

Tax Credits: Getting it wrong?



Parliamentary
and Health Service
Ombudsman

Tax Credits: Getting it wrong?

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Contents

3 Foreword

6 Summary and recommendations

14 Chapter 1

Introduction

18 Chapter 2

Changes and developments since June 2005

- HMRC's response to my June 2005 recommendations
- Processing errors
- Communication and accessibility
- Complaints, appeals, and disputed overpayments

29 Chapter 3

Overpayments and their recovery

Developments since June 2005

Continuing concerns

- Application of Code of Practice 26 (COP 26)
- Approach to overpayments arising from changed family circumstances
- Annual statements
- Compounding issues

43 Chapter 4

A wider view

46 Appendix A: Complaints received by the Ombudsman on Tax Credits matters 1 April 2005 – 31 August 2007

47 Appendix B: HMRC's response to the recommendations in the Special Report: Tax Credits: Putting Things Right (June 2005)

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Foreword

This is the second special report on the administration of Child and Working Tax Credits that I have laid before Parliament under section 10(4) of the Parliamentary Commissioner Act 1967. The first, which was published in June 2005 (*Tax credits: putting things right* HC 124), highlighted the key issues and challenges that the new system (introduced in April 2003) created for HM Revenue and Customs (HMRC). It focused in particular on the new group of customers that were intended to benefit from the tax credit reforms: namely low income families with children, and low income earners.

My first report, drawing on the experience of the complaints referred to me, charted the experience for that group of tax credit customers and suggested that many of the difficulties families were facing were a result of HMRC having developed a 'one size fits all' system which was designed to require minimum human intervention, being mainly IT based. HMRC had believed that in doing so, they were creating a fair, consistent and efficient service for all their tax credit customers. What that approach failed to recognise, however, was the very different circumstances and needs within that group. What was very clear from the complaints referred to me was that the lack of proper regard to those circumstances and needs led to the system often having harsh and unintended consequences for HMRC's more vulnerable customers.

My report in June 2005 therefore made 12 recommendations intended to address some of those consequences and promote a far more customer-focused approach within the administration of the system. This report looks at how far those recommendations have been implemented by HMRC, at what progress has been made in respect of the problems I highlighted in my first report, at the improvements HMRC have made to the system, and at whether the complaints now being referred to me suggest that the changes made have had a positive effect for those vulnerable groups.

However, my first report also raised some more fundamental issues for Government and Parliament to address, not least whether a financial support system which included a degree of inbuilt financial insecurity could properly meet the needs of very low income families and earners. This report includes a number of examples of the impact of that financial insecurity on that client group, and how that is leading a number of those affected not only to suffer confusion and hardship, but also to want to opt out of

'Tax credits are supposed to be there to help families, not cause them money worries'

(Case ref: 31482).

the tax credits system altogether. The impact of a public body's actions on the individuals concerned is, of course, central to our assessment of the seriousness of any complaint that we consider. That is why the Principles of Good Administration, which I published in March 2007, emphasise the need for public bodies to remain sensitive to the needs of those individuals for whom the service is intended, and to regularly review policies and procedures to ensure that they are effective. That is why I have also included in this report examples of where the tax credits system, even when operating as intended, appears sometimes to be working against the key policy objectives of helping to tackle child poverty (through income-related support for families with children), and encouraging more people to work by 'making work pay'. This is where changes in circumstances in-year (typically improvements in income) result in overpayments of tax credits to customers, which have to be paid back. Changes have been made to the tax credits system from the 2006-07 tax year onwards (such as the significant increase in the earnings disregard and the targeting of customer communications) which should make such occurrences far less frequent. However, most of the cases referred to me to date relate to overpayments which arose in the earlier years of the scheme, and to recent decisions to recover (or continue to recover) the sums involved. Those decisions effectively place those low income families and earners in debt, and in many cases will have a financial impact on them for years to come, often causing them hardship and anxiety. There will continue to be a number of such cases being determined (and no doubt complaints about the decisions reached) for some time to come. As I said in my first report, the design of the system is a matter for Government and Parliament to consider, and not for me. I do, however, consider it important that these adverse and distressing, albeit unintended, consequences for this relatively small but very important group of customers, are fully recognised in order to inform policy development going forward.

In conclusion, my report also shows that, despite having put administrative systems in place aimed at enabling them to look at individual circumstances and hardship issues, when considering, for example, whether to recover tax credit sums that have been overpaid, HMRC sometimes misses opportunities to take mitigating action, leaving vulnerable families to suffer unnecessary distress and hardship.

I know from HMRC's response to my first report, and the dialogue that they have since continued to have with my Office, that they are committed to understanding and improving the customer experience. They are also mindful of the importance of using the evidence of that customer experience, as set out in complaints, as an important feedback and learning tool. I hope, therefore, that they will welcome this second report as a helpful and valuable part of that evidence, which they will use to inform the development of the tax credits system.

Finally, I should make it clear that this report does not address the issue of the 'section 18' procedural error, announced in Parliament in July 2007¹, affecting some 250,000 tax credit cases. I understand that the review of those cases is expected to take three years to complete and it is not clear what impact, if any, there is likely to be on the position of the tax credit customers involved. What is clear is that it will lead to delays in HMRC making final determinations on some of the overpayments arising in those cases, and on the resolution of complaints relating to those overpayments, including by my Office. That is because HMRC will not be able to provide information on such cases to my Office, the Adjudicator or their own complaints teams, until the review of that case has been completed. A significant proportion (around 25 per cent) of tax credit complaints currently being assessed or investigated by my Office are affected by this administrative error. We will, therefore, be monitoring closely HMRC's handling of this matter.

Ann Abraham

Parliamentary and Health Service Ombudsman

¹ In a Ministerial statement on 25 July 2007 the Financial Secretary to HM Treasury announced that HMRC had identified an administrative error that affected approximately 250,000 tax credit awards. She said that all of these awards would need to be reviewed in order to correct the administrative procedure.

Summary and recommendations

My special report on the administration of the Child and Working Tax Credits system published in June 2005 highlighted the key issues and challenges that the new system had created for HMRC in the first two years following its introduction. It noted in particular that, although for the vast majority of tax credit recipients the system appeared to be working reasonably well, it nevertheless led to some harsh consequences for a significant number of HMRC's most vulnerable customers. In particular, the treatment and recovery of overpayments of tax credits was causing considerable financial hardship and distress. In response to the problems identified, I made twelve recommendations which were intended to help relieve some of those consequences and promote a more customer-focused approach.

Since then, HMRC have made a number of improvements to the administration of the tax credits system, both in response to those recommendations, and also more widely. These have included improvements in the information provided to customers in terms both of its clarity and helpfulness, such as in the award notices. Significant efforts have also been made, through media campaigns and other channels to raise customer awareness of the need to report changes in circumstances promptly and thereby avoid overpayments, and also of the need to check the personal information provided in the award notices and report errors and omissions to HMRC. There have been considerable improvements in the accessibility and reliability of the advice and information available to customers in respect of their tax credit claim, both via the Helpline, and from individual staff. Those with a claim affected by technical problems have, in particular, been provided with better support and information. There has also been a reduction in human errors in the processing of claims, leading to fewer cases where multiple award notices have been issued. Many of the technical problems that were affecting significant numbers of cases have been resolved (although some remain, causing huge frustration for those affected). In addition, the tax credit complaints handling system has been improved, in particular the backlogs in both disputed overpayments and complaints have been significantly reduced. These improvements have been reflected in the nature of the complaints being referred to my Office.

As a result of the improvements, I came to the view that HMRC had reached the position where they should be able to resolve promptly and satisfactorily, through their own complaints processes, many of the complaints about tax credits that were

being referred to me. Accordingly, from 1 April 2006 onwards, it was agreed that complaints to my Office which had not completed HMRC's complaints process would normally be referred back to them to resolve. It was anticipated that the number of tax credit cases being referred to me would subsequently decline.

However, two years after the initial report, and 18 months after the introduction of the new arrangements for complaints referred to above, the number of complaints being referred to my Office remains high. A review of these shows that the vast majority relate to overpayments and their recovery, and in particular to the application of the Code of Practice 26 (COP 26): *What happens if we have paid you too much in tax credit?*, the guidance which HMRC follow when determining whether there are grounds for waiving the recovery of an overpayment.

It had been anticipated, despite the fact that overpayments are an in-built part of the annualised system, that the number of overpayments would decrease significantly once the new tax credits system had bedded down. The recently published figures on overpayments relating to the 2005-06 year, however, showed that, although overpayments had fallen², the scale of the problem had not altered as much as anticipated from the first years of the new tax credits system. Almost a third of all tax credit awards had once again been overpaid, and almost half a million awards (494,000) had been overpaid by over £1,000; some 25,000 of those by over £5,000 in that one year alone. Of most concern is that a significant proportion of those overpayments (363,000) were again made to those on low or very modest incomes, where household income was less than £10,000. HMRC expect the volume of overpayments to reduce by about a third from 2006-07 onwards, following a package of reforms announced in the 2005 pre-budget report, including the increase in the earnings disregard from £2,500 to £25,000. However, because of the time lag before robust data on that becomes available, and also the time it takes before complaints work their way through the internal complaints process and are referred to my Office, it is not yet possible to assess precisely what impact those policy changes will have on the volume of overpayments arising.

² Overpayments were £2.2 bn in 2003-04, £1.8 bn in 2004-05 and £1.7 bn in 2005-06

Analysis of the complaints currently being referred to me suggests that they fall into three key groups:

- The design of the tax credits system
- A failure in complaints handling
- The unfair and unreasonable application of COP 26.

Design of the tax credits system

I continue to receive a significant number of complaints where the overpayment complained about has arisen solely as a result of the annualised system operating as intended. Despite HMRC's efforts so far, it is clear that many people simply do not understand that it is possible for them to have provided all the correct information, and for their award to have been properly assessed on that basis, but that because of changes in their circumstances towards the end of the tax year, they could find themselves with a significant debt to repay when their award for the previous year is finalised.

What appears to have confused tax credit customers most is that it was generally a positive change in their circumstances, such as finding employment, which threw them into debt. Further, the delay in matters being finalised meant that it might have been a long time afterwards before they learned that they owed these monies. Complainants frequently explain how they budget carefully to avoid debt, and have little or no savings to fall back on, and how distressing it therefore was for them when this happened. They assume there must be some mistake. Others question the logic of a system intended to support those on low incomes into work, when the way the system worked meant that they could be better off delaying taking up employment until the beginning of the next tax year. The policy changes which have been made to the tax credits system from the 2006-07 tax year onwards (in particular the increase in the income disregard threshold to £25,000) should mean that this will no longer be a practical concern for most families. Nevertheless, it is clear that many complainants remain unable fully to grasp the basic principles of an annualised system.

General failures in complaint handling

Whilst there have been some improvements in the complaint handling system, HMRC are still failing to take opportunities to get their decision on a complaint right first time. For example, a number of the complaints my Office has investigated have revealed that even where the complaint revolved solely around what a customer was told in a particular telephone call, HMRC have not made the effort to locate and listen to the call in question. Similarly, assumptions have been made about what an award notice would have said, without checking the notice itself. Further, there is still some confusion about what constitutes a complaint, a dispute or an appeal.

It is clear that the Tax Credits Office still have some way to go in providing 'fit for purpose' complaint handling arrangements.

