



Independent  
Case Examiner

# ICE Annual Report for the Department for Communities(NI) 2018 to 2019

## The ICE Service

### Our Purpose

We provide a free independent complaints review service for the Department for Communities.

We have two primary objectives:

- to act as an independent adjudicator if a customer considers that they have not been treated fairly or have not had their complaints dealt with in a satisfactory manner; and
- to support service improvements by providing constructive comment and meaningful recommendations.

### Our Mission

To judge the issues without taking sides.

### Our Vision

To deliver a first rate service provided by professional staff.

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**0345**  
**0845**

You can use the **0845** code to call any of our **0345** numbers.  
Check with your phone company which code is cheaper for you.



## 1. Overview

The Independent Case Examiner's Office consider each case strictly on its own merits, taking account of individual circumstances and nuanced differences, in order to determine appropriate redress, even where the facts of the case may appear superficially to be similar.

## 2. Possible complaint outcomes

### Withdrawn cases

Complaints may be withdrawn for several reasons. For example, some complainants decide to withdraw their complaint when we explain the appeal route for legislative decisions, or that their complaint does not relate to maladministration. From time to time people also withdraw their complaint because the business has taken action to address their concerns after we accepted the case for examination.

### Resolved cases

We try to resolve complaints with the agreement of the complainant and the business, without the need to call for and consider the evidence, as this generally represents a quicker and more satisfactory result for both.

### Settled cases

We try to reach settlement of complaints following an examination of the evidence, by agreement between the business and the complainant. This approach avoids the need for me to adjudicate on the merits of the complaint and issue a full investigation report.

### Findings

Detailed below are the findings I can reach:

- **Upheld**

If there is evidence of maladministration in relation to the complaint which was not remedied prior to our involvement, the complaint is upheld.

- **Partially upheld**

If only some aspects of the complaint are upheld, but others are not, the complaint is partially upheld.

- **Not upheld**

If there is no evidence of maladministration in relation to the complaint, the complaint is not upheld.

- **Justified**

Although the complaint may have merit, the business has taken all necessary action to remedy it prior to the complainant's approach to my office.

## Redress

If the complaint is upheld or partially upheld, I will make recommendations for redress such as an apology, corrective action or financial redress.

## 3. Northern Ireland Social Security Benefits

### Context

This strand of the Department for Communities administers and provides guidance on a range of social security benefits and pensions to the people of Northern Ireland. The number of cases received at ICE from this area remains relatively small and as in previous years, the overall picture of how complaints are dealt with remains positive.

### Statistical Information 1 April 2018 to 31 March 2019

#### Complaints Received

The number of complaints received and accepted for examination, during the reporting period are detailed below:

<b>Received</b>	22
<b>Accepted</b>	8

#### Case Clearances

The table below details the number of cases cleared during the reporting period:

<b>Resolution</b>	1
<b>Settlement</b>	0
<b>Investigation Report from the ICE</b>	3
<b>Total</b>	4

#### Outcomes

ICE investigation report findings are detailed below:

<b>Fully upheld</b>	0
<b>Partially upheld</b>	0
<b>Not upheld</b>	3 (100%)
<b>Total</b>	3

## Live caseload

As at 31 March 2019 there were 14 cases outstanding, of those:

- 4 were being assessed to see if we could accept them for examination
- 7 were awaiting investigation
- 3 were under investigation

## Case examples

### **Case Study 1**

Mr A complained, amongst other things, that the Department for Communities failed to provide him with clear information detailing what a Personal Independence Payment (PIP) claim is and why his Disability Living Allowance (DLA) case was to be reassessed for PIP, during a telephone call that he made to the PIP centre in February 2017.

Our investigation found that it was following correspondence received earlier that month from Department for Communities, informing him of the transfer of DLA claimants over to PIP, that Mr A telephoned the PIP centre. The information he received prior to that call detailed the legislative changes and the nationwide processes for all DLA claimants to have their benefit payments transferred over to PIP - to ensure as seamless a transition as possible DLA claimants were invited to telephone a PIP centre to submit their claim. That correspondence included several references on how to claim PIP, and prompted Mr A's call to the centre. We found that at that stage it was not unreasonable for the agent who took Mr A's call, to have expected him to have read the information provided beforehand; nevertheless, during the call he was told that the transfer to PIP from DLA was being implemented throughout the whole of Northern Ireland and he confirmed that he wanted to claim PIP.

