Treasury Committee

Oral evidence: The work of the Adjudicator's Office, HC 2083

Tuesday 26 March 2019

Ordered by the House of Commons to be published on 26 March 2019.

Listen to the meeting

Members present: Nicky Morgan (Chair); Mr Simon Clarke; Charlie Elphicke; Alison McGovern; Catherine McKinnell; Wes Streeting.

Questions 1 - 55

Witnesses

I: Helen Megarry, Adjudicator, Adjudicator's Office; Jane Brothwood, Head of Office, Adjudicator's Office.

Written evidence from witnesses:

– Adjudicator's Office, HM Revenue and Customs

Examination of Witnesses

Witnesses: Helen Megarry and Jane Brothwood.

Q1 **Chair:** Thank you very much to both of you for being here today. It has been some time, at least, since the Adjudicator's Office has been in front of the Treasury Select Committee. I do know what an important role you play handling complaints relating to HMRC and the Valuation Office Agency. I am going to ask you both to introduce yourselves for the benefit of those listening or not in the room.

Helen Megarry: I am Helen Megarry, the independent adjudicator for complaints against HMRC and the VOA.

Jane Brothwood: I am Jane Brothwood, the head of office for the Adjudicator's Office. I am actually an HMRC employee and I manage the operation of the office.

Q2 **Chair:** Perhaps we can start with a general question. As I say, the Committee has not heard from the Adjudicator's Office for a long time. I am not sure that you always have the highest profile in Parliament, so perhaps you could tell us a bit about the work you do and the issues you handle that are referred to you.

Helen Megarry: Thank you very much for asking us to come here. The last record we could find of an adjudicator appearing before a Select Committee was from 2003, so it came as something of a surprise to be asked. The independent adjudicator is an independent appointment—appointed from outside HMRC. I am on a five-year fixed-term contract, and I am given the personal authority to review complaints from individual taxpayers against the Department. We have a role that is three-fold. In addition to investigating individual complaints, we have a role in supporting the Department in effective complaint handling across the board, and in providing insight and expertise for learning from complaints. The intent of that is to use that learning to improve services for customers. The traditional role of the adjudicator had been very much focused on the review of individual complaints, but when I was recruited three years ago the emphasis put on the role by the Department was to enhance the role of learning from complaints and complaint handling good practice. That really is the area in which we see that we can add particular value to the Department at the moment and earn our keep.

Our relationship with the Department is governed by a service level agreement. It sets out our terms of reference. The parameters for our investigations, the sort of complaints we can investigate, how we investigate them and decisions we can make are all set out by the Department in our service level agreement. In terms of investigating individual complaints, we are a classic complaint handler, almost an ombudsman-lite. We take an impartial view of the complaints and we make evidence-based decisions, which involves investigating the complaints from customers by interrogating HMRC's systems and making inquiries of them.

When we are making decisions on those complaints, we are making them against the standards set by HMRC. Primarily, our role is to confirm whether they have followed their processes and procedures, whether they have followed their guidance, whether they have made mistakes or whether there have been delays. There are quite a few types of complaint that we cannot look at, primarily those that would be appealed or best decided by the courts. We cannot look at actual taxation decisions.

I have an office that is resourced by HMRC. All our staff are HMRC employees and we are governed by the broader rules in terms of HMRC policies and procedures. As Jane says, she is an HMRC employee and takes the role of head of office. We are independent in that context, but there are a lot of inherent tensions in terms of that independence and how it plays out in practice.

Q3 **Chair:** I was going to ask you about the accountability. As you mentioned, Jane and all the Adjudicator's Office staff, other than you, are employees of HMRC. Is that correct?

Helen Megarry: Yes.

Q4 **Chair:** All public bodies, or those funded by the taxpayer, are ultimately accountable to somebody. How does that chain of accountability work?

Helen Megarry: Our accountability runs through the Department. We have no accounting officer. We fall within the accounting officer rules of the Department.

Chair: The Department being HMRC.

Helen Megarry: Yes.

Q5 **Chair:** Ultimately, if there was a problem with the Adjudicator's Office—it could be anything, nothing to do with your work, but something else—would it be HMRC, Jon Thompson or one of the deputy Permanent Secretaries who would have to step in and deal with it?

Helen Megarry: It would be the Second Permanent Secretary. That is the way the line goes through that. I report annually to the board on our performance and our perception of HMRC's performance in terms of complaints.

Q6 **Chair:** You mentioned the independence and the tensions. Perhaps you can talk a little about that.

Helen Megarry: It is an interesting role in terms of the independence. When I took over the role three years ago, the actual independence of the Adjudicator's Office was quite ambiguous. Our terms of reference were quite ambiguous, and there were all sort of different understandings within the Department and within my office about what that independence meant in practice. One of the first things we did when we started working there was to take steps to clarify the independence and what that meant, to clarify our role, to ensure that everybody understood what the Adjudicator's Office was there to do. My view was that a lot of inefficiency was caused by the lack of understanding around it and quite a lot of unnecessary conflict. It was also quite difficult to manage customers' expectations of the service that we could deliver.

