



# annualreport2009

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	A D J U D I C A T O R ' S
	O F F I C E

The Adjudicator's Office  
Annual Report for the year  
to 31 March 2009

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# Foreword

By the Adjudicator, Judy Clements OBE

I am pleased to present my first Annual Report as Adjudicator. It covers the year to 31 March 2009, and is the sixteenth concerning the work of this office.



The Adjudicator, Judy Clements OBE

I am delighted to be taking on this role at a time when HM Revenue & Customs (HMRC) faces a number of challenges, ranging from building on the progress it has made in restoring its customers' trust following the data disc loss in October 2007, through to working towards meeting its demanding targets and vision against a very difficult funding and wider economic backdrop. I would also like to pay tribute to my predecessor, Dame Barbara Mills DBE QC, whose achievements included playing an important role as a critical friend to HMRC following the troubled launch of tax credits in 2003.

I took up post on 20 April 2009, so this report covers a period before I became Adjudicator. During this time the Adjudicator's Office settled a large number of cases. As the report also makes clear, however, the turnaround times for completed cases increased sharply during the year (and currently stands at about 50 weeks). This was due to the year beginning with a large backlog caused by disruptions to the office's working of tax credit complaints during the previous year. In last year's report, Dame Barbara cited two causes of this: a significant hiatus in the office's working of tax credit complaints while the policy on how HMRC's revised COP 26 applied to existing claimants was finalised, and the suspension of some of the office's tax credit complaints investigations to accommodate the reworking by HMRC's Tax Credit Office (TCO) of those cases to ensure they had been handled in accordance with Section 18 of the Tax Credit Act 2002.

In response to this, HMRC increased the office's resources for 2008/09 (with the additional staff located in a new office in Derby), and based on this the office adopted a recovery plan for 2008/09 which aimed to restore complaint turnaround times to previous levels. Despite the office having responded well to this challenge, and the successful setting up, to schedule, of the new office in Derby, the backlog of complaints currently stands at just over 2,000 cases. As a result, complainants are currently, on average, having to wait about 11 months before their cases are taken up for investigation. The reasons for this are covered in detail in the

body of this report. It is particularly disappointing that, over a year on from the introduction of the revised COP 26, a continuing high number of tax credit complaints are coming to the Adjudicator's Office; and that issues remain, concerning the quality of the TCO's complaints handling in comparison with the rest of HMRC.

An important part of my role is providing strategic direction and oversight to my office and, in that regard, restoring the office's customer service standards to acceptable levels is my first and foremost priority. Key to achieving this will be ensuring we are focusing properly on reviewing performance and learning the necessary lessons. I will also be looking at whether what we measure is best suited to promoting these goals. Also key to reducing the office's workload will be working with HMRC over the coming year to ensure that complaints and disputes concerning tax credits are dealt with by the TCO in ways that ensure they are resolved speedily and effectively, thus ensuring that such disputes only come to me where the issues between the claimant and the TCO remain genuinely irresolvable.

I also look forward to engaging and working with the rest of HMRC, the Valuation Office Agency (VOA), The Insolvency Service (IS) and the Office of the Public Guardian (OPG).

A handwritten signature in black ink, appearing to read 'J. Clements', with a large, sweeping flourish above the name.

**Judy Clements OBE**  
The Adjudicator



# The work of the Adjudicator's Office

## Our role

We investigate and help to resolve complaints from individuals and businesses who remain unhappy about the way that their affairs have been handled by:

HM Revenue & Customs, including the Tax Credit Office, The Valuation Office Agency, Office of the Public Guardian and The Insolvency Service.

We look to add value to the complaints handling of the above organisations by aiming to be widely regarded, and used, by them and the communities they serve, as:

- a trusted provider of assurance and, where appropriate, redress; and
- an informed and intelligent advocate for service improvement.

In all our dealings with complainants and the organisations complained about, we will apply our core values of being:

- objective (showing fairness, impartiality and independence)
- accessible (offering a service free to the complainant)
- efficient and outcome driven (striving continuously to achieve value for money).

We regard every complainant, department and organisation with whom we interact as customers, and the business goals and direction set out in our business plan focus almost exclusively on maintaining and improving the service we provide to all of them.

### **Making a complaint to the Adjudicator's Office**

Before we look at a complaint, we expect the organisation concerned to have had an opportunity to resolve matters at a senior level.

This means that complainants will have to exhaust the organisation's own complaints procedure before contacting us. It is our role to consider whether or not the organisation has handled the complaint appropriately and made a reasonable decision. Where we consider they have fallen short, we will recommend what they need to do to put matters right under the terms of their complaints guidance. This may include making suggestions where we believe this could be of benefit to the wider public.

We cannot require the organisation to do anything outside the terms of their guidance on complaints. Nor can we ask them to act outside their current procedural guidance (e.g. COP 26 "What happens if we have paid you too much tax credit?").

While there are some areas that we cannot consider, such as disputes about aspects of departmental policy and matters of law, we can look at complaints about:

- mistakes
- unreasonable delays
- poor and misleading advice
- inappropriate staff behaviour
- the use of discretion.

## How we settle complaints

If we believe that the complaint would best be settled by recommendation letter, the Adjudicator will write to the complainant personally with her findings. We call these letters 'recommendation' letters because they set out what, if anything, the Adjudicator 'recommends' the organisations should do to put things right. If the Adjudicator believes that the organisation has already dealt with the complaint adequately, she will say so.

Not all complaints will be settled by recommendation. We may be able to find a resolution to the complaint that is acceptable to the complainant and the organisation. If we are able to do this, we will close the case on that basis. We call this process 'mediation'. We will continually review the way we investigate and settle complaints.

However we resolve the complaint, it must be consistent with the organisation's own guidance on complaints. This could include asking the organisation to apologise and to meet any additional costs that the complainant has incurred as a direct result of their mistakes or delays – things like postage, telephone calls or the cost of professional advice. We might also ask the organisation to make a small payment to recognise any worry and distress that the complainant has suffered.



The Adjudicator's Office website

To date, the organisations that we investigate have accepted all of the Adjudicator's recommendations.

## One office, two locations

In order to help us maintain the level of service to our customers, last year we set up a team of ten Adjudication Officers and one Adjudication Manager based in Derby, in the East Midlands. This team became fully operational, as planned, in October 2008 and has contributed a significant number of case settlements during the year. All initial enquiries and complaints are still dealt with by our London Office.

## Reorganisation

Whilst establishing our new Derby office, we took the opportunity to reorganise our London office in order to maximise the number of people reviewing and investigating complaints. This resulted in the creation of a new Review and Resolution Team dealing with relatively straightforward tax credit complaints, in particular, cases where the Tax Credit Office had decided to write off overpayments under their revised Code of Practice 26 (COP 26). This team has also been successful in settling a significant number of cases during the year.

When complainants or their agents contact us to complain about one of the organisations that we investigate, the first point of contact will be our Assistance Team.

The role of the Assistance Team is to:

- Ensure that the organisation concerned has had the opportunity to consider a complaint fully and the complainant has received a final decision from them
- Decide if a complaint concerns a matter within our remit for investigation.

This team expanded its role during the year to enable the Review and Resolution Team to be set up.



## Communication

The Adjudicator's Office has continued to develop the way in which it communicates with complainants and organisations this year. We have recently published revised versions of our AO1 leaflet (for complaints about HMRC and the Valuation Office Agency), our AO5 leaflet (for complaints about the Office of the Public Guardian) and our AO6 leaflet (for complaints about The Insolvency Service). We have continued to encourage the organisations to issue our leaflets to complainants at the appropriate stage of the complaint (when that organisation's own complaints procedure has been exhausted).

