Parliamentary and Health Service Ombudsman

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Foreword

Imagine if you or a member of your family were arrested, handcuffed and detained in a police cell overnight. It is not until the next day, after you have been handcuffed to a police officer, driven to court and held in a holding cell, that it is discovered you were arrested because of a mistake by a public body. How might you feel?

As shocking as it sounds, this is exactly what happened to Miss D (page 43) when HM Courts Service (HMCS) – the body responsible for delivering justice effectively and efficiently to the public – failed to act on a request to withdraw a warrant for her arrest. Even worse, when Miss D complained about her *'unnecessary, awful and embarrassing'* experience, HMCS failed to apologise, denied any wrongdoing, and even tried to argue that she bore some responsibility for her predicament. Needless to say, I took an extremely dim view of HMCS's handling of Miss D's case.

In a perfect world, mistakes would never happen but, given that they do, it is how public bodies react when mistakes occur that interests me most. Small mistakes have the potential for far-reaching and unforeseen consequences, and the failure to remedy mistakes quickly and properly can make them considerably worse. Failure to learn from mistakes can lead to them being repeated. I have produced this Digest to illustrate how small mistakes made by large public bodies can have a disproportionate impact on those they are attempting to serve, and on the public purse. I believe valuable lessons can be drawn from this small sample of our work: 11 cases which illustrate how things went wrong; how the original mistakes might have been avoided; and how they could, usually quite easily, have been put right sooner. The cases come from a range of public bodies and all demonstrate how things might have been handled differently if the public body had borne the *Principles of Good Administration*, *Principles of Good Complaint Handling* and *Principles for Remedy*[1] in mind when delivering their service.

'Seeking continuous improvement' is one of the six Principles. I cannot stress strongly enough the importance of bodies learning from complaints and using this learning to improve their services and performance. I hope that each time I investigate a complaint and report back to the body on what I have found, they will reflect on the learning and, where appropriate, make the changes necessary to avoid a repetition. In any case, I will continue to engage with them, and other bodies in my jurisdiction, to drive improvements in public services.

As I have observed on previous occasions, many of the complaints that arrive in my Office should have been resolved without needing my intervention. I frequently observe a failure of public bodies to put themselves 'in the shoes' of their customers. All too often I see cases where the body complained about did not take the trouble to find out or, having asked the question, failed to grasp fully what it was like for the person on the receiving end of their mistake. This lack of care, attention to detail and timeliness of action is graphically illustrated throughout the Digest but one case is particularly striking.

When Child Support Agency (the Agency) staff realised that they had wrongly identified Mr U (page 14) as a non-resident parent and then failed to take all the necessary action to correct that mistake, they laid the way for a far greater problem. Four years later, by which time Mr U's marriage was falling apart and his relationship with his children was under strain, the Agency finally admitted their error and attempted – very half-heartedly – to put it right; that was too late for Mr and Mrs U and

[1] Republished 10 February 2009, available at www.ombudsman.org.uk

their children. While the details of this particular case are unusual and the consequences have been especially traumatic, it is not the only one we have seen where the consequences of a small error have been devastating for the individual on the receiving end. Nor is it the only one where the body has shown a complete failure of imagination when it has come to *'Putting things right'*.

Staff need the correct equipment, guidance and embedded procedures to do their jobs properly; without that, even simple things can go badly awry. If the UK Border Agency (the Border Agency) had made it clear to staff that they should thoroughly search all records, including archived paper files, when asked if the Home Office had granted someone leave to remain in the UK, Mr P (page 31), a legitimate long-term resident of the UK, would not have suffered the ignominy of being threatened with removal from the country. Nor would he have missed two close family members' funerals and been unable to visit his sick mother. It took three years, considerable expense to the taxpayer, and incalculable heartache, worry and distress for Mr P and his family until this issue was resolved. How was it resolved? The Border Agency finally got round to checking his paper file. A costly mistake that was easily avoidable.

I have identified three clear themes for this Digest:

- Being careless with information
- Delay
- Poor complaint handling.

The case of Miss N (page 11) highlights the necessity for public bodies to provide a service which handles and processes information properly and appropriately, and respects the privacy of personal and confidential information. The Children and Family Court Advisory and Support Service (CAFCASS) inadvertently disclosed Miss N's address to her ex-husband, against her express wishes. Miss N felt compelled to move house, incurred unnecessary expense and suffered severe stress and anxiety as a result; consequences that would have been completely unanticipated when the disclosure was made. It should not have been necessary for me to intervene before CAFCASS put that right.

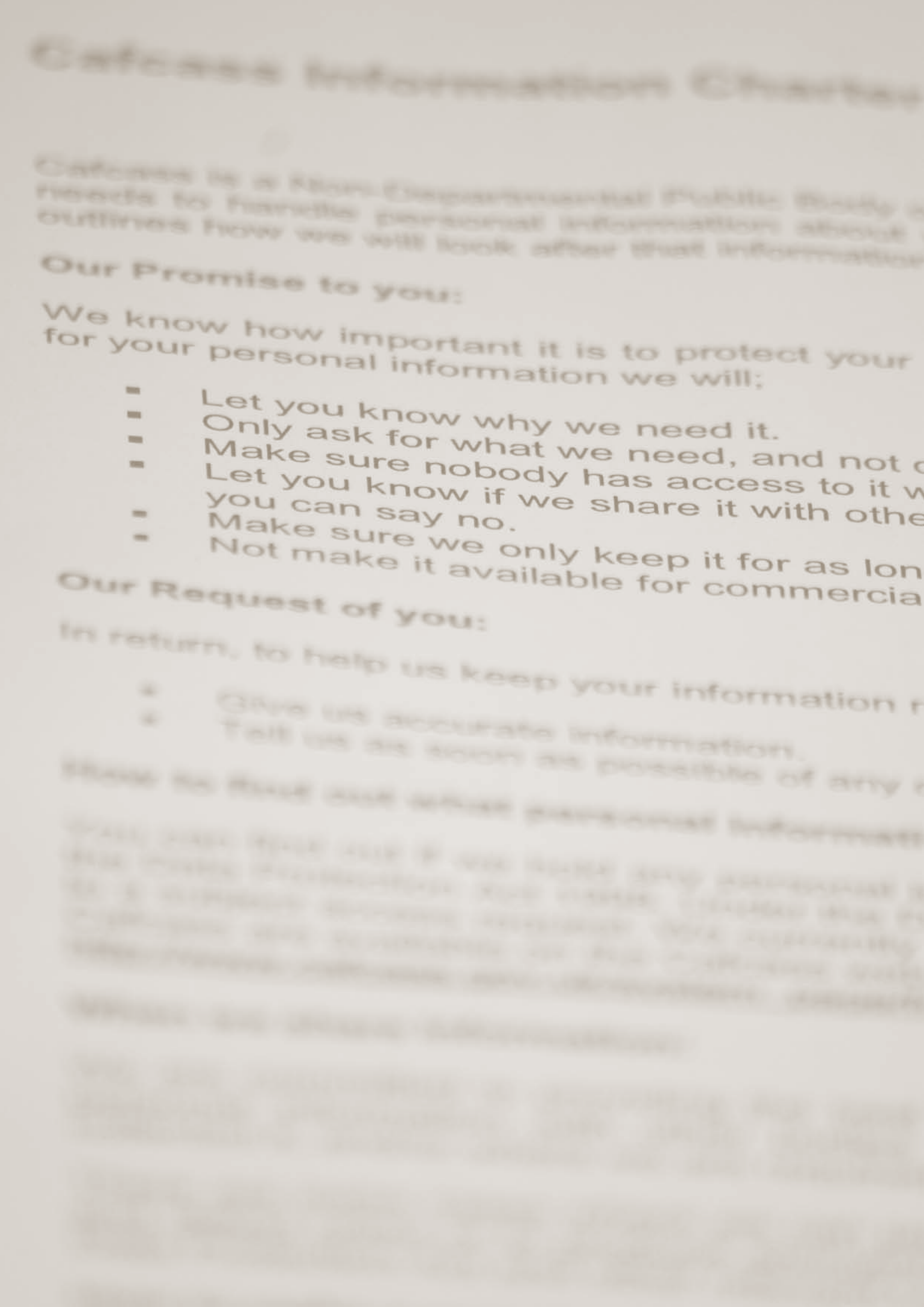
A complaint that is not resolved quickly and effectively has a habit of becoming unmanageable; wasting public money, time and effort, as well as causing all kinds of distress for the citizen. The case of Mrs Q (page 37), a war widow, starkly illustrates how a delay in resolving a complaint can impact on the public purse and on the individual. If the Department of Social Security (now the Department for Work and Pensions – DWP) had acted correctly in 1987, Mrs Q would not have had to manage without her war widow's pension for almost seven years. It took a further twelve years for Mrs Q to receive all the money she was entitled to as a result of her late husband's service in the Merchant Navy. During those twelve years she endured frustration, stress and inconvenience, all of which could have been avoided if the Department had provided her with the right information at the right time. I do not consider any member of the public should have to suffer in that way. Once we had resolved her complaint, Mrs Q told us that she was *'so glad it is almost at an end, and I feel like a cloud has been lifted after all these years'*. It is disappointing that the Department did not manage to lift that cloud sooner.

As I outline in *Principles of Good Complaint Handling*, prompt and efficient complaint handling can save public bodies time and money, by preventing a complaint from escalating unnecessarily. When the Border Agency wrongly

refused Ms A's application for indefinite leave to remain in the UK (page 49), they compounded their error by telling her employers that they were acting illegally by continuing to employ her. Ms A was left with no income for more than two months. The Border Agency then 'lost' Ms A's letter of complaint, and later refused to accept responsibility for their incorrect decision or for the consequences which flowed from it. Putting all that right took time and money. The Border Agency agreed to review their guidance to try to avoid this situation recurring. I hope that that may mean that others do not suffer the same fate as Ms A, and that the Border Agency have learnt from this sorry episode.

While righting individual wrongs is at the core of our work, my Office also aims to deliver a wider public benefit. None of us wants to see a repeat of failure; either on a grand or a small scale. I consider that publishing digests such as this one goes some way to reinforcing the message that an open and accountable public service, aiming to 'get it right', led by diligent and customer focused management, is the best way to ensure a first class service for all. I hope that public bodies – those cited in this Digest and those which are not – take the opportunity to reflect and learn from the cases described in the following pages.

Ann Abraham
Parliamentary and Health Service Ombudsman
November 2009



Cafcass Information
Our Promise to you:
We know how important it is to protect your
for your personal information we will;
Let you know why we need it.
Only ask for what we need, and not
Make sure nobody has access to it
Let you know if we share it with
you can say no.
Make sure we only keep it for as
Not make it available for
Our Request of you:
In return, to help us keep your information
Give us accurate information.
Tell us as soon as possible of any

Being careless with information

Citizens have a right to expect that public bodies will handle and process information properly and appropriately, and respect the privacy of personal and confidential information. When bodies fail to live up to that expectation it undermines the trust of the individual and of the wider public in the body. As e-government continues to grow, and as it becomes increasingly easy to share information at the touch of a button, that trust is vitally important.

'Being open and accountable' is one of the Ombudsman's *Principles of Good Administration*. Public bodies should make decisions having taken proper account of all relevant considerations, in line with the Principle of *'Getting it right'*. They should also be open with individuals about how they have reached decisions, giving clear explanations of the reasons for those decisions and about what citizens may do if they disagree with them.