When we finally negotiated a new service level agreement with the Department in spring 2018, I had sought a lot more clarity on the independence, what it meant in practice, what the governance arrangements were, and the extent of and limitations on our independence. In managing customer expectations, it is important that people understand what we cannot do as well as what we can do.

Q7 **Chair:** You mentioned the service level agreement. Before I hand over to Alison, who is going to ask about the workload and everything else, perhaps you can say a bit about your priorities for the Department and any key performance indicators you have. I do not know if they are part of that service level agreement or the report to the board that you do on an annual basis. I am sorry; I have not included Ms Brothwood but, if there are bits, please chip in.

Jane Brothwood: That is fine.

Chair: Let us start with the key performance indicators and things that you will report on to the board, on an annual basis.

Helen Megarry: As for our own performance, we generally report on the output of cases that we have, in terms of our productivity. We have spent a lot of energy on reducing the time that we take to investigate complaints. That is another of our key performance indicators. We also have quite a few soft key performance indicators, which are not just based on metrics but are based on the amount of feedback we give to the customer and learning from complaints. We also have indicators of our internal performance, for example, based on the staff surveys. It is the normal range of things. In my reporting to the board, a lot of the emphasis goes on reporting on the Department's performance and our perception of what is going on in the complaint space there.

Q8 **Chair:** Are there any particular priorities? You mentioned that you came in three years ago. Has any transformation been necessary? Are there any key priorities? Is it just a question of continuing to do what you have been doing in the most efficient and effective way possible?

Helen Megarry: We have carried out our own transformation. We needed to completely modernise the office, so we have modernised our people practices, governance and complaint handling. We have also done a lot to ensure that the processes we use and the way we approach complaint handling is independent. That has flushed out some of the issues with the understanding of our role within the Department. We have done a lot of work on rebuilding a different relationship with the

Department. When I first came in, it is fair to say that things were quite adversarial, and we have worked on developing customer-focused outcomes, to try to find a way in which we can collaborate more with the Department, particularly on the complaint-handling improvements and the learning from complaints. One of the issues for us is about being able to get the Department to fully engage in those two aspects of our work, and being able to maximise the influence we have, to achieve those customer-focused outcomes.

Q9 **Alison McGovern:** It is very interesting, what you say about getting the Department to engage with the idea that it should learn from complaints. That is something that my constituents would be very interested in. On that, can I ask you a couple more questions about the relationship with HMRC, particularly in relation to staff? Do staff normally have a HMRC background? Is that where they come from?

Helen Megarry: We have a mixture. They are all civil servants. We have some people with an HMRC background and some people from other Government Departments. We want to mix it: we need some people with a tax background so that they have some technical expertise, but a lot of the issues we come across are things that are quite cultural within HMRC. It is really important to have a balance of staff who are able to look at those from the outside and recognise what the issues are, so that we can feed back on those issues.

Q10 **Alison McGovern:** Do people normally go on to jobs in HMRC? Is there a flow-through from the office to HMRC?

Helen Megarry: There is a flow-through to HMRC, but there is also a flow-through to other Government Departments.

Q11 **Alison McGovern:** You say in your report that most of your staff are specialist investigators. You mentioned just then the expertise that they have. What investigatory expertise do they have?

Helen Megarry: We prefer to take people who have some casework or investigative background, because those types of technical expertise and skill are, in themselves, difficult to teach people. If the subject matter of the complaint is technical, there is only a certain extent to which we actually have to go into technical issues, because we are complaint handlers rather than tax experts. As long as we have enough expertise in the technical issues within the office, what we really need are people who can investigate and make impartial, evidence-based decisions. That is particularly important where we are taking people from the Department, because it is a different role. Although we are taking people who have worked within the Department, sometimes for several years, the role of the adjudicator is different from the role of the Department. The perspective that they have to take in investigating cases is quite different.

Q12 **Alison McGovern:** What would you say the balance is between tax professionals, lawyers and accountants?

Helen Megarry: I do not think we have any lawyers, apart from me, and I do not think we have any accountants either. Do we, Jane?

Jane Brothwood: I do not think so, not that we know of.

Q13 **Alison McGovern:** Are we talking about more generalist civil servants?

Helen Megarry: Yes.

Jane Brothwood: To put it into context, we have just completed a recruitment exercise and taken on seven new investigators. One of those people came from HMRC and the other six came from other Government Departments.

Q14 **Alison McGovern:** What are the typical terms that people join on? Are they serving a fixed term with the Adjudicator's Office, with the idea that they will probably go back into another part of the Civil Service?

Jane Brothwood: No. They join us as HMRC employees on a permanent contract.

Q15 **Alison McGovern:** Have you ever considered recruiting from other parts of the labour market where people might have relevant expertise that is non-Civil Service, for example Citizens Advice or Which? Could you recruit complaint handlers who have a non-Civil Service background?