The unfair application of COP 26

I remain of the view that, applied reasonably and sensitively, COP 26 is capable of providing fair and appropriate outcomes for tax credit customers. I also share HMRC's view that there is a responsibility on both them and their customers to help ensure that payments of tax credits are correct. HMRC's expectation that customers check the personal information in their award notice and notify them of any error or omission is not unreasonable. However, there is also an expectation on HMRC that when considering whether to recover an overpayment under COP26, they will consider all the circumstances of the case, including the individual and their personal circumstances, and if the overpayment is considered recoverable, the impact that recovery is likely to have on them in terms of hardship. A review of the cases my Office has seen suggested that in a relatively small, but still significant, number of cases the Tax Credits Office were failing to consider the specific circumstances of each case on its merits. In particular, they:

- took a very rigid approach and assumed high levels of understanding of the system in terms of whether it is 'reasonable' for someone to know they were being overpaid;
- did not take account of the very different circumstances prevailing within the Tax Credits Office in 2003-04 and 2004-5; in terms of the difficulties customers faced in accessing the

Helpline, the failure to record telephone calls or to respond to correspondence, and the general unfamiliarity amongst claimants and Tax Credits Office staff about the tax credits system, leading to misadvice and confusion;

- did not take account of the claimant's circumstances at the time they were expected to spot the error in their award notice/payments, including failing to consider circumstances that might reasonably affect the likelihood of the individual's/family's noticing, or following up on, HMRC errors (such as exceptional health problems or bereavement);
- assumed that the very fact that a claimant had notified HMRC of a change of circumstance or error in their award notice meant that, having done that, they could not possibly meet the 'reasonable belief' test, on the grounds that they must have known that their payments were wrong;
- did not take any account of the number of times someone had notified HMRC of things that might well affect their award, such as a mistake on their award notice/a change of circumstances, and that HMRC had failed to act; and
- frequently failed to consider whether recovery would cause hardship as part of the COP 26 consideration of their case.

As a result of these failings, some tax credit customers on very low incomes and living in very difficult circumstances, were finding themselves in the distressing position of being unfairly required to pay back often large overpayments which were caused by official error.

Discussions with HMRC centrally, the Adjudicator's Office and the Tax Credits Office revealed considerable confusion and an apparent divergence of understanding as to the proper application of COP 26, and a revision of COP 26 is under way. However, to ensure that the revised version is properly and fairly applied HMRC will need to ensure clear and comprehensive guidance on its purpose and application, ensuring appropriate training which addresses not just the process, but the desired outcomes, and proper mechanisms to ensure that learning from upheld complaints is fed back to those applying COP 26.

Other concerns

A further concern identified was where overpayments were declared, in effect on a technicality, despite the fact that, had the customer followed the proper process, they would have been entitled to tax credits. One example was where, either because of misadvice or misunderstanding of the system, claims had been made in the wrong capacity (for example, as a joint claim, rather than as a single claim). In some such cases, the Tax Credits Office had simply declared all the payments made since the start of the claim as an overpayment. They had not taken account of any notional tax credits payment to which the customer would have been entitled had they made an appropriate claim at the outset, even where that claim might have resulted in a higher tax credit entitlement. Similarly, all tax credits paid on a provisional basis in a tax year from 6 April onwards can be declared an overpayment because the customer apparently failed to return an annual statement, even where the customer denied receiving it, or insisted they had returned it and, had it been processed, they would have been entitled to the sums in question. These sorts of scenarios not only appear to defy common sense, but also to be completely out of line with the policy aims and objectives.

Conclusions

HMRC have clearly made significant improvements to the administration of the tax credit system. However, for a small, but significant, number of customers - typically those on the lowest incomes, who are amongst the most vulnerable in society - their experience of claiming tax credits is a highly distressing one. HMRC need to look closely at the specific needs of this group and ensure that their processes are able to consider and respond sensitively and appropriately to their individual circumstances. The customer experience of this group, as reflected in the complaints referred to my Office, again also raises fundamental questions as to whether a system of this nature, which includes a degree of financial uncertainty and the possibility of debts arising, can really meet the needs of this particular group of individuals and families, and the policy objectives.

Recommendations

The distress and hardship unnecessarily caused to some low income families faced with the recovery of tax credits overpayments require prompt action. The revisions that HMRC are proposing to make to COP 26 should go some way towards ensuring that decisions on recovery will be far less harsh and more appropriate to this particular customer group. However, those revisions will not be sufficient in themselves to deal with all of the problems identified in this report, nor prevent potential future misunderstandings arising about the proper application of the revised Code. This report therefore makes six recommendations:

1. HMRC should produce clear and comprehensive guidance for Tax Credits Office staff on the purpose and application of the revised COP 26 with linked case examples. (Paragraph 3.18)
2. All staff required to apply the revised COP 26 should be given training in the appropriate way to approach such cases and the outcomes expected. (Paragraph 3.18)
3. Appropriate analysis and feedback mechanisms should be put in place to ensure that the learning from upheld complaints about the unreasonable application of COP 26 is fed back on a regular basis to all those staff involved in its application. (Paragraph 3.19)
4. HMRC should review their guidance to their staff on how they should approach 'good cause' in relation to a customer's apparent failure to return an annual statement to ensure that it is not so unduly restrictive in its application as to be unfair. (Paragraph 3.23)
5. HMRC should identify how they can work in a more co-ordinated manner to ensure that contacts with their tax credit customers about recovery of overpayments take proper account of any other action HMRC are currently taking in respect of the customer's tax credit position, and of the overall impact on the customer's financial circumstances. (Paragraph 3.25)

6. In considering the recovery of tax credit overpayments, the Debt Management and Banking Unit should be required to tailor their approach to the needs of the customer group. In the case of tax credit recipients, that would include considering family circumstances (such as whether they include children or adults with disabilities or severe illness), and the likely impact on the individual or family. That consideration should also include whether recovery, either immediate or suspended, would work against the policy objectives of the tax credits scheme.
(Paragraph 3.27)

Chapter 1

Introduction

1.1

In the introduction to my first special report on the administration of the tax credits system introduced in April 2003, I explained that my decision to publish that report had been influenced both by the increase in the volume of complaints that my Office had received and the issues they had raised. In 2004-05 complaints about tax credits formed over nine per cent of total complaints referred to me in my capacity as Parliamentary Ombudsman and my Office upheld, in whole or in part, some 78 per cent of the tax credit cases we investigated in 2004-05. This was significantly higher than the general rate of Parliamentary cases upheld. A key concern for me was that a high proportion of those complaints (67 per cent) related to large reductions made to tax credit awards in order to recover either in-year excess payments, or overpayments identified at the year end, which complainants contended had been caused by official error, and that those reductions were causing severe hardship.

1.2

Following the publication of my first special report, when HMRC responded favourably to the majority of the recommendations I had made (see Chapter 2 and Appendix B), my Office continued its constructive dialogue with HMRC about improvements to the tax credits system. In my Annual Report for the 2005-06 business year I reported that the number of tax credit complaints referred to me that year had risen significantly; they had accounted for around 22 per cent of our overall Parliamentary workload, and we had upheld, fully or in part, some 90 per cent of the cases investigated. However, I was also able to point to a number of improvements that HMRC had made to the system.

1.3

In particular, HMRC had completely overhauled the way they handled complaints. They had also

put in place a new streamlined procedure designed to reduce the backlog of disputed overpayments cases, which HMRC said was prejudicing their ability to provide a reasonable level of service. Under the streamlined process, HMRC remitted most disputed overpayments arising in 2003-04 which had been caused by official error on the basis of both the size of the overpayment and the number of versions of the award there had been. In other words, because of all the disruption in the first year of the new system, they generally accepted at face value customers' contentions that they had believed their tax credit payments to be correct. As a result, those customers were able to satisfy the 'reasonable belief' test in HMRC's COP 26 (which sets out how they approach tax credit overpayments - see Chapter 3) and have recovery of those overpayments waived. This meant that there were far fewer severe delays in disputed overpayments to HMRC being investigated and resolved. Many complaints had previously been referred to my Office simply because people were unable to get a decision from HMRC in respect of their disputed overpayment or a response to their complaint. As a result of the improvements, we were satisfied that HMRC could and should be able to handle these matters satisfactorily through their own complaints processes, which should in turn lead to a better and more prompt response for complainants at a local level.

1.4

Consequently, from 1 April 2006 we agreed new arrangements with both the Tax Credits Office and the Adjudicator's Office³. Since that date we have accepted for investigation only those complaints that have completed all three tiers of HMRC's complaints procedures⁴; those that raise new issues which we feel need exploring; or where there are other issues making a referral to the Tax Credits Office or the Adjudicator's Office

inappropriate. All other cases where there appears to be some evidence of fault on HMRC's part leading to an unremedied injustice to the complainant are referred back to those offices for investigation and resolution. The impact of that policy decision is shown in the figures in Appendix A (Complaints received by the Ombudsman against the Tax Credit Office 1 April 2005 - 31 March 2007).

1.5

Appendix A also shows that we: accepted fewer cases for investigation in the 2006-07 business year than in the previous year (120 compared with 404); reported the outcome of our investigations of 393 cases; and that we referred 330 complaints to the Tax Credits Office and the Adjudicator's Office. Although the proportion of tax credits cases fully or partly upheld has reduced from the 2005-06 business year (74 per cent compared with 90 per cent), it is still very high compared with the overall figure for Parliamentary complaints (63 per cent).

1.6

It is evident from the complaints referred to my Office, that the reduction in the proportion of cases accepted for investigation (or referred back for local resolution) is in part because we have received a significant number of complaints which were about overpayments that had arisen properly as a result of the annualised system operating as intended. An important principle of public service delivery is that public bodies are open and clear about their policies and procedures, and that the information they provide means that people can understand what they can expect to happen. It is clear to me

from the comments of many of those complainants and referring Members, however, that a significant number of people still do not fully understand the workings of the annualised system. Many profess genuine bewilderment that, despite having promptly and accurately notified HMRC of changes as they happened throughout the year, they nevertheless found themselves with a (sometimes very significant) debt to repay at the end of the year.

1.7

In other cases, tax credit recipients had themselves delayed notifying HMRC of changes to their circumstances, or failed to query incorrect award notices, without realising the significant impact that that might have. I would agree with HMRC that where tax credit recipients have themselves either caused an overpayment to arise, or not taken action where appropriate to prevent it arising, they should generally be required to repay the sums in question. It seems to me that there is a clear joint responsibility on both HMRC and the tax credit customer to ensure as far as possible that the payments customers receive are correct. That does not mean that tax credit customers are expected to be able to calculate their awards, or even be able to assess broadly the sums to which they might be entitled. That would be an unreasonable expectation. However, HMRC make it very clear on the award notice itself that they expect customers to check the personal information included in the notice on which their award is based, and to alert HMRC to errors in that information. They also expect customers to check that the payments they receive are in line with what they have been told they will receive in

3 The Adjudicator's Office is contracted by HMRC to act as a fair and unbiased referee in respect of complaints which have exhausted HMRC's internal complaints system.

4 HMRC have a two tier internal system for considering complaints; those who remain dissatisfied may then complain to the Adjudicator.

their award notice. It is an important principle of good administration that customers are not only able to understand what they can expect from a public body, but that they are told very clearly what the public body in question expects of them. I am satisfied that HMRC are acting in line with that principle here in making their expectations clear to their tax credit customers. I would also add that, in general, those expectations seem to me to be both reasonable and appropriate, and take proper account of the fact that the sums in question are paid out of the public purse. Nevertheless, I have seen many cases where, because it is difficult for tax credit customers to assess for themselves the impact on their award of the changes in their circumstances, complainants have understandably been deeply shocked by the size of the overpayment that has thereby arisen. That is sometimes coupled with the fact that the first time they became aware of the scale of the debt (possibly because they have changed address and overlooked the need to notify the Tax Credits Office of that change, so earlier correspondence has not reached them) was when they received a demand for immediate repayment and a threat of court action. In such circumstances it is impossible not to feel considerable sympathy for the tax credit customers concerned. But that is not, of itself, sufficient ground for me to launch an investigation into a case. I need to see evidence of a mistake on the part of HMRC leading to an unremedied injustice to the complainant before I intervene in a matter.

1.8

As I have indicated above (paragraph 1.5), where I have investigated complaints, there has also been a reduction in the number of cases that I have upheld. This is in part due to some of the administrative improvements in the tax credits system (see Chapter 2). We have, for example, had fewer complaints concerning customers

being unable to get through to the Helpline; receiving multiple award notices that were difficult to understand; or not receiving responses to correspondence and complaints. In many instances, customers had previously pointed to such failings to satisfy HMRC that they could not reasonably have known that their award was incorrect, and thereby meet the 'reasonable belief' test, allowing the overpayment to be waived (see paragraph 1.3).

