

**HM Revenue & Customs, management of tax credits compliance cases
Briefing from the Low Incomes Tax Reform Group (LITRG)**

1 Executive Summary

- 1.1 This briefing highlights a number of issues that we have identified with HMRC's approach to tax credit compliance investigations, particularly those cases where HMRC believe a single claimant is in fact part of a couple and therefore claiming incorrectly. We understand HMRC have a duty to ensure that people receive the right amount of tax credits, and that compliance checks are an important part of that role; but we think significant improvements are needed in the process design and operational delivery of those checks.
- 1.2 HMRC's tax credits compliance activity has recently come under heavy scrutiny after HMRC announced¹, on 13 September 2016, that they would not be renewing their contract with third party provider SYNnex-Concentrix ('Concentrix'), which they had used since November 2014 to carry out compliance checks on tax credit claims.
- 1.3 The issues with the Concentrix contract and the use of sub-contracting for tax credit compliance checks are of concern, but many of the issues relating to these investigations surround the processes used for engaging with claimants and also in making decisions. These processes are not unique to Concentrix and are used by HMRC themselves. Despite using Concentrix to carry out compliance activity on their behalf since November 2014, HMRC

¹ <http://www.mynewsdesk.com/uk/hm-revenue-customs-hmrc/news/contract-for-checking-tax-credit-entitlement-not-to-be-extended-185762>

have continued to use their own staff to carry out the same kind of compliance checks – that is, only some cases have been sub-contracted.

- 1.4 In 2008/09, HMRC carried out 123,000 compliance interventions and by 2010/11 that figure had risen to nearly 2 million¹. As the number of investigations grew, we saw a decline in the quality of decisions and the general handling of the cases by HMRC staff. Prior to HMRC awarding the contract to Concentrix, we raised a number of concerns about the impact of HMRC's compliance activity on claimants² and poor quality of decision making. Other organisations raised similar concerns about undisclosed partner investigations³. Since then we have continued to highlight these issues via the Benefits and Credits Consultation Group that we sit on.
- 1.5 Our current concerns, explained in detail in this briefing, can be summarised as:
- Customer service issues – difficulties of claimants getting through to compliance officers on the phone (both in HMRC and Concentrix) and the seemingly poor planning of processes without anticipating peaks in contact
 - Postal problems – information not being scanned onto the system before decisions are taken
 - Robustness of the data used to identify single claimants suspected of living with a third party
 - Confusion around the policy of naming the suspected undisclosed partner
 - Requests for evidence where production of the items requested would not support a decision either way in undisclosed partner cases
 - Poor quality decision making where weight is placed on evidence obtained by HMRC (such as credit reference data or real time earnings data) in preference to information from the claimant. HMRC's processes thus seem to sometimes disregard the actual legal tests for establishing if someone is part of a couple
 - Disregard for the legal burden of proof requirements at various stages of the compliance process
 - Lack of education and guidance for claimants to help them understand joint and single claims and to avoid error when claiming tax credits or reporting a change of circumstances in the first place
 - An additional step has been placed in the mandatory reconsideration process that suggests claimants must provide further evidence in order to continue

¹ <https://www.nao.org.uk/wp-content/uploads/2013/03/Tax-credits-errors-full-report.pdf>

² For example see our evidence to the Work and Pensions Committee in 2014
http://www.litrg.org.uk/sites/default/files/files/140228_LITRG_Response-Work-Pensions-Comm-error-fraud-FINAL.pdf

³ See for example this report by Advice NI about undisclosed partner interventions
http://www.adviceni.net/sites/default/files/publications/Tax_Credits_Undisclosed_Partner_Interventions_2013.pdf

- Concerns about whether claimants received proper decision letters during the high risk renewals exercise carried out by Concentrix that explained their appeal rights
- A policy of hardship payments in cases where payments have been stopped or suspended that is not published

In October 2015 we welcomed a recommendation¹ by Public Accounts Committee (PAC) that HMRC should work with the government-wide Fraud, Error and Debt Steering Group to commission an independent review of the claimant experience of the tax credits process. They stated that this review should also include assessing the impact of using its private sector contractor and identify ways to reduce unnecessary burdens on people. This was recommended because the PAC felt HMRC had not given sufficient consideration to how its activities to tackle tax credits fraud and error might affect people, including more vulnerable claimants.

