

The Adjudicator deals with complaints relating to HMRC, the Valuation Office Agency (VOA) and The Insolvency Service, acting as an unbiased, independent referee where the complainant has exhausted internal department procedures. The current Adjudicator, Judy Clements OBE, has been in the role for just over two years. *Tax Adviser* caught up with her to discuss her work in detail.

1. First of all, tell us more about your role. What do you cover, and what is not dealt with under your remit?

I look at complaints about HMRC, the VOA and The Insolvency Service from customers who have exhausted the internal complaints procedure for those departments and remain dissatisfied with the way their complaint has been handled. I'm a third-tier complaints handler, almost an appellant function. So, for example, I would cover mistakes HMRC have made, poor or misleading advice, inappropriate staff behaviour or use of discretion. Another common area of complaint relates to unreasonable delays.

Areas I can't look at include: those that are very strictly matters of government or departmental policy; matters that can be dealt with by a court of law, tribunal or similar body; or where a department has an ongoing investigation or enquiry with regard to that customer. So it's quite a wide-ranging role.

2. How is your department structured?

We have a team of adjudication officers in London and Derby with just under 50 staff in total, comprising three big teams. They do the groundwork – that is, the actual investigation: any consultation or liaison with the department and the customer. They prepare a draft recommendation in cases where we can't

KEY POINTS

- The Adjudicator's Office provides an independent review on complaints relating to HMRC, VOA and The Insolvency Service where internal department complaints procedures have been exhausted
- The Adjudicator looks at complaints relating to mistakes, poor or misleading advice, inappropriate staff behaviour or use of discretion, and unreasonable delays
- The Adjudicator cannot look at matters of government or departmental policy, matters that can be dealt with by a court of law, or where a department has an ongoing investigation or enquiry

Interview with

Santhie Goundar meets the Adjudicator, Judy Clements OBE, and finds out how tax advisers and their clients should deal with HMRC complaints



mediate – and around 20% of cases are mediated – and present this to me to adjudicate.

However, investigators don't make any decisions – I make the final decision. While I have a team of 50 adjudication officers working for me, I am actually independent – I'm a public servant rather than a civil servant – and the officers are accountable to our Head of Office, Margaret Allcock, who is answerable to me.

3. How do you handle complaints?

Whether the complaint is about HMRC, VOA or The Insolvency Service, they are all dealt with in exactly the same way, although HMRC cases tend to be particularly diverse, ranging from tax credits to personal tax or VAT, and more recently, a case involving the Climate Change Levy.

There are three stages a customer has to go through, with the first two stages being dealt with by the relevant department. Someone in that department will look at the complaint when it comes in for a first review. Then if the customer is still not satisfied there is a second review which gives the department's final response. The departments have a responsibility to advise the complainant they can come to me as a third tier if they are not satisfied with the outcome of the second review. If the complainant is still not satisfied after the complaint has been handled by me, then the fourth port of call is to the Parliamentary Ombudsman via an MP.

When I deal with a case I write to the complainant formally, setting out my views on the facts, and whether I uphold their complaint or not. When I do uphold a complaint, it may be accompanied

the Adjudicator

by a form of financial redress from the department, for example writing off tax that may be due provided it is within the department's jurisdiction to do so. More commonly, there may be some small redress compensating for worry, distress and the poor handling of complaints. Last year, the departments paid out a total of just over £2.5 million to complainants following my recommendations; the majority of this figure (99%) was from HMRC-related cases, and most (88%) of *that* related to tax credits.

4. What have been your causes of concern, or areas you focus on?

I like to focus on areas of serious learning for a department, rather than just being critical of that department for the sake of it. This will often involve identifying trends and patterns and where there may continue to be systemic failures in the way that department processes cases for customers. One emerging theme of concern is around mental health: it is important that front-line staff are alert to customers who may have mental health challenges. There have been a couple of cases which caused me serious concern, where it has been very clear there has been an issue – and the customer has been very clear about it – but the department has not been as understanding as they should have. They were cases that could have been resolved without escalating, especially with the guidance in place.