Helen Megarry: We do not have the freedom to.

Q16 **Alison McGovern:** Would you like the freedom to?

Helen Megarry: Personally, I think it would be a great idea. Jane can probably fill you in a bit more on the parameters.

Jane Brothwood: Part of the constraints around us is that we are bound by HMRC's people polices. One of those, in terms of Civil Service recruitment, is that there is an order you go through before you can do external recruitment. At the moment, we are restricted to recruiting from across the Civil Service. But, in terms of the last seven people we have recruited, we have people with backgrounds in other ombudsman bodies, so they have that experience.

Alison McGovern: You mean the Parliamentary and Health Service Ombudsman, and others.

Jane Brothwood: Yes.

Q17 **Alison McGovern:** I have a couple more questions. We have touched on this, but can I ask you it explicitly? A member of the public who has been unhappy with something to do with HMRC and who comes to you might have an adverse perception of most of your staff being civil servants or having previously been HMRC staff. Do you recognise that as a problem?

Helen Megarry: Absolutely. It is a very difficult one to manage. That was one of the issues for us in seeking clarification of our independence, rather than having it as an ambiguous position. There were lots of proxies around our independence and what that meant for the behaviours and practices that built up around it. Our independence is limited. In terms of people's perception, if they think that staff coming from HMRC compromises our independence, it is really important that people understand that is the situation. I am not going to pretend that we are any more independent than we actually are.

Having said that, we have put in place ever such a lot of safeguards and checks, and done a lot of work in terms of quality assurance, to ensure that we are carrying out investigations from an impartial perspective, which really means drumming out of people their HMRC perspective. From my professional background, I have been in complaint handling for over 20 years now, and we have done ever such a lot of work to be able to identify those areas where potentially people are not looking at complaints from an impartial viewpoint.

Q18 **Alison McGovern:** That is really helpful, thank you. I have two more brief questions. According to your annual report, you had about 59 full-time staff, you had 393 cases on the books as of 31 March 2018, and the average time before complainants got a decision was about seven and a half months. Do you think that is quite a long time?

Helen Megarry: Absolutely.

Jane Brothwood: Yes. To put that into context, when Helen and I joined the Adjudicator's Office three years ago, there were 1,100 complaints on hand, which was over 12 months' worth of work. It was taking around 11 months for customers to get a response from the Adjudicator's Office. Clearly, that was not acceptable, so we spent a lot of time working with our people to understand the need for change. As at 28 February, we had 338 complaints on hand and our average for the month of February was down to four months for customers to get a response. That is within a range of a few weeks to six months for some of the more in-depth reviews, but the average was four months. That is where we have managed to get to. Our staff-in-post figure has reduced further. We are down to 47 members of staff, which shows a reduction of somewhere around 45% to 47% in headcount, but a productivity increase of around 80% over three years.

Alison McGovern: Great. There is a long way to go, but there is progress in the right direction.

Jane Brothwood: Absolutely

Q19 **Alison McGovern:** Earlier, we touched on the idea of the learnings from complaints, which is particularly important for our work. What one single thing could HMRC do that would improve your ability to influence how it acts, so that it does not continue to repeat the causes of the complaints that you deal with?

Helen Megarry: That would be improved engagement with us on those issues. Our experience is that HMRC took some time to come round to the idea of the Adjudicator's Office offering learning from complaints. There has been a period of adjustment, in terms of getting the processes in place and the responses to that. We find that the Department is more engaged in responding to feedback on process issues, task-based issues and that sort of thing that comes from complaints, but, when it comes to the more systemic or cultural issues, we have very low levels of engagement. If the Department could engage with us more to find out what the benefits are of learning from complaints, and to understand the true potential of learning from complaints in that space, that could make a big difference.

Q20 **Alison McGovern:** There is a potential carrot there, but what about a stick? One of the successes of the Parliamentary and Health Service Ombudsman is that it reports to us. For every constituent I refer to the Parliamentary and Health Service Ombudsman, I explain to them that the ombudsman will be looking for patterns of behaviour, and that they are entitled to report to Parliament on those patterns of behaviour. Would it not be better if you also had that power?

Helen Megarry: I do not currently have any sticks. The only influence we have over the Department is that of the Department respecting our service and the expertise we bring to complaint handling. As I said earlier, the parameters of my authority are set by the Department from within the Department's legal entity. There is nothing outside the Department in terms of my accountability or my reporting line.

Q21 **Alison McGovern:** That could change, could it not?

Helen Megarry: That would not be for me.

Q22 **Chair:** We will come back to that with other witnesses. Going back to the numbers, I presume that you are just about to produce another annual report.

Jane Brothwood: Yes.

Q23 **Chair:** Without wanting to pre-empt it, the 338 has fallen. Is that because the number of complaints has fallen, or you are resolving things and more cases are resolved? Without going into numbers, is there a pattern to the fall that you are able to explain?