1.9

The improvements in the administration of the system have therefore contributed to a reduction in the number of overpayments being waived. Similarly, the reduction in the backlogs of disputed overpayment cases and complaints in HMRC led to the abandoning of its streamlined procedure for dealing with such matters (paragraph 1.3) and the return to a more rigorous approach to determining whether overpayments should be remitted (namely closer scrutiny of what the customer might reasonably have believed in relation to the correctness of their tax credit award or payments). The combined impact of those changes is starkly demonstrated in the reduction in the number of cases where overpayments have been remitted (see paragraph 3.12). What we have seen in this Office, as a consequence, are increasing numbers of complaints being referred which relate solely to the operation of COP 26 and, in particular, to the 'reasonable belief' test. I understand that this is mirrored in the make-up of the cases being seen by the Adjudicator's Office and Citizens Advice.

1.10

I said in my first special report on the administration of the tax credits system, that I would continue to scrutinise carefully the complaints coming to me to determine whether a further special report was warranted. It seemed to me that the sometimes unfair and inconsistent application of COP 26 and the unduly harsh

nature of some of the decisions on recovery I had seen, the extreme distress thereby caused to low income families, and the fact that the outcomes of those decisions seemed to fly in the face of the aims of the tax credit policy, were sufficient to warrant a further report.

1.11

I am in absolutely no doubt, from the discussions and exchanges that I and my staff have had with HMRC at the most senior levels, that they are continuously seeking to improve their own performance and the service that they provide to their customers. I am also aware that HMRC are currently in the process of restructuring in order better to meet the differing needs of their different customer groups and that they are actively putting in place mechanisms to ensure that they are able to learn more effectively from the complaints that they receive. It seemed to me, therefore, that a further report at this time which again specifically looks at the customer experience of this most vulnerable client group might provide helpful information for HMRC when considering the sorts of changes they might wish to make going forward.

Chapter 2

Changes and developments since June 2005

HMRC's response to my June 2005 recommendations

2.1

I consider first the action taken by HMRC in response to the recommendations I made in my June 2005 special report. I have set out those recommendations together with HMRC's response to each of them in Appendix B. A number of those recommendations involved ensuring that customers were aware of the availability of interim manual payments, where a computer fault prevented payments; and of additional tax credit payments, where recovery of excess or overpayments greatly reduced ongoing payments; another related to putting an automatic restriction of the rate of recovery in certain circumstances. There were linked recommendations that HMRC should ensure that staff dealing with tax credit customers were alert to the availability of such payments so that they could invite claims from the relevant customers. All of those recommendations were aimed at helping to prevent hardship. It would appear that those have either been successfully implemented, or overtaken by subsequent improvements within the system (see Appendix B and paragraph 3.1). I welcome those improvements.

2.2

Three of my other recommendations related to giving people more helpful explanations about how overpayments had arisen, together with information about the circumstances in which recovery of overpayments could be waived. I am satisfied that HMRC have taken appropriate action to ensure that customers are made aware of the existence of COP 26 and of how they can challenge recovery of overpayments. There have also been improvements in the information given to customers about how their overpayment arose in the first place. This has not, however, been an area where HMRC's performance has been

consistent. The complaints referred to my Office have shown that some customers have continued to receive inadequate, confusing and sometimes even contradictory explanations for overpayments, which has made it difficult for them to challenge recovery. I note that HMRC have recently introduced a change to the system which should mean that from April 2007 it should be easier for customers to understand why an overpayment arose in the previous year (the 'playback' - see Appendix B, recommendation 8). Whilst I agree that this should be helpful, I am not convinced that it will entirely resolve the problem that faces some customers. My Office will therefore continue to look closely at the quality of the explanations given to customers in the complaints that we investigate.

2.3

The table in Appendix B shows that work is still under way in relation to three of my recommendations. Although the Government accepted in principle the case for a period of notice (a 'pause') before recovery of an overpayment began, regrettably, despite their efforts over a long period, HMRC so far have been unable, because of technical restrictions, to find a way successfully to introduce this. The aim of the pause was to give customers sufficient time to understand the reasons for an overpayment, the circumstances in which it might be waived and how they could make representations on the matter; for a proper, informed decision to then be taken on recovery; or simply for customers to have time to reorganise their household budget prior to recovery beginning. I was pleased that HMRC eventually found a way, from November 2005, to intervene manually and suspend recovery of an overpayment once the claimant disputed it, and that from November 2006 that became automatic. However, it remains my view (as I set out in paragraphs 5.13 to 5.17 of my 2005 report)

that, as the decision whether or not to recover an overpayment is discretionary, it is fundamentally unfair, and therefore maladministrative, for recovery to begin in any case before the full facts of the case have been ascertained and considered under COP 26. I am therefore pleased to note that HMRC, despite the technical difficulties involved, are continuing to work towards implementing a pause in the future. I acknowledge that they are unable at present to give any indication of when that might be achievable, but in the light of its significance, my Office will continue to monitor HMRC's progress in this regard. The fact that recovery of an overpayment only halts when the customer challenges it of course makes it all the more important that customers are given the appropriate tools to enable them to mount such a challenge, namely a full and clear explanation at the earliest opportunity of how the overpayment arose.

2.4

In June 2005 I also recommended that consideration be given to the adoption of a statutory test in relation to the recovery of an overpayment with a right of appeal to an independent tribunal (recommendation 11). I note that, in response, HMRC have said that they are considering an alternative approach which involves the Adjudicator providing a fast track independent review for disputed overpayments. They have said that they will be piloting that approach. I will, of course, be very interested to see the outcome of that pilot, and in particular whether customers consider the process to be effective and fair. However, given the relationship that the Adjudicator has with HMRC⁵, I find it difficult to see how this proposal could offer a reasonable alternative to an independent

tribunal.

2.5

The third and final recommendation which HMRC have said that they will continue to work on relates to the general delivery of tax credits, and in particular the necessity of recognising the differing needs of some of their customers at different times, and responding appropriately to those (recommendation 12). I am satisfied that HMRC are seized of the need to continue to seek ways to improve the service they provide to, and hence the experience of, their tax credit customers, in particular the most vulnerable. I note also that, longer term, HMRC say that they will be looking more radically at the way they deliver tax credits as part of their Transformation Programme. In the meantime, my Office will continue to track their progress in this respect through the experience of the customers whose complaints we investigate.

2.6

In my June 2005 report, in addition to making the specific recommendations referred to above, I also highlighted in some detail some other key problem areas under the headings *Processing errors and Communication and accessibility*. I set out overleaf my observations on progress in these areas.

5 The Adjudicator's contracted role as the final tier of HMRC's complaints process.

Processing errors

2.7

My first report set out a range of processing errors that were affecting tax credit awards, often leading to interruptions in payments and to overpayments. As the processing of tax credit applications is wholly IT-based, it was not surprising that a number of these arose from technical problems within the computer system.

2.8

Since that report HMRC have released a number of IT software updates intended to fix some of those problems or provide 'workaround' solutions until a proper technical solution could be found. Regrettably, the complexity of the system is such that some of those technical 'solutions' have themselves created further problems (the October 2006 release, for example, led to payments wrongly ceasing following a change of circumstances in some 12,500 cases, which had to be corrected in the April 2007 release. Manual payments had to be made to those customers in the interim).

2.9

The number of cases affected by continuing system faults has, however, reduced significantly to around 38,000, and I understand that HMRC are continuing to seek system fixes for those remaining problems. HMRC also put in place improved arrangements for responding to those affected by such errors, which gave customers a single point of contact within the Tax Credits Office so that they could be dealt with by staff familiar with the case, and able to respond appropriately to queries and any new difficulties arising.

2.10

It follows that the number of complaints referred to me about such matters has fallen off (see

Appendix A). However, we do still see cases where the support provided to customers in these circumstances has clearly been inadequate and has not taken account of their needs. Such instances appear, from the cases we have seen, to be individual staff failings, rather than indicative of systemic fault.

Case study: 1647

Mr H has learning disabilities and depends on support staff to help deal with his finances. In August 2003 he began a new job with earnings of £5,896. Due to a computer fault which continued for three years, he received a series of underpayments and overpayments, incorrect award notices (including 15 non entitlement notices) had to accept manual payments rather than direct payments into his bank account, received demands for non-existent overpayments (including threats of legal action), and was told over the telephone that he was no longer entitled to tax credits. The stress and worry led to a breakdown in Mr H's health and he was considering giving up his job due to the insecurity and stress caused by the uncertainty about his tax credits.

Even with the persistent efforts of the local Welfare Rights office, it took three years and the Ombudsman's intervention for the problems finally to be resolved. HMRC agreed to 'put a message on the notepad of Mr H's award' so that any staff who dealt with the case in future would be made aware that the system had in the past issued, and might still be issuing, incorrect notices and that, consequently, suitable checks should be made before any assumptions were made about his tax credit standing. A named member of staff had also been detailed to liaise with the Welfare Rights office representative over any future problems. HMRC also agreed to reimburse an underpayment of £883.22 during 2003/04, and to remit 2004/05 overpayments of £314.67 and 2005/06 overpayments of £3,614.89. They made a consolatory award of £190 for the worry and distress caused to Mr H and for the delay in complaint handling.

2.11

It is vitally important that HMRC staff do not underestimate the frustration that customers in this position can feel, particularly where several years after a system fault has been identified, HMRC are still telling them that the technical problem affecting their claim cannot yet be resolved, and that they are unable to say when it will be. Whilst that is undoubtedly an accurate reflection of the position, it is nevertheless important that staff recognise the very real irritation and distress that such messages can cause customers, and that they show appropriate understanding of that in their dealings with those customers.

Case study: 8869

"We just want to know what we owe and end this matter, as it has gone on far too long we cannot deal with this matter anymore, my husband is on antidepressants, his new job is affected by all of this and we are about to separate because of the strain."

2.12

I also referred to the problem of 'scanning' errors; that is where the electronic scanning into the computer of information from the application form led to incorrect data being fed into the system. I have continued to see a significant number of cases where failure by customers to follow to the letter the completion instructions for the application form have meant that, even though they have provided HMRC with the correct information, their award has been incorrect; in this instance the 'error' is deemed to be theirs, rather than HMRC's, when considering whether the resultant overpayment can be written off. Two key examples would be where customers have struck through a box as not

applicable to them (such as whether they have a qualifying disability award), but the computer has read that as saying that they have completed the box, or where they have left boxes such as 'earnings' empty, but attached a letter explaining why they have done that or other evidence, such as a P60 form.

Case study: 25699

When Ms L and her partner applied for tax credits they assumed that the application procedure was similar to the previous benefit system of working family tax credit. They therefore enclosed with their application form, bank statements, P45s and wage slips. The computer scanned the application form and entered their income as nil. As a result they were overpaid by £2,828, which they were required to repay. The Ombudsman could not intervene because by enclosing those documents they had not followed the instructions on the application form, nor had they noticed the error in their award notice and notified HMRC.

Case study: 25001

Mr and Mrs T made a claim for tax credits in 2003. However, as English was not their first language (they are Croatian) they had difficulty completing the application form and omitted information such as their income. They were nevertheless aware that they needed to submit their income and so they enclosed their P60s with the application form. Shortly afterwards, HMRC returned the application form asking Mr and Mrs T to complete the form where an 'X' had been marked. They did so, but HMRC subsequently issued an award notice that showed their entitlement had been based on a nil income. They did not notice that and received an overpayment of just over £6,000 which they were unable to repay. HMRC then threatened them with court action if they failed to pay the debt. In their

cont...

complaint to the Ombudsman, the Welfare Rights group representing them said 'Their dealings with the Tax Credits Office have discouraged them from claiming further, even though they have been eligible, they very much fear that further claims would lead to further mistakes on the part of the TCO and subsequent demands for repayment'.