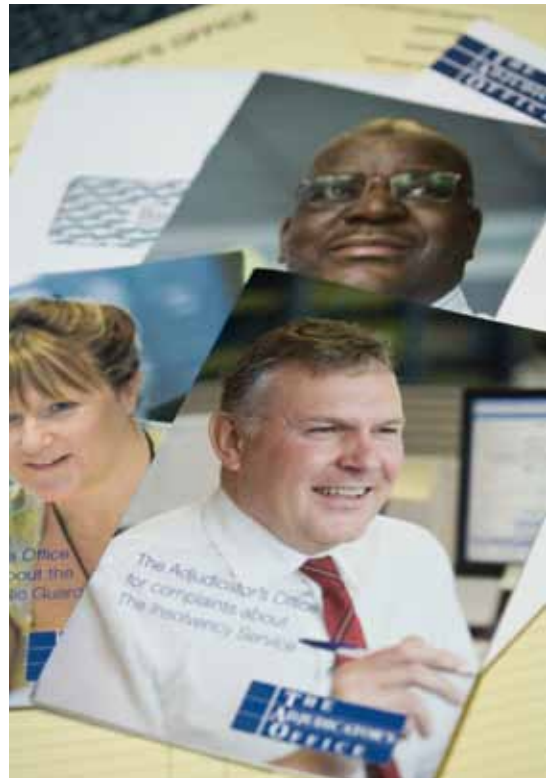
Our website has been updated and revised throughout the year and we have worked on improving the accessibility of the site, particularly in relation to disabled customers. Electronic versions of all our leaflets and most recent Annual Reports can be downloaded via the site.

## Working with the organisations

A key aspect of our work is helping the organisations to improve their service to the public. To ensure that mistakes are not repeated and that lessons are learned, we aim to monitor our results, identifying trends and particular areas of concern. We feed this information back to the organisations, prompting them to make improvements to their service.

The way in which tax appeals are handled underwent major transformation during 2008/09, leading to the establishment, from 1 April 2009, of new First-tier and Upper Tribunal tax chambers, bringing together the four previous tax tribunals to hear appeals across the full range of direct and indirect taxes. We worked with HMRC as a stakeholder in respect of the considerable work they needed to take forward to establish suitable policies and procedures.

We host visits from staff who work in the organisations' complaint teams to share best practice and improve working relationships.



Leaflets AO1, AO5 and AO6

# Overview

## HM Revenue & Customs

This was a year of consolidation for HMRC, following the organisation's difficulties highlighted in last year's report. A Non-Executive Chairman, Mike Clasper, was appointed for the first time to HMRC last summer. This was followed by the appointment of a new Chief Executive, Lesley Strathie, in November 2008. One of Mike's first tasks was to reform HMRC's governance, in particular giving a greater role to the Non-Executive Directors through their participation in a number of Non-Executive Director chaired sub-committees. One of these, the Ethics and Responsibilities Committee, has a role in providing a forum for the Adjudicator's Office to feed back its findings on departmental performance, as part of a remit that includes ensuring HMRC's customers are treated fairly, and that the needs of its vulnerable customers are taken into account.

### Tax credit complaints and the Adjudicator's Office's challenging workload

The Adjudicator's Office itself went into the year with a large and growing backlog. The reasons for this are set out earlier in the Adjudicator's foreword. In response, HMRC increased the office's resources for 2008/09, located in Derby, and a recovery plan was put in place to reduce the size of the backlog, and bring our customer service, back to an acceptable level in a reasonable timescale. This plan was based on:

- the Derby office becoming fully operational by 1 October 2008;
- the development of new ways of working straightforward tax credit complaints, to replace the simpler and more flexible arrangements we had in place for such cases prior to the introduction of the revised HMRC Code of Practice 26 (COP 26) in January 2008; and

- an expectation that the fall in tax credit complaints to HMRC from 2006/07 to 2007/08, combined with the revised COP 26, would result in a significant reduction in tax credit complaints coming to the Adjudicator's Office.

The revised COP 26 was expected to significantly reduce the number of tax credit complaints, as it applied to all open disputes and complaints when introduced, and it increased significantly the flexibility available to the TCO, when making decisions on whether to write off overpayments, to ensure a customer focused outcome. The setting up of the Derby office went to schedule. There was, however, only a small drop in the number of tax credit complaints (1,451 compared to 1,543 in 2007/08) coming to the office during the year. It also proved difficult to achieve previous levels of productivity for all but a small number of straightforward tax credit complaints, and it was proving more resource intensive and time consuming to work tax credit complaints generally because of the quality issues with the TCO's complaints handling highlighted in last year's report.

### Impact on the complainant experience

The performance of the office still meant good inroads were made into the older cases. It was inevitable that the complainant experience relating to overall turnaround times for settled cases would have declined as the older cases made their way through the system. For the reasons outlined above, however, this decline was more marked than expected, resulting in lengthy delays before cases could be allocated for investigation. Furthermore, the backlog has not fallen as expected, owing to the continuing high number of tax credit complaints (further exacerbated by an increase of 249 non-tax credit complaints coming to the office during the year).

As a result, the current position is that the office has just over 2,000 complaints waiting to be settled. In addition, complainants currently have to wait, on average, about 11 months for their complaint to be allocated to a caseworker and then about seven weeks for our investigation to reach a conclusion.

### **Other complaints about HMRC**

As with previous years, the other main areas for complaint are:

- Tax coding and the application of HMRC's Extra Statutory Concession A19
- Investigations and enquiries
- Assurance work (VAT)

There has been a significant increase in the number of non-tax credit complaints we receive.

In 2008/09, the number of complaints regarding the application of ESC A19 nearly doubled, compared to the previous year. In addition, there was a significant increase in the number of complaints about tax enquiries.

### **Going forward**

At the time of writing this report the new Adjudicator, Judy Clements OBE, was in negotiations with the TCO on how the Adjudicator's Office can work with them to clear the backlog of tax credit complaints, and develop ways of working that will drive up the quality of the reports the TCO send to us and improve their handling of complaints and disputes generally.



## The Valuation Office Agency

The Valuation Office Agency (VOA) is an agency of HMRC and is responsible for compiling and maintaining the business rating and Council Tax valuation lists for England and Wales. They are also responsible for the valuation of property in England, Wales and Scotland for the purposes of taxes administered by HMRC as well as providing statutory and non-statutory property valuation services in England, Wales and Scotland.

During the year we took on 41 VOA cases for investigation and settled 31. Of the 41 cases taken on about 25 were complaints about the VOA not paying compensation for interest on Council Tax rebated by Local Authorities because of a reduction in the band.

We are not able to look at the banding of properties for Council Tax but we can consider issues about how complaints regarding banding are handled. We can also look into where a banding has changed and complainants feel that the VOA made the original banding decision as a result of a mistake and ask for compensation in lieu of interest to be paid. Many complainants feel that, because the band has been reduced, a mistake must have occurred; this is not always the case. To enable us to recommend compensation in lieu of interest is paid we have to establish that a "clear mistake" was made when the original Council Tax banding decision was made, taking into account what was known at the time, and what the VOA could have reasonably been expected to do.

This year has seen a substantial percentage increase in the number of complaints received about Council Tax. Due to the nature of these complaints, as described above, very few of these are likely to be upheld.

Of the 31 cases that were settled, five were partly upheld and 26 were not upheld.

## Office of the Public Guardian

The Office of the Public Guardian (OPG) supports and promotes decision making for those who lack capacity or would like to plan for their future, within the framework of the Mental Capacity Act 2005. They are responsible for setting up and managing registers of Lasting and Enduring Powers of Attorney and court orders that appoint Deputies. They also supervise Deputies, instruct Court of Protection Visitors, receive reports from Attorneys and Deputies, provide reports to the Court of Protection and deal with cases where there are concerns raised about the way in which Attorneys or Deputies are carrying out their duties.

The Adjudicator cannot look at any issues that involve decisions of the Court of Protection but can look at mistakes, unreasonable delay, or misleading advice given by the OPG.

During the year we took on for investigation 33 OPG cases and settled 26.

The office also started to deal with a new class of OPG case: reviewing the appropriate level of supervision the OPG allocates to its Deputies. We received and settled 11 such cases.

Excluding the 11 deputyship cases, the volume of complaints received by this office has increased slightly from last year's figure of 15 cases. However, the number of complaints received by the office about the OPG remains low.

## The Insolvency Service

The Insolvency Service is an agency of the Department for Business, Innovation & Skills. It deals with insolvency matters in England and Wales, and some limited insolvency matters in Scotland. Through its network of Official Receivers, and various headquarters divisions, The Insolvency Service is responsible for, amongst other things, undertaking the initial administration of the estates of bankrupts and companies in compulsory liquidation; acting as trustee/liquidator where no private sector insolvency practitioner is appointed; investigating the circumstances and causes of failure of companies wound up by the court and of individuals subject to bankruptcy orders; and reporting any misconduct on the part of directors or bankrupts. It also deals with such things as the disqualification of directors, and the authorisation and regulation of the insolvency profession.

