



Annual Report

2001-02



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2001-02

8th Report – Session 2001-02

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of the Parliamentary Commissioner Act 1967**

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Parliamentary Commissioner Act 1967

*In accordance with Section 10(4) of the Act I
now lay before Parliament my Annual Report for
April 2001 to March 2002.*

MS Buckley
Parliamentary Commissioner for Administration

July 2002

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Overview of the year

1.1 In 2001-02 my office received 2,139 complaints, an increase of 24% on the previous year and the highest figure on record. The changes in working methods outlined in my last annual report proved their worth: the office concluded 1,988 complaints with 7% fewer staff than in 2000-01.

1.2 Highlights included the following:

- The office completed 195 statutory investigations, and concluded a further 91 cases in which the investigation process had been initiated, but resolution of the complaint had been achieved in the process. The average throughput time for all cases in which the investigation process was initiated was just over 45 weeks.
- At the end of the reporting year 156 statutory investigations were in progress, of which only one was older than 12 months and only 16 were older than nine months. The oldest case was 13 months old.
- 224 complaints were accepted for a statutory investigation; and no fewer than 781 complaints were resolved by enquiries of bodies complained against without initiating a statutory investigation: of these, 344 resulted in a positive outcome for the complainant. It should be emphasised that even in those cases which do not have such an outcome - typically, because our enquiries discover no evidence of maladministration - the actions of the office have a value for the complainant in that the grievance has been examined by an impartial and objective caseworker

who has satisfied himself or herself that there is no reason to believe that the department or agency was at fault.

1.3 Thus my office intervened in some 54% of the complaints referred to it, or 57% of complaints within jurisdiction.

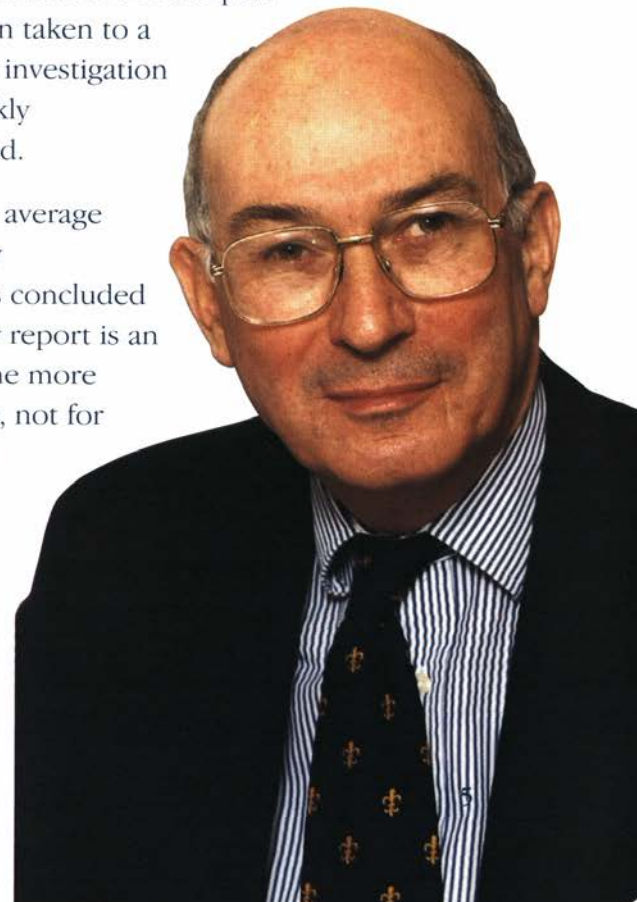
Departmental response times

1.4 The average time taken to conduct an investigation concluded by the issue of a statutory report was just over 52 weeks. Although that is higher than I would wish, account must be taken of the facts that:

- investigations which in the past would have been concluded relatively quickly by the issue of a statutory report are now discontinued at a still earlier stage when a satisfactory result has been achieved; and
- a proportion of the cases now resolved by enquiries would in the past have been taken to a statutory investigation and quickly concluded.

1.5 Thus the average time taken by investigations concluded by a statutory report is an average for the more difficult cases, not for all cases now taken to

*Sir Michael
Buckley,
Parliamentary
Ombudsman*



investigation, still less for all cases that would have been taken to investigation under past policies.

1.6 I remain concerned at the length of time that it takes departments and agencies both to respond to the statement of complaint which is the precursor of an investigation and to agree to redress when investigation by my office has disclosed injustice resulting from maladministration. This is another major factor in the throughput time for statutory reports (52 weeks in 2001-02). An average of nine weeks elapsed from the issue of the draft report to the issue of the final version. Obviously it is necessary to allow a reasonable period for Departments to confirm the facts and consider the draft findings and conclusions, and to allow for final editing by this office. But an average of two months is plainly too long; and a large part of it is accounted for by arguments about amounts of redress which are neither large in themselves nor of any significance in the context of public expenditure or departmental running costs.

Investigations involving other bodies

1.7 A common feature of a number of cases referred to my office was the involvement, actual or potential, of more than one regulatory, investigatory, or adjudicatory body, including the courts, enquiries established by the Government or another public authority, and my own office.

1.8 I received 19 complaints about the manner in which the Secretary of State for Transport caused Railtrack plc to be placed in administrative receivership. I told the

Members who had referred those complaints that I was aware that a group representing a substantial shareholder interest in Railtrack plc was preparing to take proceedings in the High Court which were likely to cover the issues of concern to complainants. Since then, the Department has announced its decision to speed up the process of bringing Railtrack out of administration. Given those developments I have, for the time being at least, decided not to initiate an investigation.

1.9 I began an investigation into complaints that widowers were being unfairly treated by being denied Widows' Bereavement Allowance and Widows' Benefit. As the substantive matter became the subject of litigation, I suspended the investigation. In February 2002 the High Court ruled that, as a matter of domestic law, the Inland Revenue and the Department for Work and Pensions were entitled to treat applicants who had applied to the European Court of Human Rights differently from those who had not. I am reviewing the judgment to assess its implications.

1.10 Finally, there were particular difficulties concerning complaints about the conduct of the prudential regulation of the Equitable Life Assurance Society. I was strongly criticised in Parliament and the media for deferring a decision on whether to investigate some of those complaints until the Baird Inquiry set up by the Financial Services Authority had reported, and for deferring a decision on whether to investigate other complaints until the Penrose Inquiry set up by the Government, which will consider a much wider range of issues than my statutory remit allows, had reported. I did not, and do not, agree with

the critics. It seems to me plainly inefficient, and potentially unfair, to have two simultaneous but separate investigations covering much the same ground and taking evidence from much the same sources.

1.11 However, the critics had a point: the situation is not satisfactory. The investigation by my office into the first category of complaints could not begin until December 2001; any investigation into the second category - should such an investigation be considered appropriate - would start a good deal later still. That is objectionable, not only because complainants should not have to wait so long for their case to be considered, but also because it is difficult or impossible to conduct a satisfactory investigation after such a lapse of time.

1.12 The root cause of the problem, in my view, is the failure of the authorities to establish at the outset a single inquiry with terms of reference covering all aspects of the Equitable Life affair, including issues of possible personal injustice due to maladministration and redress for such injustice if it should be demonstrated. When I put these points to the Treasury they said that they believed the FSA were right in setting up their own inquiry as the initial priority after Equitable Life closed to new business was to learn any immediate lessons. They added that the FSA did not have powers to initiate a wider investigation, but when it became clear that a wider investigation was needed, the Government set up the Penrose Inquiry in August 2001. There is an important general issue here, which I have drawn to the attention of the House of Commons Select Committee on Public Administration.

Individual Learning Accounts

1.13 Towards the end of the year, I began to receive complaints about the alleged failure by the Department for Education and Skills to design and operate proper controls to safeguard the scheme of Individual Learning Accounts against fraud and abuse. The complaints came, in particular, from learning providers who said they had based their business plans on expectations of a stream of income from the scheme for some years ahead, and who sought compensation for financial loss as a result of the scheme's early closure in November 2001. I am investigating a sample of the cases and expect to report on them later in 2002.

Judicial review

1.14 Following the issue of my report of the results of the third investigation by my office of their complaint against the former Department of Transport, Mr and Mrs Balchin have started proceedings seeking a further judicial review of my report. This is one of a growing number of instances where those dissatisfied with my consideration of their complaints have sought judicial review.

Freedom of Information

1.15 On 13 November 2001 the Government announced in the House of Lords that it would not bring into effect until January 2005 the provisions of the Freedom of Information Act 2000 which establish a statutory right of individual access to information held by public bodies. My office will retain until then responsibility for considering complaints under the non-



David Reynolds, Director of Investigations, with the Chairman of the Parliamentary Human Rights Commission of Azerbaijan and his associates

statutory Code of Practice on Access to Government Information that information has been unjustifiably withheld by bodies within my jurisdiction.

1.16 Also in November 2001 the Government rejected, for the first time, a recommendation by the Ombudsman that information should be disclosed under the Code. The facts of the case are set out in my special report “Declarations made under the Ministerial Code of Conduct” (HC 353). In brief, the Home Secretary refused, for reasons which I found wholly unpersuasive, to disclose purely numerical information regarding the number of times Ministers in his Department had made a declaration of interest to their colleagues under circumstances envisaged in the Ministerial Code of Conduct and the number of times they had sought the advice of the Permanent Secretary in this connection.

1.17 Commenting on the case, Lord Lester of Herne Hill said:

“As an individual I cannot go to the Parliamentary Commissioner for Administration for relief because we now know that the Government do not accept rulings by the Parliamentary Commissioner on the Code or its access. Therefore if I go to him and the Parliamentary Commissioner disagrees with the Government they will or may disregard his decision. So I personally must wait apparently until 2005”. (House of Lords Official Report, 5 December 2001 cols 838-875.)

1.18 I hope that that assessment will prove to be unduly pessimistic, and that the Government will in future accept the Ombudsman’s recommendations, as they and their predecessors have in the overwhelming majority of earlier cases. However, I cannot disguise my concern at

what seems to be a hardening of attitudes in departments. The bad habit of citing exemptions for the first time at a very late stage of an investigation has reappeared. In some cases it has taken literally months to obtain replies to correspondence.

1.19 I am seriously concerned at these developments, which not only undermine the Code but also call into question the authority and standing of my office. If they are not reversed, they will raise serious doubts as to whether it is appropriate for the Ombudsman to continue to investigate complaints under the Code.

Raising awareness

1.20 My staff and I had the pleasure of welcoming many foreign visitors to my office.

1.21 They included:

from Europe; the Czech Ombudsman, the Director of the Latvian Human Rights Office, the Legal Chancellor of Estonia and a judge from the French Administrative Court;

from Asia; a delegation from the Republic of Korea, a delegation of Members of the Japanese Diet, and a visitor from Nepal; and

from Africa; the Speaker of the Ghanaian Parliament, a judge from Mauritius, and a Chevening scholar from Tunisia;

the secretary to the Committee for the Reform of Public Administration in Nicaragua was the sole visitor from the Americas.

1.22 I again hosted two sessions for national ombudsmen or members of their staff who were visiting the United Kingdom for a study programme on the role of ombudsmen in improving public services. The lively nature

of the discussions on the various jurisdictions were, as always, both stimulating and enjoyable.

1.23 I travelled to Brisbane in the summer to attend the 19th Australasian and Pacific Ombudsman Conference on the theme “The effective, efficient and economical Ombudsman - new approaches to facilitate better public administration”. I also visited the offices of the Ombudsmen for Queensland and New South Wales, and of the Australian Commonwealth Ombudsman. In September I attended two more conferences. The first was held in Cyprus; and the second was held in Brussels, where the theme was “Ombudsmen against discrimination”. In November I was in Zurich for the Council of Europe 7th Round Table with European Ombudsmen; and in January I visited the Office of the Greek National Ombudsman in Athens and delivered a public lecture as part of the Britain and Greece 2001 lecture series. I much enjoyed these opportunities for exchanging experiences with colleagues from around the world.

1.24 In the autumn I held a further three seminars for Members of Parliament and their Westminster and constituency office staff. As in previous years, the emphasis was on encouraging Members to refer complaints to my office and to give them a greater understanding about the types of complaint which we deal with. I understand that Members and their staff found it useful, and informative, to discuss issues of concern to their constituents and to meet members of my staff, who made it clear that they would always be happy to give advice on whether or not a complaint was within the jurisdiction of the office.

1.25 My annual consultation meeting with representatives of advisory and consumer organisations also took place in the autumn. The discussions were lively; and, as always, I welcomed the opportunity to hear the views of advisers and to learn about the issues of concern to them. I am very much aware that these organisations see problems on the horizon long before any complaints are made to me. In some cases, the difficulties in finding a Member to refer a complaint mean that some issues may never reach my office. Yet many people working with disadvantaged groups are aware when things go wrong and know that my office is, perhaps, the only one which could carry out an investigation and, if the complaint is upheld, provide proposals for redress.

