will not need to demonstrate “beyond reasonable doubt” but will be able to draw conclusions “on the balance of probabilities.”

2.7 Where the Adjudicator decides that compensation is appropriate any recommendation will be in accordance with HMRC’s codes of practice and redress or regulatory payments.

2.8 The Adjudicator will not consider any matter during the currency of any criminal investigation or any court or tribunal proceedings or subsequent to any such proceedings, where the matter could reasonably have been considered during those proceedings or be the subject of an appeal to a higher court or tribunal. This includes where there is an intention to proceed towards criminal proceedings. HMRC will notify the Adjudicator of any cases falling into this category.

2.9 The Adjudicator will consider HMRC’s notification when it is received and, where appropriate, inform the customer that the complaint cannot be taken up at the present time. HMRC will indicate cases where no reference is to be made to the nature of the enquiries or the likely outcomes.

2.10 The Adjudicator will be entitled to request clarification about any such notification and to monitor these cases to ensure that the complaint is taken up at the earliest opportunity.

- 2.11 HMRC will notify the Adjudicator as soon as the restriction on investigating a complaint can be lifted because legal proceedings either have been concluded or will not be pursued.
- 2.12 The Adjudicator should investigate unresolved complaints and her recommendation letter at the conclusion of the review should deal only with issues related to the complaint. Any unrelated matters that come to light during the investigation should be brought to HMRC's attention separately for them to take appropriate action. If considered appropriate by the AO, the complainant will also be notified.
- 2.13 Due to the nature of the work that HMRC does, the Independent Police Complaints Commission and Police Complaints Commission for Scotland have a remit to investigate complaints within certain criteria. If a customer takes the handling of a complaint to the Adjudicator that falls within these categories, the Adjudicator will refer the customer to the appropriate body.

Access to Departmental/HMRC Staff and Records

- 2.14 The AO will have access to all relevant staff, information and data required for the consideration of complaints received. However HMRC will have regard to section 6.12 of the Criminal Procedure and Investigations Act 1996, Code of Practice (see **Appendix A**) where HMRC consider that the information is sensitive
- 2.15 In cases involving sensitive information,
- on receipt of a request from the Adjudicator, HMRC will list the types of information held on the case, highlighting information deemed to be sensitive;
 - the Adjudicator's Office (AO) will specify the things they need to see;
 - HMRC will send to AO all the information required that is not deemed sensitive and arrange for viewing any sensitive material in a convenient HMRC office, but with no copies made or removed.
- 2.16 Data, documents and copies with the Adjudicator's Office will be subject to the same security and classification standards as HMRC operates.
- 2.17 It may be necessary for HMRC to tell the Adjudicator that disclosure of a document would not be in the public interest. Should this happen, the Adjudicator will not make reference to the document or its contents in any report to the complainant, or more generally.

Specific Case Requirements

- 2.18 Where the Adjudicator intends to make criticism of the behaviour of an identifiable official, she will send a copy of the draft recommendation letter to the relevant Director allowing no less than 10 working days for comment.
- 2.19 Similarly, if in the opinion of the Adjudicator, her conclusion may be especially difficult for HMRC, a copy of the draft recommendation will be sent to the appropriate Director General, copied to the Permanent Secretary for Tax, allowing no less than 10 working days for comment.
- 2.20 In complaints cases involving particularly complex technical issues or points of a potentially controversial legal interpretation, the Adjudicator will seek to resolve any dispute over such points through dialogue with HMRC before issuing her recommendations. At the earliest opportunity HMRC will highlight any areas of a complaint where this dialogue may be necessary.
- 2.21 In some exceptional cases, the relevant HMRC Business Unit may consider some aspect of case so complex or contentious that they would wish to see the draft recommendation before it is issued. Any such request will be made in advance and in writing by the relevant HMRC Director. The Adjudicator will consider the request and if she agrees, will send a draft to the Director concerned and allow not less than 10 working days for any comments. If the Adjudicator denies the request, she will explain her reasons in writing.
- 2.22 The Adjudicator's responsibility to form a judgement on each complaint on the facts will not be inhibited by the arrangements set out under 2.21.
- 2.23 HMRC will be responsible for informing the Adjudicator's Office of any cases which they feel should have been dealt with under the provisions of 2.18 - 2.22 above but were not.