- 1.6 Nearly one year later, many more claimants have been affected by the HMRC tax credit compliance processes and serious problems with the Concentrix contract have come to light. At the centre of these compliance investigations are often vulnerable claimants who are left in severe hardship without money that they rely on to pay essential bills and buy food. In many cases, these claimants have not only had their payments stopped erroneously, but they have been subjected to lengthy delays in resolving cases and, even when resolved, have not received lump sum payments to cover the missing periods.
- 1.7 In terms of the contract with Concentrix, whilst clearly Concentrix were responsible for delivering what they had agreed with HMRC, it is disappointing that HMRC were aware² of the difficulties claimants had getting through on the phone some three weeks before any steps were taken to improve the situation. During that period, more payments were stopped and more people were adversely affected. HMRC have been plagued by issues on their own phone lines during the renewals period for many years³ and therefore it did not come as a surprise that Concentrix would experience similar problems.
- 1.8 We strongly recommend that there needs to be an urgent, independent review of the whole of HMRC's tax credit compliance processes. Whilst such a review should of course cover the delegation of compliance work to Concentrix, many of the issues raised in this briefing are not unique to Concentrix and are part of HMRC's own processes and have been identified as causing difficulties for claimants for a number of years.

¹ <http://www.publications.parliament.uk/pa/cm201516/cmselect/cmpubacc/394/39405.htm>

² <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/work-and-pensions-committee/concentrix-and-tax-credits/oral/41258.html>

³ <https://www.gov.uk/government/news/hmrc-service-standards-for-personal-customers>

2 About Us

- 2.1 The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998 LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes. Everything we do is aimed at improving the tax and benefits experience of low income workers, pensioners, migrants, students, disabled people and carers.
- 2.2 LITRG works extensively with HM Revenue & Customs (HMRC) and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help. Since tax credits began in 2003, we have been members of HMRC's Benefits and Credits Consultation Group – which includes representatives from a number of bodies representing tax credit claimants.
- 2.3 The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

3 Introduction

3.1 *Background*

- 3.1.1 In 2014-15, around 4.43 million families benefited from tax credits with a total entitlement of around £29 billion¹. Each year, HMRC publish error and fraud statistics and the latest available figures show that in 2014-15 there was just under 5% error and fraud in the system – in total around £1.37 billion².
- 3.1.2 HMRC have a duty to ensure that people are paid the right amount of tax credits. The compliance process is an important part of the system that allows HMRC to check awards and make sure people are receiving the correct amount.
- 3.1.3 Historically, tax credits have had a higher level of error and fraud than DWP benefits. Although HMRC have managed to reduce the level of error and fraud in the tax credits

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/525464/cwtc_awards.pdf

² <https://www.gov.uk/government/statistics/child-and-working-tax-credits-error-and-fraud-statistics-2014-to-2015>

system, it has been criticised for not fully understanding the reasons for the reduction in levels and the effectiveness of its initiatives¹.

- 3.1.4 One point to note is that although we talk about ‘error and fraud’ in this briefing, we do so because HMRC and most other commentators talk about error and fraud together, conflating them as though they were a single concept.
- 3.1.5 We believe it is unhelpful and counterproductive to treat the concepts of error and fraud together as the two are very different in nature and therefore require significantly different approaches in dealing with them. Error includes everything from innocent mistakes by claimants to careless error. It also includes mistakes by officials or ‘official error’.
- 3.1.6 There is also another element of error, which can be described as contributory error. That is primarily claimant error to which officials have contributed in some indirect way: for example, where no guidance has been given or guidance is ambiguous. We believe that this type of error continues to be widespread in tax credits and requires a different approach to address it than other types of error.
- 3.1.7 In order to address the problem, HMRC firstly need to fully understand the problems in relation to error in order to decide on approaches to tackle it, as distinct from fraud. Strategy needs to reflect this, as well as the differing types of error and to be tailored accordingly.

3.2 ***The legal basis for compliance checks***

- 3.2.1 HMRC have a number of legal powers to check claimants’ awards – this can be: before a claim is put into payment (pre-award checks); during the tax year (in-year checks or examinations); or after a tax year as ended (end of year checks which can be before finalisation, after finalisation as an enquiry, or through the discovery process).
- 3.2.2 When the checks are carried out is very significant in terms of the burden of proof on claimants. If HMRC check claims before they go into payment (pre award checks) or after the tax year has ended but before the claim has been finalised, then the burden of proof is on the claimant to prove their claim to HMRC.
- 3.3 However, once an initial decision has been made on a claim, if HMRC check the claim during the tax year (an in-year check or examination), the burden of proof is on HMRC to show that they have reasonable grounds for believing the award is wrong².
- 3.4 In our experience, HMRC staff often do not fully understand the burden of proof issues and sometimes compliance interventions fail to adhere to the legislation in this respect.