Industrial relations

1.26 The work of the office during 2001-02 was affected by a dispute with members of the Public and Commercial Services Union and the First Division Association over the pay settlement effective from 1 August 2001. Management offered increases averaging 5.2%, including some accelerated progression in the lower part of the pay ranges which was intended to help solve retention problems and to reduce anomalies related to starting pay. The unions demanded in addition a guarantee that staff should progress to the maximum of the relevant pay range within a fixed period, and pressed that demand by three one-day strikes and a “withdrawal of goodwill”.

1.27 In common with other public service organisations, there is no doubt that any

office faces challenges involving retention, rewards, and staffing structure which it wishes to address in partnership with the trades unions. I hope that it will be possible to put the past behind us and to tackle the issues in a spirit of co-operation.

Retrospect and prospect

1.28 This is the last annual report that I shall present as Parliamentary Ombudsman. Over the rather more than five years in which I have held the post, this office has come a long way. The mountainous backlogs have been cleared. Output records have consistently been broken. Throughput times are far lower. There is a larger and more flexible range of tools for dealing with complaints. Internally, there have been fundamental changes in organisation, in employment policies, in training and development, in line and personnel management, in computer and information systems, and in business planning and management accounting. Although these things have gone largely unnoticed, they are the fruits of hard work, ingenuity, and dedication among the staff of my office, to whom I pay tribute. I have no doubt whatever that they have vastly improved the service that this office provides to Parliament, to the public, and to the bodies within its jurisdiction.

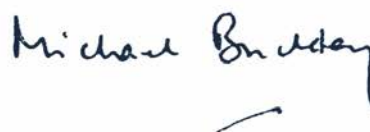
1.29 Yet the service could be so much better if it were not for the restrictions and the cumbersome methods of work imposed on the office by the Parliamentary Commissioner Act 1967. That is one of the main reasons why I joined with my

colleagues the English Local Government Ombudsmen in October 1998 to advocate radical changes in the public sector ombudsman system of this country. A modern, unified Ombudsman scheme will not only be able to provide a speedier and more flexible service to members of the public. Because of its greater breadth of knowledge and experience it will also be better placed to improve standards in public administration and to assist Parliament in holding the Executive to account.

1.30 I was therefore glad that the Government announced on 20 July 2001 that it intended to replace existing public sector ombudsman arrangements in England by a unified and flexible Ombudsman body for central and local government and the NHS; and that it would publish in due course proposals for the precise powers and accountability of the new body. I welcome that commitment, but note with regret that at the time of writing there was no sign of the promised proposals. My office will, of course, be very ready to offer whatever assistance it can in devising them and taking them forward.

1.31 Devising legislation to give effect to the reforms, and setting up a new organisation to make them a working reality, will be a task of some years. Even if I were to stay in my post for the full time permitted by the law I could not see it to completion. It is therefore right that I should step down so as to give my successor freedom to play a full part in the process. I wish whoever it may be every success. The institution of Ombudsman is of great value. The value has yet to be fully realised in this country.

1.32 Whatever the future may hold, it seems certain to present fresh challenges to this office and its staff. They have coped admirably with the challenges of the last five years: I am sure that they will cope equally well with those of the future.

A handwritten signature in black ink that reads "Michael Buckley". The signature is written in a cursive style with a long horizontal stroke at the end.

M S Buckley
Parliamentary Ombudsman



Improving our service

The way we work

2.1 The improvements in working practices introduced in April 2000 were further consolidated, and additional changes made to the staffing structure to support them. We are keeping the outcome of these changes under review; and there may well be further changes as our experience grows designed to ensure that our customers gain full value from our improved working practices.

2.2 A named investigator, under the guidance of an investigation manager and a director of investigations, now generally takes responsibility for progressing a complaint from receipt to resolution. Investigation managers and senior investigation officers themselves now verify and report the results of all but the most complex or sensitive statutory investigations. Investigators normally now issue letters reporting the outcomes of all other consideration of complaints referred by Members, and keep complainants informed of the progress of investigations.

2.3 When we receive a complaint from the referring Member we ask four questions:

- Is the complaint about a body and a matter within the Ombudsman's jurisdiction?

If either the subject matter of a complaint or the body complained against is outside the Ombudsman's jurisdiction the matter cannot be considered further. Subject to that:

- Is there evidence of administrative failure?
- Did that failure cause personal injustice which has not been put right?

- Is it likely that the Ombudsman's intervention will secure a worthwhile remedy?

2.4 The range of possible outcomes of a complaint to the Ombudsman is as follows:

Outcome 1: If the body complained against or the subject matter of a complaint is clearly outside the Ombudsman's jurisdiction the matter cannot be considered further.

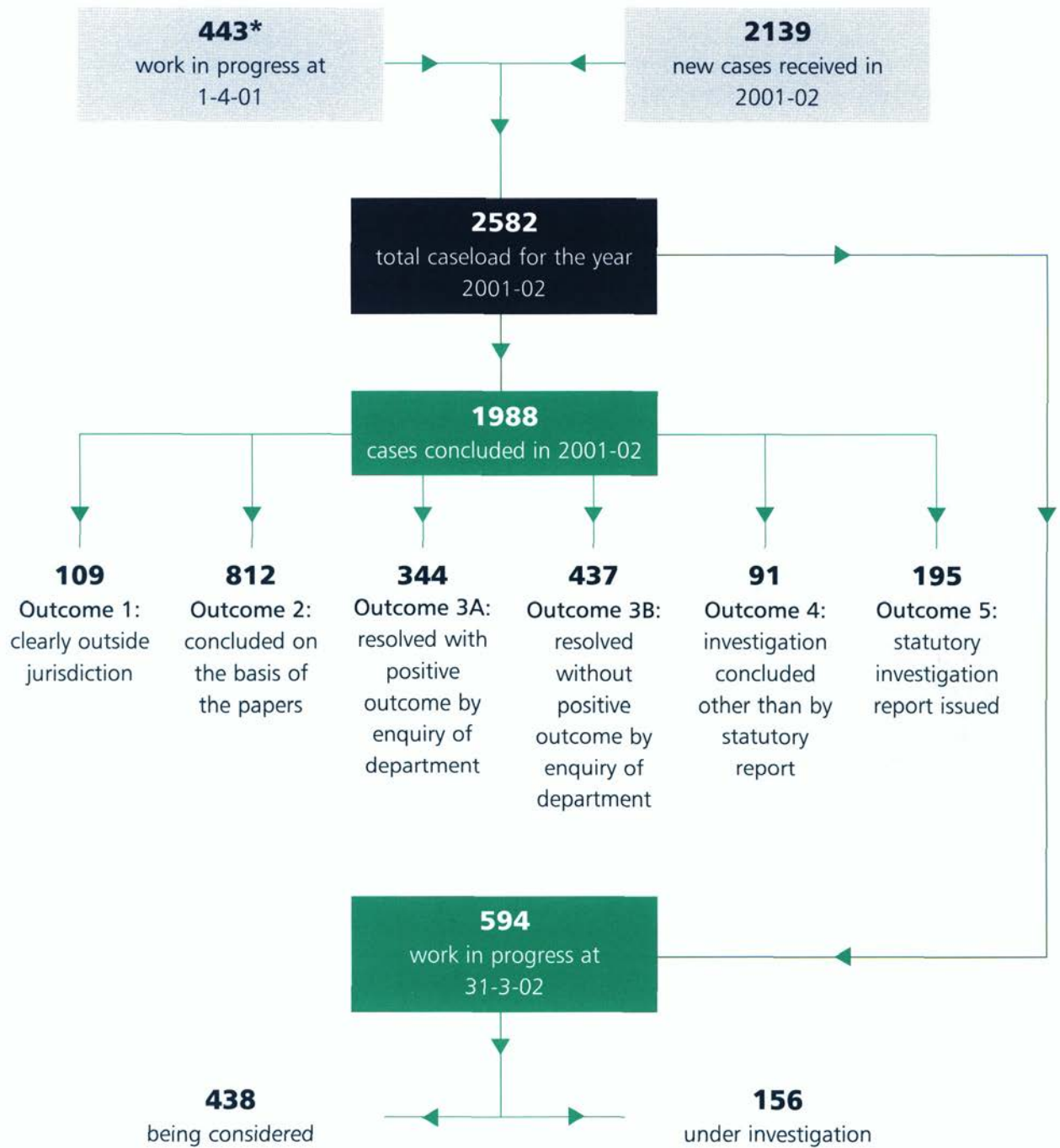
The Ombudsman continues to receive significant numbers of complaints about areas which are clearly outside his jurisdiction, such as personnel or contractual matters, or decisions which carry a right of appeal. He also receives a number of complaints about planning matters, where the complainants are unhappy with a planning decision, and essentially want him to criticise a Planning Inspector's professional judgement. In such cases, the most the Ombudsman can do is satisfy himself that the correct procedures have been followed.

Outcome 2: After further consideration of the papers submitted the complaint is not taken further, for example because there is no evidence of maladministration resulting in an unremedied personal injustice, or no worthwhile outcome is likely.

Outcome 3A: As an alternative to starting an investigation, enquiries are made of the body complained against, and result in an appropriate outcome seen as positive to the complainant. Many complaints can be settled quickly and efficiently in this way without a statutory investigation. It is evident from the reaction of both complainants and the bodies complained against that many appreciate the benefits of this approach.

Figure 1

Cases received, considered and investigated 2001-02



*Includes additional work on two cases closed during the previous year.

Outcome 3B: Enquiries of the body complained against result in the complaint being seen as one that cannot usefully be taken further, for example because no injustice has been suffered or no worthwhile outcome is likely.

2.5 When a statutory investigation is initiated, we issue a statement of the complaint to the body concerned; this is copied to the referring Member. One of two possible outcomes will then result:

Outcome 4: The investigation process is discontinued when an appropriate outcome has been achieved or no worthwhile remedy can be achieved.

Outcome 5: A statutory investigation report is sent to the referring Member. It is also copied to the body complained against (which has previously had the opportunity to comment on the facts to be reported and their presentation).

2.6 In an increasing proportion of cases it is possible to resolve complaints without issuing a statutory report; in those cases, the investigator sends to the referring Member and the body complained against a brief account setting out the main points agreed. Examples of each kind of resolution are included in later chapters.

2001-02 workload and achievements

2.7 The Ombudsman received 2,139 new complaints from Members of Parliament, compared with 1,721 in 2000-01 - an increase of 24% and the highest intake ever. He settled 1,988 complaints, including concluding 195 statutory investigations - (1,787 last year including 247 statutory

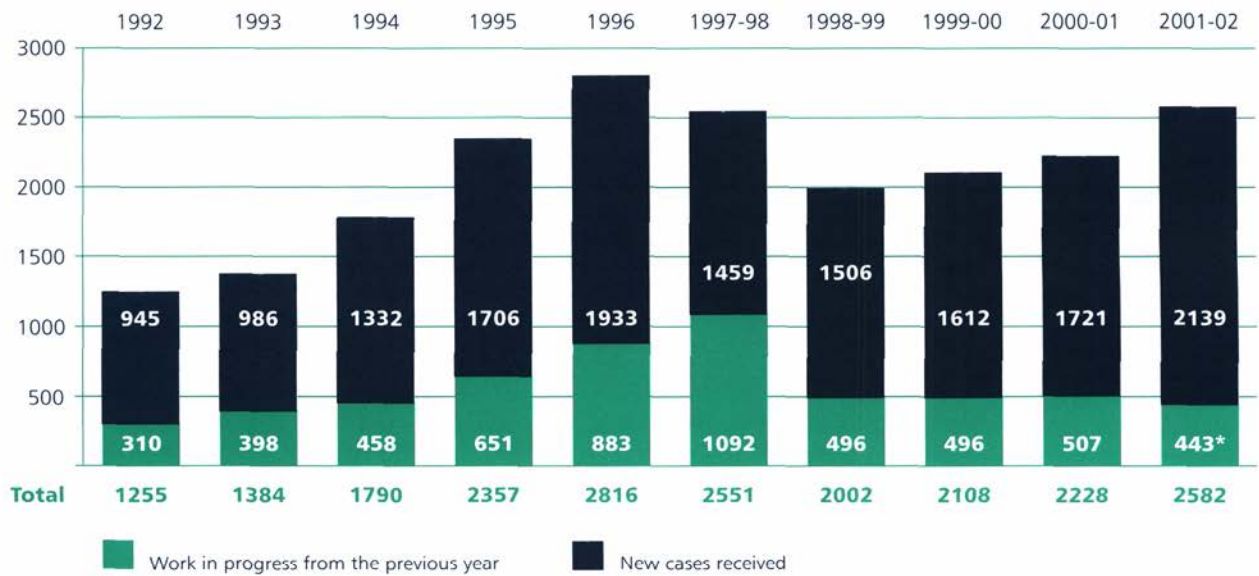
investigations). There are now fewer concluded statutory investigations because other - often simpler and faster - means of resolving complaints short of concluding a statutory investigation are increasingly being used. In a growing number of cases this enables the Ombudsman to achieve the same outcome for a complainant more quickly and cheaply than using the statutory process. Figure 1 shows the numbers of cases received, screened and resolved quickly, or on which statutory investigations were initiated and discontinued or concluded in 2001-02. Figure 2 shows the number of new cases received for each of the years 1992 to 2001-02 and, including the cases brought forward, the total workload in those years. Figure 3 shows both the total numbers of cases concluded and the numbers of statutory investigations completed in each of the last ten years. Figure 4 shows the numbers of cases concluded without completing a statutory investigation in 2001-02. The average throughput time for all cases in which the investigation process was initiated was just over 45 weeks, the same as in 2000-01. New investigations are typically being completed in nine to ten months.