Through its network of Redundancy Payments Offices, The Insolvency Service is also responsible for assessing and paying statutory entitlement to redundancy payments when an employer cannot or will not pay its employees.

The Insolvency Service's Companies Investigation Branch (CIB) investigates complaints about the conduct of "live" limited companies and Limited Liability Partnerships, which have a business address in Great Britain, and when such an investigation is in the public interest.

Official Receivers are statutory office holders, and as such they find themselves directly accountable to the courts for a considerable proportion of their actions. This is an important point for us because we cannot consider complaints about actions or decisions which have an established means of challenge through the courts. We therefore need to examine complaints about The Insolvency Service very carefully to ensure that we investigate only those matters which do not have their resolution through the courts. Only the court can reverse or modify a decision about the administration of an insolvent estate.

We took on for investigation eight complaints about The Insolvency Service, the same number as last year. We settled seven investigations, compared to eight last year. Of the seven cases we settled, one case was wholly upheld and the rest were not upheld.





# Appendices

## Appendix 1 – Statistics

### All complaints and enquiries

#### Assistance enquiries and cases

In 2008/09, our Assistance Team answered 5,085 general enquiry phone calls, compared to 4,231 last year. These covered a wide variety of topics, including requests for information about our procedures and remit and also enquiries about the progress of complaints being dealt with by the office.

In 2008/09, we took on 4,234 complaints as assistance cases compared to 6,100 last year. These are cases where the organisation concerned has not had the opportunity to consider the complaint and we refer it back to them to deal with.

#### All complaints

In 2008/09, we took on 2,174 complaints for investigation, compared to 2,017 last year. We settled 1,714 complaints, compared to 1,720 last year.

#### Outcome of all complaints

Year	2007/08	2008/09
Upheld (either wholly, or in part)	757 (44%)	577 (34%)
Not upheld	806 (47%)	633 (37%)
Withdrawn	41 (2%)	21 (1%)
Department Reconsidered	116 (7%)	483 (28%)
<b>Total</b>	<b>1,720</b>	<b>1,714</b>

## Complaints about HM Revenue & Customs

In 2008/09, we took on for investigation 2,092 complaints about HMRC, compared to 1,971 last year. We settled 1,650 HMRC investigations, compared to 1,690 last year.

### Outcome of all HMRC complaints (including tax credits)

Year	2007/08	2008/09
Upheld (either wholly, or in part)	747 (44%)	566 (34%)
Not upheld	787 (47%)	580 (35%)
Withdrawn	40 (2%)	21 (1%)
Department Reconsidered	116 (7%)	483 (29%)
<b>Total</b>	<b>1,690</b>	<b>1,650</b>

Note: Due to rounding up/down there are some instances where percentages totals will be +/- 1%

### Outcome of all HMRC complaints (excluding tax credits)

Year	2007/08	2008/09
Upheld (either wholly, or in part)	75 (25%)	69 (21%)
Not upheld	207 (69%)	240 (74%)
Withdrawn	15 (5%)	11 (3%)
Department Reconsidered	2 (1%)	4 (1%)
<b>Total</b>	<b>299</b>	<b>324</b>

Note: Due to rounding up/down there are some instances where percentages totals will be +/- 1%

## Complaints about tax credits

Of the HMRC complaints we took on for investigation in 2008/09, 1,451 (69%) were about tax credits, compared to 1,543 (78%) last year. We settled 1,326 investigations about tax credits, compared to 1,391 last year.

### Outcome of complaints about tax credits

Year	2007/08	2008/09
Upheld (either wholly, or in part)	672 (48%)	497 (37%)
Not upheld	580 (42%)	340 (26%)
Withdrawn	25 (2%)	10 (1%)
Department Reconsidered	114 (8%)	479 (36%)
<b>Total</b>	<b>1,391</b>	<b>1,326</b>



## Compensation

In 2008/09, we recommended HMRC pay a total of £188,597 compensation to complainants, compared to £142,307 last year.

In 2008/09, we recommended that HMRC give up tax and interest amounting to £30,427, compared to £40,642 last year. We also recommended that HMRC write off £1,976,113 in overpaid tax credits, compared to £673,469 last year.

Of the 1,326 tax credit cases settled, we asked HMRC to write off the overpayment either in part or wholly in 748 cases, with an average amount written off in these cases of £2,641.89.

HMRC accepted all of the Adjudicator's recommendations.

## The Valuation Office Agency

In 2008/09, we took on for investigation 41 cases about the VOA, compared to 16 last year. We settled 31 investigations, compared to 11 last year. Of the 31 cases we settled, five were partially upheld, the rest were not upheld. We recommended that the VOA pay £320 in compensation, compared to £110 last year.

The VOA accepted all of the Adjudicator's recommendations.

## Office of the Public Guardian

In 2008/09, we took on for investigation 33 complaints about the OPG, compared to 15 last year. We settled 26 investigations, compared to 11 last year. Of the 26 cases we settled, five cases were partially upheld, the rest were not upheld. We recommended that the OPG pay a total of £2,473 in compensation, compared to £850 last year.

The OPG accepted all of the Adjudicator's recommendations.

## The Insolvency Service

In 2008/09, we took on for investigation eight complaints about The Insolvency Service, the same number as last year. We settled seven investigations, compared to eight last year. Of the seven cases we settled, one case was wholly upheld, the rest were not upheld. We recommended that The Insolvency Service pay £2,961 in compensation compared to nothing last year.

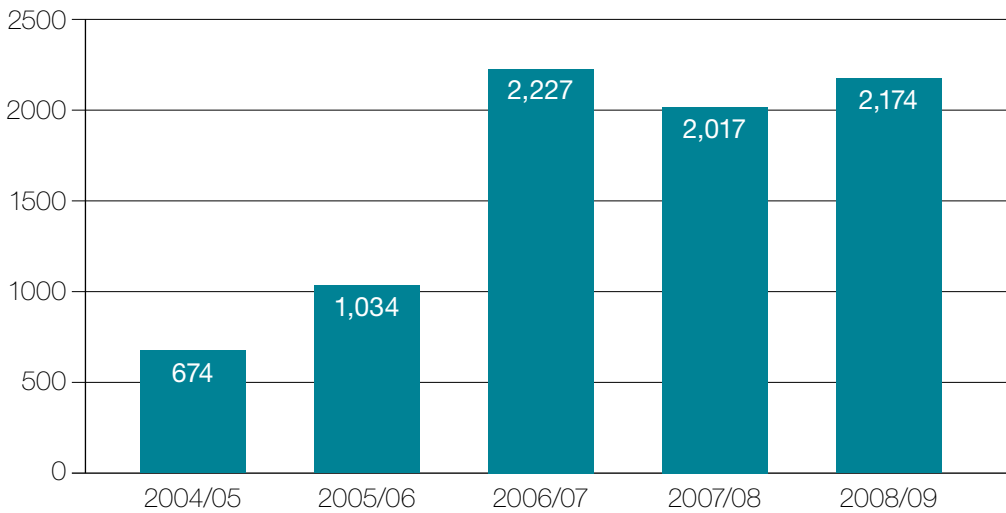
The Insolvency Service accepted all of the Adjudicator's recommendations.

## Appendix 2 – Trends

### All complaints received in the last five years

The table below demonstrates that the number of complaints the office received increased significantly in 2005/06 and 2006/07 but has remained relatively stable for the past three years. After a small decrease in complaints received in 2007/08, there was a small increase this year.