¹ Page 5, <http://www.publications.parliament.uk/pa/cm201516/cmselect/cmpubacc/394/394.pdf>

² <http://www.bailii.org/uk/cases/UKUT/AAC/2014/543.html>

3.5 Education and provision of advice/information for claimants

3.6 *Pay now, check later approach*

- 3.6.1 In the early years of the tax credits system, HMRC operated a ‘pay now, check later’ approach. This meant that claimants would fill in the TC600 claim form and declare various things about their personal circumstances and HMRC would pay the claim on that basis. At some later time, HMRC might have opened an investigation to check various parts of the claim.
- 3.6.2 Due to the large levels of error and fraud in the system, HMRC started to do more to check claims or elements of claims before they were put into payment. For example, since 2015, HMRC will check a claimant’s self-employment before putting the claim into payment, and will also check someone’s eligibility for the disability elements if they have indicated they apply on their claim form.
- 3.6.3 The Public Accounts Committee identified that HMRC have made little progress in preventing fraud and error occurring and noted that they had concentrated on detecting and correcting fraud and error once in the system¹.
- 3.6.4 Many of the comments in this briefing refer to investigations into undisclosed partners – where HMRC suspect a single claimant should actually be claiming as part of a couple. However, HMRC have done little over the years to educate claimants at the point a change in status is reported. Most claimants in our experience telephone the tax credits helpline to report a change from joint to single status. HMRC could, at this point, explore with the claimant the rules around single claims and help the claimant assess their situation to make sure the change is the correct one.
- 3.6.5 Such an approach would be far preferable to the current one which means a claimant may be investigated two or three years later and potentially all of the payments made to them clawed back as an overpayment. People often say to us that they would have taken different steps if HMRC had explained to them the definition of ‘single’ and ‘couple’ and also what evidence they require a person to show in support of each status. For example they may have kept their claim as a couple claim until they knew their separation was permanent rather than temporary. Or they would have more formally altered their financial arrangements with their ex-partner or made a formal child maintenance arrangement rather than an ad-hoc one if they had known that these things would be used as evidence against them being a single person.

3.7 *The move to GOV.UK*

- 3.7.1 Through their error and fraud statistics, HMRC have identified 6 areas that they believe are the main reasons for error and fraud in the system. They are:

¹ <http://www.publications.parliament.uk/pa/cm201516/cmselect/cmpubacc/394/394.pdf>

- Income discrepancies
- Undeclared partners (where HMRC suspect a single claimant should actually be claiming a part of a couple)
- Childcare costs
- Children
- Work and hours (including self-employment)
- Disability

3.7.2 Historically, HMRC guidance (both web-based and hard copy) on each of these areas has been poor. Until 2011 there was no information on the HMRC website about what constitutes a couple for tax credits purposes beyond a reference¹ to married couples and civil partners and those living together a husband and wife or civil partners. We have also observed that even once HMRC completes compliance activity by reducing or amending an award, they do very little to explain to claimants what has led them to make the decision.

3.7.3 In 2011², HMRC started to improve their web guidance in some of these areas, particularly undisclosed partners. They did this by including examples on their website and whilst there was still a lot of work to be done, particularly for those without internet access, it was certainly a good start.

3.7.4 Unfortunately this guidance was then removed when HMRC material moved across to GOV.UK and claimants can now only access very basic guidance³ on what is a very complex

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<https://web.archive.org/web/20100621033451/http://www.hmrc.gov.uk/taxcredits/start/claiming/get-started/joint-single-claim.htm>

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<https://web.archive.org/web/20110407152619/http://www.hmrc.gov.uk/taxcredits/start/claiming/get-started/joint-single-claim.htm>

³ See <https://www.gov.uk/claim-tax-credits/joint-claims>

This says:

'You can apply for tax credits as a single person, or as a couple (known as a 'joint claim') if you're both 16 or over and living in the UK.

Usually, you must make a joint claim if:

- you're married or in a civil partnership (and not permanently or legally separated)
- you live with your partner as though you're married or in a civil partnership
- you're temporarily living away from one another, eg looking after a relative or working abroad for the government for less than 8 weeks

You might also need to make a joint claim if you and your partner are not married or in a civil partnership, but:

- sometimes live in the same house
- have a joint financial agreement
- have dependent children'

area. We find this astonishing given the serious consequences of getting single or couple status wrong and the fact that HMRC have identified this as an area that leads to large amounts of error.

- 3.7.5 We understand that earlier this year, HMRC sent out letters to all single claimants prompting them to consider whether their claim was made in the correct capacity. Whilst we welcomed their attempt to do something to educate claimants and prompt them to think about their situation, we expressed a number of concerns about the content of these letters. In our opinion, these letters over-simplified things to the point of being misleading in what is a very complex area.