Jane Brothwood: Three years ago, as I mentioned, when we came in, we set out our transformation programme, which Helen referred to. That focused on working with our people to agree what our vision and purpose was, what our very being was going to be. The transformation programme has four groups, which are our people, our organisation, our customers and learning from complaints, and it is underpinned by governance and digital. Everything we have done and we do in the Adjudicator's Office focuses on that transformation, and our vision and purpose, so everything loops back to the vision and purpose.

We have been gradually working through that, helping our people to understand the need to improve. As part of our governance, it has been about introducing a performance culture. We have stopped talking about cases now; we talk about customers waiting and complainants. It is about bringing that focus on customers: sitting in the customer's shoes, what would it be like if you had to sit and wait for five months before we picked up your complaint to investigate it? It has been a steady approach of working with our people to help them oversee that.

Q24 **Chair:** Are there increasing numbers of cases coming in but more cases being resolved?

Jane Brothwood: The number of cases coming in to us has been fairly steady over the last three years. There might have been a reduction of about 5% to 6%. Over the last five years, we have had 1% of the Department's complaints escalated to us, and we currently get about 20% of the Department's formal second-tier complaints coming to us. The numbers have stayed reasonably static. It is our performance that has improved.

Q25 **Wes Streeting:** I have a series of related questions about your remit. The Adjudicator's Office looks at complaints only after they have been through HMRC's two-tier internal complaints process. Therefore, is it fair to say that the complaints you are seeing are potentially the more intractable and complex of complaints than the norm?

Helen Megarry: Not necessarily. That is what the Department would probably like to say. Some of the complaints we deal with probably are the more intractable ones, but there is an issue for customers in complaining about the Department in the first place. There is probably a bit of a fear factor about complaining against HMRC and what the impact of that might be. There are also issues for people making their way through the complaints procedure, so it can be quite a protracted affair for some customers. It would not be true to say that we get the 1,000 most difficult complaints. A lot of the issues we see, in the 1,000 complaints we look at, would be representative of the experience of an enormous number of customers who either do not complain or have their complaints resolved one way or another in the internal complaints procedures. Does that answer your question?

Q26 **Wes Streeting:** It does. I have a related question shortly. You talk about the people who do not complain for whatever reason, and that is an important but separate issue. What is going wrong in the first two tiers of the process for issues that are not necessarily the most complex or difficult to resolve still being unresolved to the extent they are landing on your desk?

Helen Megarry: There is a range of issues. One of my observations would be that complaint handling is not particularly consistently dealt with across HMRC, and different customers in different parts of the Department get a different type of service in terms of complaint handling.

From my observation, another issue is that complaint handling is not always about putting matters right for the customer. We see quite a lot of complaints that come through to us where the drivers of complaints are around the customer feeling that they have not been listened to, their views have not been taken into account or their complaint has not been properly considered. There are areas too where the Department has different drivers to its complaint handling, which might be about efficiencies, managing risk or resources or even just defending its decisions in some points, which do not necessarily mean that the complaints are resolved during the complaints procedures.

We see a whole range of different factors, and in fact we have started to categorise the drivers of complaints and the drivers of customer dissatisfaction. Whether or not we are upholding complaints, whether or not complaints are even within our remit to consider, we are trying to analyse a bit of what has happened behind the complaint and what is driving the customers to continue to escalate their complaint. Very often, those issues are around a lack of customer focus or the fact that the complaint handling itself is not particularly effective. There are also issues around decision-making and processes and policies that have gone wrong, but almost the majority are in that complaint handling and customer focus place.

Q27 **Wes Streeting:** Keeping that in mind, can you give us a broad outline of the most frequent types of complaint you see, in terms of subject matter, delay, behaviour, mistakes and the area of tax concern? What trends are you observing?

Helen Megarry: Jane, do you have figures on that?

Jane Brothwood: In terms of the complaints by business area, about 43% of our complaints are from tax credits. That is a real improvement over the last two years, because two years ago it was at 63% or somewhere around there. We get just over 20% on personal taxes—pay as you earn and self-assessment—and just over 20% on compliance. For the Valuation Office Agency it is tiny, only about 4%. Then we get odds and ends from other areas. That is in terms of the type of taxes that we get complaints about.

Wes Streeting: What is driving the complaints? Is it delays, behaviour, mistakes, or some of the behavioural issues that you described, Helen?

Jane Brothwood: It might be helpful for Helen to talk about the underpinning themes we see. I have given you the headline in terms of which part of the Department they come from, but the key topics we have seen over the last couple of years have been tax credits, tax credits to universal credit, departmental error, high-income child benefit, NHS widening access. There are some around compliance, debt management and treatment of extra-statutory concessions, where discretionary decisions are made within the Department. Those are the sort of issues that we have been flagging in the types of complaint that we see. On the underlying themes that we see, do you want to pick this up, Helen?

