

How to deal with inexperienced HMRC officers

Dave Wase explains the best tactics to employ when you are dealing with Revenue staff who are new to the job.

Working for many years for a large organisation within the Civil Service you get to meet a lot of 'characters' who might not share the same focus, dedication to duty or learning as most of their officer counterparts, but rather viewed the job a means to an end.

Before you get too excited, I am not here to run down my ex-employers and ex-colleagues. I have the utmost respect for anyone charting their career through the choppy seas of tax investigation work. It is a demanding role and at times cases become all consuming, with little praise and even less in the way of reward.

Offering HMRC enquiry support to general practice clients and individuals nationwide, you generally do not see those enquiries where everything is going to routine: records request, review, meeting, aspects picked up and settlement negotiated on a reasonable basis. The vast majority of enquiry officers are dedicated, professional and above all reasonable. The vast majority of enquiries pass off without the need for specialist help. Apart from those sharp-end C&P nudge letters, Counter-Avoidance approaches, FIS COP8/COP9 and otherwise complex technical enquiries, what we tend to see are those enquiry cases that feature unreasonable HMRC delays or intransigence.

The delays and intransigence can be as a result of resource issues, which have become rather more common of late during the pandemic. However, there seems to be a theme in that the officers concerned tend to be relatively new to the job and display a distinct lack of training or appreciation of the legislation they are working within.

Loss of HMRC staff

Truly, there does currently appear to be an element of very inexperienced enquiry staff, the reasons for this are likely self-inflicted by HMRC. I left the department in 2018 due to the 'Building Our Future' estates rationalisation programme. For staff in outlying areas this meant that your local office was closing and you were expected to work at offices many hours away from your home. As a result, HMRC haemorrhaged experienced staff as thousands of long-serving officers, myself included, took a package and left.

Those unable to retire found employment elsewhere and a good many took the option of working in practice to support individuals with their HMRC enquiries.

While engaging other ex-HMRC colleagues now working in practice, we regularly hear anecdotal stories of officers joining enquiry teams to work on complex tax investigations with only a few months or weeks of experience within the department.

Being a tad 'old school' myself, it used to be the case that officers had to demonstrate both competence and appetite by working PAYE (employer compliance) enquiries or enquiries into small traders. Only then, and usually after some time, would you be selected for inspector training. The course itself was punishing with a high attrition rate, but it worked well because it fixed a certain mindset and focus on task to equip inspectors for the job in hand, which at times could be very demanding. Inspector training also drummed both the legislation and the guidance into officers.

Utilising the skills of ex-inspectors like myself can be extremely useful for clients. We relish working enquiries; it is in our blood, we know how to deal with officers, we know what HMRC letters translate to, we know the motivation behind them, therefore we can give HMRC the answers straight (not too little, but equally not too much). This cuts down on unnecessary correspondence, where HMRC effectively end up issuing the same letter repeatedly in order to arrive at the answers or information they were looking for, or worse still they widen enquiries into other areas.

Additionally, it is important that when responding to HMRC information requests that you restrict the records and information you provide to what is reasonably required for HMRC to establish the tax position. This guards against 'mission creep' where individuals inadvertently give HMRC too much by way of information and records and end up with HMRC expanding their enquires into other aspects or years.

A tricky path

When coming up against officers where you suspect a lack of knowledge or understanding of the areas they are enquiring into, the path forward can be tricky.

These issues usually show themselves in HMRC taking enquiry steps out of turn or rushing to penalties before actually giving proper notice – the classic is where formal information notices under Schedule 36 FA2008 have (or rather have not) been issued.

Firstly, take a step back, cool down and focus. Respectfully (always), if the officer is not following the enquiry protocols take the officer through their own guidance or legislation. Time spent with the Enquiry Manual and Compliance Handbook is always beneficial, but equally so is the SIOG (Specialist Investigations Operational Guidance), which is great for detailing procedural guidance.

In a recent exchange, we were simply looking to extend the deadline within which to provide the information 'informally' requested in HMRC's opening enquiry notice, just by a few weeks, nothing controversial. However, my client was met with an outright refusal from the officer and a warning of immediate daily penalties.

Once I had spoken with the officer concerned, I was met with similar resistance. I had to correct the officer when they again threatened imposition of daily penalties, based on their enquiry being under Schedule 36 (Sch36 FA2008). I politely pointed out to the officer that the enquiry was under Section 9A TMA 1970, explaining that the reason I knew it was an enquiry under S9A TMA 1970 was because that was what was written in the heading of the enquiry notice they had just issued.