4 Process issues

4.1 *Importance of process issues*

- 4.1.1 HMRC's sole reason for terminating the contract with Concentrix appears to be the poor service levels given by Concentrix in recent weeks. Thus far, HMRC have not acknowledged concerns about the quality of decision making and other process related issues. All of the cases highlighted to us in recent weeks, some of which have been forwarded to HMRC, have some element of process failing within them.

- 4.1.2 We have recommended that an independent review be carried out of tax credit compliance processes and, whilst this will of course focus heavily on the contract with Concentrix, much of the focus should also be on examining the processes used – that is both by HMRC themselves and Concentrix as they are the same – and the flaws that have been identified in those processes which negatively impact on claimants and can often leave people in very desperate situations.

4.2 *Claimant contact – letters and evidence requests*

- 4.2.1 The first that a claimant knows that HMRC are investigating their claim is when the initial letter arrives from HMRC. It is therefore important that this letter, as a minimum, fully explains the process and is clear about: what evidence HMRC require; the deadline date for returning the evidence; what will happen if the evidence is not returned; and what a claimant can do if they have difficulty gathering the required evidence.
- 4.2.2 HMRC use risk analysis tools to identify which claimants should be investigated. In the most recent exercise with Concentrix, HMRC sent 1.5 million cases to them for possible checking. Concentrix then narrowed these down using their own systems to 324,000¹ which were selected for further investigation. We have seen in the past examples of suspected partners being named as family members (brother, sister, adult child etc) and the media articles and

¹ Q30: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/work-and-pensions-committee/concentrix-and-tax-credits/oral/41258.html>

claimant accounts suggest¹ similar issues have been found in more recent cases. This raises questions about how well the data is sifted before any investigation is launched.

- 4.2.3 On occasions over the years, we have reviewed these letters as part of our membership of the BCCG group and there have been definite improvements in the quality of them in terms of explanation.
- 4.2.4 However what remains a real problem with the letters is the actual evidence that is requested. In undisclosed partner cases for example, the claimant will receive a letter that asks them to provide a long list of documents such as bank statements and utility bills.
- 4.2.5 Quite crucially, the letters do not appear to be tailored to the claimant's specific circumstances. So single people who are married but separated permanently from their spouse receive the same letter and same evidence list as a single person who is suspected of living together with someone else, even though the legal tests are different and the evidence needed to be sought to prove couple status is likely to be different.
- 4.2.6 For example, a married couple who have permanently separated but who are forced to live in the same property (perhaps because they are in negative equity and cannot sell the house) are likely to have several financial connections such as mortgage and loans. Credit cards, driving licences and other key items will be registered at the same address and they will be sharing the cost of bills. Asking for a long list of generic evidence such as bank statements, mortgage, loan and other financial documents alone is unlikely to answer the question of whether they are permanently separated.
- 4.2.7 The other key point about the evidence requested in the letters is that in some cases it will not help determine whether a person should be making a single or couple claim even if they were to send all of it back. This is because HMRC are sometimes effectively asking someone to prove a negative. It is nearly impossible to prove to HMRC (in cases where you are required to do so – in some cases HMRC have the burden to prove the claim is wrong) that you do not have someone else living with you or that you are sharing a property with someone but you are not part of a couple for tax credit purposes (For example because they are a relative).

Naming the suspected undisclosed partner

- 4.2.8 In the recent Works and Pensions oral evidence session, Philip Cassidy from Concentrix stated that in undeclared partner cases 'we normally have a name of the partner, and we had a policy of not putting that named partner in there. However, when the claimant

¹ <http://www.mirror.co.uk/news/uk-news/single-mum-furious-hmrc-stop-6643361> and <http://capx.co/meet-concentrix-the-company-that-keeps-accusing-me-of-marrying-my-sister/>

phoned in we certainly provided the name and had the conversations about that'¹. He went on to say that it was a policy given to them by HMRC.

4.2.9 The issue of including the suspected partner's name in the opening letter has cropped up on many occasions, even before Concentrix began carry out tax credit compliance checks. Our understanding from HMRC is that the name should be included in the letter and it is concerning that Concentrix have not followed this practice and have indicated that this was a HMRC policy decision not to do so.

4.2.10 Claimants have a right to know what they are being accused of and knowing the name of the person HMRC suspect you of living with allows claimants to send appropriate evidence or at least alert HMRC to the status of that person. For example, they could be their landlord who lives elsewhere, a previous tenant of the property or their family member. The claimant not knowing who they are suspected of living with deprives them of the opportunity to settle an investigation very quickly by giving a simple explanation, and causes unnecessary cost, stress and wasted time for all concerned.