2.13

In such cases, unless the claimant checks their award statement carefully, such errors can go undetected for a considerable period of time and lead to huge overpayments that the individual then has to repay. Customers are often understandably upset that the fact that they provided correct information - albeit not in the format requested - is not taken into account. They also complain that they find it incomprehensible that they could have been assessed as, for example, working 40 hours a week but with no income, and they query why such an obvious error was not picked up by the Tax Credits Office staff. I raised the failure to have in place systems which would flag up such blatant errors and inconsistencies for human scrutiny as an issue in my last report. I understand from HMRC that they do now run automated checks against all claims to make sure that the information taken from the form is internally consistent, as well as consistent with other information held by HMRC. I am glad to hear that. However, as many of the complaints being referred to me still have their origins in errors that happened in the first two years of the new system, it is difficult for me to assess how effective those internal checks are in practice. HMRC have also pointed out to me that identifying 'blatant' discrepancies is not as straightforward a matter as it might seem. Using the same example as above, they pointed out

that, as the tax credit application form asks the claimant for their **previous** year's income and their **current** hours of work, it would be perfectly legitimate for someone to enter 40 working hours with no earnings if they had only recently started work. Whilst, therefore, I acknowledge that anomalies are perhaps not as easy to identify as they might initially appear, I hope that HMRC will continue to seek ways to improve their detection of them.

2.14

One area where there has undoubtedly been improvement is in the reduction in the number of human errors made in HMRC's processing of claims. According to HMRC's published figures, accuracy in processing and calculating awards rose from 78.6 per cent in 2003-04 to 97.7 per cent in 2005-06. One way in which this improvement has manifested itself in the complaints referred to me is in the reduction in the number of complaints that feature multiple award notices being sent to customers. Because of the way the IT system is designed, every alteration to an award, including each attempt to rectify an error, generates an award notice. The receipt of multiple (often incorrect) award notices was a source of huge confusion and frustration to many complainants in the first two years of the new system. I have seen relatively few such complaints relating to more recent tax years, which would support HMRC's assessment that staff are making fewer input errors.

Communication and accessibility

2.15

In my first special report on tax credits I detailed the severe difficulties faced by customers during the early months of the new scheme first in trying to get through to the Helpline, and subsequently in getting a response to their query once the Helpline had logged their call. Those

customers who sent letters, faxes and emails fared little better, and had to wait months to get replies, which in turn often failed to provide an adequate, or indeed any, explanation for what had happened in their case. In the meantime, frustrated with the delay and anxious about their position, the customers would often have made a complaint or appeal, or sometimes both, which led to large backlogs in those being dealt with as well.

Helpline

2.16

HMRC have told me that nearly 22 million calls were made to the Helpline in 2005-06, and 23.5 million in 2006-07. In 2006-07 the average time in which tax credit calls were answered was 27 seconds (including an 11 second message informing callers that their call was being recorded), compared to 58 seconds in 2005-06. HMRC said that over the last year the department had invested heavily in expanding their Contact Centre network, had focused strongly on quality and productivity improvements and had improved the tools available to staff to help them when dealing with customer queries. In 2006 they had increased the number of staff working on the Helpline by 1,300. The fact that my Office is now receiving far fewer complaints about the Helpline (see Appendix A), both about its accessibility and the quality of advice being given, suggests that HMRC's investment in this area has led to an improvement in the service that they offer.

Award notices

2.17

In my last report I highlighted the very poor quality of the award notices sent to customers in the first two years of tax credits, commenting

that they lacked information and were frequently unintelligible. I went on, however, to report that, following consultation with customer groups, very welcome changes were planned, which should help to improve matters. I am pleased to be able to say that those changes have been successfully implemented and very well received. Not only are the award notices much clearer, but they are now accompanied by a front sheet which clearly tells customers which details they must check and warns them of the potential consequence of not doing so (repayable overpayments). Customers have commented in their complaints to this Office on the significance of those improvements and how different their own situation would have been, had they had the benefit of such notices in previous years.

Complaints, appeals and disputed overpayments

2.18

In June 2005 I commented that there were extensive backlogs in the Tax Credits Office in dealing with complaints and disputed overpayments. In his evidence to the Public Administration Select Committee on 1 March 2007 the Chairman of HMRC explained that over the last 12 to 18 months HMRC had put in place what they saw as progressively better procedures for handling complaints. He said that the introduction of the concept of complaints caseworkers in the spring of 2006 had made a significant improvement. There was now a system in place for immediately acknowledging a complaint, and making contact with the person complaining and giving them a point of contact for the future. The aim was to do that within 48 hours. He added that they had also put significantly increased resources into dealing with the handling of disputed overpayments, where a large backlog had also built up. The Chairman added, *'We are still in nothing like as good a*

position as we should be on tax credits complaints handling but I think that we have turned the corner and we now have in place better procedures, increased resourcing, which I hope is going to maintain that improvement'. HMRC have provided the tables below.

The number of FTE staff at **all grades** who are employed in the complaints teams is shown per quarter since January 2005 in the table below:

	Jan – Mar 05	Apr – Jun 05	Jul – Sep 05	Oct – Dec 05	Jan – Mar 06	Apr – Jun 06	Jul – Sep 06	Oct – Dec 06
Staff numbers	359	339	300	362	344	441	588	526

The number of FTE staff at A grades only (it is the A grades who process the overpayments) who are employed in the disputed overpayments teams is shown per quarter since January 2005 in the table below:

	Jan – Mar 05	Apr – Jun 05	Jul – Sep 05	Oct – Dec 05	Jan – Mar 06	Apr – Jun 06	Jul – Sep 06	Oct – Dec 06
Staff numbers	358	557	964	912	877	780	654	601

I recognise that some of the fluctuations in the numbers in the two tables above will be indicative of when staff were moved into or out of those areas to tackle particular backlogs of work. Nevertheless I was concerned that, if the staff reductions in both areas in October to December 2006 were indicative of HMRC's intentions going forward, the progress made in complaint handling, as described by the Chairman above, might be lost. In response, HMRC said that they needed at all times to balance the need to deliver improving customer service and the need to provide that service in a cost effective way.

The reductions in the numbers of staff in those two areas related directly to the reductions in the numbers of disputed overpayments and complaints being made, to the number of such cases awaiting attention, and to increases in productivity. They assured me that they would only reduce staffing numbers further if such considerations warranted such a step. I was pleased to hear that.

2.19

On the question of appeals, HMRC told my Office that around 23,000 appeals had been received in 2005-06. However, around 38 per cent of those had included issues, such as disputed overpayments, where there was, in fact, no right of appeal. That would appear to suggest that customers were still at that point not being given clear enough information as to which matters were appealable. Certainly from the complaints referred to my Office it was evident that there remained some confusion on this point. HMRC have, however, told us that the more recent figures for 2006-07 suggest that staff are now being clearer in their communications with customers on this point (although they have been unable to provide us with those supporting figures).

2.20

In June 2005 many complaints which could and should have been dealt with by the Tax Credits Office were being referred to me simply because customers were unable to get any form of response from HMRC, either to their complaint, or on their disputed overpayment. However, as I have explained in the introduction to this report (see paragraphs 1.3 and 1.4), after HMRC fundamentally overhauled the way in which they handled complaints, and introduced a special streamlined procedure for a limited period of time in 2005 to reduce significantly the backlogs of disputed overpayments cases, I was satisfied that there were no longer severe delays in

complaints to HMRC being investigated and resolved. I take the view that, wherever possible, complaints should be resolved by the body complained against through their own complaints processes. Accordingly, as from 1 April 2006, my Office agreed new arrangements with both the Tax Credits Office and the Adjudicator's Office. Since that date we have investigated only those complaints that have exhausted HMRC's complaints procedures; those that raise new issues which we feel need exploring; or where there are other issues making a referral to the Tax Credits Office or the Adjudicator's Office inappropriate. All other cases where there appears to be some evidence of fault on HMRC's part leading to an unremedied injustice to the individual have been referred back to those offices for investigation and resolution.

2.21

The fact that my Office is now receiving fewer complaints about the Tax Credits Office's complaint handling (see Appendix A) suggests that these aspects of the administration of the system have improved, and that they now have better procedures in place. However, I would agree with the Chairman that they still have some considerable way to go before they reach the standard of complaint handling that should rightly be expected of them. I would therefore be more inclined to describe their progress as their having turned a corner, rather than **the** corner, as suggested by the Chairman (see paragraph 2.18).

2.22

Although the complaints process has been restructured, there is still some confusion (within the Tax Credits Office as well as on the part of customers) over what is a complaint, a dispute or an appeal. There is also a lack of clarity about who is dealing with a complaint and what stage of the process it has reached.

Case study:

11257

Ms F complained that, despite receiving both working family tax credits (from 2001) and the child care element of working tax credits (from April 2003) to help finance the minding of her two severely disabled children by 'assistants' linked to a registered childminder, HMRC withdrew her entitlement to working tax credits in July 2005 claiming that this arrangement contravened tax credit regulations. HMRC also designated most of the working tax credits paid to Ms F since April 2003, amounting to nearly £13,000, as an 'overpayment' and began recovery from her remaining tax credits, thus causing her severe financial hardship. In a letter to HMRC she said 'You cannot realise what this is doing to me and my family, this has now been going on for nearly two years, the tax credit office have put me through hell just because I want to work, I have had to get childcare which they told me was registered so that I could have my two children who have severe disabilities looked after and what this has caused is that I've had to remortgage my house to pay to work, and we cannot afford to live'.

Ms F complained that, after submitting her initial appeal on 28 July 2005, the lack of response compelled her to submit a further eight appeal letters, none of which resulted in an appeal hearing being convened. HMRC said that one reason they had not actioned her appeal was because she had said in her appeal form 'I am appealing against the overpayment for childcare for 2003-04, 2004-05', thus implying that she was disputing her 'overpayment'. It had therefore been decided to process her 'appeal' as if it were a 'disputed overpayment'. That error was then compounded by HMRC's failure to inform Ms F that they had made that decision, despite a steady stream of correspondence from her querying why, apparently, no one had processed her appeal. Moreover, after HMRC received a further request for an appeal in June 2006, an identical scenario ensued. Following an investigation by the Ombudsman, HMRC agreed to remit the 'overpayments' and pay Ms F a significant underpayment of tax credits. They also apologised and paid £150 to Ms F for the distress caused by their poor service, and agreed to review the way that they identify appeals as opposed to disputed overpayments.

2.23

In the light of that confusion, I am pleased to note that HMRC are proposing to merge the teams that deal with the first two stages of the complaints process and those that consider disputed overpayments, as that somewhat artificial separation has undoubtedly caused confusion and frustration for customers (with many believing that they have made a complaint, only to be told that it has been registered as a disputed overpayment). I understand that this welcome change is to be introduced over several months from October 2007 onwards.

2.24

There have been some improvements since 2005 in the written communications HMRC send to customers; the award notices (see paragraph 2.17) are a clear example of that. However, the complaints coming to me show that there is still much to be done to improve the quality of the information and explanations being sent to customers. That is particularly so in relation to the first stage of the Tax Credits Office's complaints process, and to disputed overpayments. We frequently find evidence of the Tax Credits Office failing to provide a customer with a clear explanation of how an overpayment has arisen, or the reasons for the decision to recover it. We have also seen numerous examples of where customers have been given several different, and sometimes entirely inconsistent, reasons for an overpayment and/or its recovery. This failure by the Tax Credits Office to be fully open and accountable in their decision making makes it even more difficult for complainants to make an effective challenge, especially against the recovery of an overpayment. It is not, for example, sufficient for customers simply to be told, in response to their often lengthy and detailed representations as to why they did not believe that their payments were wrong, *'We still believe that it was not*

reasonable for you to believe that your payments were right'. It is an important principle of good administration that public bodies give their customers clear reasons for their decisions.

2.25

The cases being referred to my Office also suggest that in some cases HMRC are still failing to take the opportunity to get their decision right first time by not considering all relevant evidence, particularly at the first point of contact; and that in those instances where they fail to do so they are not only acting unfairly, but they are clearly acting maladministratively. We have seen a number of cases, for example, where despite the fact that the claimant's case for disputing the recovery of an overpayment rests on what they were told in a telephone call made to the Tax Credits Office, no effort is made to locate and listen to a recording of the telephone call in question. That failure appears to happen relatively frequently when the case is considered at the first tier of the complaints system. In a recent investigation, we discovered such a fundamental failure had not been identified either by the second tier complaint handlers or the Adjudicator's Office.

