

The Forum to Oversee the Implementation of new HMRC Powers, Deterrents and Safeguards

Report on the year 1 April 2009 to 31 March 2010 to the Exchequer Secretary to the Treasury

There are three annual reports all of which are historic documents and the data has been compiled in a format specifically for the Forum at the time. HMRC will not update these reports. The final Forum meeting was on 21 February 2013.

Implementation of new HMRC Powers, Deterrents and Safeguards: Report on the year 1 April 2009 to 30 March 2010

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1. Background

The Review of HMRC's powers, deterrents and safeguards was set up to provide a modern framework of law and practice that would benefit taxpayers, agents and HMRC. The policy intention, developed through consultation, is for **HMRC to support those who seek to comply and come down hard on those who seek an unfair advantage through non-compliance**. The previous government set up an Oversight Forum to ensure that new powers were implemented by HMRC fairly and effectively and delivered real change for customers and the department. The Forum felt that the position of unrepresented taxpayers was sufficiently important to merit creation of a sub-group to consider their specific issues.

2. Pre-Implementation

Work to prepare HMRC staff for implementation

HMRC set up two specialist project teams to oversee and manage implementation of the compliance checks and penalty legislation in the run-up to 1 April 2009. HMRC is extremely grateful for the time and effort the teams have put in to achieve the 1 April deadline. Key products to prepare HMRC staff included:

- *Learning*, by 30 November 2009, 20,185 HMRC staff members had completed Compliance Checks awareness training; 14,240 had completed full information powers training; and 10,284 had completed New Penalties training.
- *Technical guidance* interprets the meaning of the legislation and *Operational Process Guidance (OPG)* provides advice on practical operation and is a living document which should continue to develop best practice. Both were exposed for external comment and published on the HMRC Internet.
- *Staff Feedback*, provides 'frontline' staff with an opportunity to feedback any concerns, risks and issues affecting both themselves and customers

Work to prepare HMRC customers for implementation

Most of the material to prepare HMRC staff for implementation is also available to help tax agents, for example: on-line learning. In addition HMRC has developed a range of material to help customers.

The HMRC Press Office developed a communication strategy to raise media awareness. This ranged from news releases to national media, including financial and accountancy press, on line media and relevant trade and employer publications. Live events included participation in workshops and conferences, particularly involving the tax profession. Some forty joint learning events brought together tax advisers and operational HMRC staff to learn together in an informal environment.

Factsheets were developed to provide advice to taxpayers about their rights and responsibilities. A wide range of external representatives helped to develop some of these products, for example, participating in guidance readership panels. HMRC is very grateful for their contributions and work continues to improve the products.

Since the establishment of the Forum the department has promoted further protections for customers through the introduction of Your Charter. An important programme of embedding the rights and values expressed in Your Charter has commenced with staff at all levels.

3. The HMRC perspective

The extent of the change for HMRC staff which took place from 1 April 2009 should not be underestimated. For the first time powers and safeguards extended across different taxes with the ability, broadly, to use one set of rules when checking taxes and duties. In addition there was radical reform of tax Tribunals coupled with the introduction of a new internal pre-hearing review process.

Early reactions were expressed by the Public and Commercial Services Union (PCS). While HMRC staff broadly welcomed the alignment of powers, difficulties were reported with both implementation and process design, which the PCS felt had been rushed. Reviews commissioned by HMRC confirmed that there were issues which included:

- Training for VAT staff which wrongly assumed a knowledge of penalties and thereby undermined confidence;
- The difficulty of finding and accessing guidance;
- Processes for the new penalties system which staff found time consuming and inefficient;
- Inconsistency about how compliance check visits should be carried out, for example, how best to explain the Human Rights Act and what information should be provided, and to whom, at an unannounced visit.

The Department responded to a number of issues, for example:

- production of simple regime specific flow charts to provide easy to understand overviews of the new processes;
- a review of the New Penalties Processing System, including the options for simplifying the processes; and
- changes made to reduce the burden on managers and staff.

Learning is ongoing and HMRC continues to update support for staff and customers.

Subsequent developments

Discussions with colleagues with this report in mind have thrown up similar issues to those mentioned above. Undoubtedly, some of this relates to wider concerns about continuing change within HMRC and reactions from teams have varied. However,

there is a growing sense that HMRC officers increasingly see benefits from the changes despite continuing frustration with some of the processes.