I did not uphold Mr A's complaint, finding that the evidence did not support his complaint that there was a failure to provide him with clear information about the DLA to PIP transfer process.

### **Case Study 2**

Mr B complained that the Department for Communities failed to check that his Jobseekers Allowance (JSA) application form was completed correctly and misadvised him, by telling him that he did not have to tick the box on the form to say that his wife was working, if she worked part time.

Our investigation found that having initially claimed benefit in 1992/93 Mr B declared his wife was working full time; whereupon a review undertaken by Department for Communities a few weeks later ended his benefit claim, and that during a telephone

call about this issue, he said he was told that the error was theirs for failing to check his application correctly. Mr B said that during that call he was also told he only needed to declare his wife's full time earnings; not part time earnings. It is Mr B's view that it was this incorrect information that led to an overpayment of JSA of almost £55,000, following a later benefit claim he made in January 1995.

We found that due to the time that had elapsed there was no record of a call in 1992/93, or of the JSA application form he completed in January 1995; however, our investigation found that when Mr B attended his local Jobcentre each fortnight (as part of his JSA claim), he would have been required to sign a declaration stating that his circumstances were unchanged; and as part of the annual uprating notices issued each year he was reminded of his obligation to inform the Department accordingly of changes in his circumstances.

We found that whilst application forms are routinely checked by Department of Communities, it is the responsibility of the claimant to complete their claim form appropriately. The standard declaration a claimant must sign at the end of such forms underlines this point. Furthermore, in the case of all means tested benefits – including Income Support and JSA Income Related – it is the household income that is considered in order for the Department to accurately assess the weekly rate of benefit due to the claimant. Whilst Mr B claimed to have been told in 1992/93 that part-time work did not need to be declared, we found that in October 1997 he also failed to declare that his wife started work of 36 hours a week – I therefore did not consider his later claim that he did not view 36 hours employment a week as being “full time” to be credible. In April 2011 he pleaded guilty to benefit fraud and the Judge said that he must have known that he should have declared his wife's employment at the relevant time.

Despite Mr B having commenced repayment of the overpayment in 2009, it was August 2016 before he complained that when he applied for JSA he did not tick the box to say his wife was working, because an advisor has previously told him that his wife's details would be checked since he had provided her name and National Insurance number. In March 2017 he told the Department that their misdirection had caused the overpayment. Mr B's allegation of misdirection was addressed over the following months through the Department's complaint process. Our investigation found no evidence to support Mr B's claim of failures by the Department to check his claim form of January 1995, or of the misdirection allegedly given during a telephone call. I did not uphold Mr B's complaints.

## **4. Child Maintenance Service**

### **Context**

The Child Maintenance Service (CMS) (formerly known as the Child Support Agency and latterly the Child Maintenance and Enforcement Division) operates within the same legislative framework and in the same way as the Child Maintenance Group in other parts of the United Kingdom. It also administers Child Support applications

originating from some parts of England. For ease of reference, for the purpose of this report, we will refer to them only as CMS.

The 2012 Child Maintenance scheme was introduced in November 2013 – there are differences in the administration of this scheme, most notably the introduction of charges for both parties if the collection service is used – paying parents pay an amount in addition to their maintenance liability and receiving parents receive a reduced amount of maintenance.

The number of cases received at ICE from Northern Ireland remains relatively small and as in previous years, the overall picture of how the CMS deals with complaints remains positive.

### **Statistical Information 1 April 2018 to 31 March 2019**

#### Complaints Received

Complaints received and accepted during the period are given in the table below:

	<b>Legacy cases</b>	<b>2012 Scheme cases</b>
<b>Received</b>	1	2
<b>Accepted</b>	1	2

#### Case Clearances

The table below details the number of cases cleared during the reporting period.