Following on from that, another concern is when departments have not been consistent in following their own guidance. One example is ESC A19 and personal tax issues, especially involving pensioners. HMRC need to make people more aware that they must look at their tax affairs closely before retirement, particularly where there have been multiple employments. With ESC A19 there is no remit to court, so it is one area that has provided a number of cases for the Adjudicator's Office to deal with. I am encouraging HMRC to look at ways of making people prepared or aware as to whether they've overpaid or underpaid tax. With the new technology HMRC has installed no-one should fall through the net now – and it should avoid people receiving unpleasant surprises five or ten years into retirement.

5. How many cases do you deal with, and how do you maintain your independence?

On average we deal with anything from 1,200 to 1,400 cases a year. However, last year we resolved 2,284 – a record high in

the 18-year history of the Adjudicator's Office. When I arrived in 2009 I inherited a backlog of more than 2,000 cases. The backlog had been building for over five years since the implementation of tax credits. There was insufficient human resource to tackle the workload, which I made clear was unacceptable and asked for additional resources. A new Head of Office – Margaret Allcock – was appointed, and with her spearheading a new operational plan, we were able to clear the backlog within 12 months. The position of Adjudicator is non-statutory, which means each department has to provide staff and funding to enable the Adjudicator to do the job – and, as most cases relate to HMRC, the majority of the funding and staffing comes from HMRC. All work is closely monitored within the Adjudicator's Office, with regular case conferences, to ensure investigations are

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balanced and impartial. Recruiting people externally would be difficult because, with all the different taxes involved, the job can get quite complex – even staff on loan from the departments have to be trained. For example, HMRC staff on loan tend to come from an investigative or compliance background, being particularly experienced in investigating cases of error and fraud. Their mindset brings a balanced argument: they have to put together the facts of the case from both sides, and as Adjudicator – and independent – I do scrutinise all the information in order to make the final decision. I guard my independence quite fiercely.

Once a year I give feedback to the Chief Executives of the department and to HMRC's Ethics and Responsibilities Committee. I like to be balanced, so I detail the highlights from our work, as well as any concerns I have.

6. What are the plans of the Adjudicator's Office going forward?

The key point for me is the emphasis on learning and not simply criticising – that's what I want to focus on for the next few years. I value the input of key stakeholders like the CIOT, because they're a good sounding board about the trends and issues customers face.

The CIOT is invited to participate in an annual roundtable I am hoping to host,

which should be this autumn – the first was held last year, where the CIOT participated through the LITRG, and other participants included TaxAid and TaxHelp for Older People (TOP). We look at customer issues for the most vulnerable taxpayers.

7. How can a taxpayer with a complaint get in contact with you?

Customers usually complain in writing. Sometimes they come to us too early – before the departmental avenues open to them have been used up – so we refer them back to the relevant department to exhaust the first two stages of their complaint internally.

However, when a customer who has exhausted all other avenues writes to us, we ask the department to detail their entire handling of the case, particularly if it's complex or goes back over multiple years. One thing we've started to do with

HMRC cases involving tax credits is to share this report with customers before I've adjudicated, and invite them to comment. We find this has worked very well. It gives the customer an opportunity to have their say on the report before the final decision is made. We are developing this approach for other HMRC cases too.

As my adjudication process is done in writing, I don't meet with customers. However, when we have customers with particular needs we will check with them by telephone on how best to meet their needs.

You can write to: The Adjudicator's Office, 8th Floor Euston Tower, 286 Euston Road, London NW1 3US. Telephone: 0300 057 1111 or 020 7667 1832 (Typetalk facilities are available); Fax: 0300 057 1212 or 020 7667 1830. Contact times are between 9am and 5pm, Monday to Friday (except Bank Holidays). Initial enquiries are dealt with by the London office. The Derby office will contact complainants directly about the complaints that they investigate.

FURTHER INFORMATION

For further information, including more details about the role of the Adjudicator's Office, case studies and the 2010–2011 Annual Report, visit www.adjudicatorsoffice.gov.uk