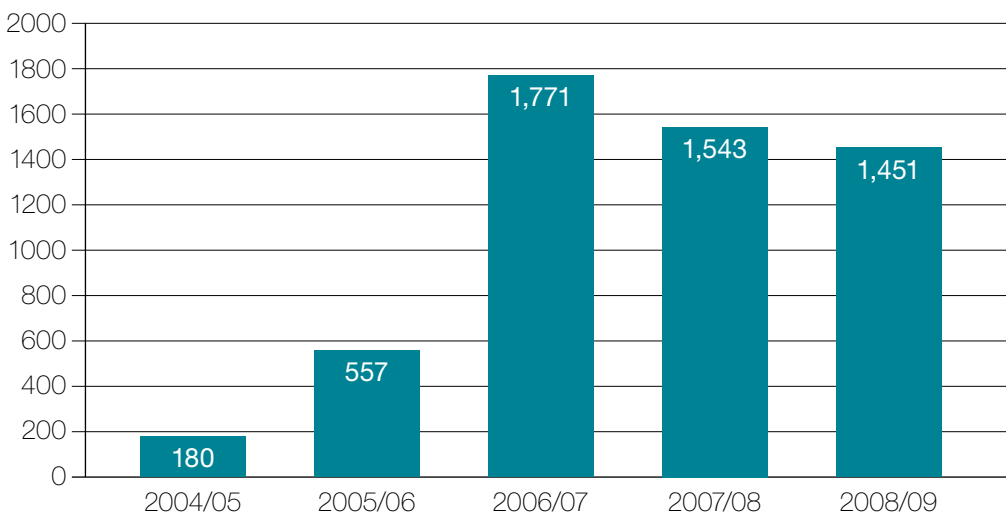
### All complaints received by the Adjudicator's Office in the last five years



### Complaints about tax credits received in the last five years

The table below demonstrates that complaints about tax credits increased significantly in 2005/06 and 2006/07. There has been a small decline in complaints about tax credits over the last two years but they remain at a level almost three times as high as they were in 2005/06. The rate of decline has also slowed slightly compared to last year.

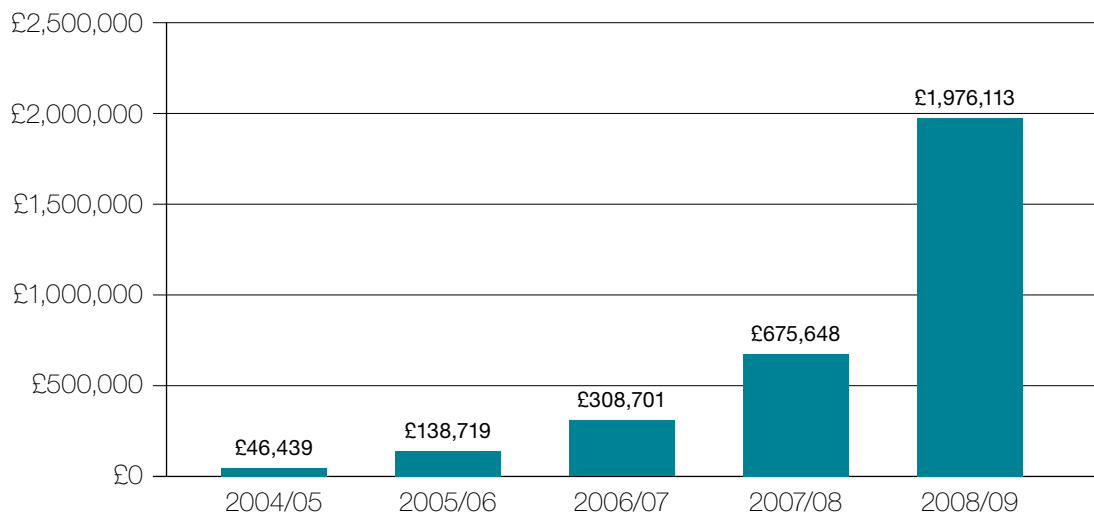
### Tax Credit complaints received by the Adjudicator's Office in the last five years



### The amount of tax credit overpayments written off (as a result of a complaint coming to our office) in the last five years

The table below demonstrates that there has been an extremely large increase in the amount of tax credit overpayments written off this year, even though the number of tax credit complaints has decreased slightly. It is likely that this is as a result of the application of the revised COP 26 (published in January 2008) to disputed overpayments considered by this office. This clearly demonstrates that the revised COP 26 is more “generous” than previous versions.

#### Amount of tax credit overpayments written off



#### The “department reconsidered” classification

In 2008/09 we classified 28% of all our settled complaints as “department reconsidered”, compared to 7% last year. Clearly, this is a significant increase and needs to be explained.

When a case is under our investigation, the organisation subject to the complaint is sometimes able to come to a revised or “reconsidered” decision, as a result of a policy change or new evidence that was not available to them when they first considered the complaint. If this happens, the organisation or our office will then explain the revised decision to the complainant. If the complainant agrees to settle their complaint on the basis outlined, the case will be classified as “department reconsidered”.

Following on from the introduction of the revised COP 26 in January 2008, the TCO have been considering all of our cases under the revised code. In nearly 500 cases this led the TCO to agree to write off all (or the majority) of the overpayments disputed. As the new decision was as a result of a change to COP 26 rather than as a result of the previous overpayment decision being incorrect, we agreed to classify these complaints as “department reconsidered”.

## Appendix 3 – Key performance measures and targets

### Assistance & Remit work

Description	Target	Achieved 2007/08	Achieved 2008/09
Where written response required, % Assistance response within 10 working days.	95%	97.28%	99.22%
% of cases where report requested within 5 working days of the decision to investigate.	95%	92.89%	99.54%

### Investigation work

Description	Target	Achieved 2007/08	Achieved 2008/09
% of investigation correspondence dealt with within 15 working days.	95%	98.34%	99.52%
Average investigation turnaround in weeks.	19.50 weeks	23.44 weeks	40.01 weeks
% of investigation cases closed within 44 weeks.	99.50%	98.43%	49.42%
% of complainants satisfied with the way we handle their complaint at investigation level.	70%	66%	68%

Note: "Investigation turnaround" means the period from the date we advise a complainant that we are taking a complaint on for investigation until the date we settle the case.



## Appendix 4 – Customer Survey

We use the services of an independent market research company, British Market Research Bureau International (BMRB), to conduct telephone surveys on our behalf with complainants whose cases have been settled by our office. We liaise regularly with BMRB throughout the year and they report their findings to us in April. This year, we have used the same criteria and questions that we used last year.

This year, BMRB contacted 295 complainants (compared to 208 last year) and sought feedback on a number of key service issues. The surveys provide us with useful data on overall satisfaction levels and give an indication of where we may need to make improvements in the way we work. The main results were as follows:

### Overall satisfaction

This year, the overall level of satisfaction with our service was 68%, compared to 66% in 2007/08. As the table below demonstrates, this figure has remained broadly consistent over the past five years. This is pleasing to note, given the backlog of complaints we have and the increased length of time complainants have to wait for a decision.

#### Level of satisfaction with the service received from the Adjudicator's Office

Year	04/05	05/06	06/07	07/08	08/09
Base: All respondents	131	249	274	208	295
Very satisfied	41%	41%	36%	29%	37%
Fairly satisfied	24%	27%	31%	37%	31%
Not very satisfied	18%	12%	12%	13%	14%
Not at all satisfied	15%	19%	20%	21%	17%
<b>Satisfied</b>	<b>65%</b>	<b>67%</b>	<b>68%</b>	<b>66%</b>	<b>68%</b>
<b>Not satisfied</b>	<b>34%</b>	<b>31%</b>	<b>32%</b>	<b>34%</b>	<b>31%</b>

Note: Satisfied = very satisfied added to fairly satisfied.

Not satisfied = not very satisfied added to not at all satisfied.

Due to rounding, total percentages may not add up to 100%

## Other results

- 70% of complainants felt that we treated their complaint impartially (compared to 60% last year)
- 65% of complainants felt we investigated their complaint thoroughly (compared to 52% last year)
- 87% of complainants who had seen our leaflet felt that it was “easy to understand” and 84% found it “useful”
- 83% of complainants who had used our website found it “easy to use” and 86% found it “useful”.

## Dissatisfaction with our service

As part of the survey, complainants who said that they were dissatisfied about our service (92 out of 295 interviewed) were asked the reasons why they were dissatisfied. The results are set out below. As last year, concerns about delay were the most likely reason, followed by concerns about our impartiality. There was a significant increase in the number of complainants concerned about delay compared to last year.