Helen Megarry: Thank you, Jane. What really interests us about these complaints is the things that we see appearing regardless of where the complaint is originating or regardless of the presenting issue of the complaint. Some of the issues we see playing out across different areas of the Department are the lack of customer focus in dealing with customers and the lack of clarity on the purpose of the complaint-handling processes. One of the themes we see is a bit of a block in being able to put things right. When something has gone wrong, there is a tendency for the Department to revert to process and to put things back in the process they would have been in had things not gone wrong, rather than recognising the impact on the customer of the thing that has happened.

The other one that we have seen is a bit of a theme across several areas of work where there are gaps in policy and a slight lack of foresight in terms of anticipating where the policy gaps might be, so that, by the time customers are being impacted by a policy and the complaints are going through the complaint process, there are still policy issues that have been undecided, which can then cause all sorts of problems with complaint handling and delays in resolution to customers.

Q28 **Wes Streeting:** You have led me neatly with that answer on to the next issue I wanted to pick up. It relates to what Alison was asking. We noticed, in preparation for this session this morning, that the House of Lords Economic Affairs Committee flagged up a case in which you were unable to find in favour of a complainant because HMRC was acting in accordance with its own guidelines, even though these guidelines were considered to be unfair. That is a pretty good example of where the policy is being followed, but the policy itself is not fit for purpose. What options are open to you in situations like this where you can see, as an adjudicator, that something is going wrong in terms of the policy itself, if not in the practice of adhering to the policy? What can you do in that situation? Can you make recommendations to HMRC? What can you do? What are your policy levers?

Helen Megarry: One of the limitations on our remit is that we cannot consider complaints that are about Government or departmental policy. We cannot technically consider that complaint and make a decision on it; we could not uphold a complaint on that basis. That does not mean we cannot comment on it to the Department. Nowadays, with a case like that, we would identify the issue and give feedback to the relevant director of the part of the Department that the complaint had originated from, and we would monitor that issue. If it was something that we saw occurring in a number of complaints, we would escalate that, drawing together that experience and those numbers, feeding back through a different route, and maybe even escalating the issue on a monthly report to the executive committee of HMRC. There are various ways in which we can address those issues but, as I said earlier, our authority is one of influence through respect for the institution of the adjudicator, rather than any more formal authority to get the Department to engage in that process.

Q29 **Wes Streeting:** Thinking about that soft power, how often are you having those conversations with HMRC and how would you characterise the response?

Helen Megarry: We have the conversations almost on a daily basis, because we have to have the conversations at multiple levels within the Department and with multiple people. In collating our learning and giving feedback, part of the issue we have experienced is that HMRC has not really had the systems in place and the infrastructure for receiving the feedback or for then making collective decisions about what it is going to do with it. We do give feedback. As I say, the feedback is given on an individual case basis. Jane often escalates issues to the deputy director level within the different streams of business. We also have a line into the centre, into the customer directorate, which has overall responsibility for complaint handling. Jane provides a report to ex-com on a monthly basis. We have series of thematic reports that we have produced and published within the Department, picking up on some of those issues where we have noticed patterns of behaviour. There are a range of ways in which we can give that feedback.

Q30 **Wes Streeting:** There are quite a wide range of channels that you have just described there. How well was your feedback acted upon? As the Chair mentioned, your annual report is coming up. Would you consider publicising unfair guidelines in your annual report so that other interested parties, particularly those concerned with public policy, like this Committee or other groups within Parliament, might take those public policy issues up?

Helen Megarry: We have not considered publishing unfair guidelines, no. Traditionally, I would raise those issues with HMRC's board before putting them in the annual report. In terms of the cycle of reporting, I would raise those issues at the highest level internally before publicising them externally. That is the answer to your question.

Q31 **Wes Streeting:** When you are raising things at the board or taking up any number of the other avenues you described, such as the publication of internal reports, how well are your recommendations and your advice taken up?

Helen Megarry: I would say it is patchy. I said earlier that there was more enthusiasm for taking action on the things that are about process or in a particular area. I would not say they are easy to fix in an organisation the size of HMRC, but they are certainly easier. In terms of those cross-cutting themes and the systemic and cultural issues, there is very little take-up. In terms of the feedback on things like the thematic reports that we have given, again, it is patchy. We have not had particular corporate responses to three of the reports that we have issued. The responses come from the areas where the leaders in HMRC have a particular interest in learning from complaints or improving customer services, rather than something that is a corporate response.

Q32 **Catherine McKinnell:** I am listening very carefully and with great interest to what you are saying. I was going to ask you about the 2017 report that you published, in particular your reference to the need for listening and engaging with customers not being universally understood and accepted throughout HMRC, and to the culture within HMRC being one of the contributing factors to the complaints. It is not all about the process; it is about customer service and effective complaint handling as well. Have you seen any improvement in the last two years? Obviously, that was 2017. What do you think needs to happen to change that?