	<b>Legacy cases</b>	<b>2012 Scheme cases</b>
<b>Resolution</b>	0	0
<b>Settlement</b>	0	0
<b>Investigation Report from the ICE</b>	2	0
<b>Total</b>	<b>2</b>	<b>0</b>

#### Outcomes

ICE investigation report findings are detailed below.

	<b>Legacy cases</b>	<b>2012 cases</b>
<b>Fully upheld</b>	1 (50%)	0
<b>Partially upheld</b>	1 (50%)	0

<b>Not upheld</b>	0 (0%)	0
<b>Total</b>	<b>2</b>	<b>0</b>

### Live caseload:

As at 31 March 2019, there were 3 outstanding cases awaiting investigation.

### Case examples

#### **Case study 1**

Mrs C complained that CMS failed to take timely and appropriate action to secure payments of regular maintenance and take appropriate legal enforcement action to secure payments of the arrears owed.

Our investigation found that the primary reason that Mrs C did not receive regular payments of maintenance was the non resident parent's non compliance with regard to making payments and providing details of his whereabouts. However, we found that there were failings on the part of CMS in their efforts to secure payments and they were not always as proactive as they should have been – on occasion they only acted when prompted to do so by Mrs C.

Our investigation found several examples where CMS had not contacted the non resident parent about his regular maintenance payments or maintenance that he owed. When enforcement action was being pursued against him in respect of maintenance arrears, they failed to warn him that he was also required to pay ongoing regular maintenance.

We found that errors and delays occurred on the part of CMS following the non resident parent's bankruptcy, which was supposed to last for 7 years, however, CMS found out that it had ended much sooner. Despite being aware of this, they failed to take any concrete enforcement action in respect of the maintenance he owed, and their failure to do so meant that they are no longer able to register the debt secured by a Liability Order in order to progress further enforcement action.

Our investigation found that at times, CMS inactivity actually permitted the non resident parent's non compliance – I therefore upheld Mrs C's complaint and recommended that they apologise and make her a consolatory payment of £300 for the service failures we identified.

#### **Case study 2**

Mrs D complained that CMS failed to identify an error in the maintenance calculation completed in 2001 until 2013, which led to an overpayment of maintenance, and failed to have regard to her personal circumstances when they decided to recover the overpayment from her at a rate of £124.97 a month.

Our investigation found that a review completed by CMS in respect of the non resident parent's liability was completed in February 2001, however, this failed to take into account his representations from 2002 that he was paying £875 a month under a court order. We found that had CMS considered this at the time, it is likely that the revised liabilities would have been significantly different, and the problems Mrs D was later caused by this oversight would have been avoided.

As CMS ignored the non resident parent's contact, and unbeknown to Mrs D, she continued to receive payments of more than she should have been entitled to for the next nine years. It was not until September 2013 that CMS corrected the maintenance liabilities backdating them almost 13 years, resulting in Mrs D having been overpaid by more than £6,000.00. Although CMS wrote to Mrs D at her correct address, it was apparent that she did not receive the notification as she contacted them in January 2014 to ask why she had received no payments since November 2013. Disappointingly it was a further three months before CMS re-issued the notifications to her and told her about the overpayment.

At this point CMS told Mrs D that in order to try and limit the overpayment they had not released the last two payments that they had received from the non resident parent. Whilst I could understand CMS's intention in taking such action, I did not consider it to be reasonable given that Mrs D had not had the opportunity to budget for receiving no payments – I was pleased to see that both of the withheld payments were forwarded to her within a week of contact.

Despite having made Mrs D aware of the overpayment since January 2014, it was several months before they finalised the overpayment balance and calculated that she had received £7,000.00 more than she should have been paid. They then decided to reduce her monthly payments by about 40% for four years in order to allow the paying parent to recoup the overpayment.

Our investigation found that the problems Mrs D encountered in relation to the overpayment were solely attributable to CMS's maladministration. I noted that they acknowledged that they should have identified the error in the assessment much earlier than 2013, and they accepted that their error had caused the subsequent problems on her case. By way of redress they apologised for their handling of her case and made her a consolatory payment of £250. In doing so I was satisfied that CMS had provided adequate redress and as such I found Mrs D's complaint to be justified.