The next section tells the stories of five people who were put – quite unnecessarily – in difficult and stressful situations because the body concerned did not follow good, basic administrative practice when it came to gathering, processing and disclosing information.

'He made no effort to sort the matter out from his end and only believed things could be sorted out if I put myself to further distress and inconvenience, which would save his department having to find the information I had already submitted.'

A complainant

Miss N's complaint about the Children and Family Court Advisory and Support Service

The disclosure by the Children and Family Court Advisory and Support Service of Miss N's home address to her ex-husband led to her and her daughter feeling unsafe in their home and, ultimately, moving house. They made matters worse by failing to acknowledge the full impact this had on Miss N until we intervened.

Background

In the summer of 2006 the Children and Family Court Advisory and Support Service (CAFCASS) inadvertently disclosed Miss N's address to her ex-husband. After she complained to CAFCASS, they apologised to her for the disclosure and the *'considerable distress'* they had caused her. Miss N responded, emphasising how distressing the disclosure had been for her and her family, and adding that it had been made clear to CAFCASS from the beginning that her address was to be kept confidential.

Correspondence continued between CAFCASS and Miss N into August 2006 and, in September, CAFCASS told Miss N that they were going to re-open her complaint and offer her a meeting to discuss her concerns. Having re-opened the complaint in October, CAFCASS spoke to Miss N, noting that she was planning to move house because they had disclosed her address, and that she wanted compensation for that. The proposed meeting took place in November, during which Miss N asked CAFCASS for help with the costs of moving and recompense for the distress they had caused her.

On 9 February 2007 CAFCASS wrote to Miss N about her request. They said that there were no court orders, before late 2006, prohibiting the disclosure of her address. They confirmed that they had disclosed her address, but said they were not aware that she had tried to minimise the risks she believed she was under. CAFCASS also suggested the risk to her was not as great as she thought. They told Miss N that they had concluded that she did not need to move house because, during the November 2006 meeting, Miss N had described making alternative after-school arrangements for her daughter, and asking a friend to stay in her house during a holiday to provide her with some security and reassurance. CAFCASS concluded that their disclosure had not resulted in any added financial commitment for Miss N and they declined to help with her moving costs.

Miss N told her Member of Parliament that CAFCASS were not taking her complaint seriously. She said that she wanted to move house as a result of CAFCASS's error but she had not been able to find anywhere suitable because of her daughter's schooling (her daughter was about to sit exams and had health problems) and because of her difficult financial situation. Miss N said she had applied for a non-molestation order against her ex-husband in 2005. She said CAFCASS had noted in three separate reports that she had asked them to keep her address confidential, and that her ex-husband had not been caught at her current address because he did not want to jeopardise his ongoing case for permission to see his daughter.

The Member of Parliament wrote to CAFCASS in March 2007. After sending several holding letters, CAFCASS sent a substantive reply to Miss N in June. They apologised for causing Miss N distress and said they regretted giving her the impression that they had not taken her concerns seriously. CAFCASS told Miss N that they had a domestic violence policy and they should have carried out a more thorough risk assessment of her

case. CAFCASS apologised for not taking proper account of Miss N's fears for her safety and said that, given that their disclosure had increased her sense of vulnerability, they were willing to pay *'reasonable moving costs associated with the transportation of her household belongings to new accommodation'*. Their offer was valid until 1 July 2008, and the costs of the move were to be agreed in advance.

Miss N wrote to the Member of Parliament saying she wanted to pursue her claim for **all** the costs associated with moving house and for compensation for the distress caused. She said that she had had to move house a number of times since her divorce and that arranging another move was stressful and disruptive. Miss N said that, since CAFCASS had disclosed her address, her ex-husband had been seen outside her house several times, and that she believed other incidents were attributable to him.

Miss N and CAFCASS continued to exchange correspondence about compensation, ending with a letter from CAFCASS in March 2008 in which they told Miss N that their offer of June 2007 still stood and that they were unable to make a further offer. The Member of Parliament then referred Miss N's complaint to the Ombudsman. Miss N and her daughter finally moved to a new address in May 2008.

What we investigated

As CAFCASS accepted that they were at fault for disclosing Miss N's address, our investigation focused on their consideration of her compensation claim, and on their handling of her complaint.

Miss N told us that CAFCASS's error had caused her and her daughter a great deal of distress, anxiety and inconvenience, and that her ex-husband's appearances had strained her relationship with her then partner. She wanted CAFCASS to meet all of the costs of her move (which she put at between £1,500 and £2,000), and to compensate her for distress and inconvenience. She also wanted CAFCASS to review their complaints procedure.

What our investigation found

CAFCASS did not act in line with the Principle of *'Putting things right'* once they were alerted to their error. Instead of acknowledging it quickly and considering how to put right any injustice to Miss N, they tried to close her complaint without really considering the injustice to her. They also refused to consider the non-financial aspects of her claim, despite acknowledging that she had suffered *'considerable distress'*. Even when we put the complaint to them, CAFCASS initially said they would consider compensating Miss N for inconvenience and distress only if she provided proof of how their maladministration had affected her. That was not a customer focused response; it was already clear that their error had been very distressing for Miss N. CAFCASS also did not adhere to the timescales set out in their complaints procedure, taking ten months to even consider awarding Miss N any kind of financial redress.

Taken together, the shortcomings in CAFCASS's handling of Miss N's case were sufficiently serious as to be maladministrative.

Consequences

But for the disclosure of Miss N's address, she would not have felt the need to move and would not have incurred the costs of doing so. CAFCASS also caused Miss N significant distress and inconvenience over a long period, while their repeated refusal to consider compensation for that meant she entered into a protracted process to obtain appropriate redress, which ultimately led to her complaining to the Ombudsman.

We upheld Miss N's complaint.

Resolution

CAFCASS told us that there were lessons to be learnt from Miss N's complaint. They described actions they had taken to tighten procedures, which included: carrying out an extra check when filing a case with the courts to ensure that documents from external sources do not reveal a confidential address; ensuring that all reports prepared for the courts are quality assured by a senior member of staff; and giving staff more guidance and training on identifying and dealing with domestic violence issues. CAFCASS also told us about their new complaints procedure (effective from January 2009), the final stage of which involved an independent panel reviewing CAFCASS's handling of the case and looking at how they had dealt with the complaint. This all showed an appreciation of the Ombudsman's *Principles of Good Complaint Handling*, and the importance of using feedback from complaints to improve service design and delivery.

CAFCASS also agreed to make any payment to Miss N that we considered reasonable. We recommended the following:

- a senior officer from CAFCASS should write to Miss N to apologise for the maladministration identified and for its impact on her; and

- CAFCASS should pay Miss N £1,000 in recognition of her removal and related costs, and a further £1,000 in recognition of the distress and inconvenience they caused her.

CAFCASS agreed to implement our recommendations.

Mr U's complaint about the Child Support Agency and the Independent Case Examiner

It took nearly three years, the breakdown of his marriage, damage to his relationship with his children and being told to take a DNA test, before the Child Support Agency finally admitted that they had wrongly identified Mr U as the father of two children. What is worse, the Agency were aware less than two months after they initially made the mistake that they probably had the wrong man. They offered him a paltry £350 in compensation.

Background

In June 2003 the Child Support Agency (the Agency) incorrectly identified Mr U as the father of Ms L's two children. (The 'real' non-resident parent had the same surname as Mr U – save for one letter – and the same date of birth.) In August the Agency noted that they had probably wrongly identified Mr U, and identified the 'real' non-resident parent. However, they took no action to trace the man or to remove Mr U from their records. In June 2004 the Agency sent Mr U a maintenance enquiry form. He and his wife initially thought it was a joke.

However, in July 2004, the Agency told Mr U that he was the non-resident parent and that he was required to pay child support maintenance. The Agency received a letter from Mr U in which he said *'I do not know any person called ...* [Ms L], *I have never had any children with this lady ... I cannot understand how my name has been brought into this matter. You cannot imagine how much trouble this has caused as I repeat I do not know this person at all or her children'*. He said he found the whole episode very distressing. Mr U also telephoned the Agency, saying that he was not the non-resident parent and that his wife was talking about divorce. The Agency said they would look into it but they did not follow that up.

In December 2005 Mr U wrote to tell the Agency that the situation had caused a *'massive problem between me and my wife'*. He said he had received no information from the Agency for over a year and was owed an explanation. The Agency did not reply. Nor did they reply to letters from Mr U's solicitors sent in August and September 2006. A further letter from the solicitors in October prompted the Agency to telephone them saying that they were investigating the matter. In November the Agency told the solicitors that Mr U would have to take a DNA test to prove that he was not the father.

In January 2007 the solicitors told Mr U that the Agency now accepted that he was not the non-resident parent, and were removing his details from their records. The Agency subsequently apologised to Mr U for their mistake and offered him £100 in recognition of the upset and difficulties he had experienced. Mr U thanked them for recognising their mistake, but pointed out that it had taken nearly three years and a solicitor to resolve matters. He asked the Agency to imagine how difficult it was to explain things to his family, adding that he and his wife had been separated for nearly three years and he considered that the Agency's actions had led to the breakdown of his marriage. He had also lost the respect of his children. Mr U told the Agency that he found the £100 payment both insulting and amusing, and asked them to consider a payment for the *'mess you have made of my family's lives'*. The Agency's response was to award Mr U a further £150 for gross inconvenience. Mr U remained dissatisfied, but the Agency declined to make a further payment.

Mr U then took his complaint to the Independent Case Examiner (ICE), explaining that he felt the Agency had not offered appropriate redress for the *'destruction of my life and other people's lives'*. Having made enquiries of the Agency, ICE told

Mr U that he had already received *'the maximum consolatory payment'* from them (that was not the case), and they could not ask them to consider a further payment. ICE then wrote to tell Mr U that the Agency had agreed to explain to him why they had identified him as the non-resident parent; to apologise for the inconvenience caused; and also to consider a further payment.

The Agency duly wrote to Mr U to apologise for the distress caused and for their *'extremely poor service'*. They said they should never have involved him in Ms L's case, but having done so they should have immediately apologised and compensated him for his inconvenience. They explained how they came to send him a maintenance enquiry form, and acknowledged they had asked Jobcentre Plus to deduct money from his benefits. The Agency said that it was unacceptable that he had to wait so long until they resolved matters, and confirmed they had removed him from their records. The Agency subsequently awarded Mr U a further £100 for gross embarrassment, humiliation and personal intrusion. He wrote to the Agency in April 2008, asking them to consider further redress, but they concluded that the previous payments were fair redress for their errors. The Member of Parliament then referred Mr U's complaint to the Ombudsman.

What we investigated

We investigated Mr U's complaint that the Agency had incorrectly identified him as a non-resident parent and had continued to send him correspondence, even though they had acknowledged their error. We also investigated Mr U's complaint that ICE had not resolved his complaint, because they had not asked the Agency to consider making a consolatory payment which took account of the distress and additional mental health difficulties he experienced.

By way of remedy, Mr U sought an increase in the consolatory payments awarded to him, which totalled £350.

What our investigation found

The Agency

We found that the Agency handled Mr U's case very badly. They failed to 'get it right' when they incorrectly identified him as the non-resident parent. Despite realising this error they did not amend their records, which resulted in the Agency wrongly sending Mr U a maintenance enquiry form; making a maintenance calculation; and asking Jobcentre Plus to deduct money from his benefit. The Agency failed to treat Mr U fairly.