4.3 ***Decision making***

4.3.1 The cases we have forwarded to HMRC recently, and others we have been told about over the last couple of years, appear to show poor decision making in undisclosed partner cases.

4.3.2. This is unfortunately not a new issue and we have seen many examples where HMRC, or Concentrix, have apparently placed more weight on the validity of a single piece of evidence they have found, such as a financial trace of another adult at the claimant's address, without a willingness to really consider the claimant's alternative evidence or arguments. This is not only unfair to the claimant but does not follow the established law.

4.3.3. There has been a series of Upper Tribunal cases² in which HMRC have been criticised for their appeal submissions and in particular the cases have highlighted the burden of proof issue (see below) in Section 16 Tax Credits Act 2002 compliance investigation cases. Section 16 cases are those where HMRC investigate a claim during the tax year and can use their powers to require further information.

4.3.4. The Courts have made it very clear that the burden of proof in such cases is on HMRC to prove that the original decision is wrong rather than for the claimant to prove their position³. This is something that seems to be continually overlook in the compliance processes, particularly those involving undisclosed partners.

¹ Q40 <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/work-and-pensions-committee/concentrix-and-tax-credits/oral/41258.html>

² <http://revenuebenefits.org.uk/tax-credits/legislation/case-law/upper-tribunal-decisions/upper-tribunal-decisions-by-topic/>

³ An initial decision can only be altered by HMRC where they have reasonable grounds for believing the rate of that award is wrong or that the claimant is not or is no longer entitled to the tax credit (Section 16(1)). If HMRC do not have *reasonable*

4.3.5. We acknowledge this can be a subtle and arguable point and involves a degree of judgement where HMRC hold information which appears to conflict with that provided by the claimant, and a recent case at Upper Tribunal¹ highlights this. However, in many cases we believe that HMRC shift the burden of proof wrongly to the claimant to disprove HMRC's inferences which are drawn from relatively flimsy information used by HMRC and Concentrix, which on its own could not possibly be regarded as giving reasonable grounds for believing the award to be wrong, such as a single electronic financial trace about another adult.

4.3.6. The other crucial point here is that evidence of financial activity that connects another adult to that household does not equate to someone 'living together as husband and wife' or whether a married couple are 'separated in circumstances likely to be permanent'. Both of these legal tests require far wider consideration.

4.3.7. Indeed in the recent Work and Pensions Committee hearings Mark Oatridge from Concentrix was asked what sort of evidence a third party would have to provide to say she is a single mother and he replied:

*'What would typically happen is that the third party would provide evidence that indicates the individual at that household has no other financial associations. So there would be no evidence of any form of joint bank account, utility bills, telephone bills, any other financial association at that property that would hint at another individual being resident there.'*²

4.3.8. This is the approach that we have seen taken by staff at HMRC and Concentrix, however we maintain that it is the wrong approach and not in line with the law. The legal test for an unmarried couple requires HMRC to establish if they are 'living together as husband and wife or civil partners'. Case law has established a set of factors³ that have to be considered, only one of which is financial dependency. In the cases we have seen, HMRC have not generally looked beyond the financial factors to any of the others or even where evidence of the other factors has been presented, more weight is placed on the financial evidence obtained from the credit reference agency.

4.3.9. Similarly in cases where married couples separate 'in circumstances likely to be permanent', HMRC should be considering firstly whether the couple have in fact separated and secondly whether that separation is likely to be permanent. It is entirely possible that someone could have no financial associations and be part of a couple for tax credit purposes or have lots of financial connections but not be part of a couple for tax credit purposes. For example a

grounds for believing this to be the case but they merely 'believe' it to be the case, they can give notice to the person to provide supporting evidence before a decision is made under Section 16(1).

¹ CTC 1514/2015 <http://www.osscc.gov.uk/judgmentfiles/j4775/CTC%201514%202015-00.doc>

² <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/work-and-pensions-committee/concentrix-and-tax-credits/oral/41258.html>

³ <https://www.gov.uk/hmrc-internal-manuals/claimant-compliance-manual/ccm15040>

separated married couple taking steps to divorce may still have joint loans, a joint mortgage and could even be living in the same property.

- 4.3.10 This failure by HMRC to look at the full range of factors could be part of the reason why so many mandatory reconsideration requests are found in the claimant's favour.
- 4.3.11 We do understand the challenges that HMRC face with undisclosed partner cases. It is a complex area and often it is not easy to ascertain whether someone is part of a couple and if so when couple status started and/or ended. However, neither is it easy for claimants without any guidance from HMRC. By making a number of improvements to the current process, HMRC could improve the quality of decision making and the experience of the process from the claimant perspective at the same time as reducing error and fraud in the system.