Adjudicator's Decisions and Recommendations

- 2.24 HMRC is not bound to accept the report, conclusion, or recommendations.
- 2.25 If a Director is concerned with part or all of the report, conclusion or recommendation for a case, they must discuss this with the Permanent Secretary for Tax. The Permanent Secretary for Tax will then decide if the case should be discussed with the Adjudicator.
- 2.26 The Director will be responsible for ensuring that recommendations made by the Adjudicator are implemented where agreed and that any compensation is paid. The Director will also tell the Adjudicator when

the recommendations have been implemented, or notify in writing any decision not to implement a recommendation.

HMRC's Service Standards

- 2.27 The service standards to which HMRC will work in respect of the above (including the provision by HMRC of any reports) are in **Appendix B**.

Media Access

- 2.28 The Adjudicator will have direct access to the media.
- 2.29 The Adjudicator will publish annually a report of the work done and how HMRC, and the other organisations, have handled complaints which their customers have made. There will be no right of veto for HMRC over the contents of the report, but as a courtesy HMRC will see an advance copy and the Adjudicator will consider any comments HMRC may wish to make.

3 GOVERNANCE, REPORTING AND RESOURCES

- 3.1 The purpose of this section is to have in place clear governance arrangements that secure and underpin the independence of both the Adjudicator and the AO in carrying out their role, and ensure this can be evidenced to complainants, HMRC and external stakeholders. It is important that there is widespread acceptance that the Adjudicator is independent of HMRC and not subject to pressure or coercion to take a particular view. This is achieved through:

Permanent Secretary for Tax

- 3.2 The Permanent Secretary for Tax will take an executive overview on behalf of HMRC of the effective delivery of both the Adjudicator's business plan and this Service Level Agreement.
- 3.3 The day to day administration related to the effective delivery of the Adjudicator's business plan and this Service Level Agreement will be undertaken by the Individuals Customer Directorate (ICD), HMRC.

Adjudicator

- 3.3 The Adjudicator will set the strategic direction of the Adjudicator's Office (AO), including performance, planning and value for money delivery of the adjudication services. These must fit with the requirement that AO follows HMRC procedures & policies on financial propriety and management; personnel; data security, etc.

Adjudicator's Office

- 3.4 HMRC will provide a support unit called the Adjudicator's Office (AO). This will include staff, accommodation, equipment and materials to enable the Adjudicator to provide an independent review of unresolved complaints.
- 3.5 The Adjudicator's Office is a unit of HMRC and:
- Will comply with all the relevant HMRC policies, guidelines & processes on finance, personnel, data security, etc.
 - Is subject to the same assurance processes, including HMRC Internal Audit, as other HMRC offices.
 - Is entitled to the same level of office support as other HMRC offices e.g. provision of IT support, access to the Solicitor's Office for legal advice, access to the Press Office, etc.
 - The accountabilities of the AO Head of Office are set out in **Appendix C**.
- 3.6 The AO Head of Office will be accountable to the Adjudicator, on a day to day basis, for implementing the Adjudicator's strategy, and for delivering the services set out in this agreement.
- 3.7 To ensure the AO's independence when supporting the Adjudicator in providing an independent review of unresolved complaints, the AO Head of Office's accountabilities and line of reporting into HMRC will be such as to position the office at arms length from the operational lines of HMRC's business that the Adjudicator may investigate.
- 3.8 The AO Head of Office will have a performance agreement which fully reflects the principles set out in this agreement.

Staffing

- 3.9 The majority of staff in the AO are HMRC employees. The Interchange rules apply to people from other government departments. As part of HMRC the people in the AO are treated as either on loan from another government department to HMRC or HMRC employees. They will all be subject to HMRC's personnel policies and terms.

Freedom of Information and Data Protection

- 3.10 The AO must refer all requests for HMRC guidance, policy and non-personal information back to HMRC to handle – AO will not release such information to complainants.
- 3.11 The AO will not release customer specific information under the Freedom of Information Act or Data Protection Act but will refer all requests to HMRC.
- 3.12 The AO will always insist that when an agent or third party asks for copy papers they are asked to provide specific written consent from the customer allowing the Adjudicator's Office to disclose.

Customer Complaints

- 3.13 The AO will provide assistance to complainants about how to pursue a grievance regarding the way their affairs have been handled by the AO.
- 3.14 Complaints about the services provided by the AO, whether directed to the Adjudicator or the AO Head of Office will be investigated initially by the AO Head of Office.