2.8 The office receives enquiries from members of the public by letter, fax, e-mail and telephone. In 2001-02, some 5,575 telephone enquiries were dealt with, compared with 5,446 the previous year; 825 letters and faxes compared with 778; and 1,446 enquiries by e-mail compared with 704. That represented an aggregate increase of 13%.

2.9 Our Business Plan 2001 was designed to help achieve the following essential aims when fulfilling the Ombudsman's statutory functions:

Figure 2

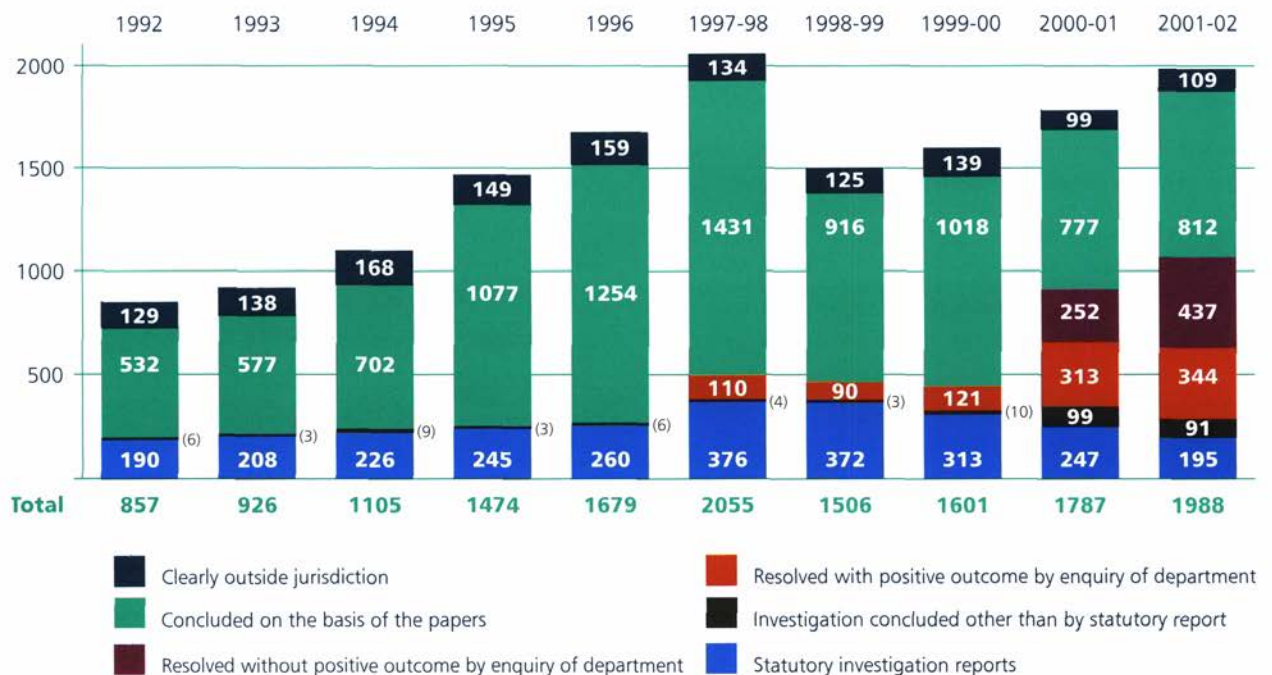
Workload 1992 to 2001-02



*Includes further work on 2 cases classified as concluded at 31 March 2001.

Figure 3

Cases concluded 1992 to 2001-02



A change in working practices at April 2000 led to an increase in the number of investigations concluded otherwise than by statutory report. In previous years investigations were discontinued due to circumstances such as the aggrieved taking court action rather than a decision by the office to conclude the case as soon as is reasonable to do so.

- to explain quickly and clearly to complainants whether the Ombudsman is able to investigate their complaints and what action will be taken;
- to achieve resolution of complaints efficiently and to report the results in an appropriate and timely way;
- to improve transparency and effectiveness of the process by which complaints are resolved.

2.10 Targets for 2001-02 in the Business Plan were:

- all cases clearly out of jurisdiction (outcome 1) to be identified and the referring Member notified within two weeks.

A target of 100% is exacting, and it was pleasing that no cases slipped through.

For complaints not clearly out of jurisdiction:

- 60% of such complaints to be the subject either of an appropriate outcome (i.e. one of outcomes 2, 3A or 3B) or of a statement of complaint being put to the body complained against within six weeks of receipt of the complaint.
- all complaints other than those where there are reasonable prospects of resolution without initiating the investigation process, to be the subject either of an appropriate outcome or of a statement of complaint being put to the body complained against within 13 weeks of receipt of the complaint.

Despite the record number of new complaints, against the target of 60% we achieved 68%. Nine complaints took longer than 13 weeks. Of those, five were deliberately allowed to run beyond 13 weeks in the knowledge that an appropriate outcome was imminent, a much better option than initiating unnecessarily the time-consuming statutory investigation process.

Figure 4

Cases concluded without completing statutory investigation 2001-02

	Outcome	Number of cases	Per cent (%)
Body complained of outside Ombudsman's jurisdiction	1	83	4.6
Subject matter of complaint not in jurisdiction ¹	1	26	1.5
Complainant had a right to appeal to a tribunal	2	65	3.6
Complaint not about administrative actions ²	2	307	17.1
No prima facie evidence of maladministration	2	318	17.7
Ombudsman's discretion not to investigate exercised	2	56	3.1
Others concluded on the basis of papers ³	2	66	3.7
Resolved following enquiries of department	3	781	43.6
Investigation concluded other than by statutory report	4	91	5.1
Total of cases concluded in these ways	-	1793	100

¹ Includes public service personnel matters and contractual or commercial transactions.

² Includes complaints about legislation and without consent from the aggrieved.

³ For example, complaint time barred or made by a public body.

2.11 For cases on which a statement of complaint was put to the body complained against (outcomes 4 and 5):

- completion should take on average no more than 42 weeks from the Ombudsman receiving sufficient information to enable a statement of complaint to be issued; and
- only exceptionally should uncompleted investigations be over 12 months old at any stage.

Setting an average throughput time of 42 weeks was ambitious, given that the equivalent time in 2000-01 was over 45 weeks; but it could have been achieved had the bodies concerned responded more quickly and positively to the findings of our investigations. As it was, the average throughput time was maintained at 45 weeks. The number of cases where a positive outcome was achieved through our enquiries increased from 313 in 2000-01 to 344. In such circumstances, the cases in which the statutory investigation process was initiated tended to be the more difficult and time-consuming ones. A much more accurate view of throughput performance would be to include in the calculation those cases in which our enquiries resulted in a positive outcome for the complainant. Such a calculation would reduce the average throughput time to 25 weeks.

2.12 Although there were on hand at any time during the year an average of around 20 investigations which were over 12 months old, by 31 March 2002 there was only one such case (13 months old), and only 16 were over nine months old. There were only 156 investigations on hand. In comparison, on 31 March 2001 there were 10 investigations

over 12 months old, 41 over nine months old, and 216 on hand.

2.13 As far as other matters are concerned:

- we kept under review the changes we had made to the organisation and working practices in April 2000, and made adjustments where necessary; and
- we continued our efforts to improve liaison with the principal bodies complained about so as to improve our processes and efficiency, and to improve their own complaints handling and resolution.

Customer service matters

2.14 Following a pilot study in 1999, the office undertook from April 2000 the first annual survey of the satisfaction of complainants with the way in which we had handled their case. Such surveys are important both so that we may understand the needs of our customers better and also to inform our working practices. The results of the survey became available in the summer of 2001. Comments from complainants ranged from: "The process takes too long" to "I would have been dissatisfied with a quick response" and from "I was impressed with the courtesy shown, the prompt action and the clear, concise explanation of the findings" to "I expected much better service than I received." They also included many criticisms of the restrictions placed on the Ombudsman's powers.

2.15 Overall, however, the results showed that those who have their complaints investigated are happier than those who have not. Our letters and reports are easy to understand, even if the conclusions are

Figure 5

Cases carried forward from 2001-02 to 2002-03



unwelcome; and complainants would be happy to come to us again. The majority of respondents were satisfied with the time taken to deal with their complaints, particularly when we forewarned them. There was, however, a clear impression that more contact with investigation staff and more frequent information about progress were wanted. As a result, staff were strongly encouraged to make early direct contact with complainants, particularly if further enquiries were to be made of the bodies complained against, and to keep them regularly updated.

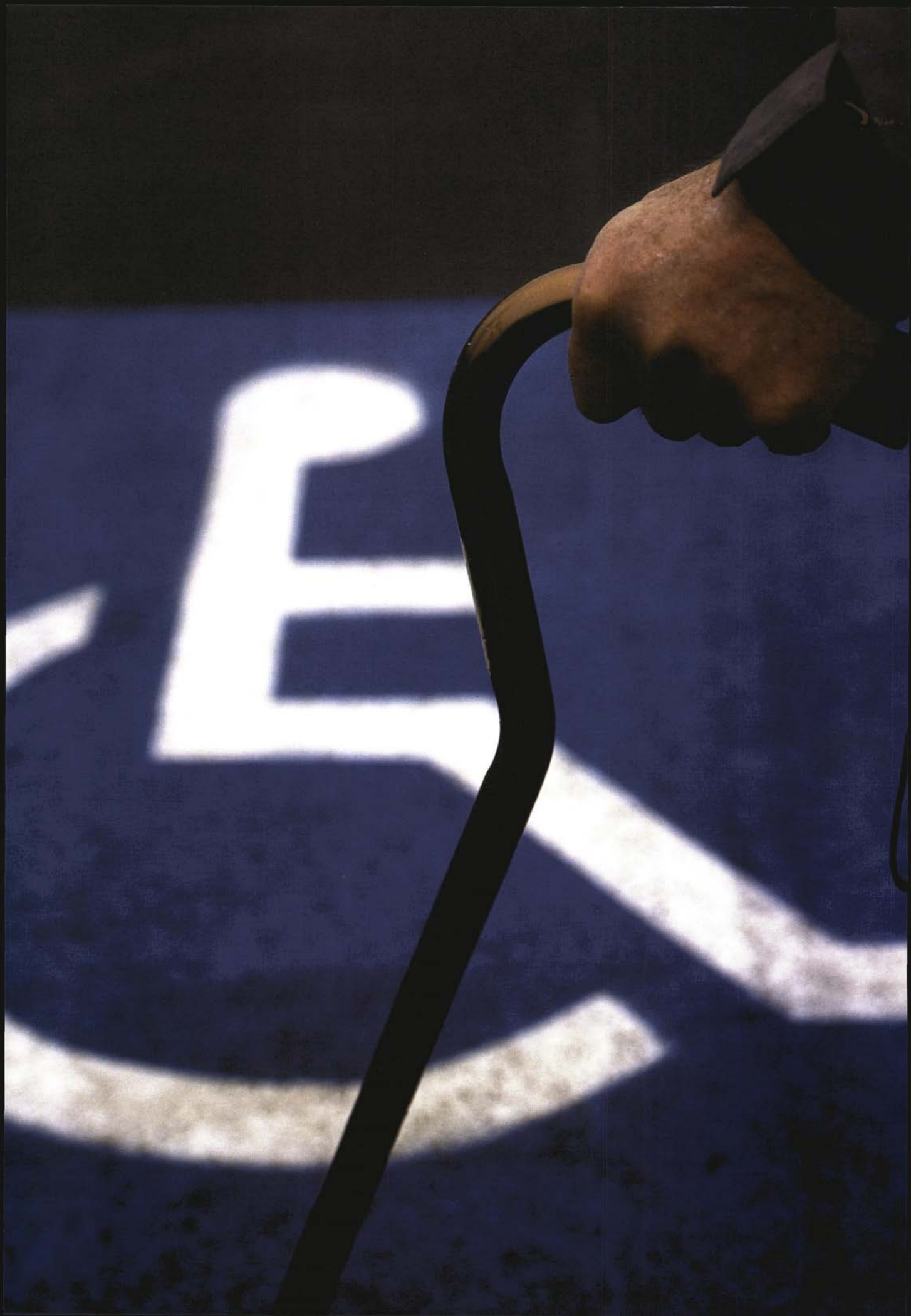
2.16 The survey also raised some issues about the best way of reaching our potential customers and their advisers. We are looking into them. It also led to a decision to review our leaflet, our complaints form, and our accessibility to those with particular communications needs. In addition, we decided to develop service standards for our telephone, fax and e-mail services. That work should be completed in the current

business year. We conducted a further customer survey in 2001-02; but the full results will not be available until July 2002.