4.4 ***Mandatory reconsiderations and appeals***

- 4.4.1 The mandatory reconsideration/appeal process is in place for people to challenge decisions. However, this should not be relied upon as a mechanism for addressing poor quality original decisions. Claimants who are forced to appeal can be left in severe hardship because of the time it takes to go through the process when in many cases their payments should not have been stopped in the first place.
- 4.4.2 The number of appeals in compliance cases seems, as a percentage of payments stopped or terminated, fairly low. There are many reasons that this could be the case – often people accept HMRC decisions so if HMRC have told someone that they should be claiming as a part of a couple they will accept this because they believe that HMRC are giving them correct advice. However, as noted above, we do not think HMRC staff have adequate training in making these difficult decisions and we do not think the process currently in place provides an opportunity to get to the right answer in every case, as it places too much weight on credit reference data without giving equal weight to other factors and the claimant's own evidence.
- 4.4.3 As part of an independent investigation, there should be a review of some of these cases to analyse the quality of the decision making. If there is any suggestion that the decisions are not robust, based on proper evidence and in line with the law, then HMRC should write to everyone affected and accept late mandatory reconsideration requests from those involved.
- 4.4.4 We are also concerned about the quality of decision letters. Often the letters do not do anything other than state that HMRC believe they are living with another adult and that their single claim has been terminated. This is clearly not acceptable and HMRC should urgently review the information they are providing to claimants to ensure that it is clear why such a decision has been reached.
- 4.4.5 We are told by HMRC that many mandatory reconsideration requests are upheld in the claimant's favour and this is normally because evidence has been provided at the reconsideration stage that is not provided at any earlier stage. However, HMRC do not appear to have looked into this further to understand why that might be the case. Most tax

credit claimants cannot afford to lose their payments and therefore it does not make sense that they would ignore a letter from HMRC that told them their payments would stop if they did not respond.

4.4.6 One aspect of the reconsideration process that is worrying is HMRC's introduction of an additional step into the process that not only causes delay but also suggests to claimants that they must provide additional evidence in order to continue with their mandatory reconsideration.

4.4.7 The last version of this letter we saw in 2015/16 was sent to a claimant after sending in a mandatory reconsideration request and said:

'You have failed to provide sufficient evidence to support your single claim. We have looked at the information you have given us but we are unable to change our decision at this stage. We want to give you the opportunity to send us more information or evidence to support your mandatory reconsideration. This might mean we can change our decision'

The letter went on to ask the claimant how they want to proceed by choosing 1 of the following 2 options at the end of the form:

'1. Choose this option if you don't want to continue with your mandatory reconsideration and want to withdraw your request (if you withdraw your request, you will have to repay any outstanding overpayment)

2. Choose this option if you want to continue with your mandatory reconsideration and are providing additional information or evidence.

The letter then went on to list some 'evidence' that HMRC would find helpful. However, the list was not tailored to the claimant's situation and gave the impression that HMRC had not looked at or considered the evidence the claimant had sent already. For example, it asked for a legal separation order or divorce papers when this was not a case involving a married couple.

4.5 **Restoring payments**

4.5.1 Some claimants will have seen a reduction in tax credit payments due to the compliance decision and others will have had their award stopped completely, sometimes for weeks or months. If a claimant successfully challenges a compliance decision, their original award will be restored.

4.5.2 When the award is put back into payment, the system will recalculate their payments on an annual basis. This means that those who only had part of their award stopped will have the money due for that period spread out over the rest of the year. Those who had their claims stopped altogether may receive a one off larger payment but it may not amount to the total of tax credits they missed out on during the period that payments were stopped, instead they would receive a slightly higher payment over the rest of the tax year.

- 4.5.3 For example, assume a claimant was receiving weekly payments of £200 and their tax credits were stopped for 10 weeks – they would miss out on £2000 and that is what they would expect to receive as a lump sum when their claim is reinstated. They would then expect that their weekly payments would continue at £200 a week. However, what actually happens depends on a number of factors, so it could be that they receive a payment of £800 and then higher ongoing weekly payments for the remainder of the tax year.
- 4.5.4 HMRC have confirmed that they do have a hardship process in place and a facility to make exceptional payments for people who are in acute difficulties however this is not something that is published nor is it well known amongst the advice sector or even HMRC staff. This means that people are unlikely to be able to reliably access this crucial support.
- 4.5.5 In some cases, when the award is put back into payment, because the tax credit payments are re-profiled over the remainder of the award period, this can result in the total tax credit award being paid out in fewer but higher payments overall. Where this happens, there can be a knock-on effect for other means-tested benefits such as housing benefit which can cause complications and confusion for claimants.

