

## ANY COMPLAINTS?

Jane Moore considers the work of the Adjudicator and the Ombudsman

A taxpayer who is unhappy with a decision of HMRC's can, in many cases, appeal against the decision and take the case to an independent tribunal. But if there is no right of appeal against an HMRC decision or action, the route to redress is to make a complaint. This route also offers the possibility of impartial scrutiny by a person outside HMRC, in the shape of either the Adjudicator or the Ombudsman. How well does this system work?

These two officials each recently published their reports for the year to March 2009. The report of the Parliamentary and Health Service Ombudsman (to give her her full title) came out on 16 July 2009 (see [www.ombudsman.org.uk](http://www.ombudsman.org.uk)) and the Adjudicator's report on 16 September (see [www.adjudicatorsoffice.gov.uk](http://www.adjudicatorsoffice.gov.uk)). I thought it would be interesting to compare their respective roles and performance.

The Adjudicator is Judy Clements, who took over from Dame Barbara Mills in April this year, and the Ombudsman is Ann Abraham. It has to be said that my choice of this month's cover picture was influenced by the fact that, coincidentally, both of the current incumbents are female.

### **Adjudicator and Ombudsman – how they work**

The Adjudicator is described as an 'impartial referee' to look at complaints about HMRC, the Valuation Office Agency and the Insolvency Service. Although not a department in HMRC, her office relies on HMRC for resources. She can look at whether HMRC has acted within its own procedural guidance and can recommend redress within the terms set by HMRC's own policy.

The Ombudsman carries out independent investigations into complaints about poor service by UK government departments and their agencies, including HMRC, and about the NHS in England. Her office is quite separately constituted from those departments. The Ombudsman has wider scope to look at HMRC's actions and can recommend compensation larger than dictated HMRC's guidelines.

Complainants can approach the Adjudicator directly but complaints to the Ombudsman have to be directed

via an MP (usually but not necessarily the complainant's constituency MP). For both, the case must have exhausted the department's own complaints procedure first. The Adjudicator cannot look at complaints which the Ombudsman has dealt with; the Ombudsman generally will expect complaints to have been through the Adjudicator's office beforehand.

Neither the Adjudicator nor Ombudsman can consider complaints about the law or where there is a legal route for redress through the courts or tribunals.

### **Judicial review**

Before looking at the 2009 reports I should note that there is of course an alternative route for objections to HMRC's administrative decisions – judicial review by the courts. I shall not consider it here, because its complexities and cost mean that in practice it is available to very few taxpayers, unless they can afford advice or get suitable pro bono assistance. A welcome development is that the Upper Tribunal of the new tribunal system can have power to hear judicial review applications in certain circumstances, which may make the process more accessible, but it is early days yet to see how this works. Thus, making a complaint is by far the most important option for most people.

### **The Adjudicator's report**

Despite an up-beat press release accompanying it, it is clear from the 2009 report that the Adjudicator's office did not have a good year. There is a backlog of work, with just over 2,000 complaints now waiting to be settled, and it now takes 11 months on average for a complaint to be allocated to a caseworker plus another seven weeks to reach a conclusion. The average investigation time is 40 weeks (up from 19.5 weeks the year before) and only 49.4% of cases were closed within 44 weeks (down from 99.5%).

The Adjudicator took on 2,092 complaints about HMRC for investigation in 2008/09 compared to 1,971 the year before. Of settled cases, 34% were upheld and 35% were not. In a further 29%, HMRC reconsidered its decision – which presumably means the complainant was then satisfied with the revised outcome – and most of these related to tax credits.

The volume of complaints about tax credits, especially overpayments, continues to be high. Things have not improved as expected after HMRC introduced a new code of practice for dealing with overpayments. The Adjudicator recommended that £1,976,113 tax credit overpayments be written off (£675,648 the year before).

Other main areas for complaint are tax coding and the application of Extra-statutory Concession A19 (writing off arrears where HMRC has been slow to use information), compliance, and VAT assurance work.

#### The Parliamentary Ombudsman's report

HMRC is second in the league table for complaints received by the Ombudsman. There were 2,159 complaints about HMRC during the year to 31 March 2009, which is a drop from the 2,342 in 2007/08. (Top of the league table as always is the Department for Work and Pensions.)

Where possible, the Ombudsman tries to resolve complaints quickly in an informal way, and only a minority of cases are dealt with by an in-depth investigation. During 2008/09 she took up 401 new cases for full investigation; of these, 24 related to HMRC, a significant fall from the 160 cases taken up the year before.

During 2008/09 the Ombudsman reported on 257 parliamentary (ie not NHS) investigations. Of these, 60% were wholly or partly upheld. Of the 113 cases that relate to HMRC, 20% were fully upheld and 20% partly upheld. Only 72% of investigations (down from 87% the year before) were concluded within the target 12 months.

There has been a significant decline in complaints about tax credits, and the Ombudsman sees this as evidence of the recommendations from her two special reports about tax credits slowly working their way into the system.

The report contains some summaries of investigation cases to illustrate the work of the Ombudsman's Office. One of these is an appalling (and, one hopes, extreme) case where HMRC was criticised for defending its own position in a way the Ombudsman calls 'self-serving and mean-spirited' and pursuing the taxpayer 'with a reckless disregard for his rights' rather than identifying the mistake, apologising and remedying it. The taxpayer suffered severe detriment and the Ombudsman recommended an unusually large compensation payment of £50,000.

#### Some conclusions

One obvious limitation of both the Adjudicator and the Ombudsman is the small number of cases they each handle, although both offices seem stretched to capacity. Indeed the time and effort required to go through HMRC's own complaints procedure first means that only a persistent and competent person – or one with professional advice – is likely to take their case right to the top.

Having said that, the approach of both offices in making general recommendations for improvement based on individual cases does provide a wider benefit, and one hopes the department learns the lessons. It is encouraging that it has accepted all the recommendations of both Adjudicator and Ombudsman, but as the Ombudsman says in her report:

*There is still much to improve and too many complaints come to my Office when they could easily have been resolved by the public body in question, avoiding injustice and preventing what can be years of suffering for the individual concerned.*

A major concern must be the time it takes to work a case and reach a final decision. We had heard anecdotally that the delays at the Adjudicator's office were getting worse, and the report bears that out. A person who feels themselves the victim of injustice wants the matter sorted out speedily, not to be left in suspense for maybe a year.

I must say I was surprised to see the Adjudicator described in the report as a 'critical friend' of HMRC (albeit specifically in the context of tax credit problems). It seems to me the Adjudicator should be neither a friend nor a critic of either party, and one hopes this approach does not extend to actual case work.

The Adjudicator is funded by HMRC and (as I understand it) staffed mostly by HMRC secondees. One has to wonder whether this affects the perception of the office as truly independent (though I am not suggesting there is actual bias). The increasing concerns about HMRC's service standards plus the constraints on the department's resources must put pressure on the Adjudicator's office just when it is needed more than ever. Perhaps it may be time to consider putting a bit more distance between the Adjudicator and HMRC in terms of funding and staff mix.