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Research report 601

HMRC Powers and Taxpayer Safeguards Research Summary Report

Qualitative research with agents

Ipsos MORI

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Behaviour, Insight and Research Team

OFFICIAL

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1. Background and introduction

This research consisted of eleven telephone interviews with agents¹. The interviews covered agents' experiences of handling Accelerated Payment Notice (APN) and Follower Notice (FN)²³ investigations on behalf of their clients, and their perceptions of their client's experience during the process. The research was conducted by Ipsos MORI, an independent external research agency.

The agents who took part in the research were a mix of consultants, lawyers and accountants. They were recruited through agent representative bodies who requested members with experience of APNs and FNs to participate in the research. Participants' role in APN and FN investigations varied and depended on several factors including whether they were self-employed or employed, and whether their key relationship was with the individual client or with the provider of the financial scheme which was being investigated. As for their clients, they included a wide range of individuals in terms of their background and wealth as well as businesses.

Given this research includes a limited number of interviews, it is important to note that these findings only show a snapshot of the experiences of agents and their clients. In some cases, agents also had limited recall of certain events given they occurred some time ago, therefore evidence is limited in some areas. The interviews covered cases dealt with by agents between 2012 and 2018.

2. Findings

2.1 Experiences of HMRC's implementation of APNs and FNs

2.1.1 Advance warnings

Typically, HMRC sent an advance warning letter before issuing the APN/FN notice, to give recipients time to make the necessary preparations. Agents said that most of their clients had received an advance warning letter, before receiving their APN/FN notice. However, agents said that the time between the advance warning and the notice itself varied from just a day to months in between. If the client had not received an advance warning, both the client and the agent expressed frustration as they felt unprepared to receive the notice.

¹ Nine interviews took place between the 12th – 24th March 2020, the research was then put on hold as a result of coronavirus. The research resumed in August, and the final two interviews were both conducted on the 20th August 2020.

² <https://www.gov.uk/government/publications/independent-loan-charge-review-summary-of-evidence/section-8-powers-to-tackle-tax-avoidance>

³ This research was also intended to explore experiences of the General Anti-Abuse Rule (GAAR), however, only one agent had experience of this power and not enough information was provided for this to be included in the analysis. For this reason, this report focuses on APNs and FNs only.

Broadly, both agents and clients were glad to receive the advance warning as it gave them valuable time to prepare, both strategically and financially; and it was clear what the advance warning was for and what would happen next.

“Typically, there is warning that you will get a notice. They would send a letter saying that you would receive a notice, and this is what you will be asked for.”

Consultant, experience of both APNs and FNs

There were cases where an advance notice arrived with or after the notice or was not received at all. As well as experiencing issues with receiving the advance warning, agents also mentioned the advance warning did not always make it clear when the notice would arrive which made planning difficult. Agents made it clear that having an indication of when the notice would arrive also helped them to plan their strategy and gave their clients an idea of how long that would have to put money aside if they needed to.

“It includes no indication of when they will get it, just ‘shortly’.”

Consultant, experience of both APNs and FNs

2.1.2 The APN/FN notice

Agents and clients who had received an advance warning were prepared to receive the APN/FN notice. As with the advance warning, the APN/FN was sent by post in a letter format. Agents and clients were both happy to receive both the advance warning and notice by post. Agents felt that this was the clearest way HMRC could present the information and gave them a hard copy to refer to; they would not want this to be altered in any way.

Views on the quality and clarity of the information in the notices were mixed. Some agents felt that the APN/FN notice detailed exactly what they needed to know and gave clear instruction about what they needed to do next. However, other agents raised several issues with the tone, content and clarity of the notices.

Agents who were critical of the tone of communications said that they had handled notices with covering letters which came across as aggressive and confrontational. These agents said that the tone and language of the letters was direct and judgemental and not what they expected from HMRC. However, agents did say that they noticed a positive change in the tone of communications over time.

“At the time HMRC sent a lot of stuff to clients that were worded viciously, ‘you are part of this tax scheme, we don't think it works, everyone else pays their tax, why don't you?’ almost tried to shame people into not joining what were, at the time, technically legal tax schemes... I think it's better now but at that time, but the wording was kind of outrageous.”

Accountant, experience of APNs

Lack of tailoring of notices or personalisation was felt to set a negative tone for the process. Agents felt that the use of what seemed to be templated letter made the information vaguer and suggested HMRC was unwilling to engage with recipients on an individual basis. In turn, they thought this made clients feel as if the context of their circumstances would be ignored. Further to this, some agents said that the impersonal tone and templated content of the letters made them appear less serious to their clients.

The use of technical language made it difficult for both some agents and clients to understand exactly why they had received the notice. These agents raised concerns about how an individual would respond if they could not afford legal advice or advice from an accountant. They said that while most individuals who received a notice would already have had an agent to support them, that was not the case for all.

“The notices are difficult to follow. The letter is quite long, it walks through the legislation in quite a bit of detail so it's quite difficult to pick out exactly what it is getting out...when drafting legislation, it should be required that the legislation must be summarised for taxpayers as well. That shouldn't be difficult to do.”