Helen Megarry: I do not think that we have seen any improvement. If anything, there was probably a little more proactive engagement during the first year of my term, which would have been the one before that report, than there has been in the last couple of years. In terms of what needs to be done, the cultural issues for HMRC are a much bigger issue. We can see them through the complaints, but fixing them is way beyond the complaints arena. There are lots of ways in which HMRC could engage more in the possibilities of good complaint handling and learning from complaints, to inform and support the cultural changes that it wants to bring in.

In terms of the Adjudicator’s Office, it would be helpful to have more explicit support of the value of learning and the potential of learning from the highest levels within the Department. To be honest, we waste quite a lot of time and energy trying to convince everybody that we have a valid role in giving the feedback on learning from complaints. If that was endorsed more explicitly within the Department, it would make it an easier job for us to entice people to engage with us in terms of the lessons.

Q33 **Catherine McKinnell:** Should you have to entice people to engage with you? What is the incentive for HMRC to implement your recommendations? What penalties are in place if it keeps getting complaints? What is driving, could be driving or is not driving HMRC’s desire to get this right? What needs to change? Do you need some obligation in place for HMRC to act on your recommendations? What is on the other side of this that would incentivise that, but is not currently incentivising it?

Helen Megarry: There are two ways of understanding complaints, one of which is that they are waste and inefficiency and should be driven out of the system. Although there is an ambition within HMRC to treat complaints in a different way, that is the driver of the way complaints are understood in the Department. I come from the perspective that complaints are free customer insight. They are a lens through which you can see an enormous amount of what is happening in an organisation.

Complaints themselves, well dealt with, are an opportunity to demonstrate openness and listening to customers, to turn round customer relationships, to turn customers into advocates. There is almost a philosophical understanding of the value of complaints and the potential to learn from complaints. That is one of the fundamental issues.

Q34 **Catherine McKinnell:** Presumably, happy customers mean happy HMRC staff as well, as it creates a better, more productive, constructive working environment.

Helen Megarry: Absolutely, there is a complete virtuous circle. I cannot remember where the research comes from, but there are links between good complaint handling, improved customer satisfaction and staff engagement. It genuinely is a virtuous circle.

Q35 **Catherine McKinnell:** In terms of identifying problems coming through the system, universal credit is one example I think of. Presumably, you have an expanded role in dealing with some of the complaints that have stemmed from that. I know you said that you do not get involved in policy and recommending changes to policy, but presumably you have seen an expanded amount of complaints. As constituency MPs, we are all overwhelmed. Have you, or not?

Helen Megarry: We are a lagging indicator of the issues that you will be seeing in your constituencies. We have been having a steady stream of tax credit/UC complaints. They have been unearthing some quite fundamental issues. We have been feeding those back to the Department almost on a case-by-case basis. At the moment, we are preparing a report for the Department as a synopsis of the issues we have raised, with some recommendations around it. The idea behind that is to help the Department get ahead of the complaints that will inevitably come up when we get to mass migration in a few months' time, when that begins to start. We are actively engaging in those complaints and in identifying the issues behind the complaints that might help the Department to manage them more effectively and to inform its policy decisions on how it deals with the issues as they arise.

Q36 **Catherine McKinnell:** You say you are a lagging indicator, but could you have a role here? On the one hand, HMRC should clearly be taking on the reports that you give it and learning from them, but, for example, we can see Making Tax Digital coming down the track. Is that something that you are aware of or, in a year's time, will you be giving feedback on how Making Tax Digital went horribly wrong? Sorry, it is a bit of a loaded question.

Helen Megarry: I saw that.

Catherine McKinnell: I will let you answer.

Helen Megarry: It varies. There are some issues we are involved in up front, in terms of anticipating what the issues might be. We were involved in discussions around tax-free childcare from the quite early stages. We have been having discussions about the tax credit/universal credit transition for a long time. We have not been involved in discussions about Making Tax Digital, though. We are aware of it. We are aware of the issues and what is on the horizon with that, but we have not been involved in any proactive discussions up front about it.

Q37 **Catherine McKinnell:** Would it be useful if you were?

Helen Megarry: It is a potential role for the Adjudicator's Office. One of the issues is that there is a slight tendency to compartmentalise complaints and complaint handling within the Department. It goes back to the alternative philosophies behind how you view complaints and the potential of learning from complaints. There is a role in being able to anticipate the issues that might come up and might generate complaints, particularly when we begin to engage in those underlying issues, for example, about gaps in policy or lack of foresight in developing policy. Where we have that step back from the operations of the Department and can see those patterns playing out over time, and over a whole range of activities, sometimes might be a good idea to take that insight into account in planning activities.

Catherine McKinnell: That was really helpful and interesting. Thank you.

Chair: Simon is going to talk about email.

Q38 **Mr Clarke:** Indeed, or the lack thereof, which is a somewhat notable absence. I am not the most technologically savvy individual on the planet, but it stands out as a rather glaring problem. All the evidence you have provided is that you have a fax number but you do not have public-facing email. Given that the Government's ambition is to make public services digital-facing by default, how would you say that matches that ambition?