2.17 The priorities for 2002-03 will be to build on last year's progress to extend the improvements achieved. The aims of the office remain:

- to explain quickly and clearly to complainants whether we are able to investigate their complaints and what action will be taken;
- to achieve resolution of complaints efficiently and to report the results in an appropriate and timely way; and
- to continue to improve transparency and effectiveness of the process by which complaints are resolved.

Put simply, our objective remains to deal with more cases and to deal with them faster.



Investigated cases: The Department for Work and Pensions and its agencies, including the Appeals Service

Introduction

3.1 Complaints against the Department for Work and Pensions (DWP) accounted for 53% of the total number of investigation reports issued by the Ombudsman during the year. The Benefits Agency (BA) accounted for 49% and the Child Support Agency 45% of DWP reports. The overall level of DWP complaints was down from last year's total of 720 to 693 - a decrease of 4%.

Benefits Agency

3.2 The Ombudsman received 472 complaints against BA in 2001-02 and issued 50 statutory investigation reports. A number of cases considered during the year concerned claims for disability- or incapacity-related benefits, which were not handled at all well by BA. In this context, it is worth noting that the Disability Discrimination Act 1995 requires providers of services to make reasonable changes to policies, practices or procedures to help disabled people to use those services. Some examples of cases in which BA's current procedures caused difficulties for disabled people are set out below.

C1433/01

Benefits Agency: errors and delay in arranging a sign language interpreter for a medical examination

Mr G and his late wife were both deaf. An appeal tribunal directed that Mrs G should undergo a medical examination to assess her care and mobility needs for disability living allowance, specifying that a female sign-language interpreter should attend. The examination was delayed at first because the

Appeals Service provided Medical Services with an incorrect address for Mrs G. When that was put right an examining medical practitioner arranged an examination expecting, incorrectly, that Mr and Mrs G would obtain the services of an interpreter. The examination was not completed. Mr G complained to the Appeals Service who, at that point, did not get in touch with Medical Services to ensure that they were aware of their responsibility to arrange an interpreter. Medical Services then re-allocated the case to a female doctor under the misapprehension that Mr and Mrs G had requested a female doctor. The Appeals Service, prompted again by Mr G, contacted Medical Services, who conceded that they were responsible for arranging the interpreter. They then expected the doctor to obtain the interpreter, with no useful information on the options for finding one. She was not successful, and suggested an appointment six weeks later. Mrs G's mother contacted the doctor and arranged an earlier appointment, saying she would interpret for her daughter, who was seriously ill. Mr G then arranged for a professional interpreter at short notice, and the examination took place. An appeal tribunal reinstated Mrs G's benefit.

The Ombudsman criticised the Appeals Service for their carelessness in providing an incorrect address and for failing to contact Medical Services when Mr G first complained. He criticised Medical Services for failing to recognise their responsibility for arranging the interpreter, to respond quickly when Mr G's complaint was first passed to them, and to have arrangements in place for providing an interpretation service for deaf people. BA, the Appeals Service, and Medical Services

themselves, apologised and paid £300 in total for gross inconvenience, paid interest on the arrears of benefit, and reimbursed the cost of the interpreter. The Appeals Service arranged training for their staff on deaf people's needs and are implementing recommendations from a disability audit concerning the provision of a textphone service. Medical Services have issued guidance to their staff about their responsibility for arranging interpretation and have developed a training module for doctors.

C1279/01

Benefits Agency: following an inadequate medical examination, disability living allowance stopped for an illiterate man

A Medical Services doctor examined Mr N in connection with his request for a review of his claim to disability living allowance. BA disallowed Mr N's claim. His representative appealed, and complained to Medical Services about the report. Medical Services replied that the report was adequate, although the doctor should have recorded more details about Mr N's heart condition and he should not have included inappropriate remarks about Mr N in the section of the report reserved for medical information harmful to the claimant. Medical Services sent a copy of their comments on the report to BA, who took no action. An appeal tribunal, who had before them the report (including the inappropriate remarks) but not Medical Services' comments, reinstated Mr N's award of the mobility component of disability living allowance and upheld the disallowance of his earlier award of the care component.

The Ombudsman found that the doctor's report contained omissions and inaccurate dates and that, on the balance of probability, the doctor had not read back Mr N's personal statement to him as required under Medical Services guidance. He also found that BA had failed to consider what action might be taken concerning the inappropriate remarks in the section of the medical report reserved for harmful information. The result was that Mr N, who knew about the remarks, suffered embarrassment before the tribunal. The Ombudsman concluded that BA had failed to send Medical Services' comments on the medical report to the appeal tribunal as they should have done. BA apologised to Mr N and awarded him £50 compensation for gross inconvenience. BA also undertook to consider making further payments, including interest on any arrears of benefit due to Mr N, when a newly constituted appeal tribunal had reconsidered his appeal. Medical Services apologised to Mr N for the shortcomings of the medical report and made him a consolatory payment of £100 for the embarrassment he was caused.

C848/02

Benefits Agency: misdirection about entitlement to invalid care allowance

Mrs D became her husband's full-time carer in 1998, when he started receiving the highest rate of disability living allowance care component. Mrs D said she had asked BA whether she and her husband were entitled to any extra benefits; and BA had sent her claim forms for disability living allowance (which Mr D was already receiving). When

she had telephoned BA about the forms, they told her that she and Mr D were receiving all the benefits to which they were entitled. Having heard about invalid care allowance in July 2000, Mrs D claimed and was awarded the benefit, backdated to April 2000. In August 2000 Mrs D complained to BA that they had not told her about invalid care allowance earlier when she had asked about extra benefits.

Following the Ombudsman's intervention, BA found that they had not investigated Mrs D's allegation that they had misdirected her. They interviewed Mrs D and accepted that they should have advised her to claim invalid care allowance in December 1998 when Mr D claimed income support. BA paid Mrs D further invalid care allowance of £1,325, having offset an amount for income support which would not have been paid had invalid care allowance been in payment. BA also paid Mrs D interest of £128 to



John Colmans and Rose Warner, who investigate complaints about the application of the Code of Practice on Access to Government Information

compensate for delay and awarded her £150 for the inconvenience their actions had caused.

3.3 In his Annual Report for 2000-01, the Ombudsman commented on a number of complaints about inappropriate conduct by SEMA doctors. Over the past year, we have continued to receive a number of complaints of a similar nature. An example of continuing problems is set out in the following case, in which Medical Services failed to recognise that there was a pattern of complaints against a particular doctor. They had failed to take prompt action regarding his performance, despite receiving many complaints about his manner.

C567/01

Benefits Agency: failure to investigate a complaint about the conduct of an examining medical practitioner

Mrs M complained about a number of aspects of the conduct of the examining medical practitioner in respect of her renewal claim for disability living allowance. She also complained that Medical Services had failed adequately to investigate her complaint.

The Ombudsman found that although there had already been a high level of similar complaints against the same doctor, Medical Services considered Mrs M's complaint in isolation. The number of complaints against the doctor continued to grow, but Medical Services did not recognise that they faced an escalating problem over the doctor's performance. They took no action until after the

Ombudsman became involved. BA subsequently made Mrs M consolatory payments of £250 for the gross inconvenience she had suffered, and £100 for severe distress. Medical Services also took steps to improve their handling of complaints. They introduced a revised complaints procedure focusing on effective management and remedial action, depending on the nature of the complaint, the doctor's previous history, and the outcome of quality monitoring of the doctor's work. BA also introduced arrangements to monitor Medical Services' performance in handling complaints.

Another case involved a poor quality medical report, which had also been completed inappropriately by the doctor concerned; and the subsequent complaint had been handled poorly by Medical Services.

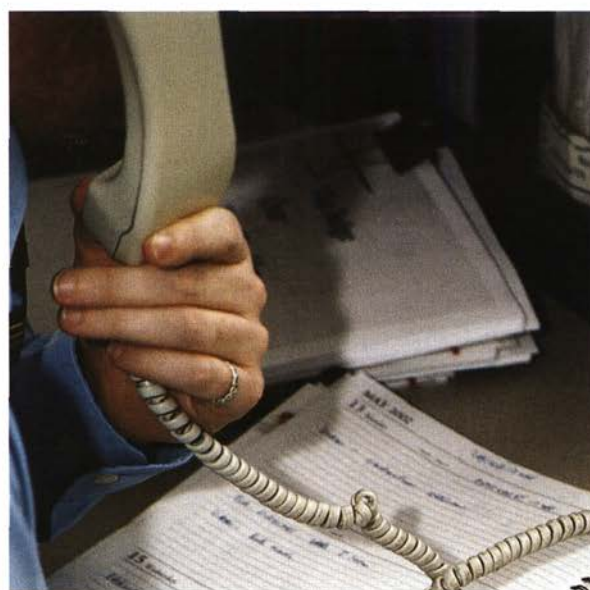
C1496/01

Benefits Agency: poor quality medical report and poor complaint handling

Mrs T applied to the Benefits Agency for her disability living allowance care component to be increased. She was examined by a Medical Services examining medical practitioner; and BA disallowed both the care and mobility components of the allowance. She appealed against the disallowance, and complained to BA that the doctor had persuaded her to sign the statement of disabilities he had recorded without having read it to her or allowing her to read it, and that his report contained inaccuracies. BA obtained further medical evidence from Mrs T, and reinstated her disability living allowance at the highest rate for both components. They failed, however,

to pass her complaint on to Medical Services until after the Member had intervened. Medical Services then gave a delayed and superficial answer to the complaint. The Member intervened again; and Medical Services found that the report was not medically safe for the purposes of a benefit decision.

The Ombudsman found that the doctor had failed to communicate effectively with Mrs T and had added to her statement in the medical report after the examination was over. Both BA and Medical Services had handled Mrs T's complaint poorly. BA paid Mrs T her arrears of benefit with interest, £150 for gross inconvenience, £100 for gross embarrassment, and £100 for severe distress. Medical Services also paid her £250 for gross inconvenience. BA have agreed to consider a further payment for severe distress on production of independent medical evidence from Mrs T's consultant or general practitioner.



Child Support Agency (CSA)

3.4 Regrettably, a considerable number of complaints against CSA continue to show that CSA have failed to enforce payment from a non-resident parent in an effective and timely way. It is to be hoped that the new enforcement powers in the new child support legislation will help CSA to enforce payment more effectively in future. The following cases illustrate problems with poor enforcement.

C629/01

Child Support Agency: Mishandling of an application for child support maintenance, and failure to take adequate enforcement action

Mrs N complained that CSA mishandled her application for child support maintenance and were slow to enforce payment of maintenance, resulting in financial loss to her. She further complained that CSA had failed to provide her with adequate compensation.

The Ombudsman found that Mrs N had received a poor level of service from CSA over a long period of time. Although the actions of both parents had been a contributory factor, there were lengthy delays in bringing the case up to date which hampered CSA's ability to take timely enforcement action. When CSA eventually took steps to obtain a liability order, they discovered errors in their maintenance assessments, and a court hearing was dismissed largely because CSA were unprepared for it. CSA's handling of Mrs N's departure application was also subject to lengthy and unwarranted delays, leading to the

accrual of maintenance arrears, which were significantly greater than they would otherwise have been. CSA agreed to make an advance lump sum payment to Mrs N in respect of the outstanding maintenance arrears of around £8,000, together with interest on that sum. They also paid Mrs N £200 for gross inconvenience, £640 interest on maintenance received late, £969 for accountants' fees, and £30 for out-of-pocket expenses.

C234/02

Child Support Agency: failure to collect child support maintenance

Mrs M complained that CSA had failed to collect child support maintenance for her from the non-resident parent largely as a result of their mistakes and delays. CSA had awarded Mrs M £185 in recognition of the inconvenience and expense to which she had been put by their maladministration, but had failed to obtain maintenance from the non-resident parent.

Following enquiries into the case by the Ombudsman's staff, CSA acknowledged poor handling of Mrs M's case and apologised to her for that. CSA agreed to make Mrs M an advance payment of £2,780, representing the maintenance not collected on her behalf as a result of their maladministration. CSA also paid Mrs M £326 for loss of use of that money. While welcoming those payments, the Ombudsman found that the payment did not reflect all of the periods of CSA's maladministration and asked CSA to reconsider their decision. CSA made a further advance payment of £1,529. That represented the broad balance of the

maintenance which CSA had failed to collect for Mrs M for the period until they had finally taken meaningful action to collect maintenance from the non-resident parent. CSA also made Mrs M a special payment of £366, representing her loss of use of that maintenance.

CSA had previously awarded Mrs M compensation payments totalling £185. As a result of the Ombudsman's intervention, they agreed to consider awarding compensation and reimbursing Mrs M's legal costs if she provided suitable evidence to them. They also undertook to pursue the non-resident parent for payment of the outstanding maintenance.