Having made a mistake, it was incumbent on the Agency to put things right. Although they said that they had taken action to close the case in September 2004, they used the wrong closure code and they failed to write to Mr U confirming that they had wrongly identified him. Further opportunities to put things right were missed when they failed to act on, or reply to, letters from Mr U and his solicitors. Then, having decided to investigate the complaint, they did not act promptly and made things worse by deciding Mr U would have to take a DNA test to prove he was not the father, before establishing the full facts. It took the Agency two and a half years to confirm that they had incorrectly identified Mr U. That was unacceptable. The Agency's initial error, together with their persistent failure to put things right and their failure to reply to correspondence, amounts to maladministration.

Independent Case Examiner

The crux of Mr U's complaint to ICE was clearly the level of redress. Given the circumstances of Mr U's grievance, it was a serious mistake to tell him that he had received the maximum consolatory award from the Agency when that was not the case. Although ICE went on to obtain a further £100 for Mr U, that did not rectify their error. Their failure to 'get it right' was maladministration.

Consequences

Although we were unable to say that the Agency's actions were the sole reason for the breakdown of Mr U's marriage and relationship with his children, Mr and Mrs U gave us compelling testimony about the devastating effect it had had on them. The Agency's maladministration greatly strained his relationship with his family, and caused them a tremendous amount of worry, distress, aggravation and inconvenience. The feeling that Mr U had lost the trust and respect of his family would have caused him emotional and psychological difficulties, while his powerlessness to prevent the Agency's intrusion into his life would have caused further aggravation, worry and distress. All of this significantly impacted on his mental health and exacerbated his depression. In providing incorrect information, ICE caused Mr U further inconvenience and upset.

We upheld Mr U's complaints.

Resolution

As it was impossible to undo the damage done to Mr U by the Agency, the only reasonable remedy was for them to make him a significant payment to recognise the injustice he suffered. We therefore recommended that:

- the Agency pay a further £9,650 to Mr U (making £10,000 in total); and
- the Child Maintenance and Enforcement Commissioner send Mr U a sincere apology.

We recommended that ICE:

- pay £250 to Mr U to remedy the distress, inconvenience and aggravation they caused; and
- the Independent Case Examiner send Mr U a written apology.

The Agency and ICE agreed to implement our recommendations.

Mr G's complaint about HM Revenue & Customs

Overlooking the fact that Mr G had paid the VAT in question, HM Revenue & Customs made him bankrupt for a debt he did not owe. Their reckless disregard for his rights and the consequences of their mistake contributed to the failure of his business and 'had a devastating effect'.

Background

Mr G ran an employment agency. In early 2002 a serious problem with his computerised accounting system affected his ability to produce accounting records. In May, in the absence of Mr G's VAT return, HM Revenue & Customs (HMRC) issued an assessment totalling £37,423.05 for the quarter ended March 2002, and began civil proceedings to recover the debt. In August HMRC issued an assessment totalling £41,475.50 for the quarter ended June 2002. Mr G sent HMRC a payment in September and asked for it to be allocated to the March quarter. HMRC's solicitors told Mr G that unless payment for the June quarter was received within seven days, they would start civil proceedings to recover the debt.

In October 2002 an HMRC officer (Officer T) carried out a VAT assurance visit at Mr G's premises. She noted that accounting system problems had prevented Mr G from submitting his VAT returns; that he had recently paid the March quarter assessment; and that payment for the June quarter would follow shortly. On 5 November HMRC received a payment from Mr G which cleared the debt for which they had begun legal action. (By this stage Mr G had paid the quarters ending March and June 2002.)

On 15 November 2002 HMRC issued an assessment for the quarter ended September 2002. On 22 November Officer T collected Mr G's VAT returns for the March, June and September quarters, and wrote to tell him that the returns had been sent for processing. Officer T also noted that Mr G had agreed to contact HMRC to discuss payment of the amounts due, and that she had identified underdeclared VAT for earlier periods amounting to £45,374. Officer T said that if Mr G did not provide evidence to dispute the assessment within 21 days, she would issue an assessment. (However, HMRC did not ask Mr G to pay that sum then or issue an assessment.) On 29 November HMRC's solicitors raised a new action in respect of the June quarter and in December the court served a writ on Mr G. His office manager asked HMRC why the writ had been served when the debt in question had already been paid. She was told that HMRC would look into the matter and call back, but it appears no action was taken.

In February 2003 the court served a Charge for Payment at Mr G's business premises, and HMRC issued an assessment for the quarter ended December 2002. On 21 February 2003 HMRC received a payment from Mr G for £37,705. On 5 March Officer T wrote to Mr G, further to her letter of 22 November 2002, saying that an assessment for £45,374 plus interest would be issued and she enclosed a schedule of the amounts involved. The assessment was issued on 11 March 2003. On 31 March the court served a Sequestration Petition at Mr G's business premises. In his absence, the petition was left with a temporary employee who did not bring the matter to Mr G's attention. An Award of Sequestration was granted against Mr G in April, and a Trustee appointed, but Mr G only became aware of the sequestration when the Trustee's office telephoned him on 17 April. The same day the Trustee took control of Mr G's business and financial affairs.

A week later Mr G told HMRC that he had been looking to recall the sequestration, but he had been unable to do so because further debts had accrued. He said he would not be applying for a recall and would have to remedy the whole debt before doing so.

In May 2003 Mr G's Member of Parliament asked HMRC for details of his debt and for copies of their correspondence to Mr G about the sequestration, while Mr G wrote to ask Officer T for a meeting to discuss the events leading to his sequestration. On 3 July HMRC sent Mr G a breakdown of his outstanding VAT liability. On 14 July he told HMRC that he had still not seen the Sequestration Petition, but that the court had said the amount under action had been £37,000. Mr G said that he believed he had already paid that sum, but that, in any case, there had been sufficient funds available at the date of sequestration to cover that debt. He said the £255,266.68 that HMRC had claimed at the time of the sequestration was *'grossly out of order'* and that neither he nor his accountant could make sense of their figures. Mr G said he had made several attempts to contact Officer T without reply.

On 5 August 2003 HMRC sent Mr G another breakdown of his outstanding VAT liability, and apologised that he had been unable to contact Officer T. HMRC told Mr G that they had referred his case to their solicitors and a further response would follow once they had received their solicitors' advice. On 24 August Mr G asked HMRC why, instead of arranging the meeting he wanted with Officer T, they had simply apologised for the fact he had been unable to contact her. He commented that neither he nor his Member of Parliament had yet received a substantive response from HMRC. The same day Mr G wrote again to Officer T, saying he had been trying to contact her because she was the only person who could clarify matters, having known about his computer problems and having been aware that he would be paying the amount demanded by HMRC.

On 7 November 2003 HMRC told Mr G that they accepted that an error had led to the sequestration, but had decided not to apply for its recall. HMRC said that Mr G's *'apparent insolvency'* had been established when the Charge for Payment had been served. In their view that position had continued as he had not paid his debts in full when they fell due and he had incurred additional VAT debts of about £180,000. HMRC commented that for the court to grant a recall of a sequestration it would have to be *'satisfied that in all the circumstances of the case (including those arising after the date of the award of sequestration) it is appropriate for it to do so'*. HMRC said that the Trustee had established that they (HMRC) were not the only creditors and that Mr G was clearly insolvent. HMRC suggested that Mr G consider applying to the court himself for a recall, but added that they would oppose any such application.

On 11 November 2003 HMRC told the Member of Parliament that their legal advice was that there were no legal grounds for recalling a sequestration that had been granted in error. Courts would consider all the circumstances before and after sequestration, but a recall would not automatically be granted where an error had been made. HMRC said that Mr G was clearly insolvent and they would not try to recall the sequestration. In reply, Mr G's solicitors told HMRC that they considered the grant of sequestration to be *'incompetent'* and were applying for legal aid with a view to seeking its recall.

In March 2004 HMRC's solicitors formally registered HMRC's objections to Mr G's legal aid application. The solicitors said that, although Mr G had paid the petition debt in February 2003 (it had actually been cleared in November 2002), a further significant

debt had accrued by then. HMRC's solicitors argued that a sequestration could still be competently awarded where a further debt had arisen that was not mentioned in the original sequestration petition. Furthermore, the Trustee had told them that Mr G had significant other debts and was insolvent at the time of his sequestration. Mr G's application for legal aid was refused, and his Member of Parliament subsequently referred a complaint to the Ombudsman.

What we investigated

We investigated Mr G's complaint that HMRC obtained his sequestration through a procedural error and without his knowledge; took no remedial action once their error had come to light; and frustrated his efforts to have the sequestration recalled.

Mr G said that, as a result of HMRC's error, he had lost his business and his share of the marital home, his health had suffered and he needed counselling. He also claimed that he had been unable to work, and his reputation had been destroyed.

In the course of our investigation we engaged independent accountants to consider the available business records and give their view on the viability of Mr G's business at the time of sequestration.

What our investigation found

When Mr G made his VAT payment in November 2002, he was actually in credit, so HMRC should not have started recovery action in respect of the June 2002 assessment. HMRC failed to realise that Mr G had paid the debt before they started their action. They then compounded that error by failing to act on a further payment that he made, and by not responding appropriately when told that the debt had been paid. HMRC did not exercise any effective control over Mr G's case and their actions bore no relation to good administration.

We found that following Mr G's sequestration HMRC took seven months to tell him of their error. Despite there being a time limit to apply for a recall of the sequestration, HMRC sought policy and legal advice before admitting their error, and then actively frustrated Mr G's attempts to recover the situation. They declined to apply to recall the sequestration themselves, and opposed Mr G's application for legal aid, relying in part on the fact that his application for recall had not been made within the statutory time limit. Rather than taking responsibility for their actions and trying to put things right, HMRC offered an ill-informed defence of their actions, relying on the fact that further VAT debts and other creditors had been identified while they were taking action against Mr G.

Consequences

In the view of the independent accountants engaged by the Ombudsman, although Mr G's business was profitable, his cash flow was not sufficient to meet his ongoing liabilities as well as the VAT debt that had built up unless he was able to introduce capital from another source in a relatively short period. Without knowing if that was a real possibility, in their view it was impossible to be certain whether his business could have continued to trade had HMRC not obtained his sequestration in error. So, while HMRC's maladministration was a significant contributory factor in Mr G losing his business, we were unable to find that his business would certainly have survived, but for HMRC's error.

Nevertheless, the impact of HMRC's maladministration was serious. Mr G was incorrectly placed in sequestration and thereby denied any opportunity to try and save his business. He lost his business and his reputation, which led to considerable worry and distress for him and affected his family life and health. His wife also had to buy out his share of the marital home to avoid a forced sale. In Mr G's own words, *'I don't think anyone could understand the impact on my family and my health'*. HMRC's considerable powers come with a responsibility to act proportionately, appropriately and fairly, and with due regard for the law and their own procedures. In their desire to defend their own position HMRC completely lost sight of the devastating impact their mistakes had on Mr G.

We upheld Mr G's complaint.