Helen Megarry: It does not.

Q39 **Mr Clarke:** I rather thought that was the answer. The impact on the public of that is—

Helen Megarry: It is not defendable not to be able to provide people with digital access to our service. It is a complete anomaly, in terms of people's expectations and providing channels of choice to people.

Q40 **Chair:** How did it happen?

Jane Brothwood: The Adjudicator's Office is a small part of HMRC. In terms of the Department's priorities, it tends to focus on larger areas, more customers and that sort of thing. Historically, the Adjudicator's Office has been prioritised quite low, partly in terms of, as Helen said, our independence and this misnomer around it. We have probably been left behind.

As part of our transformation programme, we developed a digital strand. I bid for about £500,000 to introduce digital services into the

Adjudicator's Office, which are services that are already on HMRC's estate: for example, call recording facilities would allow us to take information by phone and use that as evidence; a transition to gov.uk would give us a secure website for our front end. It would also give us a facility for some secure email transactions and a bit of internal administrative stuff. That is what we have asked for.

Q41 **Mr Clarke:** When did you ask for that?

Jane Brothwood: That was back in early 2017.

Mr Clarke: It is not hugely encouraging that you have not heard back.

Jane Brothwood: In fairness, at the beginning of this calendar year, we got to a point where the IT department thought it would be able to provide us with a secure email service. We asked for and, in January, were granted £20,000, to then be told in February that that could not be delivered this year due to other competing priorities. Even at the point that we got a bit of money, we were not able to deliver it.

The Department shared some insight with me recently, because, as we put in there, not having a digital channel actually discourages customers. The Department shared with me some research it had that around 30% of customers across all age and social groups choose digital as their channel of choice. It suggests that not having a digital channel, rather than making it harder for customers to contact us, is discouraging people from doing that.

Mr Clarke: That is an eminently fair statement. For all of us as MPs, the balance of correspondence that comes by email relative to post would be 10:1 or 15:1.

Chair: They are phasing out our fax facilities and our printers at the moment.

Q42 **Mr Clarke:** The ratio is extraordinary. If I stopped accepting email, my life would get an awful lot easier, but I suspect my constituents would have something to say about it. Is the business case you submitted still with HMRC at this point?

Jane Brothwood: Yes. The business case has been resubmitted for the current spending review round.

Q43 **Mr Clarke:** The Committee will probably want to take some steps to raise this with HMRC. In terms of the rationale that HMRC gave, other than that there is not any money, which I suspect is the equivalent of "computer says no", do you have a concern that this is probably because HMRC is preoccupied with rather larger headline projects, like making tax digital? Is that squeezing out capacity for any incremental improvement?

Jane Brothwood: I think that is right. The Department, understandably, in spending money from the public purse, needs to look at the best value it can get from the money it spends. It will look to spend the money that it is going to spend on the most customers who will be impacted by it. The fact that we only get 1,000 complaints is part of that.

Mr Clarke: That is completely chicken and egg.

Helen Megarry: Yes, potentially.

Q44 **Mr Clarke:** Have you had requests from the public? Do they comment about the lack of email?

Jane Brothwood: Yes, we have. We have had complaints about our office not being able to take secure email.

Q45 **Mr Clarke:** Is that pretty much unique among Whitehall Departments? I cannot think of any other that I have heard of that falls into this category.

Jane Brothwood: I do not know. I could not comment with any assurance.

Q46 **Mr Clarke:** You are not aware of any others.

Helen Megarry: No.

Q47 **Mr Clarke:** I am not aware of any others. Finally, if you had the money and all systems were go, would this have to be delivered by HMRC or could it outsource the work?

Jane Brothwood: I think it would be delivered by HMRC.

Q48 **Chair:** Just to clarify, is the £20,000 that you mentioned enough to get the public-facing email, or is that for scoping?

Jane Brothwood: That was for us to have an operational, secure email system for the public to use.

Chair: For the public to use for complaints.

Jane Brothwood: Yes. It would have been a bit disjointed, I am sure, but it would have been a secure email system. I do not want it to sound like it is a full all-singing, all-dancing system.

Chair: No, but it would be enough for people—

Jane Brothwood: They could have contacted us and we could have done some checks.

Q49 **Chair:** That would deal with the complaints that people have made that they cannot contact you by email.

Jane Brothwood: Yes.

Q50 **Charlie Elphicke:** Good morning. I want to talk to you about redress. By far the largest category of redress shown in the case studies is something called "liability given up". There are 454,071 of those. Can you explain a little more about this and in what circumstances can you persuade HMRC to give up tax that it believes is due?

Helen Megarry: Most of that would be from the Department remitting overpayments of tax credits. An element of it would be writing off tax underpayments, but the majority of it would be tax credit overpayments. The circumstances in which the Department would remit the tax credit overpayments is where it looks at its code of practice 26, which gives it a discretion to write off the overpayments. Often, we would find that the decision it made in respect of that discretion is not sound or needs to be reviewed. It would usually be in those circumstances.