3.5 In several recent cases CSA have agreed to make a limited advance payment of maintenance to the parent with care when it is not yet possible to make a full assessment but they expect to be able to do so in the near future. This type of advance payment is made at the average maintenance assessment rate, subject to an appropriate adjustment when a full assessment can be made.

An example of a case of this new arrangement follows.

C1214/01

Child Support Agency: failure to provide redress for acknowledged failings while child support maintenance assessments remained in dispute

Mrs K complained that CSA's failure properly to assess or collect child support maintenance on her behalf meant that she had lost the opportunity to receive all of the

maintenance due to her. A report by CSA's Independent Case Examiner, which had been accepted by CSA, had identified a number of errors and delays.

The Ombudsman found that the errors and delays identified by the Independent Case Examiner had impeded CSA's attempts to carry out enforcement action against the non-resident parent, who was only intermittently co-operative. He found that Mrs K had not received appropriate redress. The circumstances of Mrs K's case meant that she did not meet the criteria for the CSA compensation scheme to provide advance payment of maintenance, as that scheme required final assessments to be in place to determine the amount of any award. The non-resident parent had appealed against the assessments, which meant that there was a chance that the assessments might be reduced. In order to avoid possible overpayment CSA declined to make any advance payment until the outstanding appeals had been resolved. Following lengthy discussions and correspondence, pending the placing of her case on a proper footing, CSA offered Mrs K an interim advance payment of maintenance based on a range of average national rates for maintenance assessments for the relevant period. CSA's offer provided compensation for uncollected maintenance amounting to £6,168, together with £1,263 in interest on that sum. CSA also agreed to consider making Mrs K a further advance payment representing any balance of maintenance arrears due for that period once the maintenance assessments had reached a steady state.



Investigators Ade Alapafuja and Rosemary Winawer

In another case, CSA agreed to provide an interim compensation payment at the average maintenance assessment rate for the loss of opportunity to receive maintenance, subject to review if they were able to make a full assessment at a later date.

C1063/01

Child Support Agency: delay in making an interim maintenance assessment and in imposing a deduction from earnings order

Mrs X applied for child support maintenance in April 1999. The non-resident parent did not cooperate; and CSA warned him that an interim maintenance assessment would be imposed if he failed to provide the necessary information. Despite his continued non-cooperation, CSA did not impose an interim assessment until May 2000.

The Ombudsman found that CSA should have imposed an interim maintenance assessment at the latest by the end of

August 1999, and enforced it by means of a deduction from earnings order. Mrs X had therefore lost the opportunity to receive maintenance due to her. CSA agreed to pay compensation totalling £1,937 for the period of lost opportunity. They made Mrs X a further payment of £160 by way of interest, and ex gratia payments of £100 for gross inconvenience and £15 for out-of-pocket expenses. CSA subsequently made a further payment of £2,669.

3.6 One particularly difficult CSA case resulted in a substantial payment by CSA to the complainants as a result of serious maladministration which denied them a better opportunity to avoid the repossession of their home.

C1515/00 and C1287/01

Child Support Agency: delays and mishandling causing a shortfall in the family finances and affecting the ability to retain the family home

Mr P, who was a non-resident parent of two children, fell into arrears with his maintenance payments while trying to get CSA to revise the amount of maintenance he had been assessed to pay (which was wrong). CSA failed to respond effectively to Mr P's requests for his circumstances to be reviewed, and for a face-to-face meeting. Instead, CSA imposed a deduction from earnings order to collect in full the regular maintenance as assessed, together with a monthly contribution, set at a high rate, toward the amount due for the period before the assessment had been made. It took CSA five years to correct the assessments. In the meantime CSA had failed to obtain maintenance from the two

non-resident parents in the case of Mr P's wife. All that, coupled with debts from Mr P's previous relationship and the consequences of periods of ill health, resulted in such a shortfall in Mr and Mrs P's income that they felt compelled to stop making payments on the mortgage on their home, which their mortgage lender repossessed.

The Ombudsman criticised CSA severely for handling both Mr P's and Mrs P's cases consistently badly over a prolonged period of time. While there could be no certainty that in the absence of maladministration Mr and Mrs P would have been able to retain their home, the Ombudsman found that they would certainly have had a better chance of doing so. Following protracted discussions with the Ombudsman's staff, CSA agreed to make Mr and Mrs P compensatory payments amounting to £26,931 which comprised:

- advance payments of outstanding maintenance due to Mrs P totalling £5,700 plus £2,210 for financial loss and a further £1,937 in interest;
- £498 for maintenance owed to Mrs P, but which CSA had deferred collecting;
- an ex gratia payment of £15,000 to Mr and Mrs P and a further £1,000 to demonstrate CSA's regret for the time taken to conclude the case;
- payments of £585 for expenses and gross inconvenience.

Appeals Service

3.7 During the year, the Ombudsman reported on 13 cases involving the Appeals Service, some of which also involved BA, or the Court Service.

C283/01

Appeals Service: delays in arranging a tribunal hearing; Court Service delays on an appeal; poor BA handling of claims for severe disability allowance

Mr G complained, on behalf of his son (for whom he had power of attorney), that both the Appeals Service and the Court Service contributed to numerous long delays in the hearing of his son's appeal against a refusal of severe disability allowance. Mr G also complained that BA incorrectly calculated the arrears of severe disability allowance owed to his son following his successful appeal.

The Ombudsman found that the Court Service had taken no action on Mr G's appeal for four years, nor had they reported to him the outcome of an investigation by the Lord Chancellor into this delay. The Court Service apologised to Mr G, and offered him £1,000 in compensation for what they recognised to be 'a disgraceful and deplorable delay'. They also said they would report to him the Lord Chancellor's findings when they were known. BA offered Mr G £100 compensation for gross inconvenience due to their failure properly to process information about the earlier appeal and for further delays in acting upon Mr G's third appeal. The Appeals Service offered

Mr G compensation totalling £355, reflecting the detrimental effect their actions had had on his son's health, the inconvenience caused to him, and the expenses incurred.

C1150/01

Appeals Service: mishandling of appeals process

Mr H complained of unreasonable delay by BA in dealing with his application for reduced earnings allowance. He also complained about the way that BA and the Appeals Service handled his appeal against a decision about his entitlement to that benefit. BA confirmed that they had delayed processing Mr H's application for reduced earnings allowance whilst waiting for the outcome of his appeal against his assessed disability for industrial injuries disablement benefit. (This was despite explicit instructions to their offices not to delay action on a claim for reduced earnings allowance for such a reason.) BA also acknowledged that they had unnecessarily delayed Mr H's initial claim for industrial injuries disablement benefit. The Appeals Service acknowledged that Mr H's appeal had been subject to errors and unnecessary delay.

Following the Ombudsman's intervention, BA paid Mr H arrears of £6,641 reduced earnings allowance and interest of £247 as compensation for loss of use of those arrears. BA also awarded Mr H a consolatory payment of £50; and the Appeals Service paid him £100 in recognition of the inconvenience he had suffered. Both Chief Executives apologised to Mr H for the poor performance.

War Pensions Agency

3.8 In June 2001 responsibility for the War Pensions Agency, now known as the Veterans Agency, was transferred to the Ministry of Defence. The Ombudsman reported on only two cases involving the Agency.

C875/01

War Pensions Agency: mishandling a claim for Allowance for Lowered Standard of Occupation

Mr D first claimed Allowance for Lowered Standard of Occupation (ALSO) in October 1994. The War Pensions Agency (WPA) rejected the claim on the grounds that his war pension related disablement did not prevent him from carrying out his pre-service occupation of hotel waiter. In September 1996 Mr D made a second claim, saying that his regular pre-service occupation had been that of flight engineer. In April 1997 WPA decided not to change his recorded occupation, and rejected his claim. In September 1997 WPA recognised Mr D's previous occupation as driver/air dispatcher; but that did not result in an award of ALSO. In December 1998, WPA accepted he had been a flight engineer; but ALSO was again refused because WPA's medical advice was that Mr D's pensioned disablement did not prevent him from following that occupation. Mr D continued to press his case; and in May 2000 WPA awarded ALSO backdated to October 1994. They sent him arrears of £11,687, but refused to pay interest.

Following the Ombudsman's intervention, WPA accepted that the ALSO award had been delayed by their failure to obtain evidence of the medical requirements for a flight engineer. WPA paid Mr D £644

ex gratia redress for loss of use of the ALSO arrears from December 1998 to May 2000. The Ombudsman found that the award had also been delayed by WPA's failures during the period between December 1997 and December 1998. WPA apologised and made a further ex gratia payment of £393. WPA offered to consider reimbursing Mr D's expenses in pursuing his claim after December 1998 on production of relevant evidence.



Figure 6

Complaints against the Department for Work and Pensions and the Appeals Service 2001-02

Caseload	<i>Work in progress at 1-4-01</i>	<i>New cases opened</i>	<i>Total casework</i>	Outcome						<i>Work in progress at 31-3-02</i>
				1	2	3A	3B	4	5	
Department for Work and Pensions¹	208	693	901	5	169	187	188	48	103	201
Appeals Service	7	13	20	0	5	4	5	0	5	1
Benefits Agency	109	462	571	4	111	137	126	25	50	118
Child Support Agency	84	187	271	0	43	41	43	22	46	76
War Pensions Agency ²	8	5	13	0	1	2	6	1	2	1

¹ DWP totals exceed the sum of cases against the named agencies, because some cases included in the total have been recorded only against DWP.

² The War Pensions Agency was subsumed by the Ministry of Defence on 1 June 2001 and is now known as the Veterans Agency.

Figure 7

Completed statutory investigations of complaints against the Department for Work and Pensions and Appeals Services 2001-02

	<i>Justified</i>	<i>Partly justified</i>	<i>Not justified</i>	<i>Total</i>
Department for Work and Pensions				
Appeals Service	4	1	0	5
Benefits Agency	32	9	9	50
Child Support Agency	36	8	2	46
War Pensions Agency ¹	1	0	1	2

¹ The War Pensions Agency was subsumed by the Ministry of Defence on 1 June 2001 and is now known as the Veterans Agency.



**Record of
Rabies Vaccination
for**

Name and Address of
Veterinary Surgeon

Investigated cases: other departments

The Inland Revenue (including the National Insurance Contributions Office)

4.1 During the year the Ombudsman received 206 complaints against the Inland Revenue; that figure included complaints against the Valuation Office Agency (VOA - an executive agency of the Inland Revenue) and against the National Insurance Contributions Office (NICO - also an executive agency of the Revenue). The total represents a slight decline on the comparable figure for the previous year (214), especially as 35 complaints were related to complaints about the Revenue's treatment of widowers who had sought a payment equivalent to that provided to widows eligible for Widow's Bereavement Allowance. (As noted in chapter one, the Ombudsman accepted a representative case from those complaints for investigation, but suspended the investigation once it became clear that relevant issues were to be considered by the courts.)

4.2 The complaints put to the Ombudsman always include ones of delay. In one case reported this year, the Revenue took an extraordinarily long time to deal with an admittedly complex capital gains tax matter. Following the Ombudsman's intervention the Revenue recognised that some five and a half years' delay was unjustified. They apologised; waived some £42,000 of interest; and offered to make a consolatory payment and meet reasonable costs arising from their mishandling (C788/01).

4.3 Other types of complaint are more specific to the Revenue - among those that the Ombudsman dealt with this year were

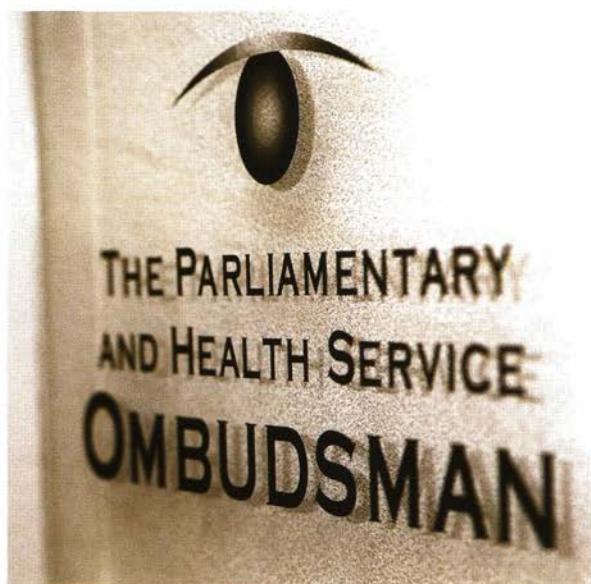
some in which the complaints were about the impact of the Revenue's actions on agents and other third parties. The Ombudsman did not find all of those complaints to be fully justified. In some there was only modest or partial fault by the Revenue; but in others the Revenue's mishandling led directly to trouble and costs for those concerned.