Resolution

Although we could not determine what position Mr G would have been in but for HMRC's errors, their serious and persistent failings caused him and his family considerable worry and distress. As a result of our recommendations HMRC:

- paid Mr G compensation of £50,000;
- apologised to him for their maladministration and failure neither to recognise the injustice they had caused him, nor to seek to remedy it;
- provided Mr G with a letter admitting that he had been sequestered in error, which he could show his creditors in an attempt to restore his reputation; and
- paid £971.75 to Mrs G to reimburse the costs she incurred in buying out Mr G's share of the marital home, which she would not have incurred but for their error.

Mr J's complaint about HM Revenue & Customs and the Adjudicator's Office

HM Revenue & Customs' failure to ask Mr J questions at the right time put him in a difficult position which led to the breakdown of a long-standing business relationship, causing him financial loss and a great deal of worry, distress and inconvenience.

Background

Mr J was engaged at a hotel as a general handyman, on a self-employed basis. In 2003 HM Revenue & Customs (HMRC) carried out an employer compliance review at the hotel; they considered that Mr J was an employee, basing their opinion on information from the hotel's proprietor. Mr J declined HMRC's invitations to meet with them, but he did submit written answers to their questions. Unfortunately, the hotel was sold before Mr J's status was resolved. HMRC wrote to him in February 2005 reiterating their opinion that he was an employee, and saying that he should give the new owners a copy of their opinion. Mr J said he did not receive this letter. HMRC carried out another employer compliance review in October, and again determined that Mr J was an employee. They did not contact Mr J, basing their decision on the information he had provided in 2003 and on information from the new owners.

In February 2006 HMRC wrote to tell Mr J that he should be treated as an employee and explained their reasoning for this. They did not invite him to provide any additional information if he disagreed with their determination, nor did they tell him he could ask for a formal decision against which he could appeal. Mr J wrote back, explaining in detail why he considered himself to be self-employed. HMRC replied, saying that it appeared that he had continued to work under the same terms and conditions as before and that he should be treated as an employee. They did not address most of the points in Mr J's letter.

Mr J continued to work on a self-employed basis until April 2006, when he resigned after the owners insisted he became an employee. He asked HMRC to reconsider their decision, which he said had caused him financial hardship. HMRC replied, reiterating their position and inviting Mr J to complain if he remained unhappy. In response to an approach from Mr J's Member of Parliament, HMRC acknowledged that they had not asked Mr J for any information before making their decision, and said that they should give him the opportunity to tell them of any changes in the working practices between the hotel owners which might affect their opinion. Accordingly, HMRC invited Mr J to meet their inspector, and said that the hotel owners could treat him as self-employed until the matter was resolved.

The hotel was sold again in May 2006. Mr J felt unable to approach the new owners for work because of his dispute with HMRC, and HMRC's offer to continue treating him as self-employed had come too late, because he had already resigned. Mr J met the inspector in June and provided detailed information about his engagement at the hotel and his business generally. In July HMRC accepted that Mr J was self-employed.

In August 2006 Mr J asked HMRC to compensate him for the losses (£2,000), costs (£1,400), worry and distress he said he had incurred because of their actions. He said that he had had to terminate his contract at the hotel, through no fault of his own, leaving him short of income. He had unpaid bills and had incurred penalty charges and court fees. He also wanted the stress and trauma caused

to him and his wife taken into account. HMRC asked for more information about Mr J's claim for costs, which he provided. They wrote again in October, accepting that they should have asked him for a meeting before deciding his status, and apologising for their mistake. HMRC said it seemed that because he did not wish to meet with an officer in 2003 they had assumed he would also refuse subsequent requests. HMRC rejected Mr J's claim for compensation, but offered him £25 for the delay in responding to his complaint. Mr J then complained to the Adjudicator's Office.

In his letters to the Adjudicator, Mr J said *'I still see this as a result of an HMRC investigation resulting in me having to terminate my main contract leaving me such a shortfall with very little hope of making it up in the short or long term'*. He said also that the stress he had been under while dealing with his creditors had *'... played havoc with my health and well being and at times I was very short-tempered and depressed, I would be seeking reasonable compensation for this traumatic period'*. The Adjudicator's Office partly upheld Mr J's complaint, finding that HMRC had provided a poor service and that their failure to adhere to their guidance had caused him worry and distress. They recommended that HMRC pay him £50, plus £10 towards his communication costs, and endorsed their offer of £25 for the delay in dealing with his complaint. The Adjudicator declined to recommend anything for Mr J's costs and losses, because he had not provided evidence to show how they had been incurred. Mr J then brought his complaint to the Ombudsman.

What we investigated

We investigated Mr J's complaint that HMRC had not interviewed him, or sought any information from him, before ruling that he was an employee.

We also investigated Mr J's complaint that the Adjudicator had not obtained sufficient redress for him.

Mr J told us that, following HMRC's ruling, he had been unable to keep working for the hotel and had lost substantial earnings. He said he had also incurred significant costs and expenses, fallen into debt and suffered hardship.

What our investigation found

HM Revenue & Customs

HMRC's guidance is clear about the importance of obtaining evidence from both parties to a contract when coming to a view about the status of a worker, and that all decisions should be evidence-based. HMRC should have considered Mr J's position based on his current circumstances, and not assumed he would again decline to meet them. Without interviewing or seeking information from Mr J, HMRC issued an opinion in October 2005 based on incomplete information and which we concluded, on the balance of probabilities, was flawed. Any reasonable HMRC officer in possession of the relevant information would have determined that Mr J was self-employed, as the inspector subsequently did in July 2006. HMRC did not 'get it right' (in line with the *Principles of Good Administration*) when deciding that Mr J was an employee, and that amounted to maladministration.

These mistakes were compounded by HMRC's failure to implement their dispute resolution procedures. They should have invited Mr J to dispute the decision if he disagreed with it, and made him aware that he could ask for a formal ruling against which he could appeal. Then, when Mr J complained to HMRC in February 2006, he raised issues that cast some doubt on the original

decision, which he was clearly disputing. According to their guidance, HMRC should have asked to interview Mr J and then reviewed their opinion, but they did not do so. HMRC also failed to follow correct procedures when Mr J asked them to reconsider their decision in April 2006: they invited him to complain when they should have invited him for an interview. HMRC's failure to follow their dispute resolution process and to 'put things right' (another of the Principles) amounted to maladministration.

HMRC failed to take proper account of the seriousness of their mistake. Although Mr J asked them to consider the worry and distress he had suffered, HMRC did not do so. Their failure to investigate Mr J's complaint thoroughly was maladministrative. Although their decision about his status put him in a position where he stood to lose money, whether he continued his work at the hotel or not, it was not possible to quantify the precise extent to which his claimed financial losses were directly caused by HMRC and for which they should compensate him. For that reason, we found no maladministration in relation to HMRC's failure to compensate Mr J for lost earnings and costs.

The Adjudicator's Office

Although the report from the Adjudicator's Office did not identify all of HMRC's maladministration, the remedy they recommended was not unreasonable. Given the difficulties in quantifying the extent to which HMRC had caused the financial losses that Mr J had claimed, we did not consider the Adjudicator's failure to recommend a payment for that to be maladministration.

Consequences

HMRC's mistakes caused Mr J significant worry, distress and inconvenience. Although we considered his decision to resign was a disproportionate response to his situation, particularly as his finances were already precarious, he should never have been put in the position of having to choose to do the same work, but for less money, or give up his main source of income altogether. HMRC's mistakes led to an avoidable breakdown in Mr J's long-standing relationship with the hotel which caused him a great deal of worry, distress and inconvenience.

We upheld Mr J's complaint about HMRC but we did not uphold the complaint about the Adjudicator's Office.

Resolution

As a result of our recommendations HMRC:

- apologised to Mr J for the distress and inconvenience they had caused; and
- paid him £1,000 for distress, inconvenience and financial loss.

Mrs B's complaint about HM Revenue & Customs

HM Revenue & Customs' failure to record receipt of an annual declaration led to Mrs B going for nearly three years without money to which she was entitled and being taken to court for a debt she did not owe. Mrs B got into debt and sold household items to make ends meet. She was 'driven to her wits' end' by HM Revenue & Customs' action.

Background

Mr and Mrs B were in receipt of tax credits. In May 2005 HM Revenue & Customs (HMRC) sent them their annual declaration for 2004-05 to complete and return, followed by a reminder on 6 September. Mrs B returned it, along with P60s, childcare details for their three children, and a covering letter, by the deadline of 30 September. HMRC's records show that on 18 October they attempted to amend Mrs B's address and childcare details. (HMRC told us a mistake was probably made when this information was being manually input, as a result of which the system did not record receipt of Mrs B's declaration.) As HMRC had no record of receiving the declaration, they stopped Mrs B's tax credits from 18 October and said she had been overpaid (from 6 April).

On 24 October 2005 Mrs B telephoned the Tax Credit Helpline (the Helpline) saying she had returned the declaration with her P60s. They told Mrs B that if she called back with her P60 details before 1 November they would reinstate her payments. Mrs B immediately posted copies of the declaration and P60s, with a letter providing her new address from 25 November. HMRC have no record of receiving them. The next day Mrs B received an award notice asking for details of her and her husband's actual income for 2004-05 by 31 January 2006. She was unconcerned by this letter as she had posted the details the previous day. On 4 January 2006 a system-generated letter was sent to Mr and Mrs B's previous address, thanking them for making their 2004-05 declaration. The letter said that Mr and Mrs B had provided their estimated income, when HMRC required their actual income, and that if HMRC did not receive it by 31 January their 2004-05 award would be finalised based on the estimated income. (This letter did not show up on Mrs B's tax credit record, and so officials were unaware of it.) On 16 January the Debt Management and Banking Unit (the Unit) wrote to Mrs B at her new address about the overpayment (of £1,722.96). On 23 January Mrs B faxed the Unit a copy of her declaration, saying that she had sent it in before the deadline and had since forwarded copies.

HMRC sent Mr and Mrs B award notices in February 2006 finalising the 2004-05 award, based on the details they already held (because they said they had not received details of their actual income). Mrs B telephoned the Unit and their recovery section but HMRC have no record or note of these calls. In April the Unit told Mrs B that if she did not deal with the overpayment immediately, they would consider legal action. In May Mrs B submitted another copy of her declaration, her husband's P60 and her payslips. She explained that she had sent in her declaration and P60s by 30 September 2005 and had sent copies since. She pointed out that she had also sent copies on 24 October 2005 with details of her new address from 25 November: as she had not written again until 23 January 2006, HMRC must have received the documents because they had used her new address when writing to her on 16 January. HMRC replied by sending Mrs B a new claim form.

In June 2006 an officer from the Unit told Mr and Mrs B that he would visit them to talk about repaying the overpayment, otherwise he would

consider legal action. Mrs B telephoned the Unit and then the Helpline, saying she had sent her declaration to HMRC several times. The adviser said she would send Mrs B a disputes form and recovery of the overpayment would be *'put on hold'*. (It was during this call that Mrs B understood for the first time that HMRC had stopped her payments because they thought she had not completed the 2004-05 declaration.) Mrs B completed the disputes form. In September Mrs B made a formal complaint and in October HMRC told her that the overpayment remained recoverable and that *'we do not hold any records of calls or letters made to the tax credit helpline regarding this matter'*.