Consultant, experience of both APNs and FNs

2.1.3 Calculations

Agents raised concerns about the complexity of the calculations provided in APNs/FNs. Whilst the calculations generally seemed accurate, agents raised some concern over how an individual would be able to deal with the notices without advice from an accountant. Agents also mentioned that on occasion they found errors in the calculations. Agents would make a representation if they came across any errors in the notice.

“There are loads of issues with the figures to be honest and without advice, a client would not know how much they need to pay to settle.”

Consultant, experience of both APNs and FNs

In addition to complexities and errors, agents noted that it was not always from the calculations what amount the client needed to pay to clear the debt as interest was payable but not included in the notice. This meant that in practice, it was not possible for a client to fully pay a notice without contacting HMRC for a full amount.

2.2 Experiences of dealing with APNs and FNs

2.2.1 Making representations to HMRC

Agents felt that the APN/FN did not leave them with much they could do, other than make representations for any errors they spotted in the notice or pay the amount requested. Agents informed their clients of this and said that their clients often expressed frustration at not being able to negotiate the amount or appeal.

Agents said that in most cases, individuals who could afford the amount and individuals who did not have access to specialist advice would generally pay the total sum quite quickly after receiving the notice. Where there were errors in the notice or the client was unwilling to pay the amount, they made a representation to HMRC. In order to make a representation, it was up to the agent to put together evidence as to why their client should not pay the notice or should not pay the full amount.

“Response varied by client. Some were willing to fight it until the end and to use more money to fund the judicial review case because they had a lot of tax at stake. Some had just taken a bit of a gamble and just been in the scheme a year and just paid it.”

Accountant, experience of APNs

Agents commented that often there were delays in responses to the representations from HMRC of many months. For clients who wanted to resolve the notice, agents said this delay often added to their client’s anxiety. For others, the delay meant that their client lost interest in the notice and stopped engaging with it which, agents felt, made them less likely to pay as time went on.

Other agents said their clients actively planned to use the representation process to draw the process out for as long as they possibly could in order to delay any payment. This, agents said, involved putting a representation in just before the deadline and hoping that HMRC would take months to respond.

“When HMRC then take ages to come back on the representation it means that the client doesn't take it as seriously as they ought to and then they aim to just draw the process out.”

Consultant, experience of both APNs and FNs

When it came to the conclusions made by HMRC about a representation they received, agents did feel that the conclusions were mostly always clear. However, again they were templated, leaving both agents and clients feeling constrained about what they can do next.

2.2.2 Dealing with penalties

There was limited experience of dealing with penalties among the agents who took part in the research. Penalties were issued in cases where the client had not paid the full sum before the deadline set by HMRC. Agents with penalty experience said that they occurred because their client either could not afford to pay the full amount or they wanted to prolong the process in the hope the underlying case against the scheme would get to court.

Overall, the way penalties were implemented was viewed negatively both by agents and their clients. Agents felt that the threat of a penalty put pressure on the client, meaning they felt forced to pay the full amount even if their agent believed the notice should be challenged. Agents also mentioned that penalties added to the stress and anxiety their clients were experiencing. In cases where a client was willing to pay but unable to pay the full amount on time, receiving a penalty exacerbated the situation.

2.2.3 Dealing with HMRC staff

Agents reported mixed experiences of dealing with HMRC staff. Some agents felt the staff they dealt with were helpful and able to answer their questions. Agents tended to be more positive about their experiences in cases where they had a named contact at HMRC to deal with as they felt that this made the process of resolving issues easier.

However, some agents were quite critical of their experiences of HMRC when dealing with notices. These agents felt that the HMRC staff they were able to get in touch with were only able to answer basic questions about APNs and FNs, rather than answer questions about their case. Agents found this frustrating and they said it limited their ability to do their job and progress the case.

3. Conclusions

Overall, it is evident that the quality and clarity of the written communications received throughout the APN/FN process shaped the experience for both agents and their clients.

The advance warning was a valuable part of the APN and FN process as it allowed agents time to prepare their client and to consider how to handle the notice, they also allowed clients time to set aside the money they will need if they intend to pay. They felt this step in the process could have been improved by providing some indication of when they should expect the notice to arrive.

When it came to the APN and FN notices themselves, agents stressed the importance of making them as clear and concise as possible. A key concern for agents was that an individual would be unlikely to understand the details within the notice. It was suggested the powers legislation should include some protections against this by requiring HMRC to include easy-to-read summaries in each notice to reduce the reliance on specialist support. Agents felt that communications should use neutral language, as negative tones, or as some saw,

accusations, could generate undue stress for their clients which could reduce their ability and willingness to pay.

Agents also felt that communications should be more personalised and that HMRC should be willing to recognise the circumstances their client is in and provide some flexibility where possible. Agents believed that this should be paired with more time to negotiate the outcomes of representations and for more flexibility around payment terms. In all, this would encourage clients to engage with a notice and help ensure that they are treated fairly.