Resources and Finance

- 3.15 HMRC will provide funding to cover agreed operational costs for the Adjudicator's annual Business Plan.
- 3.16 The AO Head of Office will submit an annual business case for funding to HMRC Finance copied to ICD. If necessary, discussions will escalate to the Permanent Secretary for Tax and Chief Finance Officer for resolution.
- 3.17 Any request for additional funding during the year will be subject to a formal business case to the Permanent Secretary for Tax. The final decision will rest with the Chief Finance Officer.
- 3.18 In keeping with HMRC's commitment to continuous improvement the Adjudicator's Office will seek to better business performance in service delivery and value for money.

4 HOW THE ADJUDICATOR WORKS WITH HMRC

- 4.1 A key element of the Adjudicator's role is to promote a learning culture, through disseminating the lessons learnt from complaints to HMRC. This section sets out the arrangements for achieving this, and ensuring that the Adjudicator and HMRC work together effectively.
- 4.2 The Adjudicator will meet with the Permanent Secretary for Tax as and when required and any aspect of HMRC's work seen by the Adjudicator may be discussed.
- 4.3 The Adjudicator will formally meet at least once a year with HMRC's Permanent Secretary for Tax to discuss progress, matters of concern and share best practice.
- 4.4 The Adjudicator will have direct access to Directors General as and when required to discuss relevant issues relating to their areas of business.

Working with HMRC's Lines of Business

- 4.5 HMRC values highly an independent review of its complaints, coupled with the input that an independent Adjudicator can bring to improve the quality of customer service and the processes HMRC uses to deliver its complaints handling. In order to achieve this, the Adjudicator will work directly with the lines of HMRC's business whose complaints she investigates (i.e. Personal Tax, Business Tax, Benefits & Credits and Enforcement & Compliance), to promote a learning culture. The relationship between the Adjudicator and HMRC will be based on reciprocal openness and honesty.
- 4.6 The Adjudicator will work directly and constructively with the Individual Customer Directorate (ICD), as part of their responsibility, within HMRC, for complaints policy and strategy and for the operation of this agreement.

HMRC Executive Committee

- 4.7 The Adjudicator will attend at HMRC Executive Committee twice a year to keep them updated on customer issues and the HMRC response.

HMRC Ethics and Responsibilities Committee (ERC)

- 4.8 The Adjudicator will attend the HMRC Ethics and Responsibilities Committee at least annually and report on:
- specific issues that the Adjudicator has brought to the attention of HMRC

- how HMRC treats customers who complain
- HMRC's performance in dealing with complaints.

4.9 This will give the Adjudicator an opportunity to highlight successes and areas for improvement to non-executive directors on whether HMRC is delivering their commitment to customers and treating them even handedly.

Provision of Management Information

- 4.10 Making best use of the wealth of information on complaints is a key component of driving up the standards of complaints handling in HMRC
- 4.11 The Adjudicator's Office will be required to keep information on the demand for the services provided and the work undertaken.
- 4.12 The AO Head of Office shall provide the management information as specified in **Appendix D** for ICD to report on departmental wide performance on all complaints handling, of which AO cases are a sub-set. The information will be made available to Directors General and the Permanent Secretary for Tax.
- 4.13 The AO Head of Office shall provide other relevant information that HMRC may require to assist in monitoring the performance of both HMRC and the AO; or for other agreed specified purposes.
- 4.14 If HMRC asks for collection and collation of such information over and above that identified in **Appendix D**, which will involve the AO in additional costs beyond their budget, (for example overtime working or programming changes to computer or telecommunication systems), these will be payable by HMRC.
- 4.15 If HMRC requests information or data outside the terms of this document that will incur significant extra costs to the Adjudicator's Office, agreement will be reached to cover those additional costs.
- 4.16 When information is needed by HMRC, such as to answer Parliamentary Questions, draft briefings and submissions etc. it is the responsibility of the AO Head of Office to provide adequate responses within the agreed timescale. Any costs will be treated as within the agreed Adjudicator's Office budget.
- 4.17 The format for the presentation of any data specifically requested by HMRC outside of the standard Management Information provided by the AO will be agreed between ICD and the AO Head of Office.

- 4.18 The Adjudicator and AO Head of Office will notify ICD of any suggestions for changes to HMRC complaints policy, processes or central guidance so that, if ICD agree to instigate change, the consistency of service across all customer groups can be maintained.