In November 2006 the Unit told Mrs B they would start legal proceedings if the overpayment was not repaid. She telephoned the Unit and spoke to an officer who said that the family details and childcare costs had been updated on 27 September 2005 with information that could only have come from her declaration. He said he could do nothing and advised Mrs B to contact the Helpline. Mrs B told us that she spoke to many people in several departments, all with different databases and all saying that they could not see how things had got that far. No one could help her. She said she telephoned the officer again and that he had told her that the legal proceedings would be stopped.

Despite that, Mrs B received a county court summons for a hearing in March 2007. The judge advised her to ask HMRC for further information (which she did) and adjourned the hearing until May. In their reply to Mrs B, HMRC said they could find no record of her telephoning the Helpline between October 2005 and May 2006, and no record of receiving her declaration. The May hearing was adjourned until July. In the meantime, Mrs B requested recordings of specific telephone calls to the Helpline. HMRC sent Mrs B a compact disc of recordings, but not of the calls she had requested. Meanwhile, on 30 May the Unit told Mrs B that HMRC had received the declaration; the problem related to the use of estimated income rather than non-receipt of the form. At the July hearing HMRC produced a certificate of debt, but the judge stayed enforcement for three months, which allowed Mrs B time to approach the Ombudsman. Mr and Mrs B repaid the 'overpayment' and paid £110 court costs to avoid having a county court judgment against them.

What we investigated

We investigated Mrs B's complaints that HMRC had: lost or failed to act upon information she had provided; failed to respond to her questions and complaints; resorted to court proceedings when they had told her they would not do so; wrongly refused to reinstate her tax credits; and given conflicting advice about the information they required, the cause of the overpayment and how to reinstate her award.

Mrs B said she had been put to considerable time and trouble, incurred out-of-pocket expenses and sustained severe distress as a result of HMRC's mistakes. She wanted HMRC to pay her the tax credits she believed she was entitled to.

What our investigation found

On the day that HMRC tried to amend Mrs B's records, they created a note that referred to the childcare details she had told them about. We therefore had no reason to doubt that HMRC had received Mrs B's declaration, and that this was before 30 September 2005. HMRC did not properly input the details from that declaration, causing the computer system to wrongfully terminate Mrs B's

claim, and creating the 'overpayment'. We were also satisfied that HMRC received the documents Mrs B sent them on 24 October, and had received them before the new deadline of 1 November. Although a system-generated letter acknowledged receipt of the declaration, officials were unaware of it.

Those errors were compounded by a complete lack of customer focus. HMRC gave Mrs B inaccurate advice, and their failure to make accurate and adequate notes of calls was not in keeping with the Principle of *'Being open and accountable'*. While Helpline advisers cannot be expected to make verbatim notes of every call, they should keep accurate and appropriate records sufficient to enable HMRC to take reasonable decisions based on all relevant considerations. We were not persuaded by HMRC's position that notes of calls are unnecessary; in our experience it is not always possible to trace the recordings when needed and HMRC do not regard them as the primary record. HMRC's failure to interact critically with the computer system meant they lost sight of their customer: they did not question whether the absence of a computer record of the declaration meant no declaration had been received, or that one had simply not been recorded. They also missed many opportunities to assemble and review the evidence and quality assure their actions.

HMRC failed to 'put things right' when Mrs B complained, treating her complaint as a dispute about the overpayment. Mrs B said that when she telephoned the Unit in November 2006, she was told the legal proceedings would be stopped. Although neither party has a note of the call, Mrs B's recollections (which were generally reliable) were vivid. We thought it more likely that HMRC did give her the impression that the legal proceedings would be stopped.

In summary, HMRC's handling of Mrs B's tax credits claim and her subsequent complaint fell so far short of the standards in the Ombudsman's *Principles of Good Administration* as to constitute maladministration.

Consequences

HMRC's mistakes caused Mrs B and her family a significant injustice. They went without their tax credits entitlement for around three years, got into debt, and sold household items in order to make ends meet. They were wrongly pursued at great length for an overpayment and endured the strain of three court hearings. By Mrs B's account, she wrote letters and made telephone calls most days, to no avail. She felt at her wits' end, argued with her husband, and spent time dealing with tax credits which should have been family time.

We upheld Mrs B's complaint.

Resolution

During our investigation, HMRC acknowledged their mistake and agreed to restore Mrs B's claim by calculating her entitlement from 2005-06 to 2008-09. They also proposed to pay her £150 for worry and distress, £20 to cover her costs, and £110 to reimburse the court fees. Although those actions were welcome, they did not fully remedy the injustice to Mrs B and so we recommended that HMRC:

- arrange for a senior officer to send Mr and Mrs B a written apology which explicitly acknowledged that they did not owe HMRC money and that legal proceedings should never have been taken against them; and

- pay them £5,000 compensation for distress, inconvenience and financial loss, and reimburse their £110 court costs.

We also asked HMRC to tell us what they will do to try to ensure that future cases similar to that of Mr and Mrs B's do not end up in court.

HMRC accepted our recommendations.


Monday
Tuesday
Wednesday
Thursday
Friday
Saturday
Sunday
Week No.
May
November

Delay

Delay is a theme common to many of the complaints that come to the Ombudsman. We expect public bodies to deal with people promptly, within reasonable timescales and within any published time limits. But we also accept that things can often take longer than the customer wants and that delay is sometimes unavoidable and not maladministrative. However, where things do take longer than they should, the body should make sure that they manage delayed cases in a way that is fair to all those affected; they should have mechanisms in place to enable them to consider representations about exceptional circumstances; and they should give people information about when they **can** expect their case to be progressed.

Where delay constitutes maladministration, bodies should take responsibility for that; putting in place measures to ensure that the impact on individuals is taken into account and that redress – when appropriate – is offered. It is not acceptable simply to argue that one individual has waited no longer than others in a similar position.

The three cases that follow serve to illustrate how maladministrative delays can impact on people and, indeed, on the public purse.

'I am so glad it is almost at an end, and feel like a cloud has been lifted after all these years.'

Mrs Q complained about the Department for Work and Pensions and the Service Personnel and Veterans Agency (page 37)

Mr P's complaint about the UK Border Agency

Failure by the UK Border Agency to check their paper files led to a legitimate long-term UK resident being threatened with removal from the UK, missing the funerals of two close family members and being unable to visit his sick mother.

Background

Mr P, a Jamaican citizen, was granted indefinite leave to remain in the UK in May 1990. Later, during an argument with his then partner, Mr P's passport was destroyed. He obtained a new Jamaican passport in 2004, and in July he asked the UK Border Agency (the Agency) for a No Time Limit (NTL) stamp on his passport to confirm he held indefinite leave to remain. He enclosed the fee of £155. In September the Agency asked Mr P for a police report for his lost passport and for confirmation of his indefinite leave to remain. Mr P explained that his passport had been destroyed and that he had not reported it to the police until he applied for a new one, by which time it was too late to report it lost. Mr P said he had also lost all the correspondence relating to his indefinite leave to remain and the firm of solicitors who had dealt with matters had closed. Mr P asked the Agency to sort matters out quickly as he wished to visit his mother, who was ill, in Jamaica. The Agency rejected Mr P's NTL application, as he had provided no evidence of having been granted indefinite leave to remain and the Agency held no record of it either. They returned Mr P's passport and papers, but not his £155 fee.

In February 2005 Mr P submitted a new indefinite leave to remain application, on the grounds that he had resided in the UK for 14 years. The Agency returned the application in April, saying that he had not enclosed the fee of £155. Mr P resubmitted the application on 8 April, together with a letter complaining about delay processing his application, and proof of having paid the fee in 2004. In May 2005 the Agency wrote to Mr P, referring to his April application and noting he had not paid the £160 fee (which had just increased from £155). Mr P resubmitted the application on 8 May and paid the £160 fee, pointing out that the Agency had still not reimbursed the previous fee. Mr P then complained to the Agency about their service, and lack of a refund. The Agency told Mr P that they aimed to decide his case promptly, at most within 13 weeks. Following further contact from Mr P, the Agency returned the original fee of £155.

In July 2006 Mr P asked the Agency to return his passport duly stamped. He said he still wanted to visit his mother, who remained ill, and that he had been unable to attend the funerals in Jamaica of his father and sister because the Agency had his passport.

In January 2007 the Agency wrote to Mr P, apologising for not updating him sooner on the progress of his May 2005 indefinite leave to remain application, which was awaiting consideration. Mr P replied that he had not applied for indefinite leave to remain, but for an NTL stamp on his passport to confirm the indefinite leave to remain he had been granted in 1990. He again stressed the urgency of his case, given his mother's poor health. On 8 April and 10 May 2007 the Agency asked Mr P to complete a questionnaire which they said would help them to determine his lawful entry into the UK. They also asked the Foreign and Commonwealth Office if they held an overseas visa application for Mr P. In July the Agency told Mr P that they had rejected his May 2005 NTL application and his February 2005 application

for indefinite leave to remain, and served him with a notice that he was liable to be detained and removed from the UK. He unsuccessfully appealed this decision. In October 2007 Mr P's solicitors submitted a new indefinite leave to remain application, on the basis that Mr P had lived continuously in the UK for more than 19 years, and enclosed the £750 fee.

In November 2007 an Agency official emailed another official seeking a *'brief look'* for any file holdings on Mr P. The response noted that the Agency held a file for Mr P which had been opened in connection to a marriage application in 1989, with a *'follow up application in 1990, presumably when he applied for indefinite leave to remain...'*. (Mr P's 1990 application pre-dated the Agency's current database, and his original Home Office file contained clear evidence of his entitlement to indefinite leave to remain.)

On 27 November 2007 the Agency wrote to Mr P, referring to a letter he had written to the Prime Minister. They said that further enquiries had established that he had been granted indefinite leave to remain in May 1990, and they asked for evidence to show that he had not been away from the UK for more than two years since then. The Agency made no reference to their errors in denying his indefinite leave to remain status for three and a half years, but did say they would not remove him from the UK while he had an *'outstanding application'*. Mr P provided the evidence the Agency required in December 2007 and in February 2008 the Agency finally returned his passport, endorsed with his indefinite leave to remain status. Mr P's Member of Parliament brought Mr P's complaint to the Ombudsman, and it was accepted for investigation in April.

What we investigated

We investigated the Agency's handling of Mr P's case since he first contacted them to obtain an NTL stamp.

Mr P said that during the time it took the Agency to recognise his legal status in the UK, he had been threatened with removal from the UK, been unable to visit his sick mother and had missed two family funerals. Mr P said he wanted the Agency to recognise the stress and anxiety their actions had caused him and his family, and to reimburse the expenses and fees he had incurred.

What our investigation found

While it was not the Agency's fault that Mr P had no proof of his indefinite leave to remain status, it was not unreasonable for him to expect that they would, quickly and easily, be able to confirm that he was entitled to be in the UK. Once they became aware of his difficulties and received his application for an NTL stamp, the Agency ought to have dealt with his case far better.

'Getting it right' is the first of the Ombudsman's *Principles of Good Administration*, but from the beginning the Agency failed to get things right. While they may have followed their own procedures in checking their computer database and checking with UK Visas, they did not take the obvious step of checking their paper records. That small error by the Agency ultimately had the serious consequence of Mr P being threatened with removal from the UK.

The Agency showed no 'customer focus' in their dealings with Mr P. They did not always pay attention to the details of his correspondence, failing to appreciate that he was applying, not

for a grant of indefinite leave to remain, but for confirmation that it had already been granted. They also failed to respond appropriately when he described to them the impact of their delay on his normal family life.

