How should HMRC treat the victims of tax fraud?

What should be the tax liability of people who are the victims of fraud? That is the important question raised by the case of victim Mike Grogan, writes George Turner Mike Grogan is one of a number of victims of tax advisor fraud, where scam tax advisors make fraudulent claims for tax rebates on behalf of their clients, pocketing the money themselves before disappearing, leaving the victim with a large tax liability when HMRC uncovers the fraud and seeks to reclaim the tax.

In Mr Grogan's case, a colleague recommended an adviser who claimed to be able to access tax reliefs on out-of-pocket expenses connected to his work. Many financial frauds rely on referrals that see clients paid to refer friends and colleagues. People will let their guard down when approached by a trusted contact.

After engaging in some correspondence with the person from the firm he provided them with his identity documents to make a claim on his behalf, and he received £3,883. Having an agent submit a tax return on your behalf is nothing unusual, however, as Mr Grogan would later discover, the fraudsters had used his details to impersonate him and submit returns in his name. They changed the nominated bank account to their own account and put in claims for £11,494, pocketing the difference.

The claims were made on the basis that Mr Grogan had invested in an enterprise investment scheme company, which entitled him to tax relief. When HMRC would later investigate the claim, they would discover that the company did not exist, and no investment had been made. However, by that point they had already paid out the money.

As the claim was made in Mr Grogan's name they presented him with a demand for the full amount – £11.5k, an amount he had never received.

Before he was contacted by HMRC he was completely unaware of what had happened.

He provided all the details of his contacts with the scam advisor to HMRC, who accept that he was the victim of fraud.

However, they have not waived the liability and continued to demand full payment. In a review of his case carried out by an HMRC officer he was told: "I cannot see that HMRC is at fault in this matter. The fraud has been enabled by you and you are sadly the victim."

He was also told that providing login information to the scammers for his government account "was akin to providing [the scam company] with a pin code for your bank account in terms of security".

HMRC are putting all of the blame on what they accept is the victim of crime, while accepting no responsibility for the fact that they made a payment on the basis of a false claim without making any checks themselves.

This was an issue picked up by James Wild MP, Member of Parliament for North West Norfolk, at a recent hearing of the Public Accounts Committee. He raised the advisor fraud case as reported in The Times and asked Jim Harra, the head of HMRC, whether they carried out any checks before making payments to these kinds of scams. Mr Harra confirmed that HMRC's policy since the mid-nineties has been "process now check later".

In this case there were a number of red flags which HMRC could have picked up on. The tax relief was being claimed under a scheme usually accessed by high net worth individuals, yet Mr Grogan is not a high earner. The company that the scheme was being claimed for did not exist.

With EIS, it is a requirement for companies involved in the scheme to seek certification from HMRC, and for investors to obtain a compliance certificate from the company before making the claim.[1]. It could be argued that given that in this case HMRC had not received a valid claim, they should not have been able to make the payment in the first place.

The case of Mr Grogan shows how HMRC's policy of "process now check later" can easily be abused by fraudsters to pile liabilities onto their victims before HMRC get around to checking. For HMRC to accept no responsibility for the deficiencies in their own processes, whilst accusing the victim of being "careless" is victim blaming.

There is no dispute that Mr Grogan is a victim of crime, HMRC acknowledge that, and in pursuing Mr Grogan for the money that has been obtained fraudulently, they end up punishing the victim rather than the perpetrator of the crime.
This unfortunate situation is not inevitable. HMRC are the public body entrusted with "care and management" of the tax system and they have broad discretion over how they execute that duty. It would be perfectly within HMRC's power to settle the matter for a much lower amount (i.e. the amount that Mr Grogan actually received).

HMRC makes settlements with large taxpayers all of the time.[2] HMRC also have broad powers of criminal investigation which would allow them to pursue the advisor, and recover funds under proceeds of crime legislation, relieving them of the need to recover the funds from the victim. This is a much more difficult process for HMRC, but surely a course of action more in line with the principles of justice.

In this case, HMRC are refusing to disclose to Mr Grogan whether or not they have opened a criminal investigation. Again, this is a bizarre outcome of having the tax authority (which is under strict duties of confidentiality) taking on the role of the police. If someone was a victim of any other form of crime and walked into a police station to report it, it would not be acceptable for the police to reply, thanks, but we won't tell you if we are going to do anything about it.

Overall, the case raises important issues about how HMRC deals with the victims of tax crime. As the system is currently set up, the only victim is seen as the Crown, and HMRC seek to recover losses on behalf of the Crown. But as this case illustrates, taxpayers can be the victims of fraudulent tax advisors too, and it is often the taxpayer that ends up being severely impacted by HMRC action to recover the bill. Once that bill is recovered, there is little incentive for HMRC to go after the fraudster.

This is not a marginal issue involving a few shady actors. Recent years have seen an increasing number of claims brought by people involved in tax avoidance alleging negligence or even fraud against their advisors for recommending that they join a scheme and advising them that it was legal.

When HMRC challenge the schemes and defeat them through the courts, that advice is demonstrated to be wrong but the tax bill lands at the feet of the taxpayer.

Many will be unsympathetic to the plight of people involved in tax avoidance schemes, but there is a broad spectrum of culpability on the part of the taxpayer. Mike Grogan's case is an extreme example where the taxpayer had no clue what was being done in his name and the adviser stole money claimed on his behalf. In other cases, such as with some loan based disguised remuneration schemes, promoters have given wildly misleading statements about the schemes, in some cases claiming that they had been approved by HMRC.

The law is clear that where advisers behave dishonestly, they are committing tax fraud. HMRC needs to develop a better policy as to how it deals with the victims of tax fraud, beyond simply asking them to pay up and telling them it's their fault.

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1 Venture Capital Schemes Manual, HMRC, 09 March 2016, https://www.gov.uk/hmrc-internal-manuals/venture-capital-schemes-manual/vcm14130

2 TaxWatch calls for scrutiny over "sweetheart" tax deal between HMRC and GE, TaxWatch, 23 September 2021, https://www.taxwatchuk.org/ge_sweetheart_tax_deal