Referencing HMRC enquiry manual guidance at EM1580 (<https://www.gov.uk/hmrc-internal-manuals/enquiry-manual/em1580>) I pointed out that an officer should allow sufficient time for individuals to respond to their informal information request made with their opening notice. HMRC guidance states 30 days as a minimum. This being a rather complex matter and a fulsome request, this would naturally require more time. We were engaging with HMRC and cooperating ahead of the deadline so there was no need for HMRC to rush to issue a formal information notice. We quickly agreed a reasonable extension without recourse to the officer employing Sch36 formal information powers.

The officer was very new to HMRC and plainly was very inexperienced. Hopefully, following our exchange, they perhaps spent some time reviewing guidance and understanding the legislation they were working within. The enquiry closed for no adjustment shortly thereafter once we had answered the apparent risk on which it was based.

In another recent case I was presented with a corporation tax enquiry where the accountants were at their wits' end with the enquiry officer concerned. The officer had been looking at the position on the directors' loan accounts for their company client. After providing the officer with a breakdown of the loan account entries, the officer was convinced the 'records were broken'. By this, the officer felt they had identified cash transactions undertaken where the records could not evidence those sums of physical cash being present within the business.

This was a serious allegation to make; however, it was based on the officer misunderstanding what comprised a cash dividend for accounting purposes. The officer had focused on a single cash dividend of about £12,000 and found that the company did not have physical cash available to it at the time the cash dividend was paid to the director, therefore the records were unreliable, discredited and 'broken'.

Initially, no amount of explaining what comprised a cash dividend or even requests for the officer to “Google it please” was deterring them. It was only with a mixture of taking them slowly through the textbook definition, coupled with instead focusing on a far larger £250k+ cash dividend, that the penny began to drop. Essentially, was the officer really saying that our client left his place of work that day with over £250k in cash about his person (perhaps in a wheelbarrow), and leading up to that point upwards of £250,000 in cash was allowed to sit around and build up within the industrial unit? I asked the officer to run his thoughts past his technical support, because he would need their backing if he were to go to the next step, which would be to look to raise assessments to accompany his closure notice. Our exchange was followed a few days later with a closure notice for no adjustment.

Summary

Enquiry work is not easy and there are a great many decent, hardworking and reasonable HMRC officers out there, so do not let the odd bad experience cloud your judgement of all HMRC officers.

If, unfortunately, you experience poor work, take a step back and compose yourself – it pays to be patient and reasonable no matter what you might be faced with in return.

If the issue is with a suspected lack of knowledge or training, then try to find the guidance governing that situation, pick up on protocols and relay back to the officer. At all times be respectful and remember that getting upset really gets you nowhere, so keep your composure.

It is important not to get aggressive or angry; aggression toward HMRC officers is often seen as a signal that the officer is pushing the right buttons and there’s something to hide. For instance, I had a four-hour meeting the majority of which was spent with the back of a trader’s head. When they eventually did turn around to face me, once the game was well and truly up, it was like a scene from *The Exorcist*; it happens in that line of work and enquiry officers are well used to it.

Ultimately if the officer really is not prepared to budge, then the logical next step for them is to “put up or shut up” and go for a closure notice – potentially assessments, too. In order to do that, they would need approval, so ask them (again, respectfully) to refer your last letter or phone call up to their manager or technical support. Chances are that the show will be brought to a swift end at that point. If not, for HMRC to move forward we would then go through the view of the matter, ‘independent’ review stage and perhaps even statutory review, so there is plenty of opportunity for common sense to descend.

If all else fails and common sense doesn’t descend, then there is always the complaints route if you feel HMRC are being unreasonable.

One final plea: if everything breaks down and assessments are issued, please do lodge an appeal within the 30-day statutory appeal period. Time and again I have seen instances where clients have failed to appeal within the statutory time limit. This automatically puts us on the back foot and, in worst-case scenarios, the late appeal is referred to the FTT, who then refuse to allow it without a reasonable excuse to cover the entire period concerned. It takes five minutes to lodge an appeal, no fancy wording required, just get the appeal in and follow up with your detailed grounds later.

The PKF-Francis Clark investigations team has a lot of experience in dealing positively with HMRC enquiries, so please engage with us early and we can look to secure the best chances of a positive outcome. If you would like to get in touch with one of our specialists, please email me at david.wase@pkf-francisclark.co.uk or phone us on 01392 667000.

Dave Wase has worked within the PKF Francis Clark Tax Advisory Service for more than three years, supporting clients subject to HMRC investigations