'Putting things right' is another Principle relevant here. The Agency's performance was particularly poor, in that they failed to recognise their errors until Mr P had been put to the trouble of approaching his Member of Parliament, writing to the Prime Minister, and complaining to the Ombudsman. The Agency's errors were so stark they ought to have recognised them far earlier.

Consequences

The resulting injustice to Mr P of this maladministration was that for three and a half years he was unable to exercise the rights that the indefinite leave to remain gave him. He missed two family funerals and he was unable to visit his mother when she was ill. Mr P was wrongly threatened with removal from the UK, which caused him and his family considerable distress and anxiety. The impact of being told by a government agency that you have no right to reside in the country that is rightfully your home must have been immense. The Agency also caused Mr P unnecessary expenses in that he felt compelled to engage a solicitor, and paid £750 for an indefinite leave to remain application that should not have been necessary.

We upheld Mr P's complaint.

Resolution

During our investigation, the Agency apologised unreservedly to Mr P for mishandling his case and for the distress and inconvenience caused; offered to consider compensation; and agreed to refund the £750 application fee. As this did not, in our view, recognise the full impact of the Agency's maladministration on Mr P, we recommended that they also:

- refund all the legal fees Mr P incurred after he first approached them in 2004;
- refund his £750 fee, with interest;
- refund the £5 difference between the fee payable when he first approached them and the £160 he was subsequently charged (as they had not dealt properly with his first application);
- consider any other expenses that Mr P incurred as a result of their maladministration on production of supporting evidence; and
- pay him £2,500 in recognition of the severe distress, inconvenience, great uncertainty and embarrassment they caused him and his family.

The Agency complied with our recommendations.

Mr F's complaint about the UK Border Agency

Not only did the UK Border Agency delay sending Mr F a form, they also lost his file and four sets of his photographs. Their mistakes meant that for fifteen months Mr F did not receive the income support to which he was entitled – money that he needed for food and basic necessities.

Background

In December 2000 Mr F claimed asylum in the UK, which was refused. His appeal was allowed in March 2003, but the UK Border Agency (the Agency) successfully appealed against that decision in October. While awaiting the decision on his asylum claim, Mr F claimed National Asylum Support Service (NASS) support until December, when he became destitute. His solicitors told us that between January 2004 and November 2005, Mr F found free accommodation with various people. In November 2005 Mr F was awarded what is known as 'section 4 support'. (A person whose asylum claim has been rejected may be able to receive short-term support while waiting to return to his or her country of origin.)

Mr F made further submissions to the Agency about his asylum claim. On 27 March 2007 he was granted refugee status and five years' leave to remain in the UK. The Agency sent Mr F notification of this decision on 18 May. On 31 May the solicitors wrote to ask the Agency to issue Mr F with a NASS 35 form. (The form certifies how much NASS support a person has received since claiming asylum. That enables Jobcentre Plus to backdate income support payments to the date the asylum claim was submitted, provided income support was claimed within twenty eight days of the applicant receiving notification of his or her status as a refugee.) The solicitors repeated their request for the form to be issued, on 15 June, enclosing two passport photographs. On 20 June they hand-delivered a letter to Jobcentre Plus saying they were still waiting for the NASS 35 form.

Jobcentre Plus told Mr F, on 1 July 2007, that he was not entitled to income support for the period from his asylum application to when he was granted refugee status, because he had not claimed income support within twenty eight days of receiving notice of his grant of refugee status. The solicitors appealed that decision on the grounds that Mr F had not received the refugee status notification until 23 May 2007, and had claimed income support within twenty eight days of that date. On 25 July the solicitors wrote to the Agency, referring to a recent telephone conversation during which the Agency had said they could not trace the solicitors' letters of 31 May and 15 June 2007, but that they would issue a NASS 35 form on receipt of two further photographs. The solicitors duly enclosed the photographs with their letter. In November the solicitors again wrote to the Agency. They referred to another telephone conversation, during which the Agency had said they could not accept the photographs because they were unsigned, and which they would return for signing. Having not received these photographs back, the solicitors enclosed two further signed photographs with their letter.

On 28 February 2008 Jobcentre Plus wrote to tell the solicitors that they had revised their decision not to backdate Mr F's income support claim. They said that they would calculate entitlement from Mr F's date of application for asylum, but needed the NASS 35 form. In March the solicitors told Jobcentre Plus that they were still unable to supply them with the NASS 35 form, and commented that there was nothing to stop Jobcentre Plus from contacting the Agency direct for the information

they needed. On 19 March the Agency wrote to Mr F confirming that his asylum claim had been determined and that he no longer qualified for section 4 support. They said they urgently needed two signed photographs before they could issue the NASS 35 form. The solicitors duly sent the Agency two more signed photographs.

In May 2008 Mr F's Member of Parliament referred a complaint to the Ombudsman. In August Jobcentre Plus told the solicitors that they had faxed the Agency in April requesting the NASS 35 form, and were waiting for a reply. Also in August the Agency told us that they were still waiting for photographs from Mr F. On 14 August the solicitors sent another two signed photographs to the Agency. In September the solicitors sent us a copy of the NASS 35 form they had finally received from the Agency on 27 August, together with a copy of their letter to the Agency querying the date shown on the form indicating when Mr F had submitted his asylum claim, and requesting a revised form. (The date on the form – 31 January 2006 – was the date the Agency had accepted further submissions on Mr F's asylum claim, not the date of claim, which was 11 December 2000.) The Agency agreed with the solicitors about the date, apologised, and corrected their error. As a result, Jobcentre Plus finally told Mr F, in January 2009, that he was entitled to arrears of income support of £9,724.74.

What we investigated

The complaint we investigated was that the Agency had delayed issuing the NASS 35 form to Mr F, and had repeatedly lost the photographs they had been sent.

By Mr F's account, the Agency's actions delayed payment of his income support arrears, which caused inconvenience and financial loss. He wanted an apology and compensation.

The Agency could not find the file relating to Mr F's NASS support application. However, his solicitors provided us with copies of their correspondence with the Agency, most of which was accompanied with proof that it had been sent to the Agency by recorded delivery. That was strong evidence that the Agency had received the solicitors' correspondence.

What our investigation found

The Agency's handling of Mr F's request for the NASS 35 form was poor. The form should have accompanied the decision letter of 18 May 2007, but they did not provide him with the form until August 2008, and only then after a request from Jobcentre Plus and the intervention of this Office. The Agency also lost Mr F's file and four sets of photographs. Indeed, the Agency's requests for the photographs were unnecessary since, according to their guidance, they can use photographs that they already hold. These errors represented a persistent failure to get things right and amounted to maladministration.

Consequences

What effect did these errors have on Mr F? He suffered significant frustration and a sense of hopelessness that he would ever see the NASS 35 form, or be able to successfully claim his backdated income support. That was money to which he was entitled and which should have been available to him to buy food and other basic necessities. He also incurred the cost of providing five unnecessary sets of photographs, and had to wait fifteen

months to receive his income support arrears, which was extremely inconvenient and frustrating.

We upheld Mr F's complaint.

Resolution

In line with the Ombudsman's *Principles for Remedy*, where maladministration has led to injustice or hardship, public bodies should try to offer a remedy that returns the complainant to the position he or she would otherwise have been in. Where that is not possible, the complainant should be compensated appropriately. In Mr F's case, therefore, we recommended that the Agency:

- pay him interest (which amounted to £986.86) for the fifteen months he waited unnecessarily to receive his income support;
- pay him £500 to recognise the frustration and inconvenience caused; and
- send him a written apology for their poor handling of his case.

The Agency agreed to implement our recommendations.

Mrs Q's complaint about the Department for Work and Pensions and the Service Personnel and Veterans Agency

The Department did not tell Mrs Q that she might be entitled to a war widow's pension. It took more than 20 years for that to be put right.

Background

In 1987 Mr and Mrs Q visited their local Department of Social Security (DSS) office (now the Department for Work and Pensions – DWP), as Mr Q wanted to apply for his retirement pension. He provided details of his service in the Merchant Navy and of his war disablement pension, which had ceased in the 1960s. Sadly, Mr Q passed away in the summer and in July Mrs Q visited the office to ask about her entitlement to benefits. Officials told her about widow's state retirement pension, but not about war widow's pension. (At this time, war pensions were administered by DSS. Responsibility moved to the Ministry of Defence in 2001. The Service Personnel and Veterans Agency (the Agency) was created in 2007.)

Mrs Q said that it was not until 1994, when she read a newspaper article about war disability pensions, that she realised she could claim a war widow's pension. She duly made a claim, and was awarded a war widow's pension from 30 March 1994. Mrs Q told us that she telephoned the Agency regularly over the following five years, trying to get the award backdated to the date of her husband's death. She said she was continuously fobbed off and told *'if we give to one – we have to give to all'.* In January 2000 Mrs Q telephoned the Agency. They said there were no grounds to backdate her claim because Mr Q was not in receipt of a war disablement pension at the date of his death, and the onus had been on Mrs Q to make a claim. They also thought that unless she had specifically asked about a war widow's pension, her local office would probably not have offered her any advice.

In June Mrs Q's Member of Parliament asked the Agency why they had not backdated Mrs Q's award to 1987. The Agency replied that they were unable to backdate her claim. They also said they had taken reasonable measures over the years to make information about war pensions available to the public; Mrs Q's lack of knowledge was not a good enough reason to backdate her claim.

Over the next five years Mrs Q contacted the Agency many times, asking them to look into the possibility that she had been misdirected in 1987 and to consider backdating her award. She also asked to appeal against the start date of her award. On each occasion the Agency replied saying that the responsibility for claiming rested with the individual. Furthermore, their decision on the start date did not carry a right of appeal because it had been made before 2001 (before 9 April 2001 there was no legal provision for an individual to appeal against the commencement date of awards), and although they had reviewed their original decision in 2000 and found it to be correct, they had not reviewed their decision since.

Mrs Q telephoned the Agency in July 2005 asking to appeal against the start date of her award. They replied that they did not accept that she had a right of appeal; however, the Pensions Appeal Tribunal had the authority to determine whether that was the case. In January 2006 the Agency sent their papers to the Tribunal explaining their position. The President of the Tribunal promptly wrote back, pointing out that Mrs Q had the right of appeal against any review decision made after April 2001, since which time both she and her

Member of Parliament had repeatedly asked for a review of the refusal to backdate. He directed that Mrs Q's appeal be heard by the Tribunal, which had jurisdiction to consider whether she had a right of appeal. The Tribunal heard Mrs Q's appeal in April 2006. They decided that the matter was within their jurisdiction, and concluded that Mrs Q's award should be backdated to the date of her husband's death. The Agency subsequently paid £26,209.76 to Mrs Q, plus interest.

Mrs Q then asked the Agency to consider paying her compensation for the distress and inconvenience they had caused her. The Agency said they were unable to consider a payment for distress without medical evidence. Mrs Q was very unhappy about being asked for medical evidence. In one letter to the Agency she wrote:

> *'I find it impossible to contemplate that someone who fought for justice for so many years could not fail to be affected by the experiences ... met with such indifference, intransigence, sometimes even hostility and even rudeness ... multiplied by the years it took for resolution. How is it possible not to suffer distress, trauma and anguish after so many knock-backs? ... I discussed my problems with no-one ... I think it is an insult to expect someone of my years ... to have to prove what you are asking.'*

The Agency maintained their position. Mrs Q's complaints were subsequently brought to the Ombudsman.