5 Concentrix

5.1 *Sub-contracting tax credit compliance work to a third party company*

- 5.1.1 HMRC's decision to use a third party, private company to carry out tax credit investigations on a 'payment by results' model has always caused us great concern primarily because the process that HMRC were using in some of their own compliance checks was already seriously flawed.
- 5.1.2 Prior to the award of the contract with Concentrix, HMRC themselves had massively increased the volume of compliance checks being made which was starting to lead to more reports to us of poor decision making and claimants being left without payments. There were also problems with the initial letters, decision letters and appeal processes (such as long delays due to the increased volume).
- 5.1.3 One important point to note is that Concentrix have, as far as we understand, always followed the same processes as HMRC staff carrying out the same interventions; so whilst the recent customer service issues were related to only Concentrix cases, the wider issues apply equally to both HMRC and Concentrix.

5.2 *Customer service issues*

- 5.2.1 The recent problems that led to the termination of the Concentrix contract related to difficulties claimants had getting through to Concentrix on the telephone. According to evidence given by HMRC¹ to the Work and Pensions Committee recently, by the middle of

¹ <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/work-and-pensions-committee/concentrix-and-tax-credits/oral/41258.html>

August 2016, Concentrix were answering less than 10% of phone calls and the amount of time taken to get through rose above 30 minutes.

- 5.2.2 In the two weeks prior to the HMRC announcement that they would not be renewing the Concentrix contract, we had seen a significant spike in contact from tax credit claimants who were unable to get through to the main Concentrix helpline number.
- 5.2.3 This was not a surprise, given that historically many more investigations are carried out in larger numbers during the renewals period between April and July. In the past, when HMRC have done their own high risk renewals (HRR) exercises at that time, we have reported to them problems of claimants getting through both to the main helpline and also to the individual compliance officer numbers that are given to claimants on their letters asking for additional evidence. Whilst HMRC have improved their call handling on the main tax credits helpline since the middle of 2015/16, it can still sometimes be difficult to get through to individual teams carrying out compliance interventions.
- 5.2.4 HMRC's response did mean that the call handling times at Concentrix improved fairly quickly after the announcement was made, however given that this was a somewhat predictable event we would have expected HMRC to have ensured Concentrix were able to meet the increased demand.
- 5.2.5 Two themes that were common in the website enquiries¹ we received in the two weeks leading up to the announcement by HMRC to terminate the Concentrix contract were:
- Claimants reporting that they did not receive the initial letter from Concentrix asking them for evidence to support their claim (which if not supplied by the deadline would result in a suspension of payments and a decision being made);
 - Claimants reporting that even though they did receive the letter asking for evidence, they sent it back before the deadline but had their payments stopped anyway for a failure to send the information requested. We had consistent reports of people being told by HMRC and Concentrix staff that there were backlogs of post and of papers getting scanned onto the system.
- 5.2.6 One other important point that we have raised with HMRC is that we have seen a handful of Concentrix cases where we believe the decisions were not issued in accordance with the law. The Tax Credits Act 2002² requires HMRC to issue a final decision of entitlement for the tax year just ended and also an initial decision for the new tax year – both decisions, by law, must state the right of the claimant to appeal.

¹ LITRG has four websites: www.litrg.org.uk, www.revenuebenefits.org.uk, www.taxguideforstudents.org.uk and www.disabilitytaxguide.org.uk. Although we do not offer to answer enquiries, members of the public often contact us sharing their experience of the tax and tax credits systems, or asking questions.

² Section 18 Tax Credits Act 2002 and Section 14 Tax Credits Act 2002

- 5.2.7 In the examples sent to us, formal decisions do not appear to have been issued and instead, where Concentrix made a decision that the claimant was not entitled to tax credits (normally because they had claimed as a single person and Concentrix felt they were part of a couple) they sent a TC607 notice which stated that payments had been stopped due to a change of circumstances. These TC607 notices are normally used in cases where people fail to renew after the end of the tax year.
- 5.2.8 Not only is the wording of the letters confusing (because as far as the claimant is concerned there was no change of circumstance) they do not appear to comply with the legislation. What needs to be established is why these letters were sent out and to how many people – HMRC will need to write again to those people with a formal decision notice and giving them information about their right of appeal. This needs to be addressed urgently.
- 5.2.9 We have raised these points with HMRC who have assured us that the processes used to send out letters and scan post have been checked and that no issues have been found. Similar statements were made in evidence to the Work and Pensions Committee by Concentrix who said they are investigating the letters issues. It is crucial that this is followed up and that the matter is investigated again by HMRC.
- 5.2.10 We also recommend that a second stage is added to the process that sends a reminder letter out to the claimant that HMRC require them to send information/evidence before any payments are suspended or a decision is made on the claim.