5 UK BORDER AGENCY (UKBA) TRANSITION ARRANGEMENTS

Background

- 5.1 On 25 July 2007, the Prime Minister announced the establishment of a unified border force integrating the work of the Border and Immigration Agency (BIA), the work of Customs, and the work of UK Visas at the main points of entry to the UK. The UK Border Agency (UKBA) formally came into being with the Royal Assent of the Borders, Citizenship and Immigration Bill.

Transition Arrangements

- 5.2 Complaints received by the Adjudicator before the transfer of staff on 5 August 2009 will be handled under the terms of a Memorandum of Understanding in **Appendix E**, which outlines the arrangements in place between the Adjudicator and the UKBA to ensure that complaints about issues arising before 5 August 2009 are dealt with appropriately. These arrangements will be known as the transitional arrangements.

APPENDIX A

1 Extract from Criminal Procedure and Investigations Act 1996 Code of Practice

1.1 Subject to paragraph 6.13 below, the disclosure officer must list on a sensitive schedule any material; the disclosure of which he believes would give rise to a real risk of serious prejudice to an important public interest, and the reason for that belief. The schedule must include a statement that the disclosure officer believes the material is sensitive. Depending on the circumstances, examples of such material may include the following among others:

- material relating to national security;
- material received from the intelligence and security agencies;
- material relating to intelligence from foreign sources which reveals sensitive intelligence gathering methods;
- material given in confidence;
- material relating to the identity or activities of informants, or undercover police officers, or witnesses, or other persons supplying information to the police who may be in danger if their identities are revealed;
- material revealing the location of any premises or other place used for police surveillance, or the identity of any person allowing a police officer to use them for surveillance;
- material revealing, either directly or indirectly, techniques and methods relied upon by a police officer in the course of a criminal investigation, for example covert surveillance techniques, or other methods of detecting crime;
- material whose disclosure might facilitate the commission of other offences or hinder the prevention and detection of crime;
- material upon the strength of which search warrants were obtained;
- material containing details of persons taking part in identification parades;
- material supplied to an investigator during a criminal investigation which has been generated by an official of a body concerned with the regulation or supervision of bodies corporate or of persons engaged in financial activities, or which has been generated by a person retained by such a body;

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- material supplied to an investigator during a criminal investigation which relates to a child or young person and which has been generated by a local authority social services department, an Area Child Protection Committee or other party contacted by an investigator during the investigation;
- material relating to the private life of a witness.

APPENDIX B

1 Service Standards

1.1 This appendix sets out the service standards applicable to HMRC

1.2 HMRC will:

- ensure complainants are made aware of the services offered by the Adjudicator's Office;
- provide information to AO on assistance cases within 15 working days;
- when requested by the AO, provide case reports within 30 working days;
- provide any subsequent information as required, normally within 10 working days, and inform the AO if the provision of such information is going to take longer than 10 working days;
- confirm with the Adjudicator that the recommendation has been accepted, and inform the Adjudicator when the recommendation has been implemented or,
- explain in writing to the Adjudicator the reasons behind any decision not to accept or implement a recommendation and,
- implement recommendations where agreed as soon as practically possible and in any event within 20 working days, unless the Adjudicator has been informed that implementation will take longer, and told the reason for this;
- respond to suggestions made by the Adjudicator (ensuring ICD are kept informed for departmental consistency) relating to departmental procedure and practice, setting out either;
 - the action HMRC plan to take to implement the suggestion
 - the reasons why HMRC plan to take alternative action and what that action will be; or
 - reasons why HMRC plan to take no further action.

APPENDIX C

The AO Head of Office Accountabilities

1 The AO Head of Office

1.1 Accountabilities are:

- the preparation of an annual report;
- ensuring that the Adjudicator's Office complies with the appropriate financial, administrative, personnel, operational and legislative frameworks;
- data security
- delivery of the performance and results of the Adjudicator's Office within the agreed budget;
- supplying agreed data and information to ICD and the areas of business subject to complaints handled by the AO;
- ensuring adequate accounting and management information systems are in place so that reporting data and expenditure are robustly verifiable; and
- liaising with ICD to ensure that the Service Level Agreement remains up-to-date.

APPENDIX D

1 Management information

1.1 The AO Head of Office will provide the information listed in the table below to Individuals Customer Directorate. The list may be amended from time to time to meet changing needs.