Case study: 28004

Mrs J claimed tax credits as a single person with two children. In February 2005 she contacted HMRC to advise them that she had moved in with her partner and submitted a joint claim. HMRC said that a technical problem meant that, although they processed a new joint claim for Mrs J and her partner, they did not stop payments on her existing single claim. As a result, HMRC continued to make weekly payments of £100.92 to Mrs J for her single award, although they did not send out award notices relating to this award. Mrs J contacted HMRC on several occasions asking

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about the payments being made until September 2005, when she said that HMRC advised her that the overpayments that had been made to her would not be recovered as they were due to HMRC error. In October 2005 HMRC wrote to Mrs J to say that the overpayment on her 2004-05 award would not be recovered because it had arisen due to their error. However, in August 2006, some ten months later, Mrs J received a provisional tax credit statement saying that she had been overpaid by £2,298 in 2005-06, and that this would be recovered. She said that if she had to pay the money back she would 'be made bankrupt and more than likely lose our home ... I wish I could convey the stress that we are going through'.

The Adjudicator found no grounds to ask HMRC to reconsider their decision that Mrs J should repay the overpayment for 2005-06, as she did not consider that the conditions of COP 26 had been met in her case; in other words that Mrs J could not have believed that the payment she was receiving was correct. However, neither the Adjudicator's Office, nor the Tax Credits Office had listened to the telephone call in September 2005. When they did, following the Ombudsman's intervention, they discovered that Mrs J had indeed been told, as she had contended, that she would not have to repay the sums involved. As a result, HMRC remitted the overpayment, apologised for failing to listen to the relevant call and paid Mrs J £100 in recognition of the worry and distress they had caused.

2.26

Another example of where the Tax Credits Office's decisions are not based on all the relevant facts is where they contend that the claimant should have known something from the award notice without the Tax Credits Office actually examining the award notice in question. Assumptions are made by staff, based on other cases they have seen, as to what the notice *'would have said'* as opposed to what it actually did say in the case in question.

Case study: 9943

Mr and Mrs B have two small children and Mrs B is disabled. In November 2002 they completed their tax credit application form and informed HMRC that Mrs B was receiving a disability living allowance with both a lower rate care component and a higher rate mobility component. When they received their first tax credit award notice for 2003-04 it stated that 'Mrs B ... is disabled'. As Mrs B was registered disabled, and HMRC had not listed the criteria used to come to this conclusion, they assumed that the information held by HMRC was correct. However, when Mr and Mrs B renewed their details for 2004-05 through the Helpline, Mr B became aware that HMRC held incorrect details that his wife received the highest care component of disability living allowance. He immediately pointed out the error.

In August 2004 Mr and Mrs B were sent revised tax credit award notices which showed overpayments in both 2003-04 and 2004-05 amounting to £1,463. HMRC said that recovery would be made through reduction of their future tax credit payments. When Mr and Mrs B complained they were first told to complete an appeal form, which they did, then a form requesting reconsideration of the decision to recover the overpayments. Their request was refused on the grounds that they should have been aware of the error as the award notice had said that Mrs B was in receipt of the higher rate care component of disability living allowance. That decision was subsequently reviewed and upheld. Mr and Mrs B complained to the Ombudsman saying, 'This has caused us immense hardship, worry, upset and stress not only financially but also because of the length of time the Revenue have taken to make their decision'. Following the Ombudsman's intervention in February 2006 HMRC finally accepted that there was no error in Mr and Mrs B's award notice which they should have noticed. They waived the overpayment and made Mr and Mrs B a consolatory payment of £85.

Chapter 3

Overpayments and their recovery

Developments since June 2005

3.1

In my June 2005 report I explained how overpayments were an in-built part of the annualised tax credits system. A key problem identified in the first two years of the new tax credits scheme was where adjustments to tax credit payments were made to take account of changes in circumstances in-year. As a result, payments could suddenly cease or be drastically reduced, and many families experienced severe difficulties. Although additional tax credits (ATCs) were made available from October/November 2003 to those families who were experiencing hardship, many customers were unaware of them and Tax Credits Office staff often failed to invite claims. I therefore made several recommendations suggesting that the rate of recovery should be restricted so as to avoid hardship where possible; staff should be made fully aware of when ATCs would be payable and should invite claims; and greater prominence should be given to the availability of ATCs in the information provided to customers. HMRC have implemented all of those recommendations in full, by restricting recovery where appropriate, sending out guidance to staff and making information about the availability of ATCs much more prominent in their award notices and customer guidance notes (see Appendix B). Those changes would appear to have had a very positive effect as we have had very few complaints on this particular aspect in the last two years.

3.2

I said in my first special report that it had always been likely that there would be a large number of overpayments occurring in the first year or so of tax credits because of the fact that the initial awards in 2003-04 were based on 2001-02 income. It would also take some time for the new scheme to be bedded down and for tax credit customers to get used to the need to report relevant

changes of circumstances. However, HMRC had been caught unprepared for the volume of overpayments (which occurred in a third of all tax credit awards in 2003-04) and their customers' response to their attempts to recover them, particularly where the overpayment had been caused by HMRC error. Eventually, in December 2003 COP 26 (see page 7) was published setting out the approach taken by HMRC to the recovery of overpayments (with full guidance on its application eventually provided to staff in May 2004). Two of my recommendations in June 2005 highlighted the importance of customers being made aware of COP 26, and the circumstances in which the recovery of overpayments could be waived.

3.3

Regrettably, the high level of overpayments has continued. The published figures on overpayments at the end of 2005-06 show that, once again, almost a third of all tax credit awards (1,902,000) had been overpaid, amounting to some £1,573 million. Almost half a million awards (494,000) had been overpaid by over £1,000, and some 25,000 by over £5,000. Once again, a significant proportion of those overpayments were made to those on low or very modest incomes, some £214 million being overpaid on 363,000 awards where the household income was less than £10,000.

3.4

HMRC have taken a number of steps since my last report, in addition to improving staff accuracy rates, to try to reduce the numbers of overpayments arising. This has included media campaigns to alert people to the need to report changes in circumstances promptly to avoid overpayments arising, targeted reminders by telephone to customers, and specific mail shots. There have also been a number of policy developments, including a package of reforms in the pre-budget report 2005, which announced a

rise in the income 'disregard'⁶ to £25,000 (from £2,500) in 2006-07 and a proposed reduction in the 'renewal window'⁷ to four months, both of which should help to reduce the likelihood, and size, of overpayments. HMRC have estimated that these changes together should reduce overpayments by about a third. Because of the time lag, both in the availability of robust statistical information (the statistics on finalised annual awards for child and working tax credits for 2005-06 became available in May 2007) and before complaints make their way through HMRC's internal complaints system and arrive in my Office, it is not possible as yet to assess whether HMRC's assessment of that impact is realistic. What is, however, clear is that the continuing high numbers of overpayments and their often devastating impact on the most vulnerable groups (as I detailed in my first report) makes the fair and appropriate application of COP 26 all the more important.

Continuing concerns

Application of COP 26

3.5

Under COP 26 HMRC can decide not to recover all or part of an overpayment where that overpayment:

- arose as a result of official error, and
- it was reasonable for the claimant to believe that their payments were correct (often referred to as the 'reasonable belief' test); or
- although recoverable in principle, recovery of

the whole or in part would cause hardship to the claimant and/or their family.

3.6

In my June 2005 report I pointed out that the low success rate in getting overpayments remitted showed that, up to April 2005, HMRC had taken a 'robust line on the question of reasonable belief'. They had argued that there was a principle of individual customer responsibility involved, and that tax credit recipients had to take responsibility for checking that the personal information in their award notices was correct. I had no difficulty with that principle, as it was clear to me from the cases I had seen that most people understood that they had a responsibility to give correct information to HMRC, to update that information if circumstances changed and to alert HMRC to any obvious errors in the notices and payments that they received. I therefore considered that to be an appropriate and reasonable expectation on HMRC's part, which seemed to me to take proper account of the fact that the sums paid out are from the public purse. That remains the case.

3.7

However, I also pointed out in my earlier report that most people, not unreasonably, then took the view that once they had provided HMRC with all the relevant information, or corrected an HMRC error, they could assume that HMRC would properly determine their claim. As a result, they did not always closely scrutinise their subsequent award notices, which could lead to the same HMRC error, or a further error, going unnoticed. HMRC would interpret any such failure (however often the customer might

6 HMRC will disregard household income rises of a set amount over the total of the previous tax year, when calculating entitlement.

7 The renewal window is the period between the beginning of each tax year (6 April) and the date by which claimants are required to renew their claim (currently 30 August) by confirming their details for the previous year, including their household income.

already have alerted them to the same error) as the claimant not fulfilling their responsibility and would require repayment of the sums overpaid as a result. I said that, as a consequence, I was not convinced that in reaching their decisions, staff were giving proper weight to the obligation that there should be on HMRC to get things right and give customers accurate and reliable awards.

3.8

I noted also that the COP 26 test of whether a person reasonably thought that their award was correct was clearly subjective and needed to involve the decision maker putting him/herself in the claimant's shoes. They had to consider all the circumstances surrounding the overpayment which might have led the claimant to believe that their award was correct, including the claimant's own background and experience. I said that, from some of the cases I had seen, I was not persuaded that that was happening. I was therefore concerned that decisions were not being taken in a fair and transparent manner, nor in the light of the full facts of the case.

3.9

Increasingly the complaints that I have seen since then have amply demonstrated that both of those concerns were fully justified. Despite the fact that my reading of the guidance given to staff applying COP 26 suggests that, applied reasonably, the test should be capable of delivering fair and appropriate outcomes for tax credit customers, the evidence from the cases I have seen strongly suggests that that is not happening in a relatively small, but still very significant, number of cases.

3.10

The cases referred to me suggest that in a number of cases the Tax Credits Office:

- are taking a very rigid approach and assuming high levels of understanding of the tax credit system in terms of whether it is 'reasonable' for someone to know they are being overpaid (such that they do not satisfy COP 26)

Case study: 25499

Mrs T was in receipt of contributions based jobseeker's allowance, and visited her local Revenue Enquiry Centre to seek advice on completing her application for tax credits. She says that she was advised to tick the box on the form that indicated that she was in receipt of the income based form of jobseeker's allowance, which meant that HMRC disregarded her income when they calculated her tax credit award, resulting in an overpayment of over £3,000. Mrs T said that the recovery of the overpayment was causing her financial hardship. HMRC and the Adjudicator said that the overpayment was recoverable because it was not reasonable for Mrs T to believe that her payments were correct, as she had received award notices which showed that her award had been based upon her being in receipt of income based jobseeker's allowance, when she knew that that was not true. HMRC told Mrs T that 'Although there was confusion on both yours and the Enquiry Centre's side, the ultimate responsibility for checking the type of jobseeker's allowance must lie with the claimant'. Mrs T has said 'I was unaware that there was a distinction between the two types [of jobseeker's allowance], or that there could be a significant impact on tax credits if the two types were confused'. HMRC have told us that, in line with revised guidance on overpayments issued to HMRC staff on 17 August 2007, they have now remitted Mrs T's overpayment in full. The revised guidance says that if a customer telephones a Contact Centre to confirm that they are in receipt of jobseeker's allowance, they should be asked to specify which type it is. If the adviser does not ask the customer, but simply assumes that it is income based and an

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overpayment arises as a result, then HMRC will remit the overpayment, as they accept that the customer could not be expected to understand that an incorrect recording could lead to an overpayment.

agreed to waive the overpayments which totalled £3,676.01, paid Mrs K a lump sum of £492.56 (the sum they had already recovered from her), and made her a consolatory payment of £160 for the inconvenience and distress their errors had caused

Case study: 17355

Mrs K complained in January 2005 that her tax credits payments had stopped without warning. This occurred shortly after informing HMRC that, because they had not registered her daughter as being in full time education, she was getting less tax credits than she was entitled to. She was told there was a major system error that could not be repaired and started getting manual payments. After informing HMRC that she had been sent three renewal notices, all of which were incorrect, she received an award notice which took no account of her daughter being in full time education. Mrs K immediately reported this but HMRC then sent her two payments (totalling £2,579.14) into her bank account. She suspected these were overpayments but she had no idea by that point what her real entitlement was. HMRC accepted that there had been an overpayment but told Mrs K they would write to her once they had worked out how much she owed them. However, they failed to do so and, instead, started making deductions from her payments. Mrs K then received three further award notices, each one of which referred to a different level of overpayment. Moreover, the amount she owed increased as time passed, but HMRC never explained the reason for this. Mrs K said, 'I am appalled at the way I have been treated I feel that I have been treated unjustly and unfairly by a system that was supposed to be helping people like myself on low incomes, which has caused me nothing but heartache and anxiety'.