C980/02

Inland Revenue: mishandling led to additional costs for an accountant

A certified accountant told the Revenue that his firm was relocating. The Revenue updated some of their records for his clients' tax records accordingly, but they omitted to tell him that the records for those of his clients who were employers would need to be updated by individual tax offices. When the accountant told the Revenue that some of their communications were going astray, they endeavoured to put the matter right; but a mismatch of two of their computer systems gave only partial success. When some of the accountant's clients received penalty warning notices, even though their end-of-year returns had been correctly submitted, he was understandably frustrated, the more so when the Revenue's letter of apology showed an incorrect address.

Following the Ombudsman's intervention, the Revenue agreed that they had put the accountant to extra work which he could not reasonably charge out to his clients. They understood his exasperation at their failure in what should have been a simple matter, and agreed to meet his additional costs in full.



C1400/01

Inland Revenue: mishandling by NICO of excess rebates

A substantial 'age-related' rebate had been paid by NICO into a company pension scheme - it was then allocated to individual members. The scheme administrators pointed out to NICO that the rebate was excessive, but that an automatic recovery would complicate matters further. That, however, went ahead causing considerable costs to the administrators through no fault of their own, and the possibility of losses for members.

Very promptly, once the Ombudsman had intervened, the Revenue gave an unequivocal apology; agreed to deal with any losses which might arise for the members; and said they would meet the additional cost incurred by the administrators.

4.4 Once again, complaints about investigations by the Revenue have been

among those taken up by the Ombudsman. The Revenue's Special Compliance Office (SCO) deals with some of the Revenue's most substantial investigations, including those where there is a suspicion of fraud. Inevitably, such cases will be particularly stressful for the subject and may cause him or her to spend money on professional advice even when the Revenue are satisfied, after enquiry, that not all of their concerns have substance.

C476/01

Inland Revenue: handling of an investigation case worked as a prosecution case

In 1994 Mr X's local tax office opened an investigation into his family business. Later that year the investigation was taken over by SCO, who decided to work the case with a view to criminal prosecution; they declined to interview Mr X otherwise than under caution. It was not until 1999 that the substantive matters were heard by the court. The Revenue's case was dismissed because of the delay. SCO then negotiated a civil settlement with Mr X which, he complained, demonstrated that matters were much less serious than SCO had contended.

The Ombudsman said it was not for him to question the decision to prosecute or the subsequent legal process. He found some administrative fault in SCO's working of the case, some avoidable delay that was their responsibility, but no significant mishandling or misconceived approach. The Ombudsman found that the local tax office had not been at fault in opening the investigation. Their broad approach had not contravened Revenue guidance as it then stood; but that

guidance in part had been at odds with the Revenue's relevant code of practice. The mismatch was regrettable and may have contributed to the difficulties of the case. The Revenue apologised, and agreed to make an ex gratia payment of £2,000 to reflect their fault and mishandling.

4.5 During the year the Revenue extensively revised their long-standing code of practice on how they handle complaints: "Mistakes by the Inland Revenue Code of Practice 1". Unlike the Adjudicator, the Ombudsman is not constrained by what the Revenue say in their code of practice and associated guidance; he nevertheless welcomed the revision and the opportunity it provides for the Revenue to take a more flexible approach.

Valuation Office Agency (VOA)

4.6 Many of the complaints put to the Ombudsman about VOA are essentially disputes about council tax banding or the valuation of property. It is not for the Ombudsman to intervene in such matters, which are for the appeal tribunals. But VOA's administrative actions can cause problems. In one case, Mr B complained that VOA had delayed for 19 months in rebanding his property for council tax purposes; and that that had led to the unnecessary accumulation of a debt of some £387. He was given no satisfactory explanation for the delay; and his request for a compensatory payment was refused. After the Ombudsman had intervened, VOA acknowledged that they had failed to deal with the rebanding of Mr B's property timeously, and could not explain their delay. They gave a full apology, and

offered an ex gratia payment for what they acknowledged to be a justified complaint (C452/02).

HM Customs and Excise

4.7 During the year the Ombudsman received 42 complaints against Customs - a clear increase on the previous year's 24 complaints. Some of that increase related to complaints from travellers about Customs' action against suspected tobacco 'bootleggers'. Travellers who fall foul of the guidelines for bringing tobacco into the UK for personal use are particularly aggrieved when their private vehicles are seized along with the goods. Travellers are entitled to ask Customs to review their decision. If Customs stand by their refusal to restore the vehicle, an appeal to the VAT and Duties Tribunal is the next resort: it is not for the Ombudsman to intervene in that process. However, the Ombudsman has been concerned that travellers should have clear information, and also that Customs should take humanitarian considerations into account when a vehicle is seized. Following an investigation (C1488/01), Customs said that a £7 million publicity campaign was underway to explain to travellers the penalties faced by smugglers; and that Customs have revised their practice in respect of travellers who find that they do not have the means to complete their journey home.

4.8 During the year Customs, like the Revenue, revised their code of practice on mistakes (Complaints and putting things right: our code of practice: Notice 1000). The revision is intended to make Customs' approach more easily understood.

The Ombudsman welcomes that, but recognises that there will always be cases that present difficulties when redress for departmental fault is at issue.

C658/01

Customs and Excise: mishandling of an investigation into a company's imports of fertiliser

Mr E was managing director of a company which imported fertiliser. Customs queried two import entries which showed potash imported from country M. (Anti-dumping duty may apply on the import of certain products - including potash - from certain places of origin.) Mr E told Customs the entries should have shown blended fertiliser (rather than potash) from Country C. Customs searched the company's premises, taking a sample of a fertiliser product. They then sought to interview Mr E under caution; he was suspended from his post with the company. Customs issued the company with substantial demands for anti-dumping duty; and the company ceased trading. But before that cessation, Customs said there would be no criminal proceedings against Mr E; and that the anti-dumping demands would be replaced with a much lower bill for import duty.

The Ombudsman found that Customs had failed to establish definitively at the earliest opportunity whether the imports fell to be treated as 'potash' or 'blended fertiliser' and, crucially in this case, to recognise the distinction between legal avoidance of anti-dumping duty and fraudulent evasion. Mr E's position had been affected by Customs' mishandling. Following the Ombudsman's intervention,

Customs offered apologies and an ex gratia payment of £5,000.

Other departments

4.9 June 2001 saw a massive reorganisation across Whitehall. A number of new Departments were set up; and responsibilities for several issues were transferred. This inevitably caused some initial confusion for complainants and investigators alike in identifying to which bodies certain complaints should be addressed. It also makes statistical comparisons with previous years more difficult - and in some cases impossible.

4.10 Another significant effect of the reorganisation was changes in the departmental teams handling complaints work. This has meant that the Ombudsman's staff have had to put some effort into re-educating departments about the office's work and products - in particular, the value of early resolution, and improving understanding of the Ombudsman's approach to matters of redress. Besides some helpful liaison meetings with bodies including the Immigration and Nationality Directorate of the Home Office (IND), the Department of the Environment, Food and Rural Affairs (DEFRA), the Criminal Injuries Compensation Authority, the Court Service, the Legal Services Commission and the Prison Service, staff have been taking part in an increasing number of training sessions within departments, particularly for staff with responsibility for complaints handling. These have proved to be mutually beneficial in improving understanding and co-operation.

4.11 The reporting year also saw the office receive its first complaints against a number of bodies, including the Horse Race Betting Levy Board; the British National Space Centre; the Human Fertilisation and Embryology Authority; and the Disability Rights Commission. The complaints relating to the first two bodies were largely outside the Ombudsman's jurisdiction and served to demonstrate the difficulties there can be for the public in separating policy matters, which fall outside his remit, from the administration of those policies. The complaints relating to the latter two bodies, however, did fall within his remit and were accepted for statutory investigation.

4.12 The first (C431/01) involved a complaint about the Human Fertilisation and Embryology Authority's handling of a request that they should review their policy not to allow fertility treatment centres to use pre-implantation genetic diagnosis to select the sex of embryos for social reasons. The Ombudsman criticised the Authority for having failed to consider their position more thoroughly at the outset, and for giving undertakings from which on further reflection they found it necessary to retreat. The Chief Executive offered her apologies for having unnecessarily (albeit in good faith) raised expectations which were later disappointed.

4.13 The complaint against the Disability Rights Commission (C869/01) was wide-ranging, and interestingly - given the reason for which the Commission was established - included the contention that they themselves had contravened the Disability Discrimination Act 1995 by failing to make a reasonable adjustment for the complainant's

disability in their handling of her case. The Ombudsman did not uphold any of the main aspects of the woman's complaint; on the contrary, he found that the Commission had handled her affairs with commendable diligence and patience, despite her unreasonable demands and expectations.

Employment Service

Actions of contractors working for departments

4.14 Although departments regularly contract with external providers to deliver services, the statutory responsibility for the service delivered remains with the central department. One Employment Service case (C975/01) investigated this year highlighted the importance of maintaining effective management and monitoring of contracts. In this case, a man complained that company Q, acting under contract with the Employment Service, failed to inform him of his entitlement to claim travelling expenses while participating in a work link placement under the New Deal 25 Plus Pilot Programme. The Ombudsman found that, owing to the pilot nature of the programme, procedures were not clearly laid out, which had resulted in administrative failings and the loss of key papers covering the man's time on the programme. He also criticised the Employment Service's failure to retain papers and to monitor administrative processes. The Employment Service assured the Ombudsman that they had since improved the management and monitoring of contracts; and that the lessons learned from the pilot programmes had influenced the current development of the New Deal 25 Plus Programme. They apologised and

offered to pay a proportion of the man's expenses (a payment of £537).

Department of Trade and Industry (DTI)

4.15 Four identical complaints were received contending that DTI had sent former employees of an organisation misleading information, which caused significant delay to the employment tribunal process. As a result, the tribunal could not order the Redundancy Insurance Fund to pay compensation to many former employees for holiday pay relating to early 1998, because by then it fell outside the 12 month period set by the Employment Rights Act. Following the Ombudsman's preliminary enquiries in respect of one of the complaints (C818/02), DTI agreed to pay ex gratia compensation to cover the loss of holiday pay. As a result, some 42 former employees received payments totalling £9,219.

Court Service

4.16 There were seven Court Service complaints reported on this year, one of which featured the actions of bailiffs (C705/01). A man complained about the bailiffs' conduct when they had called at his premises in order to execute a warrant. He alleged that their actions, which had included calling the police, had been inappropriate and excessive. The Ombudsman did not uphold that complaint, but criticised the Court Service's handling of the man's complaint to them. In the main, however, the Ombudsman tends to receive more complaints that inaction by bailiffs has led to complainants being unable to recover

the judgment debts due to them. There are problems with such cases because of the difficulty of assessing what would have happened if the bailiffs had not delayed taking action. Most complainants claim they would have received the full sum owing to them; but in practice that is often far from clear. In one such case, in which it appeared the Ombudsman's intervention would not help, a woman was unable to provide any real evidence that the debt would have been collected if there had been no delay (C1421/02). That case however, also raised an interesting point - namely, that when offering complainants an ex gratia payment to compensate the effects of maladministration, the Court Service required them to say that they accepted the payment "in full and final settlement". The Ombudsman's view was that this was wrong, as it could be regarded as a way of forcing complainants to choose between accepting an immediate payment, of which they might well be in some need, and asking a Member to refer their case if they regarded the offer as inadequate. Following further discussions, the Court Service accepted that the statement needed to be amended to make it clear that that was not the intention; and they have changed it. The Ombudsman very much welcomed the Court Service's co-operation in this matter.

Legal Services Commission

4.17 A total of 74 cases were referred this year, of which a higher proportion than for other bodies had to be resolved by statutory investigation. As in previous years, there were complaints about the award of legal aid to opponents in legal proceedings, when



Peter Barratt, Personnel Manager, receiving the Disability Symbol award from Richard Stilgoe

people felt that their representations on their opponent's financial eligibility to receive legal aid had not been properly investigated. In one case, the Ombudsman found that the efforts made by the regional office to look into the complainant's concerns had fallen below an acceptable standard of investigation (C985/99). However, he also found that it was unlikely, even in the absence of maladministration, that investigation of the representations would have been completed before the legal action concluded; and that even if the opponent's certificate had been revoked rather than discharged, the financial consequences for the complainant would probably have been the same. The Ombudsman welcomed the Chief Executive's apologies and the offer of a £500 consolatory payment in recognition of the effort the woman had expended and the worry and inconvenience to which she had been put.

4.18 Other complaints related to the mishandling of the statutory charge placed on a legally aided complainant's property. In one case (C264/01), a woman complained that the Commission's predecessor, the Legal Aid Board, had sent her over a period of two years many conflicting statements of the amount outstanding; and that they had failed to give her adequate redress for the problems she had encountered. The Ombudsman found that there had been a catalogue of errors by the Board. They had made mistakes, some of them persistent, about the dates and periods over which interest should be charged on the debt to the legal aid fund, and how to treat a refund on one element of that. They had also made mistakes about the amount of equity available to be charged and the amount of the payments the woman had made towards her debt, and a series of other errors. As a result, they had given her a confusing series of statements, often varying widely. None of them was right: even the last statement, on the basis of which she redeemed the charge, was slightly wrong, though the mistake was in her favour. The Chief Executive of the Legal Services Commission offered the woman further apologies, together with an ex gratia payment to meet her lost earnings for an afternoon she had had to take off work to visit a Citizen's Advice Bureau to obtain advice, plus £100 for the distress and inconvenience caused to her.