5.3 ***Value for money***

- 5.3.1 Since the beginning of the contract, there has been a lack of clarity around the savings that would materialise from the Concentrix contract.
- 5.3.2 Initially, HMRC expected to save £285 million in the first year of the contract and over £1 billion over three years. The NAO warned HMRC that the £1 billion forecast was not achievable given that in the first year it only delivered savings of £0.5m. HMRC then revised its three-year forecast to £423 million¹.
- 5.3.3 HMRC have said that so far the contract has saved nearly £300 million, however we would like to see further investigation by the NAO into how this figure was calculated. In the past we have raised concerns about HMRC's error and fraud statistics which are based on a sample of just under 4,000 cases that are worked by compliance officers in the same way as any other enquiry, with the additional step of requiring the officer to indicate whether they believe the overpayment was the result of genuine error or fraud and, if error, whether it was claimant error or official error².

¹ <https://www.nao.org.uk/report/her-majestys-revenue-customs-2014-15-accounts-3/>

² <https://www.gov.uk/government/statistics/child-and-working-tax-credits-error-and-fraud-statistics-2014-to-2015>

- 5.3.4 Based on our experiences over the years of dealing with disputes and appeals, in order to really understand what caused an error a detailed investigation is required. This includes: a conversation with the claimant; a review of what materials the claimant was provided with; listening to phone calls the claimant made to the helpline; and carefully reviewing household notes and correspondence as well as the evidence used by HMRC in coming to their decision. We therefore believe that HMRC's analysis could be flawed in that they only look at cases from their own viewpoint, without detailed investigation from the claimant's perspective.
- 5.3.5 We have similar concerns about the £300 million figure given our concerns about the quality of decision making in these cases.

6 **Independent review**

- 6.1.1 The recent Concentrix issues have brought to the forefront a number of serious concerns that we have had about the tax credits compliance processes for a number of years, particularly in relation to undisclosed partner cases.
- 6.1.2 The impact that the decisions made by HMRC and Concentrix has had on claimants cannot be underestimated. In October 2015 the PAC said that HMRC's method of tackling error and fraud in tax credits is a 'blunt instrument approach that does not properly take into account the human impact of its response, particularly on vulnerable claimants' and in our view little has changed in the last year.
- 6.1.3 An independent review of HMRC's tax credit compliance investigations should be carried out which should include the following points:
- Investigation of the Concentrix contract with a particular focus on:
 - How the contract was set up and negotiated, including the payment by results model
 - Value for money obtained from the contract (independently verified)
 - Why many claimants reported not receiving initial letters from Concentrix
 - Why many claimants reported having sent in their evidence but were told their paperwork had not been received
 - How cases were selected for investigation and whether the risk analysis process was sufficiently robust
 - The interface between Concentrix and HMRC
 - Whether the decisions issued by Concentrix stated the appeal rights a claimant has, as required by law
 - The quality of the decisions made in the cases
 - What arrangements were in place for telephone handling and repair work, including contingency plans
 - Review of HMRC's end to end compliance processes to ensure they are meeting the legislative requirements placed on them by the relevant legislation
 - Review of all letters used in compliance interventions to ensure they comply with legislative requirements

- Review of the end to end undisclosed partner process with a particular focus on the evidence requested at the outset (ensuring that it complies with legal tests) and the methods used by HMRC staff in making a decision
- Review of a sample of cases to see whether HMRC has dealt with the burden of proof correctly and to see whether adequate weight has been given to all evidence in the case
- Review of decision letters to see whether they meet the legal requirements, and what information has been given to claimants and whether it was enough help them understand their appeal rights
- Review of the effectiveness of tax credit compliance activity by examining whether the current sample cases that are used to establish the fraud and error statistics are sufficiently detailed
- Establish the role of contributory error in compliance cases and look at to what extent HMRC could reduce error through better communications at earlier stages

6.1.4 We recommend that this review is carried out by an independent person or body outside of HMRC in a similar way to the review of Personal Independence Payment has been carried out, with clear terms of reference¹.

LITRG
October 2016

¹ <https://www.gov.uk/government/publications/personal-independence-payment-pip-assessment-second-independent-review>