A better understanding of customers

If we are to have a better tax system, behavioural change needs to touch everyone – HMRC, agents and taxpayers. The new powers and penalties can be a catalyst for this. To help improve mutual engagement and understanding of what each party requires HMRC has carried out a number of activities. Three of these are:

- *Survey of Customer Perceptions of Interventions* – HMRC commissioned Ipsos Mori to undertake qualitative research with customers who had been subject to a compliance check. The aim was to develop better understanding of how HMRC compliance checks were perceived. This research proved very valuable and the report was published on HMRC’s Internet in 2009.
- *Workshops* - HMRC organised a series of customer focused workshops with the aim of putting staff in the customer’s shoes to understand the emotional, financial and administrative impacts of a compliance check. Feedback was very positive and outputs used to produce guidance for staff.
- *Language and Tone* - Further customer focussed research has helped HMRC to understand customers’ preferred approach to communication. New “Language & Tone” principles and techniques for improved consistent and effective communication respond better to customers’ needs.

Use of the new powers and penalties

HMRC introduced the new powers in a measured way within its Local Compliance area in which the majority of compliance staff work – the idea being to build and learn from accumulating experience. This has led to a slower take-up of the changes.

The new rules for compliance checks applied to old and new cases from 1 April 2009. Different parts of HMRC were affected by the new penalties at different times. VAT staff working on pre-credibility checks used the new penalties immediately after 1 April but direct tax staff mainly became engaged late in the tax year.

Certain actions must be authorised by a trained, and generally senior, officer. This was felt to be an important safeguard. The majority of authorisations involved unannounced visits to business premises. High levels of rejection in the April to August period resulted from authorising officers believing alternative courses of action were available or that there was insufficient evidence to justify authorisation. Thereafter rejections fell significantly as officers understood when authorisation would not be given. By the year end the proportion of rejections was 8%.

Summary of authorisations granted and rejected			
Authorisations Requested		Authorisations Rejected	
<i>Deferred</i>	16	<i>Insufficient evidence</i>	105
<i>Granted</i>	1414	<i>Non compliant with HRA</i>	1
<i>Pending</i>	7	<i>Not relevant or proportionate to benefit</i>	30
<i>Rejected</i>	202	<i>Preferable alternative course of action</i>	64
<i>Withdrawn</i>	2	<i>Reasonable excuse accepted</i>	1
Total	1641	<i>Unspecified</i>	1

The imposition of penalties for failing to respond to an information notice issued by HMRC confirms the gradual approach to using the new powers. By August only 134 penalties had been issued, rising to 701 by December and 1916 at the year end.

Schedule 24 Penalties illustrate quite dramatically the different build up rates for VAT and ITSA. Figures are only available from 1 April 2009 to 31 May 2010. These show 908 ITSA cases completed compared to 5353 VAT cases. It is difficult to extrapolate a trend for ITSA cases; total penalties are just under £200,000 suggesting few significant omissions to date. 832 VAT penalties have been suspended which account for 42% of total VAT penalties by amount.

Penalties recorded up to 31/5/2010					
By Regime	Cases	Inc suspensions	Suspended	Due now	
ITSA	908	23	£10,312	£188,408	
PAYE	279	68	£35,627	£54,994	
VAT	5353	832	£3,359,333	£4,641,618	
Other	21	3	£947	£14,744	
Total	6561	926	£3,406,219	£4,899,764	

Looking at behaviours, 55% of cases have been errors and 39% failures to take reasonable care. The error cases exclude those which were considered for a compliance check but not taken up.

Penalties by behaviour up to 31/5/2010			
Behaviour	Cases	Prompted	Unprompted
Deliberate + concealment	39	32	7
Deliberate	117	113	4
Failure to take care	2,679	2,545	134
Failure to notify under-assessment	256	226	30
Error	3,782	3,337	445
Total	6,873	6,253	620

The total number of Cases is greater as a case can exhibit more than one behaviour

The internal review process

HMRC introduced a new optional internal review process on 1 April 2009. It offers the opportunity of an internally independent review of disputed tax decisions. The aim is to resolve cases without the need to go to a tribunal. HMRC has worked closely with external bodies in the development of the new review process, including learning, training and guidance products. HMRC is grateful for their support. In the first nine months there were 20,778 requests for internal review. 15,083 decided cases were penalty decisions and 3443 non-penalty cases. 76% of non-penalty cases were upheld. Of the others, 349 decisions were varied and 471 cancelled.