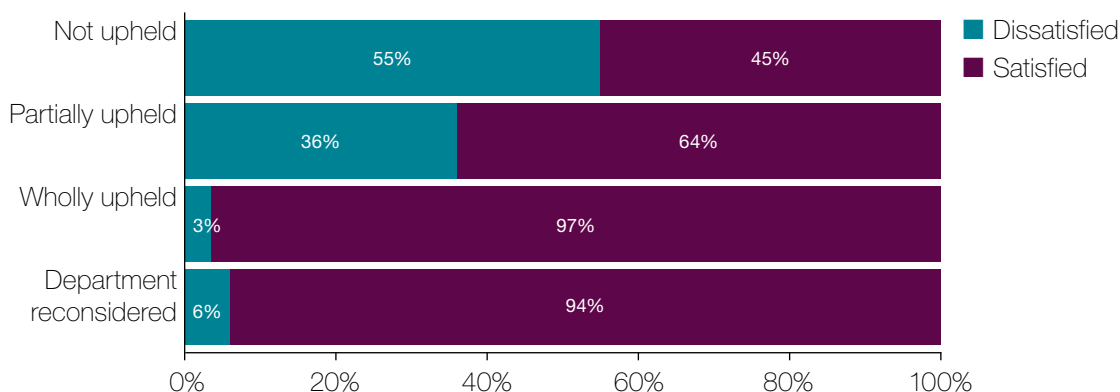
### Top five reasons for dissatisfaction

Year	04/05	05/06	06/07	07/08	08/09
Base: All who were dissatisfied	61	78	88	72	92
Slow process/took a long time to respond	16%	26%	13%	31%	48%
Bias/not impartial service	18%	33%	38%	12%	23%
Unsatisfactory outcome	25%	31%	16%	17%	14%
Not kept up-to-date/lack of correspondence	5%	4%	8%	9%	13%
Case was not investigated properly/ as I expected	30%	27%	19%	15%	11%

## Satisfaction compared to outcome of complaint

It has always been apparent from our surveys that complainants' overall satisfaction with the service provided by our office has been largely dependent on the outcome of their complaint. The table below demonstrates this very clearly.

### Satisfaction compared with complaint outcome



## Appendix 5 – Budget

Year	2007/08	2008/09
Staffing	£1,882,050	£2,160,376
Other operating costs	£57,820	£91,639
Capital	N/A	N/A
Total	£1,939,870	£2,252,015



## Appendix 6 – Case Summaries

### HM Revenue & Customs

#### Tax Credit case summaries

The great majority of tax credit complaints that we receive are normally about HMRC's refusal to write off an overpayment.

HMRC's decision on whether to write off an overpayment is made in accordance with COP 26 – "*What happens if we have paid you too much tax credit?*".

COP 26 says that, if a claimant disputes an overpayment, HMRC will check whether the claimant has met their responsibilities, and whether HMRC have met theirs. They will then decide whether an overpayment should be paid back.

#### **HMRC will check:**

- that they accurately recorded and acted on any information the claimant gave them within one month of the claimant telling them about a change of circumstance
- that they accurately calculated and paid the claimant their correct entitlement
- that the information they included on the claimant's award notice was accurate at the date of the notice
- what the claimant told them if they contacted them, and whether the advice they gave them based on that information was correct. They will also check whether the claimant contacted them to discuss any queries on their award notice, and whether they answered them.

#### **HMRC will also check:**

- that the claimant gave them accurate and up to date information when they claimed tax credits
- that the claimant told them about any changes of circumstance at the right time (in the timescales listed on the checklist)
- that the claimant checked their award notice within one month of getting it and checked that the payments they got matched the amounts on the award notice
- that the claimant checked their award notice within one month of getting it and they told them about any mistakes
- whether the claimant told them of any exceptional circumstances that meant they could not tell them about a change of circumstances or about their mistake within one month.



## TC case summary 1

Mrs B wrote to us because she felt that the TCO had treated her poorly. She and her husband had made a joint claim in 2003. They had elected that the payments should go to Mrs B, although in reality the money was paid into a joint account.

The couple separated in 2005 and Mrs B made a single claim, at the same time advising the TCO of her new bank account. The changes went smoothly and no overpayments arose.

In September 2006, Mrs B informed the TCO that her actual income for 2004/05 was lower than the figure used. The TCO amended her records correctly, which caused underpayments in the current, single award and also the previous, joint awards. In accordance with the records held, the TCO paid the 2005/06 underpayment from the single award into Mrs B's new bank account and the 2004/05 and 2005/06 underpayments from the joint award into the old joint bank account. In accordance with

their usual procedures, the TCO notified both Mr and Mrs B of the payments. The award notices stated that the payments would be paid to Mrs B but, as before, the money went into the joint account. It was now some time after the couple had split up and Mrs B had assumed that the account had been closed. However, when she contacted the bank she was informed that Mr B had withdrawn the money and had closed the account.

Mrs B wanted the TCO to recover the money from her estranged husband and to repay the award to her. She argued that she had informed them that she was separated from her husband and she had given them details of her new account. The TCO pointed out that the joint and single awards were separate and that information from one did not flow over to the other. They felt that they had not made a mistake because they had acted on the information provided by Mr and Mrs B when they made their joint claim and this had not been amended by either partner.

Whilst the Adjudicator had a great deal of sympathy with Mrs B, she found that the TCO had not made a mistake. Therefore, we had no grounds for asking the TCO to make a further payment to Mrs B or to recover the

award from Mr B since, as a joint claimant, he was equally entitled to the money, despite having authorised this to be paid to his wife.

## TC case summary 2

Mrs C asked this office to consider the TCO's decision not to write off an overpayment of tax credits of approximately £3,000.

When Mrs C and her husband applied for tax credits, there was some delay in processing their claim. When it was processed, the TCO calculated their entitlement based on a nil income. Because of the delay, Mr and Mrs C received a large lump sum payment to bring the payments they were apparently entitled to up to date. Shortly after the TCO sent

Mr and Mrs C an award notice showing this, Mrs C contacted the Tax Credit Helpline to say that she expected their income would be around £13,000. On this basis, the entitlement reduced considerably. Mr and Mrs C had already received more than their entitlement and payments stopped. When the award was finalised after the end of the year Mr and Mrs C reported a much higher actual income and this led to their award being nil. On this basis, all of the payments they had received were classed as an overpayment.

When we reviewed this complaint we found that the TCO had made a mistake when they set up the claim. We had been provided with a copy of their claim form and Mr and Mrs C had, clearly, included their 2001/02 income of around £13,000. However, because the TCO actually used nil income to calculate the entitlement, a maximum award was made.

If the TCO had correctly set up Mr and Mrs C's award at the outset, they would only have received an award of about £320.

The TCO had not appreciated this because they had not realised that the income details had been provided at the outset. We felt that, on this basis, all of the overpayment in excess of £320 had arisen as a result of the TCO's mistake. Mr and Mrs C had met their responsibilities because, after they received the award notice showing the income was incorrect, Mrs C advised the TCO of this within 30 days. After discussion between our office and the TCO, they agreed to give up the remainder of the overpayment.

### TC case summary 3

The TCO overpaid Mr and Mrs D tax credits by issuing lump sum payments totalling approximately £7,000 for the 2004/05 and 2005/06 tax years. When Mr and Mrs D realised that they had been overpaid they immediately contacted the TCO to establish how they could repay the money, and subsequently repaid it.

The TCO claimed the overpayment arose because Mr and Mrs D provided inaccurate income figures on their 2004/05 annual declaration form. They explained that Mr and Mrs D's annual declaration form was scanned electronically onto their computer and so the income figures shown would have been scanned.

As Mr D was certain that the TCO had inaccurately entered incorrect income figures on their system, and this had caused them to be overpaid, he requested and received a copy of his 2004/05 annual declaration form from HMRC's Data Protection Unit, and sent it to us. As the declaration showed that Mr and Mrs D's income for 2004/05 was significantly higher than the income figure that the TCO recorded and had based their tax credit entitlement on, we referred the matter back to the TCO for their reconsideration.

Consequently, the TCO accepted that they made a mistake as they had recorded the incorrect income details shown on Mr and Mrs D's annual declaration. They agreed that they failed in their responsibilities here. The TCO accepted that Mr and Mrs D met their responsibilities when they informed them that their payments were incorrect. Because of this, the TCO refunded the lump sum payments that Mr and Mrs D received in error, and had already repaid. The TCO also paid compensation of £70 in recognition of the worry and distress caused by their mistake.