Standard Monthly Management Information Requirement for the AO.
New complaints received
Type of complaint - (i.e. line of business subject complaint)
Reason for complaint – (i.e. error, delay)
Total number of cases on hand
Age profile of cases on hand (under 1 month, 1- 3 months old, 4-6 months old, 7-9 months old, 10-12 months old, over 12 months)
Number of complaints taken on for investigation
Number of Assistance cases received
Number of Investigation cases closed and outcomes
Number of cases allocated to Adjudication Officers
Number of cases successfully mediated
Amount of redress by compensation/consolatory payment
The number of open investigation cases exceeding 9 months from date of receipt
The number of open investigation cases exceeding 6 and 12 months from date of receipt
Current headline issues for HMRC Business Units handling customer complaints

Standard Quarterly Management Information Requirement for the AO.
Progress against key business plan deliverables including budget
Detailed written commentary on trends and relevant issues pertinent to each HMRC Business Unit and across HMRC as a whole

APPENDIX E

Memorandum of Understanding between Judy Clements OBE ("the Adjudicator") and Lin Homer of the UK Border Agency

1. On 25 July 2007, the Prime Minister announced the establishment of a unified border force integrating the work of the Border and Immigration Agency (BIA), the work of Customs, and the work of UK Visas at the main points of entry to the UK. The UK Border Agency (UKBA) formally came into being with the Royal Assent of the Borders, Citizenship and Immigration Bill.
2. The Adjudicator, whose remit is governed by terms of appointment and a service level agreement (SLA) with HM Revenue & Customs (HMRC), investigates complaints about maladministration, including mistakes and delays, poor advice, use of discretion, and inappropriate staff behaviour, although this does not extend to matters proper to HMRC's internal personnel or disciplinary procedures. The Adjudicator will only take on for investigation those cases that have exhausted HMRC's internal complaints processes.
3. The UKBA does not have an Adjudicator and so, for complaints about matters occurring on or after the date of transfer of staff to the UKBA on 5 August 2009, once the UKBA's internal complaints process has been exhausted, the UKBA will ensure that customers who remain dissatisfied are aware of the services of the Parliamentary Ombudsman.
4. This Memorandum of Understanding outlines the arrangements in place between the Adjudicator and the UKBA to ensure that complaints about issues arising before 5 August 2009 are dealt with appropriately. These arrangements will be known as the transitional arrangements.

HMRC/UKBA Protocol

5. This Memorandum of Understanding acknowledges the operational protocol agreed between the UKBA and HMRC covering the management of complaints, and proceeds on the basis that the parties to that protocol will operate at all times in accordance with it.

Transitional arrangements

6. The Adjudicator will investigate complaints within her remit after 4 August 2009 from customers who are complaining about matters which occurred on or before 4 August 2009 and which relate to HMRC duties, by reference to the departmental policies, procedures and guidance which applied at the time those matters occurred.

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7. To facilitate the Adjudicator's investigation of a case, the UKBA will provide her office with the same level of access to information, data and personnel as is provided by HMRC under the SLA between HMRC and the Adjudicator.

8. Where the Adjudicator's Office is unable to broker an agreement between the parties to a complaint as to how the complaint should be resolved, the Adjudicator will review the complaint personally and notify her decision to the complainant by letter. Such a letter is known as a recommendation letter. The Adjudicator will send a copy of her recommendation letter to the appropriate person in the UKBA.

9. The Border Force complaints team will be responsible for ensuring that recommendations made by the Adjudicator are implemented and that compensation, where appropriate, is paid. The Border Force complaints team will also be responsible for liaising with HMRC on any policy recommendations.

10. The UKBA will act upon the Adjudicator's recommendations within 20 working days or, where this is not possible, will inform the Adjudicator in writing why this cannot be achieved and when implementation is expected.

11. While the UKBA is not bound to accept the Adjudicator's recommendation, they will normally expect to do so. If, exceptionally, the UKBA feel unable to accept the Adjudicator's recommendation, the UKBA signatory to this Memorandum of Understanding will notify the Adjudicator in writing giving an explanation for the decision.

12. The Adjudicator may make reference to complaints investigated during the transitional arrangements in her annual report.

Costs

13. The Adjudicator and the UKBA understand that UKBA will not be expected to bear the cost of the services provided by the Adjudicator to the UKBA during the transitional arrangements.

Review

14. Twelve months after the formal transfer of functions, the Adjudicator's Office, the UKBA and HMRC will review any 'open' cases that concern incidents prior to the formal transfer of functions but are yet to be resolved, to decide if there should still be recourse to the Adjudicator's services.