Q51 **Charlie Elphicke:** In other inquiries with HMRC, we have had some discussion about the extent to which HMRC can exercise discretion not to pursue the payment of tax that it considers to be legally due. I think it is under the care and management powers. Some people feel that HMRC is too rigid in its approach. Obviously, HMRC takes a different view. HMRC thinks it has to stick a shovel in our stores, and the biggest shovel that it can, as the famous tax case goes. What do you think?

Helen Megarry: The practice probably varies. In terms of what we see, it often goes back to that issue of the understanding of the purpose of complaint handling. In some areas, we see the Department defending its decision to recover tax, sometimes in situations that are potentially a bit tenuous. Again, we have a relatively restricted role in reviewing the discretions. We can only substitute our judgment for that of the Department if it has been properly decided, if we think that its view is wholly unreasonable, which is quite a usual complaint handling remit issue. The issues vary. In some areas, we see the Department being quite customer focused and happy to take into account customers' individual circumstances, and it does exercise discretion. Sometimes it exercises discretion before we even get to the case. When it knows that we are investigating it, it sometimes exercises discretion and decides to remit overpayments, but sometimes we get into a bit of a process-driven approach in terms of defending the recovery. I would say that our experience is mixed in that respect.

Q52 **Charlie Elphicke:** Have you noticed any change in HMRC's approach when it comes to exercising discretion. Is it becoming more hawkish or dovish as time passes?

Helen Megarry: I would not say we are really seeing any change. No, not particularly. A lot of complaints to us historically have been triggered when the Department decides to take recovery action in terms of debts. Particularly in the tax credits arena, we have noticed that quite a lot of historic debt is being brought forward at the moment, which generates quite a lot of complaints. You get various phases of activity within the Department that trigger complaints, but that is probably more cyclical and about the way it manages its resources than about an attitude towards collection.

Q53 **Charlie Elphicke:** You mention in your report that HMRC staff do not understand HMRC's own discretionary powers, and that sometimes your office has to explain to them how it all works. If HMRC's own staff do not understand, how likely is it that the wider public are going to understand it, and what do we do about that?

Helen Megarry: There is a real issue of the wider public understanding the rules, procedures and guidance that HMRC operates by. My view on that and the way that we try to address those issues is to encourage clarity in communication on the issues. There is sometimes a tendency to obfuscate in the language that is used. One of the big areas we see that in is the tax credits arena, where traditionally I understand that the literacy levels of many tax credit claimants are not particularly high. Some of the legislation and guidance is complicated, and it is genuinely quite difficult to explain things to people in very plain English terms when they are complicated concepts. There is something about translating that guidance into something that is more accessible to people, and to people with different levels of understanding of the role of HMRC and the way it operates, and with literacy issues.

Q54 **Charlie Elphicke:** In that case, is there a role for the Adjudicator's Office to explain to the public more about HMRC's discretionary powers? Do you have a role, not simply in adjudicating but in educating and raising awareness, and what are you doing about it?

Helen Megarry: I do not think we have a role in that respect. We have a role in feeding back to the Department where we see those issues, but in terms of scale, as Jane said, there are 47 of us and some 60,000 or so people working in the Department. We are very focused on our role and purpose, and what we can do. For us to deliver that effectively, there are also responsibilities on the Department, and there is only so much that we could or should take on ourselves to deliver. The value of our role is being able to give the insight and feedback to the Department. It is then for the Department to make decisions on prioritisation and taking action on those issues.

Q55 **Chair:** It has been a really fascinating session, so thank you very much indeed for your evidence and being so open. I think the 16-year wait has been worth it, so thank you for that. A number of the areas that members of the Committee have probed on have been things that you potentially could do, based on the lessons that you are collating and everything else. We all appreciate that 47 people is not a lot compared to tens of thousands working in HMRC. As the adjudicator, with an expanded office and remit, are there things you can see that it would make sense for you to do, such as, as Charlie said, educating the public about the issues you are coming up with, or at least making plain English guidance available, based on the experiences and the cases that you have been handling? Would you be open to looking at that, assuming that the office and remit were expanded and HMRC was brought along on that journey?

Helen Megarry: The answer to that would really depend on the outcome that you are trying to achieve from it. Once you turn the adjudicator from being a complaint handler, in a way the world is your oyster in terms of what you might decide you wanted on customer representation, advocacy or assurance of processes. It would really depend on what the endgame was. I would be wary of having various things added to the adjudicator's role and remit, in what might appear to be almost a ragbag of activities. It would be very important to have a coherent and mutual understanding of what the purpose of the role is and what we are trying to achieve by changing it. It would really depend on that; on having very clear outcomes.

Chair: Can I thank you both very much indeed? We know that preparing for these sessions is not always the easiest, and on top of your existing workload, but it has been genuinely interesting. We are very grateful to you for the evidence and we will look forward to reading your annual report when it is published in the near future. Thank you for now.