## Other HM Revenue & Customs case summaries

### Extra Statutory Concession A19 (ESC A19)

Taxpayers have a responsibility to ensure that their tax affairs are up to date and in order. In many of the cases that we investigate about tax codes, the complainant has asked HMRC to give up an unexpected tax liability under the terms of Extra Statutory Concession A19 (ESC A19).

Under the provisions of ESC A19, HMRC can give up arrears of tax where they have failed to make proper and timely use of information that they have received. There are, however, strict conditions that must be met before the concession can be applied. Usually, the concession will only apply

where a taxpayer:

- was notified of their tax arrears more than 12 months after the end of the tax year in which HMRC received the information showing that more tax was due.

There are, however, exceptions to this rule and arrears of tax notified 12 months or less after the end of the relevant tax year may be given up if HMRC:

- failed more than once to make proper use of the facts they were given about a single source of income, and
- allowed the arrears to accumulate over two whole tax years in succession by failing to make proper and timely use of information that they had been given.

The concession can only apply, however, where the taxpayer could reasonably have believed that their tax affairs were in order. This difficult test is often the deciding factor in determining whether or not HMRC have applied their discretion fairly and properly.

It is important to remember that the test is not a question of whether a taxpayer actually believed that their tax affairs were in order, but whether it was reasonable for them to hold this belief when all relevant factors are taken into consideration.

In considering such complaints, we are looking to see whether HMRC have applied the test in accordance with their guidance.



## ESC A19 case summary 1

Mrs F complained about HMRC's refusal to give up underpayments of tax in 2003/04 and 2004/05, under their ESC A19.

These arose because van benefit she received from her employer was not included in her tax code.

Where a person receives, as part of their employment package, taxable benefits, the employer is responsible for providing notification of those benefits to HMRC. In the case of van benefits in the years concerned, there was no requirement for the employer to notify HMRC until after the end of the tax year of the amount involved, and they did this using a Form P11D. Therefore, unless Mrs F had contacted HMRC when she began to receive the benefits, and asked for them to be included in her tax code, there was bound to be an underpayment of tax for 2003/04.

Clearly, HMRC could not have prevented the parts of the underpayment which arose before they received the first relevant P11D, for 2003/04. In October 2004, they reviewed this and, while they issued a calculation for 2003/04 and wrote to Mrs F to tell her they would collect this through a subsequent tax code, they did not adjust her tax code for 2004/05, as their instructions say they



should have done. HMRC accepted the "time test" element of the concession was met for 2004/05, but considered the "reasonable belief" test failed, on the basis that Mrs F should have expected to receive a revised tax code for 2004/05.

When we reviewed this case we felt there was an argument that reasonable belief was satisfied. The amounts involved were very small and HMRC had not sent Mrs F tax codes for a number of years, so it did not seem to us that she would necessarily have realised that HMRC would need to issue her with a new tax code in order to

collect the extra tax due. As a result of discussions with them, HMRC agreed to give Mrs F the benefit of the doubt, and this has led to HMRC waiving the amount of the underpayment that could have been avoided if they had updated Mrs F's tax code on receipt of the P11D for 2003/04.

## ESC A19 case summary 2

The Citizen's Advice Bureau asked us to look at Mrs G's complaint about HMRC's refusal to give up underpayments of tax.

Mrs G underpaid tax in 2000/01 through to 2005/06. This was because, in addition to the full personal allowance given to her through her tax code on her occupational pension, she also received duplicate partial personal allowances on her employment income. Prior to Mrs G reaching the age of 60 in 1998, and commencing receipt of the state retirement pension, HMRC had split Mrs G's personal allowance between her two sources of income at that time, as her occupational pension did not use them all. When she started to receive the state retirement pension, it seems the tax code for deductions on her occupational pension was adjusted to include a restriction for the state pension, which meant that the whole personal allowance could then be offset

against this, with none left over. Unfortunately, however, the partial personal allowance on her employment income, which should have stopped at this stage, continued.

It was not until November 2006 that HMRC wrote to Mrs G to tell her that they had reviewed her tax affairs and they found she had underpaid tax of approximately £4,000.

When considering Mrs G's complaint, HMRC accepted that their failure to act on information had led to the arrears. However, they did not feel that the "reasonable belief" test was met, as they had always sent her tax codes and the relevant explanatory booklets. They said that, as this was the case, Mrs G was in a position to have realised that she was not paying enough tax. To apologise for their poor handling of matters, they made a payment of £125 compensation.

When we reviewed this case we had considerable sympathy with Mrs G's situation. However, in light of the information made available to her, we could not conclude that HMRC's decision had been unreasonable. We saw that the tax codes Mrs G received quite clearly showed that for each year she was being given the benefit of personal allowances around £3,000 more than they should have been.

We were, however, able to give Mrs G some good news. Due to the size of the arrears of tax HMRC could not collect the amounts owed through tax coding so they should have asked her to complete Self Assessment returns and then raised assessments for the amounts due. In fact HMRC had left it too late to do this for the earliest year in question, so they could no longer collect the underpaid tax for those years. This reduced her liability by just over £1,750.

## Indirect Tax case summary 1

This case is primarily about a claim for costs.

Company H was in the business of waste disposal. They had always treated waste loads containing a certain plant as being subject to the lower rate of Landfill tax (LFT). Following an assurance visit in 2005, an officer of HMRC told the company that they should be charging the standard rate of LFT on loads containing the plant, because it had the potential to pollute at the time it was accepted at the landfill site. Consequently, the officer raised an assessment for £122,239, plus interest and penalty.

The company protested against the assessment, and requested two Departmental reviews, but both reviews upheld the assessments. Following that, the company made an official appeal to the VAT and Duties

Tribunal to have the assessment withdrawn. HMRC referred the matter to their Solicitor's Office for advice and, as a result of advice received, HMRC withdrew the assessment and withdrew from the appeal.

After that, the company claimed full costs incurred in disputing the LFT assessment, but HMRC reimbursed costs for work undertaken in respect of the appeal to tribunal only. HMRC stated that they only reimburse pre tribunal costs if they had made a mistake, and in this case, did not consider that any mistake had been made. HMRC insisted that the decision of the assessing officer to raise an assessment was not wholly unreasonable, and so could not be considered a mistake, particularly as she raised the assessment after consulting with other parts of HMRC.

We ascertained that HMRC had been focusing on the plant's potential to pollute before it arrived at landfill, when they should have considered its potential to pollute after it had been landfilled. Therefore, HMRC had misinterpreted what paragraph 3.3 of Notice LFT1 was saying and so the advice provided to the assessing officer was incorrect. We concluded that HMRC should not view the actions of the assessing officer as distinct

from HMRC as a whole, and therefore concluded that raising the erroneous assessment on the company constituted a mistake.

We found that this mistake should be remedied under HMRC's Code of Practice on complaints. HMRC accepted our view and agreed to reimburse the company's pre-tribunal costs.



## Indirect Tax case summary 2

We receive a number of complaints that HMRC have misled businesses to their detriment, and usually, where we have upheld complaints, there is no question but that the detriment started when the misleading advice was given and continued until the mistake came to HMRC's attention and they corrected it. But, occasionally, we receive a case in which we need to consider whether there was a point in time along the way when circumstances changed, bringing to an end HMRC's responsibility for the detriment. If this is so, we can only uphold the complaint in part.

Company J is part of a network of businesses providing educational services using computer media.

In the earlier days of the network, it was not clear whether individual businesses within the network would be making standard-rated or exempt supplies of services. This issue had been referred to HMRC's VAT policy specialists, and was under consideration for an extended period. Usually, a business making only exempt supplies would have no requirement or entitlement to be registered for VAT, and would not be able to reclaim any of the VAT that it incurred on its expenses, but, as an interim measure, HMRC allowed affected businesses in the network provisionally both not to charge VAT on their supplies of services and to reclaim the VAT incurred on their expenses.

After a VAT assurance officer visited Company J, she wrote to them to confirm an interim arrangement for "provisional" VAT accounting. Later it emerged that the company had a completely different understanding of what "provisional" meant from what the officer had intended. The company understood that, once HMRC had made their decision about the VAT rating of the services, they would have to review their VAT position and adjust from a current date the VAT, if any, they charged and could reclaim. But in the language used by HMRC internally, "provisional" meant

that the company would have to review, and account for VAT according to HMRC's decision retrospectively. Because HMRC's decision was not announced until the company had been trading for two years, and it was that their supplies of services were exempt from VAT. This meant that they had reclaimed VAT on their expenses to which they were not entitled; the arrears of tax that HMRC later said were due as a result amounted to a considerable sum.