The Ombudsman found that the system fault, combined with a series of complex errors, meant that Mrs K could not reasonably have been expected to work out whether the payments she was receiving bore any relation to her actual entitlement. HMRC

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- do not take account of the very different circumstances prevailing in the Tax Credits Office in 2003-04, and 2004-5, in terms of the difficulties customers faced in accessing the Helpline, the failure to record telephone calls or to respond to correspondence, and the general unfamiliarity amongst claimants and Tax Credits Office staff, about the tax credits system, leading to misadvice and confusion;
- do not take account of the claimant's circumstances at the time they were expected to spot an error in their award notice/payments, including failing to consider circumstances that might reasonably affect the likelihood of the individual's/family's noticing, or following up on, the error (such as exceptional health problems or bereavement);

Case study: 21786

Miss G incurred an overpayment of child tax credit, comprising two separate amounts for two separate periods. The first overpayment of £381 arose because Miss G delayed notifying HMRC that her son had left full-time education. He had left on 31 January 2005, but Miss G only notified HMRC on 4 March 2005. However, when she did notify HMRC, a 'system fault' at their end prevented them from actioning the change of circumstance, thereby causing a further overpayment of £795. HMRC had refused to remit the overpayment on the grounds that, knowing her son had left full-time education, Miss G would have

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known that the tax credit payments which she continued to receive were incorrect. However, Miss G had mental health problems and had been admitted to hospital because of her severe depression around the time in question. The Mental Health Trust then wrote to HMRC on her behalf saying that she had severe financial problems and that the threat of the recovery was making her depression worse. The Tax Credits Office initially insisted that Miss G's case should be referred to the Debt Management and Banking unit for the standard assessment of her assets (despite a letter from the Mental Health Trust detailing her severe financial situation). However, following the Ombudsman's intervention, they agreed to waive recovery of the overpayment.

overpayments, but incorrectly restarted the entitlement to working tax credit on 7 March 2006 as they wrongly calculated Mr A to be eligible for working tax credit. HMRC finally stopped payments in August 2006 and, on 4 October 2006, sent Mr A notification that he did not qualify for working tax credit. HMRC initially pursued recovery of the resulting overpayments on Mr and Mrs A's 2004-05, 2005-06 and 2006-07 tax credit awards which totalled £5,706.85. In his complaint to the Ombudsman Mr A said, 'This whole case from virtually day one has been a mixture of events which has left both myself and my wife extremely distressed, worried and confused, and in my case it has impacted greatly upon my health'. Following the Ombudsman's intervention, HMRC agreed to remit all overpayments and pay Mr and Mrs A £170 compensation for their poor service. Sadly, prior to HMRC agreeing to remit the significant overpayments, Mr A passed away.

Case study: 22261

Mr A was diagnosed with terminal lung cancer in January 2004, which prevented him from working from that point on. HMRC wrongly awarded Mr A working tax credit on 2 August 2004 after Mrs A had informed them on two occasions of his health situation and that he was being paid half pay by his employers. Properly, a claimant's entitlement to tax credit should end after 28 weeks if they are unable to work due to illness or disability. Due to HMRC's error, Mr A started to receive working tax credit around 28 weeks after he first became unable to work. Mrs A contacted HMRC on four further occasions ending on 26 September 2005. On each occasion, she informed HMRC correctly of her husband's health and employment situation; however HMRC continued to make payments of working tax credit. On 26 September 2005, HMRC correctly told Mrs A that she and her husband were not eligible for working tax credit or child tax credit, but HMRC did not end Mr A's entitlement and still continued to pay working tax credit to them. On 7 February 2006, HMRC recorded Mr A's correct end of work date as 23 July 2004. They notified Mr and Mrs A that this would mean that payments of working tax credit after 23 July 2004 would be classed as

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- assume that the very fact that a claimant has notified HMRC of a change of circumstance or error in their award notice means that they cannot possibly meet the 'reasonable belief' test, on the grounds that they must know that their payments must be wrong; (Were this 'Catch 22' approach, whereby either notifying, or not notifying HMRC of such matters would both be clear grounds for refusal to waive an overpayment, it would, of course, render COP 26 a nonsense.)

Case study: 28229

Ms G was overpaid tax credits by £1,449.75 in the 2003-04 tax year as her award was based on an income lower than the income figure used to finalise the award at the end of the year. Ms G said that she had identified from her first award notice that her

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award was based on an incorrect income figure and had notified HMRC of her correct income in April 2003. She had assumed that HMRC had acted on that notification. HMRC acknowledged that Ms G had notified them of her true income figure in April 2003 and that they had failed to act on that. However, they argued that it was not reasonable for Ms G to have believed her continuing award was correct because she should have expected to have received an award notice confirming her award. Ms G complained that she had done everything she could have done to notify HMRC of her circumstances and felt that she was being blamed for their errors. She said, 'It has been my sole intention not to get into debt and I cannot begin to describe to you the stress and anxiety that this whole process has created'. We are still exploring with HMRC on what grounds they consider that they can reasonably have expected Ms G to have realised that she should have followed up with them their apparent failure to send a revised award notice (not least as this was at the start of the new tax credits system).

- do not take any account of the number of times someone notifies HMRC of things that might well affect their award, such as a mistake on their award notice/a change of circumstances, and that HMRC has failed to act. There is therefore no incentive for HMRC to put things right, and the burden of responsibility for the overpayment (see paragraph 3.7) falls far too heavily on the claimant; (In the original version of COP 26 there was a provision that overpayments could be remitted if the customer alerted HMRC to an error and they failed to take action within 30 working days. This was, however, removed from subsequent versions.)

Case study: 27733

As Mr and Mrs M had a relatively high joint income during most of 2003-04 they were only entitled to a minimal tax credit award. However, when Mr M was made redundant he knew that their entitlement would increase significantly because their income had fallen to £17,000. However, although he said their circumstances changed very little during 2004-05, Mr M told the Ombudsman that they received over twenty award notices, each one citing different incomes and awards, some of which fluctuated wildly. He claimed that he queried each of these notices with HMRC in an attempt to put their award right but that the matter was never satisfactorily resolved and they consequently had no idea what their correct entitlement was. HMRC said that they had no record that Mr M had contacted them and said they had only issued twelve award notices. In April 2006 HMRC informed Mr and Mrs M that they had been overpaid during 2004-05 by £3,231.04 and asked them to repay it within seven days. Mr M said that he and his wife were 'both terribly depressed and stressed at the problems that have developed. Worrying continually about the ramifications of not paying by the 26th April and annoyed by the fact that if we do pay, the nagging doubt as to if we should have done'. This case is still under investigation.

- Frequently fail to consider whether recovery would cause hardship as part of the COP 26 consideration of their case.

**Case study:
8984**

Ms S complained that errors made by HMRC led to an overpayment occurring on her tax credit award, which HMRC had decided to recover. Ms S also complained that the recovery of the overpayment would cause her severe hardship and worsen her physical and mental health. She said that she was in receipt of disability living allowance, and was caring for her daughter who was also in receipt of disability living allowance. Both Ms S and her daughter suffered from a chronic skin disease and Ms S had been suffering from stress-related depression and anxiety for some time. Ms S told the Ombudsman that 'My main concerns these days are can I afford food for me and my girl? Can I keep a roof over our heads? How do I keep on supporting her when I can a barely support myself?'. The Ombudsman found that whilst HMRC had properly applied the 'reasonable belief' test of COP 26, they had not gone on to consider the impact of the recovery of the overpayment on Ms S. She therefore recommended that HMRC's Debt Management and Banking unit consider remitting the overpayments on Ms S's award in the light of the severe hardship that would be caused by recovery. HMRC agreed to remit the overpayments in full.

3.11

As a result of these failings tax credit customers, on very low incomes and sometimes in very difficult situations, are placed in the distressing position of being unfairly required to pay back sometimes very large overpayments which were caused by official error. Many complainants placed in this position contend that they would prefer not to claim tax credits in future as they find the possibility of further overpayments potentially building up to be seriously worrying. They would rather 'make do' and be able to budget with sums they know they will not have to repay. Others, who have never before been in debt and are deeply concerned that they may ultimately be taken to court by HMRC if they are unable to pay the money back promptly, have taken out loans to repay the overpayment. In other cases, although recovery of the overpayment is not being implemented because it is clear that it would cause the customer hardship, the overpayment has not been remitted, but simply suspended in anticipation of the tax credit recipient's circumstances improving at some stage in the future. Consequently, some individuals and families can find themselves with the threat of the future recovery of the whole or part of the overpayment hanging over them for many years.

3.12

The failings I have identified in paragraph 3.10 above might in part account for the decreasing number of cases in which disputed overpayments are being remitted by HMRC. The table below shows the number of tax credit overpayments remitted by HMRC per quarter since April 2005.

	Apr – Jun 05	Jul – Sep 05	Oct – Dec 05	Jan – Mar 06	Apr – Jun 06	Jul – Sep 06	Oct – Dec 06	Jan 07 – 28 Feb 07
(around) 000s	75	62.5	17	6	2.6	2.8	2.6	1.3

I understand that in the 2005-06 tax year HMRC remitted approximately £180 million because of official error. However, in 2006-07 HMRC has only remitted approximately £9.04 million on the grounds of official error.

Recent developments relating to COP 26

3.13

My Office has had numerous discussions and exchanges with HMRC officers, both in the Tax Credits Office and those with central policy responsibility for tax credits, and with staff at the Adjudicator's Office, about how COP 26 should be applied, and how it appears that it is being applied in practice in a number of the individual cases referred to me. Those discussions have focused largely on:

- the application of the 'reasonable belief' test;
- whether staff have given appropriate regard to the individual's personal circumstances, both in terms of their likely understanding of their tax credit position or particular circumstances at the times relevant to when the overpayment arose; and

- whether, once it was decided that an overpayment was recoverable, appropriate consideration had been given to the likely impact on the individual or family, in terms of whether recovery would cause hardship.

In those discussions and exchanges, my officers have been given a variety of responses by different officers over a period of time as to whether there was sufficient flexibility in COP 26 and the supporting guidance to deliver the sorts of fair outcomes for tax credit customers that my Office expected it to be able to deliver, or whether COP 26 and guidance were so restrictive, as drafted, that staff had no option but to reach the decisions that they had reached.

3.14

My view, taken purely from reading COP 26 and the supporting guidance provided to HMRC staff (in its various versions since its introduction) has remained that, applied reasonably, COP 26 does provide an appropriate framework for delivering fair outcomes for tax credit customers in respect of decisions on the recovery of overpayments. My Office has therefore continued to make findings on that basis in the reports of the investigations that we have undertaken.

3.15

However, that view is not shared by the Adjudicator, as she made clear in her Annual Report for 2007, nor the Tax Credits Office, both of whom have insisted to my Office that they are following COP 26 and the supporting guidance to the letter and that it is the guidance itself, and not their application of it, which produces harsh decisions in some cases. They argue that it is therefore inappropriate for my Office to describe the application of the guidance as maladministrative in such cases. As I have indicated, unless there is guidance to HMRC staff which my Office has not been made aware of, I find it difficult to understand on what basis they have reached that view. Despite further exchanges in the period leading up to the issue of this report, we have been unable to reach agreement on this point. Accordingly, our respective understandings as to the root cause of the problems I have identified continue to differ. Ultimately, however, whether it is the guidance or its application which is at fault here, what is most important is the unfair outcomes for tax credit customers, and what needs to be addressed is how that can be remedied.