4.19 That case, together with others, revealed a disturbing problem relating to the Legal Services Commission's computer system for calculating statutory charge accounts, which meant that incorrect information was provided to complainants as to the amount outstanding on the charge on their property.

Despite assurances from the Commission in November 2001 that the faulty automated statements were no longer being issued and that manual calculations were being provided on request, the Ombudsman continued to receive complaints which suggested that the problem had not been resolved. He subsequently discovered that, although it was true that automated annual statements had ceased to be issued, faulty automatic statements were still being triggered each time payments on account were made. That is clearly not acceptable; and the Ombudsman will be discussing the matter further with the Commission.

Department of the Environment, Food and Rural Affairs

4.20 As usual, the Ombudsman received a number of complaints relating to European Union subsidies. In several it was clear that complainants wrongly believed that he could override European legislation relating to the general rules and, more specifically, the penalties which are imposed on those who - often by oversight - have claimed a higher rate of subsidy than is their due. That is not within the Ombudsman's powers, no matter how harsh the penalties may appear in an individual case. Perhaps surprisingly, until toward the end of the year the Ombudsman received only a very few cases relating to foot and mouth disease, and in none of those was he able usefully to intervene. There was, however, a sudden surge towards the end of the reporting year; and well over a hundred complaints were received within one week. By the end of the year some 150 cases had been referred. It seems likely that such cases

will have a noticeable impact on the office's work in 2002-03.

4.21 A more unusual case (C1002/01) concerned a complaint about the new Pet Travel Scheme. A man complained that the then Ministry of Agriculture, Fisheries and Food (MAFF), now the Department for the Environment, Food and Rural Affairs, failed to implement the pilot scheme properly; and that as a result he was required to place his pet dog into quarantine unnecessarily. The Ombudsman's investigation revealed that the Spanish authorities, and not MAFF, had been responsible for the lack of official health certification in Spain immediately before the Pet Travel Scheme came into effect. However, the Ombudsman said he was disappointed that MAFF had not done more to ensure that they were aware of the Spanish authorities' intentions in relation to the production and issue of certificates. Had they made relevant enquiries, although that might not have made certificates more readily available in Spain, MAFF would have been better able to advise the man of the facts so that he could have made a better informed decision about when to travel.

Department for Transport, Local Government and the Regions (formerly Department of the Environment, Transport and the Regions)

4.22 The Ombudsman received a wide variety of complaints this year and issued six statutory reports. In one case (C1533/01), the Driver and Vehicle Licensing Agency (DVLA) refused to issue a refugee with a



The Thai Ombudsman and members of his staff with Alan Watson, the Deputy Parliamentary Ombudsman

replacement driving licence on the grounds that the documents he had submitted as evidence of his identity were not acceptable for that purpose. As a result, the man claimed to have lost £62 a week in earnings as a taxi driver, and incurred a fine for failing to produce a driving licence. The Ombudsman found that DVLA had been obliged to deal with the man's application for a replacement driving licence against a background of complex and developing policy regarding acceptable evidence of identity. However, their failure to clarify earlier the status of expired travel documents had meant that the man had had to wait several months longer than he should have done to receive a photo-card licence. DVLA apologised for the inconvenience caused, and offered to reimburse the resulting costs.

4.23 A complaint against the Planning Inspectorate, which was resolved without a statutory investigation, arose when they

refused to withhold a woman's name and address on the grounds of openness from any submissions which she put forward for the hearing of a planning appeal against the proposed closure of a local footpath (C362/02). The woman was concerned that her submission contained details of her daily movements, and that inclusion of her name and address would breach her right to privacy and security. Following the Ombudsman's enquiries, the Inspectorate accepted that her request was not unreasonable.

Home Office: Immigration and Nationality Directorate (IND)

4.24 There was an increase in the number of complaints received against IND this year (92 in 2001-02 as against 64 last year) although the Ombudsman was able to resolve most of them by enquiries without a statutory investigation. As in previous years, by far the most common theme was delay, especially in dealing with applications for asylum and for leave to remain as a spouse. Disappointingly, a number of other themes recurred. For example, some complaints again had their origins in the upheaval caused by the reorganisation which took place in December 1998. The Ombudsman also again received cases in which asylum was refused on the grounds that statements of evidence had not been returned in time, whereas they had been returned, but IND had failed to record that on their computer system or to link the papers to the file. As this was clearly a recurring problem, IND agreed to undertake a thorough review of procedures. The Ombudsman will be monitoring

complaints carefully to see if the review has solved the problem.

4.25 Once again, loss of papers and documents, including passports, mislaying of files, and failure to reply to correspondence from legal representatives have also been common grounds for complaint. The Ombudsman upheld one complaint that delay in dealing with an application for leave to remain in the United Kingdom had resulted in the complainant being unable to take up the employment she had been offered (C1232/01). IND apologised for the mishandling of the woman's application and offered her an ex gratia payment of £4,725 for loss of earnings. The Permanent Secretary also assured the Ombudsman that IND had taken steps to improve their service, in particular in clearing backlogs, tracing passports and making sure that staff linked papers to the correct files promptly.

4.26 Perhaps the most significant outcome achieved for a complainant was when IND offered an ex gratia payment of £1,000 to reflect the complainant's loss of entitlement to full-rate income support for a period of over three years during which his asylum application was unreasonably delayed (C1472/00). Although IND did not accept in principle that an ex gratia payment should be linked to any particular level of benefit, they said that they would be prepared to consider whether financial redress was warranted in individual cases. On that basis, they were prepared to offer the complainant in this case £1,000. This was the first time that IND had agreed to recognise the effect of their delays on benefit entitlement.

Foreign and Commonwealth Office (FCO)

4.27 The Ombudsman generally receives few complaints about the FCO, mostly about the actions and attitudes of entry clearance officers in Embassies and High Commissions around the world. This year repeated that pattern; most cases did not require investigation. The Ombudsman reported on only two investigations. In one, he did not uphold a complaint from a man that the FCO had mishandled his application for a loan, which they had offered exceptionally to cover the costs of his brother's repatriation from Thailand after he had been severely injured in a traffic accident (C614/01). Other complaints, resolved through enquiries, raised various issues, such as the level of assistance available for someone robbed in Spain (C1599/01), and lack of adequate information and support for a woman whose son was murdered in Holland (C294/02). In the last case, the complainant's main wish was that something could be done to prevent another family experiencing the same difficulties with the FCO that she herself had experienced. It was therefore pleasing to note that, following the Ombudsman's intervention, the FCO took positive action and changed their procedures to help prevent a similar occurrence in the future.

Land Registry

4.28 As in other years, the Ombudsman received a relatively small number of

complaints (14) about the Land Registry. In one of them (C1379/01), Mr N and Mr U complained that the Registry had erroneously registered title to a plot of land comprising a 'gidel' (a passageway) running down to a river near their homes in Wales, following which public access was inhibited. Although the issues of title and rights are not for the Ombudsman but ultimately for the courts, the Ombudsman was critical of aspects of how the Registry had reached their decision. However, he was pleased that the Chief Land Registrar had apologised to the complainants for the shortcomings and provided a way forward by funding legal research, to be commissioned by the complainants, into their own rights or claims (if any) in respect of the gidel.



Access to official information

5.1 During the year the Ombudsman received 34 complaints that information had been wrongly withheld under the Code of Practice on Access to Government Information (the Code). This shows a slight reduction from 2000-01. In addition, as well as dealing with many enquiries (both written and over the telephone) about information issues, the Ombudsman commented on the information element of 79 maladministration cases submitted to him for consideration. The Ombudsman issued 20 statutory investigation reports and, for the first time, published a special report on the results of a single investigation under the Code.

Freedom of Information

5.2 As noted in the opening chapter of this report, the Government announced in November 2001 their intention to delay until January 2005 the bringing into force of those sections of the Freedom of Information Act 2000 which give a statutory right of individual access to information held by public bodies. Other things being equal, this means that until then the Code will remain in place and the Ombudsman will continue to investigate complaints that information has been incorrectly refused under it. The Ombudsman was pleased to be invited to be represented on the advisory group set up by the Lord Chancellor to consider how best to prepare bodies covered by the Act for full implementation, and to introduce a culture of greater openness. The Ombudsman has also maintained contact with the Information Commissioner on matters of mutual interest and, more generally, has tried to ensure that the expertise gained by his Office in dealing with information complaints is made more widely available. As part of this process he has continued to publish, both in hard copy and on the internet, anonymised versions of

all his Code investigations. The Ombudsman is also taking steps to prepare for his own office a publication scheme of the kind required by the Act; good progress is being made on this.

Investigation difficulties

5.3 This has been a frustrating year for the Ombudsman in policing the Code. For the first time since the Code came into operation in 1994, a department refused to accept a recommendation by the Ombudsman that information should be released. The investigation (A28/01) involved a request to the Home Office to be told the number of times Ministers in that Department had made a declaration of interest under the Ministerial Code of Conduct. The Home Office refused to provide the information, and cited Exemption 2 ('internal discussion and advice') and Exemption 12 ('privacy of an individual') in support. The Ombudsman found that neither of those exemptions applied, and recommended release of the information. The Home Office refused. A full account of the case can be found in HC 353, published by the Stationery Office on 13 November 2001. While recognising that departments have a right to disagree with his recommendations, the Ombudsman was disappointed with the Home Office's response. This was particularly so as, the Ombudsman had made it clear in his report, that he might have come to a different conclusion had the complainant sought to know the **details** of any such declarations. A refusal to act in accordance with an Ombudsman's recommendation undermines not only the Code but also his independent role in investigating complaints under it, particularly if such a refusal is the result of considerations which may not be relevant to the Code itself.

5.4 A second concern has been delay by departments involved in Code investigations. There are at least two occasions in an Ombudsman's investigation when responses are required from departments. The first is when the statement of complaint, which sets out the basis of the investigation, is sent to departments for their comments. Departments are usually allowed three weeks to respond to this, and to provide any relevant papers (in particular, the information that forms the subject of the complaint). The second is when the Ombudsman sends the department a copy of his draft report; again, departments are usually given three weeks to reply. The Ombudsman has faced difficulty this year in both areas. In case A33/01 (which involved a request for information relating to the Hinduja brothers and their applications for passports, aspects of which formed the subject of separate investigations by Sir Anthony Hammond QC), he issued his statement of complaint to the Home Office on 21 March 2001. Although he was able to examine some of the papers in this case relatively quickly, others were not provided to him because of a failure on the part of the Cabinet Office to respond, through the Home Office, to his request for a contact point for provision of their papers. Despite frequent letters and telephone calls, it was not until the Ombudsman wrote to the Home Office on 7 November, threatening to discontinue his investigation as a result of a lack of co-operation from both departments that, in December 2001, **nine months** later, papers were finally made available. In case A28/01 (see previous paragraph), the Ombudsman issued his draft report, again to the Home Office, on 20 March 2001. A response was not received until 19 October, a period of **seven months**, again despite

regular prompting. The Home Office said that the delay in this case was caused by the need to consult other departments and the Prime Minister.

5.5 Such delays are completely unacceptable. The Ombudsman recognises that many of the cases he investigates under the Code involve sensitive material and difficult decisions; and that, inevitably, departments may not always welcome his conclusions. But he has become increasingly concerned at the difficulties being placed in his way in conducting some of his investigations, with consequences not only for the office's target times for the completion of investigations but, more importantly, for the complainant, who has to wait much longer for an answer than should be necessary even in the most finely-balanced of cases. In particular, it has become apparent that in some cases departments are resisting the release of information not because they have a strong case under the Code for doing so but because to release the information could cause them embarrassment or political inconvenience.

5.6 A further continuing difficulty, which has also significantly increased throughput times, is one to which the Ombudsman drew attention in last year's report (see para 5.7 of Annual Report 2000-01, HC 5). This is the late citation of statutory restrictions and exemptions under the Code. In one case, it was not until the issuing of the Ombudsman's draft report that the Valuation Office Agency drew attention to the existence of a statutory prohibition on the release of information which the Ombudsman had recommended should be made available to the complainant (A4/01). A statutory prohibition, if absolute, will always

take priority over the non-statutory Code: the Ombudsman therefore had no option but to amend substantial parts of his report. In another case, it was again not until the issuing of the Ombudsman's draft report, that HM Treasury decided to cite a further exemption in addition to the two they had already applied to the information sought (A6/02). Such an approach tends to reflect an underlying determination not to release the information requested in any circumstances. It is, however, clearly good practice that the department's full case against disclosure should not only be put to the Ombudsman at the earliest opportunity but should be drawn to the complainant's attention when the request is initially refused. This is particularly so if the department's case involves a statutory bar to its release. In both of these cases (which are not unique) the Ombudsman's investigation took much longer than it should have done as a result of these belated developments.