The extent of the alleged arrears was increased unfairly, the company said, because HMRC had not written to them to give them the VAT liability decision, and they had only become aware of it two years after it had been made.

The company's complaints to us were that HMRC had misled them about the nature of the interim arrangements and had failed to notify the policy decision to them properly at the time it was made. On these grounds, they said that HMRC should forego the whole of the arrears of VAT that had been assessed.

HMRC accepted that their visiting officer's letter might have been ambiguous, since "provisional" was capable of carrying the meaning "subject to retrospective adjustment" but did not necessarily mean that, but thought the complainant had also had a responsibility to be aware of the VAT rules governing the consequences of making exempt supplies, and, in particular, to clarify the letter's meaning if there had been any doubt. They therefore denied that they had given misleading advice to the company's detriment. They agreed that they had not written to the company directly to deliver their ruling. They said that, because the network had many businesses all needing the same ruling, they had both published it on HMRC's website and arranged for it to be published through the computer system used by all the network businesses in common. In their view, this had discharged their responsibility to notify their decision to the company.



We decided that the visiting officer's letter had amounted to a clear ruling and had misled Company J to their detriment. We looked at dictionary definitions of "provisional" and could not see that retrospection was universally or usually implied. We took the view that, if we had received the letter, our understanding would have been that we did not have to charge output tax and could reclaim input tax for now, but that we might have to charge VAT and stop claiming input tax from a later date, should HMRC's decision go that way. Taking this, together with the context provided by the rest of the visiting officer's letter, we did not see that the letter gave any indication that there would be any question of "undoing the past", or that Company J should have thought this was a possibility.

HMRC were not able to show us the information that they had arranged to be placed in the computer system used by the company's network, because it was no longer current and had been removed. They were able to show us a draft of the message, however, and we were satisfied that its information covered the company's circumstances. We concluded that HMRC had discharged their responsibility to provide a ruling to the company, and found that HMRC's responsibility for their misleading advice had ceased when their ruling had been put onto the computer system that Company J used. We upheld the complaint in part.



## Stamp Office case summary

Mr K complained about an interest charge imposed on Stamp Duty Land Tax (SDLT) of £10,500 paid late. Although Mr K's solicitors (K & Co) had sent a payment with Mr K's SDLT return it had been dishonoured on account of being unsigned. A subsequent cheque was sent to the Stamp Office (SO) but, because this was received after the due and payable date, mandatory interest was applied.

Mr K complained that the SO had failed to tell him or K & Co that the cheque had been unsigned and that they only found out about this when K & Co had queried demands for interest.

K & Co first raised the matter with the SO on 12 January 2007 following receipt of the

SO's first demand dated 4 January 2007 which indicated that the SDLT had been paid but that a small amount of interest was owed. The SO responded on 23 January 2007 querying why no SDLT was due on the transaction. K & Co confirmed that payment had been sent to the SO with the return and queried why an additional payment of interest had been demanded.

Despite the fact that K & Co contacted the SO again, on 22 February 2007, following receipt of a further reminder for interest, the SO did not reply to them until 13 March 2007 when they advised that the cheque payment had been returned on 17 January 2007 because it had not been signed.

We established that, although the SO's records were updated to show that the original cheque had been dishonoured on 17 January 2007, this was a system update only (that is to say there was no paper notification to the SO or alert, which would have led to them seeing the system update). In the circumstances, we considered that the SO could not have been expected to have alerted K & Co to the problem at that time. However, the Adjudicator considered it to have been remiss of the SO not to have confirmed the correct position to K & Co when they wrote to them on 23 January 2007, because of the note that was on the system by then.

It was clear to us that the SO had originally been unaware that there was a problem with Mr K's cheque payment and, as they had processed his SDLT1 return onto their system on 6 December 2006, it appeared that the payment on or around that date had also been processed. It was, however, unclear why, if payment had been treated as received, an interest charge had arisen.

Interest was charged on this occasion because payment was not received until March 2007.

Interest is charged on late payments of SDLT in accordance with Section 87 Finance Act 2003 (S87 FA 2003). The charging period for interest runs from the legally due and payable date to the date of payment.

Whilst there are no provisions within S87 FA 2003 for relief from interest, there are very limited circumstances where mitigation is considered. HMRC's Interest Review Unit (IRU) is the only office authorised to give up interest. Usually relief is considered where it has been demonstrated that HMRC are at fault and interest has accrued as a direct result of their error or delay.

On this occasion we considered that because the SO's reminder dated 4 January 2007 confirmed receipt of Mr K's SDLT payment, and the SO did not confirm, until 13 March 2007, that there had been a problem with the cheque, the SO should ask the IRU to consider a waiver of interest.

The IRU agreed with our view and decided that a waiver of the interest arising between the date of the first reminder which suggested that the tax had been paid [4 January 2007] and 13 March 2007 when the SO had made K & Co aware that there had been a problem with the cheque.

We asked the SO to pay Mr K compensation of £75 in recognition of the worry that he personally experienced in connection with this matter.

## The Valuation Office Agency

### VOA case summary

Mr L asked the Adjudicator to consider his complaint about the VOA's refusal to pay interest on refunded Council Tax payments, loss of earnings and direct costs. He believed that it was clear that the VOA had made a mistake with the initial banding of his property.

When the band review was carried out, the VOA's inspector incorrectly calculated the size of the property which led to a questionable

reduction. However, the LO decided that the decision should stand. The VOA explained that because a band is reduced it does not prove conclusively that the original band was a mistake; a judgement is made on the evidence available. In this case, the decision to reduce the band was questionable. However, the VOA accepted that there had been some general handling issues and had agreed to pay Mr L £50 compensation.

The Adjudicator was satisfied with this and did not recommend any further action. The claim for "loss of earnings" was declined as there was no proof of an actual financial

loss. The Adjudicator stated that she could not recommend that the VOA offer Mr L a payment in respect of the lost interest. The case was not upheld.



## Office of the Public Guardian

### OPG case summary

The following case summary relates to the Public Guardianship Office (PGO) and the Office of the Public Guardian (OPG), as the complaint overlapped the period when the PGO was replaced by the OPG following the introduction of the Mental Capacity Act (MCA) 2005 on 1 October 2007.

Mr M made an application to the PGO and was appointed Receiver by the Court of Protection (COP) for his mother, as she was found to be incapable of managing or administering her own property and affairs, as defined in the Mental Health Act 1983.

Mr M had proposals to renovate and modernise his parents' property and required the release of funds to carry out such plans. He also required guidance and suitable formal directions under seal from the PGO and COP.

Mr M was asked by the PGO, as was then the appropriate procedure, to provide competitive estimates from builders in connection with the planned work, which would be referred to the COP, together with Mr M's views, and if considered viable and acceptable to the COP, approval to his plans would be granted. Upon such approval, the PGO would formally authorise the release of sufficient funds, belonging to his mother, invested at the Court Funds Office.

Being a newly appointed Receiver, without professional assistance, Mr M communicated regularly, anticipating continuous advice, and guidance, by the PGO, especially as he was looking after both his elderly parents. Shortly before the implementation of the MCA 2005, on 1 October 2007, the COP approved, in principle, to his plans to repair the bungalow,

although insufficient paperwork had been received from Mr M. Accordingly, the PGO advised Mr M that he should go ahead and secure the services of a contractor who he felt would offer the best deal. This was 'green light' for Mr M and allowed him to proceed with a certain amount of freedom and discretion.

From 1 October 2007, following the implementation of the new Act, the OPG went through a difficult period of transition. In anticipation of the changes, and any possible delays and difficulties, a 'transitional' order was made giving Mr M 'extended' powers as a Deputy (which replaced the role of a Receiver) to facilitate him in carrying out his new deputyship duties, including giving him authority to access his mother's funds, including those at the Court Funds Office, without asking for specific permission from the new OPG or COP.