HMRC Internal Reviews to 31 December 2009	
New review requests total	20,778
Unrepresented by an agent	14,921
Outcomes: non-penalty cases	3443
Varied	349
HMRC decision cancelled	471
Outcomes: penalty cases	15,083
Deemed upheld time limit expired	48
Varied	793
HMRC decision cancelled	7961

4. The external perspective

Introduction

The Forum's external members have made an important contribution throughout the first year of implementation. The Forum has benefited from the data and recommendations in the report by the Past President of the Chartered Institute of Taxation which reflects views of members and discussions with HMRC frontline staff. The ICAEW has suggested that over the next twelve months it would be useful for external Forum members to build on the CloT report and design and coordinate a wider survey of members and constituent groups to obtain objective data.

Early observations

Early concerns about excessive and inappropriate use of powers by HMRC have not proved to be correct. Some commentators anticipated the worst, painting a picture of taxpayers and tax advisers overwhelmed by information requests and inspections of private homes. Manifestly that has not happened. Whilst still early days, HMRC has clearly kept to its assurances about how powers would be used and has been cautious in its approach to implementation. This should be acknowledged.

That is not to say that everything has worked smoothly or that there are no areas of concern. But these concerns should be considered in the context of a relatively soft landing for the powers as a whole. The second overriding point is that taxpayers, their tax advisers and, in some cases HMRC, have been slow in coming to terms with what the new powers mean in practice.

General support for compliance approach

There is strong support from tax advisers for HMRC's compliance activities. A recurrent view is that HMRC compliance activity is not visible or extensive enough. The overwhelming view from the CloT survey was that HMRC visits are being carried out "acceptably". But there is a recurring theme about the competence of HMRC staff conducting enquiries and concerns about the attitude of some HMRC staff. Unrepresented taxpayers are particularly ill equipped to challenge HMRC officers who might make unreasonable demands or unnecessarily prolong a compliance check that lacks substance. Here HMRC owes a particular duty to act scrupulously.

Training

There is praise for HMRC's open approach to sharing its training material. There is great value in joint training of HMRC staff and the agent community and the representative bodies are committed to pursuing this. A number of joint training sessions have already been held and have been very successful in helping each side to understand the other's point of view. Unfortunately the timing of training, on all sides, has not been ideal. Some initial training was probably too early and the detailed training was often left too late, leaving people struggling to deal with powers in practice without a proper understanding of what they needed to do.

HMRC should investigate what toolkits or other assistance would help unrepresented taxpayers to understand better their obligations and entitlements and reduce the incidence of error. Work should also continue to refine the factsheets issued to taxpayers subject to any compliance activity to ensure they provide a comprehensive view of safeguards and statutory rights in line with HMRC's Charter commitments.

Information and inspection powers

It is difficult at this stage to discern an overall picture on the use of information and inspection powers. However, representative bodies have not been overwhelmed with complaints from tax advisers about inappropriate use of powers. The main issue is

how the use of information powers fits into the wider picture. In particular, there is concern where clients and tax advisers cannot discern the big picture and information requests relating to past, present and future liabilities arrive apparently at random. Some HMRC officers continue to send out long lists of questions at the start of enquiries, lists that can be unreasonable, rather than adopting an open and risk based approach.

Particular care is needed when a taxpayer subject to an enquiry or check is also a tax credit claimant. HMRC should continue to look for ways to work tax and tax credit compliance issues in conjunction wherever possible and should ensure that unrepresented taxpayers and tax credit claimants are fully aware of the total effect of adjustments at the point when they consider an appeal.

Reasonableness

The information and inspection powers rely on the concept of reasonableness – HMRC can only seek information which is reasonably required for the purpose of checking a person's tax position. It is essential that taxpayers and their advisers have confidence that HMRC will use what could be very draconian powers reasonably and fairly. The safeguards in the powers need to be seen as clear, available and working.

Concerns remain that HMRC does not see the need for all safeguards to be set out in statute. While the Forum's role is welcome in reassuring ministers that powers are used in accordance with assurances given to Parliament, statutory safeguards are the only wholly satisfactory option. There is a lack of clarity as to precisely which records are 'statutory records'. As there is only a right of appeal against a penalty for failing to produce 'statutory records', unrepresented taxpayers may feel pressured to reveal information the legal status of which is not free from doubt.