What we investigated

We investigated Mrs Q's complaint that she had been misdirected in 1987, and her complaints about the Agency's refusal to backdate her war widow's pension, failure to provide her with appeal rights, and refusal to make a consolatory payment.

Mrs Q told us that she experienced considerable inconvenience and severe stress in seeking to get her pension backdated, for which she wanted apologies and compensation.

What our investigation found

Misdirection in 1987

Given the information known to DSS about Mr and Mrs Q in 1987, they should have identified Mrs Q's possible entitlement to a war widow's pension. Their failure to give her an effective service, and their misdirection, denied her the chance to claim until 1994. That simple mistake had far-reaching consequences for Mrs Q, who spent years pursuing something that should have been paid to her, as a matter of course, when her husband died.

Refusal to backdate the war widow's pension

Although the Agency have no evidence that Mrs Q contacted them between 1995 and 2000, we were satisfied that she did raise the issue of backdating during this period. There is evidence that Mrs Q contacted the Agency in January 2000 and said that DSS had not told her about claiming a war widow's pension, but the Agency did not investigate this. Their failure to understand and investigate Mrs Q's complaint fell far short of the standard of 'customer focus' expected of public bodies.

What of the Agency's refusal to backdate Mrs Q's award or to allow her to appeal? Although they argued that she had not given them 'sufficient' grounds to review their decision before 2005, they did not explain why her claim of misdirection was not sufficient for them to look again at the start date of her award, nor did they explain what they

might accept as 'sufficient'. The Agency were not 'open and accountable'. Nor did they act 'fairly and proportionately' when they declined either to allow Mrs Q to appeal or to allow a tribunal to determine for itself if an appeal was within its remit.

All of these shortcomings were so serious as to be maladministration.

Refusal to award a consolatory payment

We found no evidence that the Agency considered Mrs Q's request for a payment for inconvenience, while the way they went about considering her claim for distress was inept. In particular, the Agency gave no proper thought to what their guidance had to say about 'self-evident distress': namely, that it is not always necessary to obtain objective evidence if it is self-evident that the error would have caused severe distress (which we believed to be the case here). The Agency did not act in keeping with the *Principles for Remedy*; they did not recognise the full impact of their errors on Mrs Q and they did not properly take into account her individual circumstances when deciding not to award her a payment for distress. Their strict application of their guidance lacked 'customer focus' and this, coupled with their failure to 'put things right', amounted to maladministration.

Consequences

If DSS had acted correctly in 1987 Mrs Q would not have had to manage without her war widow's pension for almost seven years, nor would she have experienced the shock of finding out that she had previously been misdirected. It took a further twelve years for Mrs Q to receive all of the benefit she was due, during which time she endured frustration, stress and inconvenience and incurred unnecessary correspondence costs. The Agency's insensitive request for medical evidence compounded her distress.

We upheld Mrs Q's complaint.

Resolution

To recognise the injustice caused to Mrs Q and the time taken to resolve a very simple mistake, we recommended:

- that DWP and the Agency pay Mrs Q a total consolatory payment of £5,000; and
- that the Chief Executives of the Agency and of the Pension, Disability and Carers Service (on behalf of DWP) both send Mrs Q a written apology for the shortcomings we identified and for the effect their maladministration has had on her.

In view of the Agency's repeated insistence for medical evidence to support a claim for severe distress, despite the wording of their own guidance, we also recommended that they:

- consider what action they can take to ensure that all staff authorised to consider such claims understand and exercise properly that discretion in line with the Ombudsman's *Principles for Remedy*.

DWP and the Agency agreed to implement our recommendations.

HER MAJESTY'S COURTS SERVICE

hmcs

I want to complain - Wha

bout this leaflet

leaflet explains what you can do if you are unhappy
ved from staff working in:

a County Court;

Crown Court;

Magistrates' Court;

Probate Service;

Royal Courts of Justice;

ourt of Protection;

e Directions Office;

ummer Service Unit.

Poor complaint handling

Everyone has a right to expect a good service from public bodies and to have things put right if they go wrong. When things do go wrong, as they inevitably will from time to time, public bodies should manage complaints so that customers' concerns are dealt with appropriately and promptly. A sincere apology, along with action to put the matter right, is often enough, **if** it is done quickly.

A complaint that is not resolved promptly and effectively has a habit of growing into something bigger and more difficult to sort out, wasting money, time and effort on the way. As well as the impact on the individual, it is likely to have a wider impact, as individuals relate their bad experiences to others, and as time and money is diverted away from the body's core business and into putting things right.

Good complaint handling matters because it is an important way of ensuring customers do receive the service they are entitled to expect; it is often an opportunity to recover a bad situation before it gets worse, and it also provides a valuable – and free – source of feedback about how the public body is performing and what needs to be improved. Used wisely it can be a helpful spur to continuous improvement.

The final three cases illustrate how not to handle complaints.

'It is a huge relief that you have listened to me and taken the time to go through my papers and find that I did have cause for complaint ... Thank you very much for this and your time in doing so.'

A complainant

Miss D's complaint about HM Courts Service

HM Courts Service's failure to act on a fax led to Miss D's arrest; she was handcuffed and detained in a police cell overnight.

Background

On 23 January 2008 a court issued a warrant for the arrest of Miss D for failing to attend the court on that day, in connection with matters involving a local authority. Solicitors acting for the local authority gave an incorrect address for Miss D, which meant that the address on the warrant was wrong. The next day the solicitors faxed a letter to the court saying that Miss D did not live at the address they had given, and asking for the arrest warrant to be immediately withdrawn. They also asked for the summons to be marked as 'not served', and for the case to be adjourned until March. The solicitors added that if none of that was possible, HM Courts Service (HMCS) should contact them so that they could arrange for the case to be listed for an application to withdraw the warrant. The court received the faxed letter and annotated it *'cannot locate file in box for 23.1.08'*. The solicitors also wrote to Miss D, enclosing copies of earlier summonses, and said that the case had been adjourned until March. In reply, Miss D said the solicitors' letter had shocked her as she believed the subject matter of the summonses had been taken care of, while she had not previously received the correspondence they had copied to her. Miss D copied her letter to the court.

Miss D told us that during a later telephone conversation with the local authority she was told about the arrest warrant but by the end of the call she was clear that the proceedings against her, and the warrant, would be withdrawn. A few days later Miss D learnt through a neighbour that the police had been looking for her. She told us that she thought that it was either about the court proceedings or about an assault she had recently witnessed. She telephoned the police to find out what they wanted and they asked to see her in person. She went to the police station that evening and was immediately arrested. Miss D spent the night in custody. The next morning, she was handcuffed to a police officer, driven to court, and placed in the cells. She saw a duty solicitor and gave him the relevant correspondence. Miss D was subsequently given bail and allowed to leave in the afternoon.

In February 2008 the local authority's solicitors wrote to the court, making a formal request to withdraw the proceedings. On 8 April Miss D's solicitors wrote to the Ministry of Justice (the Ministry), setting out the background to her arrest and claiming compensation. Having received no reply from the Ministry, Miss D's solicitors wrote to HMCS in July. The Customer Service Unit replied, acknowledging that the local authority's solicitors had written to the court on 24 January 2008. The Unit said there had been *'a short delay'* in dealing with the application to withdraw the warrant, during which time Miss D had presented herself at the local police station. As the warrant had not been withdrawn, the police had had no option but to arrest her. HMCS said that, if Miss D had contacted the court direct, instead of the police, any outstanding issues could have been resolved without her being arrested. (HMCS did not explain how Miss D was supposed to know that she should contact them rather than the police.) There was, HMCS said, no evidence of maladministration on their part, and they rejected Miss D's claim for

compensation. They ended by suggesting – wrongly – that Miss D's solicitors re-direct their complaint to the Local Government Ombudsman.

In October 2008 Miss D's Member of Parliament contacted HMCS about her case. HMCS replied that they were sorry to hear of Miss D's experience, but a full investigation by their Customer Service Unit had found no evidence of clerical error. They said that the Unit was the final tier of the internal complaint handling process, and signposted the Member to the Ombudsman's Office if he thought the matter merited further investigation.

What we investigated

We investigated Miss D's complaint that HMCS had failed to act on the request to withdraw the arrest warrant. We also investigated HMCS's handling of Miss D's complaint, which she said had not been given full and proper consideration to the extent that she felt *'fobbed off'*.

Miss D sought compensation for her unnecessary, awful and embarrassing experience.

What our investigation found

HMCS did not 'get it right', nor were they 'open and accountable' when they failed to act on receipt of the fax from the solicitors asking them to withdraw the arrest warrant. They showed no proper regard for Miss D's rights, nor did they handle the information they had been sent properly and appropriately. An apparent shortage of staff at the time did not excuse HMCS from such a basic responsibility.

HMCS did not handle Miss D's subsequent complaint about her experience well and they failed to act 'fairly and proportionately'. There was no apology for the fact that no one had responded to her previous complaint; they did not explain that the Customer Service Unit was the final stage in their complaints procedure; and they suggested that the solicitors contact the Local Government Ombudsman, who has no jurisdiction over HMCS. Instead of focusing on the events that led to Miss D's arrest, HMCS simply denied that she had been 'unlawfully' arrested, which was an unnecessarily legalistic approach, which took no account of the administrative nature of her complaint. HMCS did not give proper consideration to all the relevant information and, in particular, they do not appear to have considered carefully when it was that they received the request to withdraw the warrant, and when they ought to have acted on that information. Finally, they inappropriately suggested that Miss D bore some responsibility for her arrest because she had gone to the police station rather than to the court.

The actions of HMCS amounted to maladministration.

Consequences

Miss D was arrested unnecessarily as a direct result of HMCS's mistake, and was caused a great deal of avoidable distress. As someone with bipolar disorder, depression could aggravate her condition. She told us that she had found it extremely difficult to cope in the morning after her arrest and had started to *'lose it'*. She recalled sobbing on the floor of the cell. HMCS's poor complaint handling added to Miss D's distress: not only did they deny that they were at fault, they also sought to shift some of the blame to Miss D.

We upheld Miss D's complaint.

Resolution

During our investigation, HMCS offered Miss D a £250 consolatory payment. That did not fully recognise the impact on her of their maladministration and so we recommended:

- that the Chief Executive of HMCS send Miss D a personal, written apology; and

- that HMCS make her a consolatory payment of £1,500.

HMCS agreed to implement our recommendations. They also told us that since January 2008 there had been a change in management and staff had been given training, which had included guidance on identifying priority work. HMCS also said that they now had capacity for cover in the event of staff shortages.

Mr K's complaint about Jobcentre Plus

Mr K felt bullied and discriminated against, to the extent that his health suffered, after a catalogue of errors and delays by Jobcentre Plus over a prolonged period.

Background

Mr K – a chemical engineer – was made redundant and claimed jobseeker's allowance. In July 2006 his jobseeker's agreement was reviewed by the jobcentre. Mr K disagreed with their proposal that he should look for general office work and other work for which he felt over-qualified. Jobcentre Plus suspended his benefits and referred his case to a decision maker, on the grounds that he had refused to sign a jobseeker's agreement. (The correct ground to use was that there was a doubt about whether he satisfied the conditions for entitlement to benefit. Jobcentre Plus continued to work on the basis of that misunderstanding for a long time.) Mr K then complained to Jobcentre Plus that he had felt humiliated and distressed at the interviews, and that staff were racially discriminating against him.