Mr M complained on several occasions that the PGO, then subsequently the OPG, did not respond quickly enough, or provide adequate guidance or appropriate formal directions, to his proposals and requests. Mr M complained of poor service, inadequate advice, delays, mistakes, and of insufficient compensation, totalling £150, which had already been made.

We found that, while the OPG handled certain matters poorly, made mistakes and gave inappropriate advice, particularly after October 2007, as a result of the difficulties experienced following the transition from the PGO, they had provided sufficient facilities, documentation and suitable new guidance, for Mr M to make progress with the property modernisation plans and the accessing of the funds required to proceed. Accordingly, the complaints were partially upheld.

Our investigations found that the OPG were at fault, as several times they missed the opportunity to properly review the case and advise him of the correct procedure and action he should take. Because of this we asked the OPG to agree that a further £50 compensation should be made to Mr M for their errors and in general recognition of any delays, stress and anxiety, together with suitable apologies.



## The Insolvency Service

### IS case summary

In 1994, Mr N was declared bankrupt. Shortly afterwards Mr P (the complainant) forwarded a proof of debt (regarding Mr N) to The Insolvency Service. The proof of debt showed a different address for Mr P but The Insolvency Service records were not altered to reflect this. The Insolvency Service then filed Mr P's proof of debt at court.

In 2000, a trustee was appointed to administer Mr N's bankruptcy, but the Official Receiver failed to inform the trustee of the existence of Mr P's proof of debt.

In 2001, the trustee sent a notice of intended dividend to all unproven creditors, which, to his knowledge, included Mr P. This letter was sent to the original, incorrect, address and no response was received from Mr P. Consequently, Mr P was not included in the 2001 dividend.

In 2005, the trustee sent a further request for a proof of debt to the incorrect address. Mr P received this letter and forwarded a copy of the original proof lodged in 1994. Consequently, Mr P received a dividend of approximately 25% of what he would have received in the 2001 dividend.

Mr P complained that, because he had not been included in the first dividend, he had received far less than he should have received.

When the complaint reached this office, The Insolvency Service had admitted that they had made mistakes, and had offered redress totalling one third of the loss that Mr P had suffered. This was on the basis that both the trustee and Mr P were in part culpable for the situation. The trustee had an obligation to check at court for proofs of debt, which he failed to do, and Mr P failed to respond to the letter in 2001.

Although we agreed that it was reasonable to expect a trustee to check for proofs at court, we found that there is no obligation for them to do so. In contrast, the outgoing trustee (the Official Receiver) does have an obligation to forward proofs of debt to the new trustee, which he failed to do in 2000.

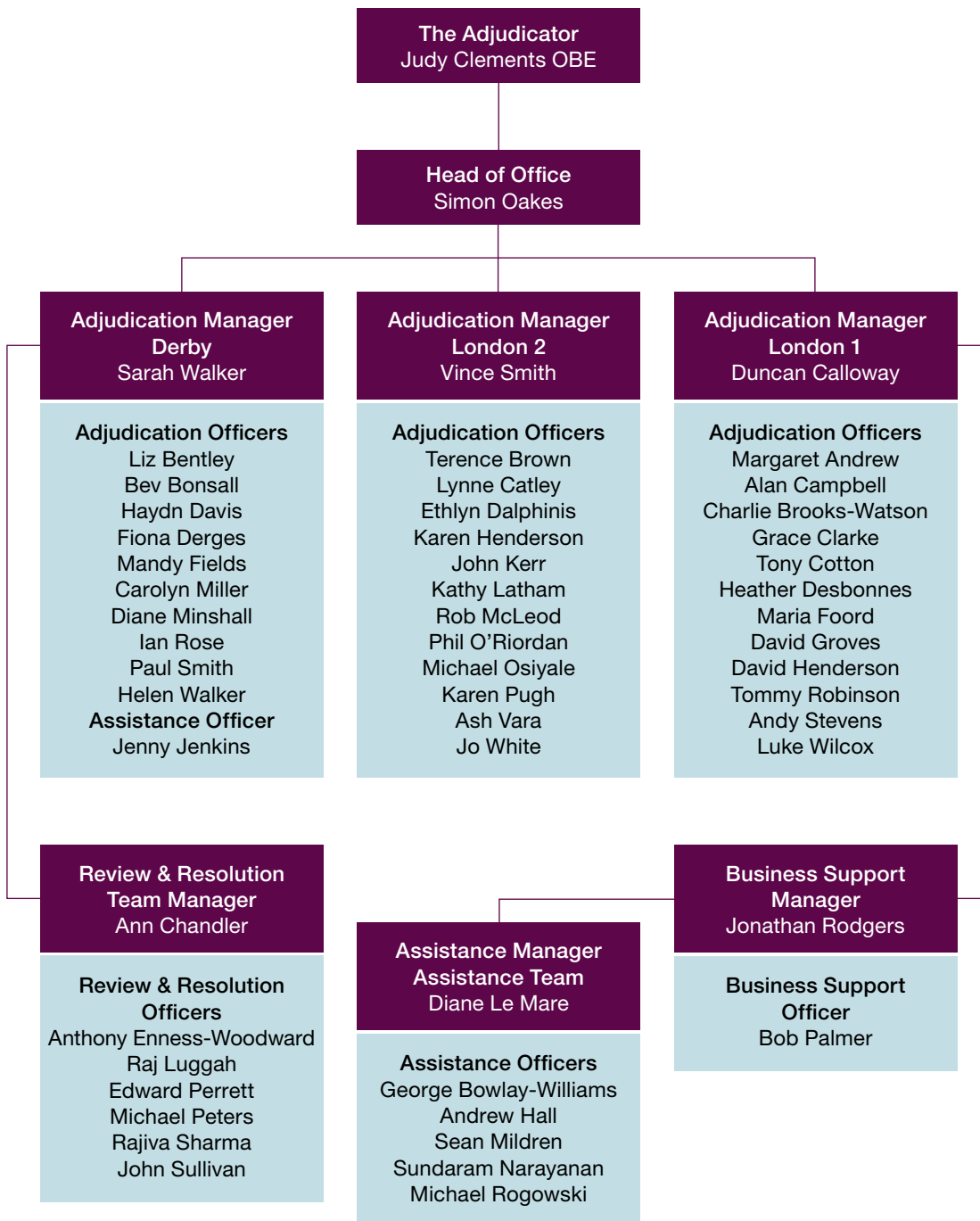
The Insolvency Service suggested that, because Mr P received the letters in 1994 and 2005, it is reasonable to assume that he received the letter in 2001, even though it was to an incorrect address. We were unable to agree with this for two reasons. Firstly, Mr P had informed them

of the correct address to use in 1994, and secondly, there was no way for us to know with any certainty whether or not Mr P had received the letter. Given Mr P's diligence in replying to other correspondence, it appeared more likely that he had never received the letter in 2001.

Therefore, we were unable to agree that either Mr P or the trustee were responsible for Mr P's loss, and recommended that The Insolvency Service should pay compensation totalling the full loss that Mr P had suffered from not being included in the first dividend.



Appendix 7 – Organisational Structure (August 2009)





## Appendix 8 – Contact details

The Adjudicator's Office  
Eighth Floor  
Euston Tower  
286 Euston Road  
London  
NW1 3US

Telephone: **0300 057 1111** or **020 7667 1832**  
(Typetalk facilities are available)

Fax: **0300 057 1212** or **020 7667 1830**

Website: **[www.adjudicatorsoffice.gov.uk](http://www.adjudicatorsoffice.gov.uk)**

You can contact us between 9am and 5pm,  
Monday to Friday (apart from Bank Holidays).

Calls to our 0300 number will cost the same  
or less than 01 and 02 prefixed numbers.

Initial enquiries and complaints are dealt with  
by our London office. Our Derby office will  
contact complainants directly about the  
complaints that they investigate.



## Appendix 9 – Publications

### Leaflets



AO1 – The Adjudicator's Office for complaints about HM Revenue & Customs and the Valuation Office Agency



AO5 – The Adjudicator's Office for complaints about the Office of the Public Guardian



AO6 – The Adjudicator's Office for complaints about The Insolvency Service

### Annual Reports



Annual Report 2007/08



Annual Report 2006/07



	<b>T H E</b>
	<b>A D J U D I C A T O R ' S</b>
	<b>O F F I C E</b>

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