3.16

I am therefore pleased to note that in the light of all the concerns raised about the difficulty of applying the reasonable belief test fairly and consistently, HMRC are in the process of

consulting on a revised version of COP 26 to remove the reasonable belief test and replace it with a much clearer test of whether the tax credit customer has alerted HMRC to an error or change of circumstances (see bullet point 4 of paragraph 3.10 above). If they have done so, then a failure by HMRC to act on that information within 30 days would lead to HMRC having to waive any overpayment arising after that period. I welcome that proposal which, it seems to me, will at least address my concern about the undue weight of responsibility for the correctness of the award being placed on the customer (paragraph 3.7). It will also give HMRC staff a clear incentive to get things right, and put things right, promptly. Nevertheless, it seems to me that any test that is applied will have the potential to lead to harsh decisions, unless there remains sufficient flexibility within it for staff to be able to apply a commonsense approach and take account of individual circumstances. It will be particularly important, therefore, that in drawing up the revised COP 26, HMRC ensure that they are satisfied that it will deliver not just consistent, but fair and appropriate outcomes for tax credit customers.

3.17

I am also pleased to report that, following further discussions between my Office and both HMRC and the Adjudicator's Office, they have both acknowledged that the question of whether the recovery of a recoverable overpayment is likely to cause hardship should be addressed as part of the COP 26 process. In future, therefore, where the complainant raises the issue of hardship, either explicitly or implicitly, in their representations on the overpayment, that issue will be put to the Debt Management and Banking Unit (DMB – specialists in determining the question of hardship in respect of all HMRC recovery issues, namely in relation to unpaid tax arrears as well as overpayments) for

consideration, before the final decision on recovery is given to the customer. I welcome that development. It seems to me, given the wording of COP 26, that once a decision has been made that a sum is recoverable, and there are good reasons to suspect that the recovery of that sum would cause hardship to the customer, then a failure to consider hardship as an integral part of the recovery decision would be unreasonable and clearly maladministrative.

3.18

Whilst I welcome both those developments, however, I am not convinced that those changes alone will be sufficient to ensure that the revised COP 26 is properly and fairly applied in future. In particular, I am not persuaded that, on their own, they will fully remedy the failings in approach I have identified in paragraph 3.10 above, in particular the need to ensure that staff are equipped to be able to apply a fair and consistent approach, which nevertheless ensures that they consider the specific circumstances of each individual case on its own merits.

I therefore recommend that HMRC should produce clear and comprehensive guidance for Tax Credits Office staff on the purpose and application of the revised COP 26 with linked case examples.

I also recommend that all staff required to apply the revised COP 26 should be given training in the appropriate way to approach such cases and the outcomes expected.

3.19

Another important principle of good administration is that public bodies should ensure that they learn lessons from complaints and use these to improve services and performance.

I therefore recommend that appropriate analysis and feedback mechanisms should be put in place to ensure that the learning from upheld complaints about the unreasonable application of COP 26 is fed back on a regular basis to all those staff involved in its application.

Approach to overpayments arising from changed family circumstances

3.20

Another area of concern is the number of cases I have seen where couples have either separated or moved in together and failed to notify HMRC promptly. As a result their original tax credit claim (that is their single or joint claim) ceases from the date of the change in their circumstances, and any payment made on that claim after that date becomes an overpayment. In such instances, the customers have to make a new claim on the basis of their changed family circumstances. However, such claims can only be backdated by approximately three months. So if the customer delays longer than that in reporting the change, they not only have to pay back the sum they received during the period between the date of the change of circumstances and the date of the start of the new claim, but they also lose any entitlement they might otherwise have had in their new capacity. That somewhat harsh penalty for delay once again underlines the importance of claimants notifying HMRC promptly of such changes in their circumstances. However, there have also been instances where, either because of

misadvice or misunderstanding of the system, claims have been made in the wrong capacity from the outset. In such cases, when determining how much of the overpayment to recover, HMRC have sometimes failed to take into account the fact that, had the claim been made in the appropriate capacity, the individual would still have been entitled to tax credits (and sometimes even to a higher award). I am pleased to note that in a number of such cases which my Office has brought to their attention, HMRC have been prepared to take account of the claimant's notional entitlement had they made an appropriate claim in determining the level of the overpayment to be recovered. That seems to me to be a sensible and fair approach in line with the tax credits system's policy objectives. However, I was concerned from the cases we had seen that that did not happen as a matter of course and customers who were not aware of this possibility

Case study: 16022

Ms L, who had been in poor health since suffering a brain haemorrhage in November 2000, complained about HMRC's insistence that she return a tax credit overpayment of £1,539.42. The overpayment had arisen because Ms L had mistakenly made a joint application for tax credits in May 2003, when her intention had been to apply on her own behalf. Ms L, who felt compelled by her illness to hire an accountant to help with her case, told us:

'I had only made a minor error at a time when I was mentally incapacitated [but] I found the experience (of dealing with HMRC) deeply unhappy to say the least. I encountered considerable delays, stonewalling, a failure to respond to reasonable questions and the ignoring of relevant points just because they weren't convenient.'

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Our investigation revealed that, because Ms L had not completed her application form correctly HMRC's decision not to waive the 'overpayment' was not in itself unreasonable. However, it was only after we intervened that HMRC accepted that, as Ms L's severe health problems had been a contributing factor, they would offset the 'notional single tax credits entitlement' that she would have been awarded had she completed the form properly, against the overpayment that had accrued from payment of the joint award. They also agreed to make a consolatory payment of £85 for the worry and distress caused to her and to refund 'reasonable costs' incurred by Ms L in pursuing her complaint.

could therefore lose out substantially.

3.21

I am therefore pleased to note that HMRC changed their policy in May 2007 in relation to this issue. I understand that now, where it comes to light that a claim was mistakenly made in the wrong capacity at the outset (as in the above case example), the amount of tax credit to which the customer would have been entitled, had they claimed in the correct capacity, will automatically be offset against any recoverable overpayment for the same period.

Annual statements

3.22

A similar area of concern is where HMRC have declared large sums as overpayments on the grounds that the tax credit recipient has not returned their annual statement (even if they deny receiving it), or has not completed it correctly. That is the case even where, had the claim been finalised appropriately, the claimant would have been entitled to the sums in question.

Case study: 27830

Ms B, who has five children, complained that, due to her alleged failure to return an annual declaration form for 2003-04 by the stipulated date of 31 August 2004, HMRC decided that all the tax credits paid to her between 6 April 2004 and 29 November 2004, totalling £4,725.15, must be repaid. Ms B said that, although she and her partner mislaid the original form, they requested a replacement form and returned it before the closing date. However, HMRC claimed they did not receive it.

During the Ombudsman's investigation it emerged that, soon after HMRC had terminated Ms B's tax credit award, on the grounds that she and her partner had not submitted a declaration, they had sent her a 'Statement of Account' informing her how much she would have to repay. When her partner had queried this, an HMRC official told him that if, at that point, they returned the annual declaration form, they would not have to make the repayment. However, despite this evidence, HMRC not only refused to write off the 'overpayment', but applied for a warrant for recovery.

Subsequent to our enquiries, HMRC confirmed that their internal guidance states that, if applicants contact HMRC within 30 days from the issue of the 'Statement of Account' and provide the information required, repayment is not required. As this guidance was ignored in Ms B's case HMRC agreed not to pursue repayment. They also awarded Ms B a consolatory payment of £110 because of their mistakes and delays in dealing with her case.

and appropriate for the claim to be reinstated. To do anything else would seem to me to be far too harsh a penalty for the delay, work entirely against the policy objectives of the scheme and unnecessarily cause customers avoidable distress and hardship. HMRC have said that (as in the example cited above) it is, and always has been, their policy where the the statement is returned within 30 days of the specified deadline, automatically to restore the claim. Further, that a claim could still be restored after that period where the claimant can show good cause, for example bereavement of a close member of the family, or serious illness. I accept that that may well be the case, and that in many of the cases that my Office has seen where that has not happened, it has been a result of human error. Nevertheless, I am not persuaded that HMRC are sufficiently flexible in their interpretation of 'good cause' to ensure that injustice does not arise. I note in particular, from the cases we have seen, that they will not generally accept it as good cause if a customer contends that they have not received the statement for completion. It seems to me that where the customer's claims history shows that they have previously responded to HMRC correspondence, then it is unfair and over harsh - and therefore maladministrative - not to accept non receipt as good cause. The same considerations would apply where the customer was insistent that they had returned the statement, but HMRC claimed not to have received it. We will, therefore, be monitoring the approach to such cases closely in the future.

I therefore recommend that HMRC review their guidance to their staff on how they should approach 'good cause' in relation to a customer's apparent failure to return an annual statement to ensure that it is not so unduly restrictive in its application as to be unfair.

3.23

I recognise that completion of the annual statement for the previous tax year constitutes the tax credit claim for the current tax year. Without that, therefore, there is no legal basis for the provisional payments made at the start of the new tax year. I also recognise that tax credit legislation sets out a statutory deadline for the return of the statement. Nevertheless, it seems to me that where customers can give reasonable explanations for the failure to return the relevant forms within that timeframe, then it is only fair

Compounding issues

3.24

A further matter of concern that has come to light in a number of cases my Office has seen is the confusion caused to tax credit customers by the fact that a number of different parts of HMRC can be legitimately communicating with them about their tax credit overpayments. The complaints I have seen suggest that that contact will often not be co-ordinated or linked in any way (although the problem may well have arisen because the customer has assumed that it is).

Case study: 27640

Mr V had been overpaid by £2,775.77. In October 2006 he entered into an agreement with HMRC's Debt Management and Banking Unit to repay the debt at the rate of £100 per month. Mr V complained that despite adhering to that payment agreement, HMRC's Tax Credit Overpayment Unit had written to him demanding repayment of the debt in full and that they had passed the matter to a debt collection agency. Mr V said that when he called HMRC he was told that they had no record of the payment agreement. When referring Mr V's complaint to the Ombudsman, his MP said that Mr V and his partner 'are understandably both upset and distressed at a system which has incorrectly assessed their payments, has refused to acknowledge payments that have quite obviously been made and now has the temerity to threaten them with court proceedings through no fault of their own'. Following the Ombudsman's intervention HMRC honoured the agreement that had been made, allowing Mr V to continue to repay the debt in instalments, and also agreed to reduce his payments to £30 per month in recognition of a change in his financial circumstances.

3.25

As a consequence of this lack of co-ordination, there is frequently no consideration given to the overall impact on the tax credit customer. It is possible, for example, for the recovery of an

overpayment from a customer's current award to be restricted so as not to cause hardship, whilst DMB are pursuing the same individual at the same time for repayment of an overpayment from a different award, and threatening court action if the customer does not pay the money back within a set period. I have seen a number of cases where the complainant has simply not understood that the action being taken by DMB is in relation to a different award.

I therefore recommend that HMRC should identify how they can work in a more co-ordinated manner to ensure that contacts with their tax credit customers about recovery of overpayments take proper account of any other action HMRC are currently taking in respect of the customer's tax credit position, and of the overall impact on the customer's financial circumstances.

3.26

Another complicating factor is that different sections of HMRC can only consider certain aspects of the individual's circumstances. For example, the disputed overpayments team will consider whether the overpayment could be recovered under COP 26. In the course of that consideration they can look at whether there were special circumstances, such as very poor health or a bereavement in the family at the relevant time, in terms of the 'reasonable belief' test. DMB, on the other hand, will look at whether the overpayment should be recovered focusing in particular on whether recovery would cause hardship, but also on whether there are other current special circumstances which might impact on the decision on recovery, such as the customer having a terminal illness.

3.27

Finally, DMB is not a part of the administration of the tax credits system as such, but as I have already indicated, deal with all HMRC's customers. It therefore effectively takes a largely 'one size fits all' approach in that it treats repayments owed by tax credit recipients in the same way as tax owed by taxpayers generally. This means it will look at whether the customer has any assets which can be realised, such as savings, or whether the person could use equity in the home to raise a loan to repay the sums due. Whilst I understand why HMRC would see that as ensuring consistency in their approach to all their customers, nevertheless, it seems to me that that approach is hardly likely to meet the needs of this client group, particularly those on the lowest incomes, nor tie in well with the policy objectives of the tax credits system more generally.