While waiting for a decision about his benefit entitlement, Mr K applied for a hardship payment. Jobcentre Plus did not pay him, on the basis that he had no underlying entitlement to jobseeker's allowance. That was wrong – his entitlement continued pending a formal determination. Nor did Jobcentre Plus tell Mr K of their decision.

In September 2006 a decision maker determined that Mr K's jobseeker's agreement should be amended as proposed in July. Jobcentre Plus did not explain that decision properly to Mr K, leaving him unsure what had been decided. In October a decision maker accepted that 'chemical engineer' should be added to Mr K's jobseeker's agreement. In November part of Mr K's computer record was removed from Jobcentre Plus's computer system because they noticed that they had continued to meet Mr K's housing costs, while the rest of his benefit was suspended. Mr K continued to pursue his complaint through Jobcentre Plus's internal complaints process; the Chief Executive told Mr K that she was satisfied that his complaints had been properly investigated.

In January 2007 Jobcentre Plus finally processed Mr K's appeal and sent it to the Tribunals Service to be listed for a hearing. Also in January Mr K made a fresh complaint; he was particularly concerned that his housing costs had not been paid since November 2006, and that he had not been told this would happen. In a subsequent letter, Mr K complained about the delay in dealing with his appeal and said he was suffering hardship and distress. He sent a further letter of complaint in February 2007. The District Manager replied rejecting Mr K's complaints. When Mr K's appeal was heard in March, the tribunal found in his favour. Jobcentre Plus received a copy of that decision on 7 March but took no action until 27 May, when prompted by Mr K. Two days later Mr K asked for a crisis loan, but was told that he could not apply, because his benefits claim had been closed. Mr K then requested an interim payment of jobseeker's allowance; that request was not processed.

Jobcentre Plus decided that, before they would implement the tribunal's decision, they needed evidence of how he had supported himself while they had not been paying him. As well as asking Mr K for that information, they told him his appeal had been struck out. On 8 June 2007 the District

Manager replied to three of Mr K's complaints. She told Mr K that he had been asked to attend an appointment in June to *'complete the action necessary to satisfy the eligibility conditions for jobseeker's allowance'*. She said that his hardship application had been refused, and that a decision notice had been sent to him in August 2006. Mr K then applied for a budgeting loan, which was refused.

Mr K attended the June 2007 meeting and was again asked to sign a jobseeker's agreement resembling the July 2006 one. When he said he wanted to take legal advice before signing it, Jobcentre Plus again referred his case to the decision makers. They also refused a further application for a crisis loan. In July 2007 Mr K signed the proposed jobseeker's agreement, but also asked the decision maker to review her decision. Also in July Jobcentre Plus reviewed, but did not revise, their June crisis loan decision. Jobcentre Plus finally paid Mr K his benefit and housing costs arrears in August.

What we investigated

We investigated Mr K's complaints that Jobcentre Plus had suspended his benefits unreasonably; not notified him of their decisions; delayed processing his appeal and implementing the decision; and had not told him that his housing payments would stop. We also investigated his allegation that officials were racially prejudiced against him, and that the responses to his complaints were unsatisfactory.

What our investigation found

It was reasonable for Jobcentre Plus to have asked Mr K to broaden his jobseeking goals, but they did not handle the discussion well. It was appropriate for Mr K's case to be referred to a decision maker, but the referral was made on the wrong grounds and this error was never fully corrected. Jobcentre Plus also delayed reaching an initial decision on the suspension of Mr K's benefit, and did not communicate that decision properly.

Of all the decisions taken in respect of Mr K's applications for jobseeker's allowance, social fund payments, jobseeker's hardship payment and interim payments, Jobcentre Plus correctly notified him of a properly made decision just twice. There were also instances where they said decisions had not been taken, when they had. More fundamentally, Jobcentre Plus fell a long way short of 'getting it right', on some occasions even failing to take the decisions properly. The decisions to reject Mr K's hardship payment application, his social fund claims, and the second suspension of his benefit were perverse.

Jobcentre Plus's processing of Mr K's appeal was so poor that it amounted to maladministration. They took far too long to make an initial determination on his jobseeker's agreement. They also took too long to take action after Mr K's successful appeal. Rather than putting his claim back into payment immediately, Jobcentre Plus launched an 'investigation' into Mr K's circumstances. Despite Mr K eventually complying with their demands for information, Jobcentre Plus continued to withhold his benefit, and no real work was undertaken to put his benefit into payment until 20 August 2007.

Turning to Mr K's housing costs, Jobcentre Plus were aware that a system fault had allowed his housing costs to continue in payment erroneously. They should have realised that that error had led Mr K to think that his housing costs would continue during the suspension of his benefits. We saw no evidence that Mr K was told the conditions for receiving housing costs.

Mr K's serious complaint about racial discrimination merited thorough investigation by Jobcentre Plus. Jobcentre Plus did not do that. While we could not say why Mr K was treated so badly, he certainly did not receive the service that he should have had. Officials somehow developed a collective negative mindset towards Mr K, which prevented them from objectively assessing his case. That is a long way from saying that Mr K was discriminated against because of his race, or for any other specific motive, but we could entirely understand why he felt bullied and disadvantaged.

Jobcentre Plus's handling of Mr K's complaints was abysmal. A number of their replies contained incorrect information and, as time went on, they became less prompt and more inaccurate. Some letters went unanswered, and many replies did not acknowledge or apologise for the delay in responding. Jobcentre Plus did not investigate Mr K's complaint thoroughly, despite the assurances of increasingly senior staff that they had done so. Indeed, Jobcentre Plus could not demonstrate that they had ever looked critically at the evidence and asked themselves if Mr K had a valid complaint.

Consequences

We were satisfied that, as a result of Jobcentre Plus's maladministration, Mr K suffered financial hardship; incurred costs that he would not otherwise have incurred; and suffered a great deal of distress and anxiety, which impacted on his physical and mental health. Going into the jobcentre filled Mr K with *'stress, fear and loathing'* and having to rely on the help of friends and relatives while he was without the funds to which he was entitled caused him significant embarrassment.

We upheld Mr K's complaint.

Resolution

We recommended to Jobcentre Plus that:

- the Chief Executive write to Mr K to apologise for their failings; and
- they pay him £10,000 in recognition of the injustice he suffered.

Given our concern that Mr K's case might indicate a wider problem in the Jobcentre Plus unit that had dealt with it, we also recommended that:

- the Chief Executive should consider what further action he might take to assure himself that such problems would not recur, and to provide the Ombudsman and Mr K with a copy of the ensuing action plan.

Jobcentre Plus agreed to implement our recommendations.

Ms A's complaint about the UK Border Agency

The UK Border Agency's mishandling of an application for leave to remain from a Key Worker led to Ms A's suspension from work as a teacher. They then delayed putting right their mistake.

Background

Ms A came to the UK from Romania to study in 1997. She subsequently obtained a degree and a postgraduate teaching qualification, and in 2003 she secured a teaching post in a London school. In that same year she obtained a work permit and leave to remain, and secured a council tenancy under the Key Worker Housing Scheme. In 2004 Ms A applied successfully for her leave to remain and work permit to be extended and in November 2005 she applied for a further extension.

In March 2006 the UK Border Agency (the Agency) refused Ms A's application for leave to remain on the basis that, as she was living in local authority housing, she had recourse to public funds (which was not the case). The Agency also told Ms A's employer that she must not continue to work as this would be an offence under immigration law. As a consequence, Ms A was suspended without pay.

Ms A submitted an appeal saying that she was unaware that accepting Key Worker housing amounted to having recourse to public funds, and pointing out that her circumstances had not changed since 2003 when she had first applied for leave to remain as a work permit holder. However, this was the first time she had been told she was using public funds. Her appeal was successful, on the basis that the Agency's decision had been wrong, as Key Worker housing is not considered to be public funding. On 22 May 2006 the Agency wrote to Ms A confirming that she had been granted further leave to remain and she returned to work on 25 May.

In October 2006 Ms A wrote a letter of complaint to the Agency seeking compensation for loss of earnings between 17 March and 25 May 2006, as well as for the *'great distress and anxiety'* caused to her and the *'great worry'* resulting from having to pursue an appeal. The Agency said they had no trace of receiving that letter (although it was sent by recorded delivery and Royal Mail records showed it as having been delivered).

In March 2007 Ms A chased the Agency for a response and was told to fax a further copy of her complaint. In June the Agency replied saying that they had applied the rules appropriately as they had not been aware until the appeal hearing that Ms A's accommodation was being provided under the Key Worker Housing Scheme. They also said that Ms A had been entitled to continue in employment pending her appeal and so they were unable to consider her claim for compensation and lost earnings.

What we investigated

We investigated Ms A's complaint about the Agency's handling of her application for leave to remain; in particular that they wrongly refused her application on the basis that she had recourse to public funds, and that they failed to tell her that she could continue working pending her appeal.

Ms A said that as a result of the Agency's actions the school where she was working had terminated her contract. She had lost earnings and was caused

'an enormous amount of stress', for which she sought compensation.

In responding to our investigation, the Agency said that they had added advice to their guidance notes for applicants of leave to remain about the categories of housing that do not fall within the definition of public funds. The Agency also offered to pay £4,614.15 to Ms A, in respect of her gross earnings from 17 March to 24 May 2006.

What our investigation found

The Agency's decision on Ms A's claim for leave to remain was based on incomplete facts, in that neither their application form nor the accompanying guidance notes contained sufficient information to obtain the required information from Ms A about her housing. The Agency's decision was also flawed as their own guidance said that those renting homes under the Key Worker Housing Scheme should not be classified as having recourse to public funds. We found that the Agency failed to explore an apparent contradiction in Ms A's form, which said that she was renting from a local authority but had no recourse to public funds. These errors demonstrated a failure to be 'open and accountable' in line with the *Principles of Good Administration* and were sufficiently serious as to amount to maladministration.

The Agency's handling of Ms A's complaint was also poor. This ranged from the poor customer service – shown by the loss of the recorded delivery letter, to the substance of their reply to her complaint – in which they refused to accept any responsibility for the incorrect decision or the consequences which flowed from it. This initial failure by the Agency to admit to and then correct their mistakes was not in keeping with the Principle of *'Putting things right'* and also amounted to maladministration.

Consequences

As a result of the Agency's error in refusing her application, Ms A suffered significant distress and anxiety, which was compounded when the Agency told her employer that they would be acting illegally if they continued to employ her. This left Ms A without an income for two months and caused her embarrassment and distress.

We upheld Ms A's complaint.

Resolution

We welcomed the Agency's offer to compensate Ms A for her lost earnings. In response to the recommendations contained in our report the Agency also:

- sent Ms A a written apology for their poor handling of her case and its impact on her;
- paid her compensation of £500 for the impact of their poor complaint handling; and
- agreed to review the content of the leave to remain application form, and their internal guidance to staff, and to further review the guidance notes for applicants with the aim of satisfying themselves that an error of this kind could not recur.

Parliamentary and
Health Service Ombudsman

Millbank Tower
Millbank
London SW1P 4QP

Enquiries:
Tel: 0345 015 4033
Fax: 0300 061 4000
Email: phso.enquiries@ombudsman.org.uk

www.ombudsman.org.uk

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