Cross-tax working

One of the key drivers of the new powers regime is the creation of a framework under which HMRC can look across all of the taxes applying to a business at one time, rather than dealing with each separately. At the moment these cross-tax checks are still relatively uncommon. Our sense is that there is a broad measure of support for the concept, but concern about the practicalities such as basic training. Cross-tax working should be supported but it will only work if HMRC develops cross-tax skilled individuals, particularly those dealing with small businesses.

Penalties

The old regimes were widely perceived as fairly blunt instruments so it must be right that the new penalty regime reflects behaviours. Penalties should be high for those who deliberately evade their taxes. Indeed, the way that HMRC has operated penalties in direct tax cases in the past has not created a significant deterrent. But the system needs to be balanced and must properly distinguish between those who deliberately set out to evade their taxes, those who are careless or in a muddle but who have no deliberate intent, and those who simply make mistakes.

HMRC should continue to ensure that its staff are fully aware of these crucial distinctions and monitor trends around the error/failure to take reasonable care boundary. It is important that HMRC staff offer suspended penalties whenever appropriate and ensure that unrepresented taxpayers are properly informed about suspension. The statistics on page four reveal that there have been few suspensions to date for ITSA cases; HMRC should seek to understand why.

Reasonable care

Reasonable care is an absolutely critical concept within the new regime. It is essential that there is further serious engagement between HMRC and the

profession to develop a robust framework within which tax advisers can be sure that they are working with reasonable care. This is a key priority, as is continued recognition by HMRC that reasonable care relates to the differing circumstances and capabilities of each individual.

Internal reviews

The internal review is a new feature of the direct tax environment which only a minority of practitioners has used. HMRC and the professional bodies need to do more work to ensure that the process works fairly, that there is confidence in the system and that it is something worth supporting. There needs to be greater clarity over the scope the reviewing teams have to look at the decision in the round and monitoring of the extent to which lessons are learned by front line teams. The question of how many more decisions would be different if all were reviewed and whether there is a training issue is still to be addressed.

Discovery

The mix of new information powers and court decisions which have expanded the scope of discovery has created uncertainty. Discovery powers should be the subject of a proper review as part of the HMRC powers review exercise.

Forms of Intervention

Tax advisers do not have any sense of the process under which HMRC decides which particular form of intervention to use in any case. Work should be undertaken jointly to create a broad framework in which the positioning of each of the various types of compliance check approach can be properly placed. There is also a need to understand the interaction of informal and formal powers and how to obtain certainty.

5. Conclusion

The Forum is pleased to report that the broad consensus is that, in “year one”, HMRC has taken care to implement the new powers on a test and learn basis. As a result the “horror stories” anticipated by some commentators have not materialised.

It is still early to be certain of trends: anecdotal evidence suggests that HMRC staff may have changed their approach as the year proceeded.

Bodies represented on the Forum would be happy to continue to work with HMRC to understand issues as they arise and help provide solutions. HMRC is fully persuaded of the benefits of working together and activity is already underway to consider issues highlighted in this report.

All members of the Forum commend this report to the Exchequer Secretary to the Treasury.

Membership of the Oversight Forum

HMRC	
Chair – Dave Hartnett	Permanent Secretary for Tax
Mike Eland	Director General of Enforcement and Compliance
Anthony Inglese	General Counsel and Solicitor
Richard Summersgill (Naomi Ferguson to 14/10/2009)	Director of Local Compliance
Simon Norris	Head of the Review of HMRC's Powers, Deterrents and Safeguards
External Representatives	
Chas Roy-Chowdhury	Association of Chartered Certified Accountants (ACCA)
Ian Menzies-Connacher	Confederation of British Industry(CBI)
Andrew Hubbard	Chartered Institute of Taxation (CIOT)
Simon Sweetman	Federation of Small Business
Paul Aplin (OBE) or Frank Haskew	Institute of Chartered Accountants in England & Wales(ICAEW) Tax Faculty
David Cruickshank or Derek Allen	Institute of Chartered Accountants of Scotland (ICAS)
Nigel Popplewell	The Law Society
Robin Williamson or John Andrews	Low Income Taxpayers Reform Group
Robert Maas or Bob Davies	Institute of Indirect Taxation

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