I therefore recommend that in considering the recovery of tax credit overpayments, DMB should be required to tailor its approach to the needs of the customer group. In the case of tax credit recipients, that would include considering family circumstances (such as whether they include children or adults with disabilities or severe illness), and the likely impact on the individual or family. That consideration should also include whether recovery, either immediate or suspended, would work against the policy objectives of the tax credits scheme.

Chapter 4

A wider view

4.1

It is clear that significant numbers of low income families and workers have benefited from the introduction of Child and Working Tax Credits since April 2003. For many, particularly those in stable employment and family structures, once the system had bedded down and the initial administrative problems had been resolved, their experience as a tax credit recipient will most probably have been positive. However, as I have shown in previous chapters, that is by no means the full story and there are many for whom the experience has been, and indeed remains, highly distressing. Whilst they may be only a relatively small proportion of the overall numbers claiming tax credits, they are a significant number, and the impact on the customers concerned, typically those on the very lowest incomes who are amongst the most vulnerable in society, is huge. It is, therefore, vital that work continues as a priority within HMRC to find ways of lessening the adverse impact that the current system can have on those customers. Otherwise, increasing numbers of those whom the system is intended to benefit most (low income families and workers) will opt out of claiming tax credits, thereby defeating the very laudable policy objectives.

Case study: 28229

'This has caused me great distress and upset at a time when I was trying to be financially independent from state benefits and not get into any debt. It appears that working for a living as a single parent is disadvantageous. Surely this should not be the case!'

Case study: 25072

*"I do not want to receive one single further payment from you and cancel **all** payments regardless of so called 'entitlement'."*

Case study: 31533

'I have been informed over the [tele] phone that I now owe you £446.86. I thought (silly me) that WTC was meant to help the low paid but all it does is get us deeper and deeper into debt, something that both myself and my wife never do. Therefore we both wish to withdraw from the scheme right now.'

Case study: 31630

'This is the second year in which we have received such a 'Notice to Pay' and we must say that it is causing us both grief and stress with the worry of the whole situation, as well as putting a strain on our marriage. We shall not be attempting to claim this 'benefit' ever again.'

4.2

The evidence in the complaints that I have seen also raises fundamental questions which are not administrative or service issues as such, but policy considerations related to the design of the tax credits system which only Government and Parliament can address. Whilst they are not for me, it is important in my view that I raise them here in this report.

4.3

I raised the first of these issues in my first special report on tax credits in June 2005; that is, that financial uncertainty is inherent in an annual system. Overpayments and underpayments are unavoidable aspects of the system which will continue to occur, however well the system is administered, because that is how the system is designed. Although this tax credits system is in its fifth year now, as I have already indicated earlier in this report, it is evident from the complaints referred to my Office that this aspect of the system is simply not understood by many tax credit recipients or even their referring Members.

Case study:
25074

'I fail to see how, given that HMRC were notified of all the changes and acted upon them, an overpayment can possibly have been made! The fact must be, surely, that if an overpayment was made then it was made because HMRC did not, as claimed, act upon the evidence provided. Or, are we presiding over a system that is so completely flawed and incompetent as to almost inevitably in many cases result in an overpayment at the end of a financial year.'

(from a referring Member in support of his constituent's complaint)

This means that the system is likely to keep generating dissatisfaction and numerous complaints, with the resulting impact on HMRC staffing and resource needs.

4.4

The annual system means that tax credit payments can fluctuate in an unpredictable manner in year, making it difficult to budget in the short term. But it also means that entitlement to the tax credit payments already made (and spent) is only finalised retrospectively, rendering longer term budgeting much more difficult. Does such a system therefore truly meet the needs of this particular customer group?

4.5

The very fact that, as a result of that process, so many low income families who would otherwise not have been in that situation end up in debt must raise concerns that, although many children may be lifted out of poverty by the tax credits system, others may be being forced into it. Whilst HMRC have taken steps to try and ensure that recovery of overpayments does not lead to severe hardship, by delaying or restricting recovery where requested and the circumstances allow, it is undoubtedly the case that some low

income families and earners find the prospect of being in debt to HMRC a very worrying prospect. Others will not have the courage or confidence, even where they have good cause, to dispute an overpayment or its recovery. We have seen a number of cases where those who can least afford it have taken out new or additional loans (with high rates of interest accruing) in order to repay tax credit overpayments.

4.6

Similarly, although overpayments may sometimes (albeit infrequently - see Chapter 3) be remitted on grounds of hardship, recovery will often simply be suspended in anticipation of the tax credit recipient's circumstances improving. Some individuals and families may thereby have the threat of recovery of sometimes very large sums hanging over them for many years. It seems to me that such a threat must provide a negative incentive for people in such a position to seek employment or improve their circumstances. Further, it directly contradicts one of the key policy objectives of the scheme, namely that of providing an incentive to work.

4.7

The aim of having a flexible system, able to respond promptly to changes in customers' circumstances, is to provide those with low incomes with appropriate support when they most need it. However, I have seen many cases where families have only been alerted to overpayments and the need for them to repay the sums involved sometimes two or three years after those overpayments arose. Consequently, families who might already have had their current tax credit payments reduced to take account of a change of circumstances in-year, and who are already struggling to make ends meet as a result, can find themselves being pursued to repay sums received and spent a very long time ago.

4.8

This can be particularly problematic for those on the lowest incomes because, had they not received those tax credits payments at the time, they might well have been entitled (or had an increased entitlement) to other benefits such as income support or housing benefit. Because of the rules governing entitlement to those benefits, however, the tax credit claimant cannot make a backdated claim for those benefits so long after the event. Hence, those on the lowest incomes can end up, over time, receiving less than their overall entitlement to financial support and be seriously disadvantaged.

4.9

Some of those disadvantaged in that way will be taken to court by HMRC in pursuit of repayment of the sums involved. And in a number of those cases the origin of the overpayment will be HMRC error which the tax credit claimant has failed to spot. It seems to me that such instances raise fundamental questions of fairness and injustice which must be addressed.

Appendix A

Complaints received by the Ombudsman on tax credits matters 1 April 2005 – 31 August 2007

Business year 1 April 2005 to 31 March 2006	19.1% of PCA workload
Business year 1 April 2006 to 31 March 2007	20.6% of PCA workload
Business year 1 April 2007 to 31 August 2007	26.4% of PCA workload

Number of cases taken on for investigation/Number of cases reported on in year

Business year	05/06:	404	299
	06/07:	120	393

Proportion of cases upheld in whole or in part

	Tax credit cases	Parliamentary Ombudsman cases generally
05/06	90%	54%
06/07	74%	63%

<i>Casework themes</i>	<i>04/05</i>	<i>05/06</i>	<i>06/07</i>
Overpayment	72%	86%	91%
Problems with Tax Credit Office information, explanations, advice	32%	20%	11%
Problems with Tax Credit Office records	31%	41%	19%
Complaint handling	29%	30%	10%
Underpayments, ceased payments, etc	17%	9%	6%
Failure to reply	14%	9%	2%
Delays	11%	8%	3%
Errors processing claim	11%	11%	2%
Telephone helpline	9%	9%	2%

Appendix B

HMRC's response to the recommendations in the Special Report: Tax Credits: Putting Things Right (June 2005)

	Recommendation	Response
1	Steps to ensure staff recognise the situations where interim payments of tax credits are appropriate.	Implemented. <ul style="list-style-type: none"> • Guidance sent out to all staff in 2005.
2	HMRC should not seek to recover until it has come to a decision on whether it should be recovered under COP 26 (the 'pause').	Work in progress. <ul style="list-style-type: none"> • Suspension of recovery of disputed overpayments became possible from November 2005. From November 2006 this became automatic. • Government accepted the case in principle for a period of notice before recovery of any overpayment begins and said that HMRC would continue to look for opportunities to implement this. However, in a letter dated 25 June 2007 to the Chairman of HM Treasury Committee the Paymaster General said that it was now clear that the necessary change could not be delivered in the short to medium term.
3	On the 'payments page' of an award notice, customers should be alerted to the fact that recovery can be disputed under COP 26.	Implemented. <ul style="list-style-type: none"> • Clearly displayed in the one-page notes accompanying the award notice.
4	Recovery should be at the same rate as those for previous year overpayments.	Implemented. <ul style="list-style-type: none"> • Part of package of measures announced at Pre-Budget Report 2005.
5	Steps to ensure that staff who have contact with tax credit customers are alert to the circumstances when ATCs might be appropriate.	Implemented. <ul style="list-style-type: none"> • Guidance sent out 2005.

	Recommendation	Response
6	<p>Where in-year recovery of excess tax credits is justified, HMRC should take steps to pay ATCs automatically to families in receipt of income support and income based jobseeker's allowance.</p>	<p>Implemented.</p> <ul style="list-style-type: none"> • This recommendation has been overtaken by the announcement in PBR 2005 to align cross and in-year recovery rates. This will occur for all in-year recoveries, whether or not the claimant is in receipt of income support or income based jobseeker's allowance. • In January 2007 HMRC introduced a manual process to identify where a restricted rate of recovery was appropriate and to apply that rate without the claimant having to ask for it. • [Automated restriction has been available from June 2007.]
7	<p>Details of the availability of ATCs should be printed prominently on the 'payments' page of an award notice and the guidance notes.</p>	<p>Implemented.</p> <ul style="list-style-type: none"> • More prominent on both these documents. Overtaken by the announcement in Pre Budget Report 2005 to align cross and in-year recovery rates.
8	<p>Overpaid customers to be sent a letter outlining:</p> <ul style="list-style-type: none"> • the total amount they owe; • the reasons why the overpayment occurred and the date or dates when it happened; and • the repayment arrangements which will apply in their case. <p>The letter to enclose a copy of COP 26 and draw particular attention to the circumstances when recovery can be waived and the availability of ATCs in cases of hardship.</p>	<p>Implemented.</p> <ul style="list-style-type: none"> • The revised award notice explains in more detail how the award is made up, the payment schedule and details of how payments are affected by recovery action. The guidance notes give greater prominence to overpayments and recovery, the availability of COP 26, waiver and ATCs. • A full 'playback' introduced in November 2006, as part of the latest computer release, will mean that a claimant's finalisation/renewals notice from April 2007 will contain information on their award throughout the previous tax year. This will help to explain 'why did this overpayment occur?'.

	Recommendation	Response
9	Whenever a HMRC mistake is identified which has led to an overpayment, the customer should be immediately notified of exactly what has happened and informed of the circumstances when recovery can be waived.	Implemented. <ul style="list-style-type: none"> • When an IT system problem is identified which has led to an overpayment, HMRC will contact those affected. • Award notice contains the amount and how it will be recovered on the notice. The accompanying guidance notes tell customers that HMRC's approach to overpayments is outlined in COP 26. • HMRC cannot always identify where a mistake has been made as it often needs individual contact from the customer to identify it.
10	Consideration should be given to writing off all overpayments caused by official error which occurred during 2003-04 and 2004-05.	Considered, but not accepted. <ul style="list-style-type: none"> • The Government considered this but decided that it would not be appropriate because of the need to balance the duty of care to tax credit customers with their duty to all taxpayers and the public purse.
11	Statutory test for recovery of overpayments consistent with the test that is currently applied to social security benefits, with a right of appeal to an independent tribunal.	An alternative approach is being piloted. <ul style="list-style-type: none"> • Customers can complain if they disagree with the decision or matters are not resolved to their satisfaction. • HMRC are planning with the Adjudicator to provide a fast track independent review for disputed overpayments. A pilot will start in the next few months to test arrangements.
12	HMRC should consider the way it organises delivery of tax credits in order to deliver a better, more complete service to the customers it now serves. A different model is needed in complex cases and where something has gone wrong. More sustained and informed communication with customers about their case is essential.	Implemented but will always be subject to ongoing work. <ul style="list-style-type: none"> • A special team has been set up in the Tax Credits Office to deal with more complex cases (known as 'Group 33') who adopt a whole case approach. • Tax Credits Office have reviewed their complaints processes and made a number of changes. In particular to have a named caseworker who will take ownership of the complaint until it is resolved. • More generally HMRC have taken a more radical long term look at the way they deliver tax credits. This now forms part of HMRC's Transformation Programme.

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