Success stories and current themes

5.7 However, among the frustrations there have been successes. In case A13/02 (reported in Access to Official Information - Investigations Completed July 2001 - January 2002 HC585) the Department of Health were asked to provide copies of all the responses to a consultation exercise to do with the physical punishment of children other than those responses in which the respondent had explicitly requested confidentiality. The Department had initially refused to provide this information, citing Exemptions 10 ('prematurity of publication') and 14 ('information given in confidence'). However, after having published their analysis of the responses, they agreed to

make them all available (other than those for which confidentiality had been sought) by publication on the internet. The Ombudsman regarded this as a positive outcome, as well as a recognition of the way in which many people now routinely access information. Several cases involved, either in whole or in part, requests for the release of minutes of official meetings. In A31/01 (reference as above) the Driving Standards Agency agreed to release the minutes of a meeting held to discuss research findings into the approved driving instructor industry. In A30/01 (reference as above), however, the Ombudsman supported the Department for Transport, Local Government and the Regions in their refusal to release minutes of meetings of the Building Regulations Advisory Committee. Requests for minutes of meetings usually involve consideration of Exemption 2 ('internal discussion and advice'). In deciding whether or not this exemption has been applied correctly, aspects the Ombudsman will probably need to take into account include: was there an understanding that the meeting was held in confidence; how much of the information sought is already in the public domain; and, in particular, what is the balance between the public interest in knowing the information and the harm (if any) that might be caused by its disclosure?

Exemption 9 (Voluminous and vexatious requests)

5.8 Exemption 9 remains one of the most difficult exemptions to apply. It is clearly a matter of judgement as to whether requests from a particular complainant can be said to be voluminous or vexatious. Such judgements are made more difficult by the fact that the complainants, perhaps

understandably, almost never perceive them as either. In A9/02 (reported in *Access to Official Information - Investigations Completed February - April 2002*, HC844 published in May 2002), the Ombudsman took the view that a complainant against the Legal Services Commission, whose correspondence took up 25 files and who, between January and June 2001, had sent the Commission over 400 e-mails, many of which were lengthy and sought information about a range of different subjects, fell into this category. The Ombudsman noted that the Commission, while doing what they could to respond to this correspondence, had nevertheless failed in a number of cases to meet Code targets for dealing with information requests. However, he also noted that the Commission had repeatedly asked Mr X to limit the number of his requests and to define them more narrowly. From the papers examined, there was little evidence to suggest that Mr X had found himself able to comply with either of these requests.

5.9 Although each case will need to be dealt with on its individual merits, the Ombudsman recognises that sometimes departments will have done all that can reasonably be expected of them in responding to requests for information, and that there is an equal responsibility upon those who make requests to ensure that they do not make excessive demands upon departments.

Familiarity with the Code

5.10 The Ombudsman has also noted a growing familiarity with the requirements of the Code among departments with which he deals. This is particularly so with central Government departments, which often have

a dedicated unit through which all Code requests and complaints are channelled. However, it is not so universally, particularly in executive agencies or non-departmental public bodies whose experience of the Code is very limited, and in departments with widely diffused workforces: here, understanding can be very patchy indeed. Since the Code now has an expected life of at least another three years, it is the Ombudsman's view that it would now be appropriate for the Lord Chancellor's Department to issue further guidance to bodies covered by the Code as to its requirements (the Code and the related guidance issued by the Cabinet Office were last revised in 1997). This should have the longer-term benefit of making departments consider the not dissimilar requirements of the Freedom of Information Act. Indeed, given the continuation of the Code, now may also be a good moment to generate more general publicity, as it is clear that awareness of the Code, beyond Whitehall and those with a particular interest in information issues, remains largely non-existent.

Investigation timescales

5.11 For the reasons outlined earlier in this chapter, throughput times for investigations have been much higher this year: the average completion time for a Code investigation has risen from 23 to 33 weeks. This is a serious disappointment; but it has been almost entirely due to the sensitivity of some of the cases handled, the unwillingness of departments to accept the Ombudsman's recommendations, and the introduction of new lines of argument at the very last minute. Dealing with these difficulties has diverted effort from the more straightforward cases, which have themselves taken longer to complete as a result. The

Ombudsman considers that an average throughput time for Code investigations of 20 - 23 weeks is an achievable target but one

that is unlikely to be easily reached in the present climate. He will, though, do all that he can to reach it.

Figure 8

Access to official information complaints 2001-02

Bodies complained about	Work in progress at 1-4-01	New cases opened	Total casework	Outcome						Statutory Investigations (Outcome 5)			Work in progress at 31-3-02
				D1	D2	D3A	D3B	D4	D5	Justified	Partly justified	Not justified	
Biotechnology and Biological Sciences Research Council	1	1	2	0	0	1	0	0	1	1	0	0	0
Cabinet Office	0	1	1	0	0	0	1	0	0	-	-	-	0
Department of Culture, Media and Sport	0	1	1	0	0	0	1	0	0	-	-	-	0
HM Customs and Excise	1	0	1	0	0	0	0	0	1	0	1	0	0
Ministry of Defence	0	3	3	0	1	0	0	0	0	-	-	-	2
Disability Rights Commission	0	1	1	0	0	0	0	0	0	-	-	-	1
Economic and Social Research Council	0	1	1	0	0	0	0	0	1	0	0	1	0
Department for Education and Skills	0	1	1	0	1	0	0	0	0	-	-	-	0
Department of the Environment, Food and Rural Affairs	1	1	2	0	1	1	0	0	0	-	-	-	0
Department of Health	1	2	3	0	0	0	0	0	3	2	0	1	0
Higher Education Funding Council for England	0	1	1	0	0	0	0	0	0	-	-	-	1
Home Office	2	2	4	0	0	0	0	0	4	2	1	1	0
Inland Revenue	1	2	3	0	0	0	0	0	2	0	1	1	1
Department for International Development	0	1	1	0	0	0	0	0	1	0	1	0	0
HM Land Registry	0	1	1	0	0	0	1	0	0	-	-	-	0
Legal Services Commission	1	2	3	0	0	0	1	0	2	0	0	2	0
Lord Chancellor's Department	0	3	3	0	2	0	0	0	0	-	-	-	1
Department of Trade and Industry	1	1	2	0	0	1	0	0	1	0	1	0	0
Department for Transport, Local Government and the Regions	2	4	6	0	0	0	0	0	3	1	2	0	3
HM Treasury	0	3	3	0	1	0	0	0	1	0	1	0	1
Department for Work and Pensions	0	2	2	0	1	0	0	0	0	-	-	-	1
Total	11	34	45	0	7	3	4	0	20	6	8	6	11

One case in this table concerned a complaint about both maladministration and a refusal of access to official information.

Analysis of complaints by department or public body

Bodies complained about ¹	Work in progress at 1-4-01					Caseload					Outcome					Statutory Investigations (Outcome 5)	Work in progress at 31-3-02
	New cases opened	Total casework	1	2	3A	3B	4	5	Justified	Partly justified	Not justified						
Ministry of Agriculture, Fisheries and Food*	11	4	15	0	2	2	8	0	2	0	2	1	0	0	0	2	1
Arts Council for England	0	2	2	0	1	0	1	0	0	0	0	0	0	0	0	0	0
United Kingdom Atomic Energy Authority	1	0	1	0	1	0	0	0	0	0	0	0	0	0	0	0	0
British National Space Centre	0	1	1	0	1	0	0	0	0	0	0	0	0	0	0	0	0
Cabinet Office	0	5	5	2	0	1	1	0	1	0	1	0	0	0	1	0	0
Central Council for Education and Training in Social Work	0	2	2	0	1	0	1	0	0	0	0	0	0	0	0	0	0
Central Office of Information	0	1	1	0	0	1	0	0	0	0	0	0	0	0	0	0	0
Charity Commission	4	5	9	0	5	0	1	1	1	1	1	0	0	0	0	0	1
Children and Family Court Advisory and Support Service	0	3	3	0	1	0	1	0	0	0	0	0	0	0	0	0	1
Civil Aviation Authority	1	1	2	0	1	0	1	0	0	0	0	0	0	0	0	0	0
Coal Authority	1	2	3	0	1	0	1	0	0	0	0	0	0	0	0	0	1
Commission for Racial Equality	0	5	5	0	2	0	2	0	0	0	0	0	0	0	0	0	1
H M Customs and Excise	8	42	50	0	28	1	6	0	5	3	1	1	10	0	0	0	0
Department of Culture, Media and Sport	0	1	1	0	1	0	0	0	0	0	0	0	0	0	0	0	0
Criminal Injuries Compensation Authority	1	16	17	0	6	3	3	0	2	2	0	0	3	0	0	0	0
Crown Estate Office	0	1	1	0	0	0	1	0	0	0	0	0	0	0	0	0	0
Ministry of Defence	0	31	31	13	5	1	8	0	0	0	0	0	0	0	0	0	4
Disability Rights Commission	1	3	4	0	1	0	2	0	1	0	0	1	0	0	0	1	0
Economic and Social Research Council	0	1	1	0	0	1	0	0	0	0	0	0	0	0	0	0	0
Department for Education and Employment*	15	14	29	0	4	5	8	0	8	2	2	4	4	0	0	0	0
Department for Education and Skills	0	31	31	0	18	1	6	0	0	0	0	0	6	0	0	0	0
Engineering & Physical Science Research Council	0	1	1	0	1	0	0	0	0	0	0	0	0	0	0	0	0
English Nature	0	1	1	0	0	0	1	0	0	0	0	0	0	0	0	0	0
English Partnership	0	1	1	0	0	0	1	0	0	0	0	0	0	0	0	0	0
Environment Agency	3	10	13	0	3	0	7	0	1	1	0	0	2	0	0	0	0
Department of the Environment, Food and Rural Affairs	2	177	179	0	14	5	15	0	2	1	1	0	143	0	0	0	0
Department of the Environment, Transport and the Regions ³	12	26	38	0	16	5	10	0	6	2	3	1	1	0	0	0	0
Office of Fair Trading	0	1	1	0	1	0	0	0	0	0	0	0	0	0	0	0	0
Food Standards Agency	1	2	3	0	2	0	0	0	1	0	1	0	0	0	0	0	0
Foreign and Commonwealth Office	3	12	15	0	7	2	4	0	2	0	1	1	0	0	0	0	0
Forestry Commission	0	2	2	0	1	1	0	0	0	0	0	0	0	0	0	0	0
Further Education Funding Council for England ⁴	2	0	2	0	0	1	0	0	1	0	1	0	0	0	1	0	0

Publications

Parliamentary Ombudsman

Business Plan 2002 - available on request: see address on inside back cover.

Session 2001-02

First Report: Annual Report for 2000/2001, July 2001, HC 5

Second Report: Investigations Completed October 2000 - March 2001, June 2001, HC 6

Third Report: Access to Official Information - Investigations Completed January - June 2001, July 2001, HC 160

Fourth Report: Access to Official Information - Declarations Made Under the Ministerial Code of Conduct, November 2001, HC 353

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Select Committee on Public Administration - Reports concerning the Parliamentary Ombudsman

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First Report: Government Response to the 5th Report from the Select Committee on Public Administration on Inherited SERPS, February 2001. HC 264

The Parliamentary Ombudsman

What he does and how to contact him

The Parliamentary Ombudsman deals with complaints from members of the public that they have suffered injustice because of maladministration by government departments and agencies, and other named public bodies. Examples of maladministration include:

- avoidable delay;
- faulty procedures or failing to follow correct procedures;
- neglecting to inform a complainant of his or her rights of appeal;
- unfairness, bias or prejudice;
- misleading or inadequate advice;
- refusal to answer reasonable questions;
- discourtesy or failure to apologise for errors;
- not offering an adequate remedy where one is due.

He also investigates complaints about the operation of the Code of Practice on Access to Government Information. The present holder of the post is Sir Michael Buckley. His service is:

- completely independent

The Ombudsman is not a civil servant. He is appointed by the Crown and is responsible to Parliament, reporting to the Select Committee on Public Administration.

- confidential
- free of charge.

Complaints must be referred to him by a Member of Parliament. If he decides that a case warrants full investigation, he has right of access to all documents concerned.

He may investigate only complaints which are not about:

- matters which carry a right appeal to a tribunal or court of law (although there are exceptions);
- personnel, commercial or contractual matters;
- a body outside his jurisdiction; for example, he may not investigate complaints against local authorities, the police, or commercial companies;
- the law as it stands, or about the merits of discretionary decisions taken without maladministration.

For further information and an explanatory leaflet please contact:

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Office of the Parliamentary Ombudsman
Millbank Tower
London SW1P 4QP

Telephone: 0845 015 4033

Text Phone: 020 7217 4066

E-mail: OPCA.Enquiries@ombudsman.gsi.gov.uk

Website: <http://www.ombudsman.org.uk>

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