

Where's the deterrent?

The funding of HMRC's Taxpayer Protection Taskforce raises serious questions about whether it was the best approach to dealing with Covid fraud, writes Alex Dunnagan

After launching the Taxpayer Protection Taskforce to great fanfare, HMRC is set to wind down this team, despite an estimate of at least £3.3bn outstanding as a result of fraud and error in the coronavirus relief schemes.

Even after a downwards revision in the estimated amount of fraud and error, it looks like only 25% of that will be recovered by HMRC, and it seems likely that a significant proportion of the recovery will come from pre-existing teams. In addition, in order to create this team staff have been diverted away from potentially more lucrative compliance work to focus on Taskforce cases.

Fraud and error

HMRC administered three Coronavirus support schemes throughout the pandemic, the Coronavirus Job Retention Scheme (CJRS, or furlough as it's commonly known), the Self Employment Income Support Scheme (SEISS), and Eat Out to Help Out (EOHO). These schemes were rolled out at great speed, and were crucial in supporting workers as the country shut down during the pandemic.

However, with great speed came an increased risk of fraud, something which should have been foreseen and mitigated. TaxWatch has reported regularly on the issue of fraud and error in the three schemes raising concerns that significant sums lost to fraud and error seem unlikely to be recovered.

In Spring 2021, the then Chancellor of the Exchequer Rishi Sunak announced additional funding of £100m to form the Taxpayer Protection Taskforce ('the Taskforce'), starting in April 2021 with a view to recovering the billions of pounds incorrectly claimed. This Taskforce will wind down its work from March 2023, with Covid scheme cases moving to business as usual from September 2023¹.

HMRC has recently issued updated reports² reducing the estimates for total error and fraud in Covid support schemes, but also indicating that work to recover those amounts will produce lower returns than originally anticipated.

Fraud and error for the three schemes across their lifetime is now estimated to be £3.2bn–6.4bn (3.3–6.5% of scheme payments) with a best estimate of £4.5bn (4.6%), reduced from best estimate of £5.8m for 2020/21 alone previously³.

Amounts recovered from compliance activity to March 2022 are as follows:⁴

20/21	£536m
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¹ Tackling error and fraud in the Covid-19 support schemes, [Gov.uk](https://www.gov.uk/government/publications/hmrc-issue-briefing-tackling-error-and-fraud-in-the-covid-19-support-schemes/tackling-error-and-fraud-in-the-covid-19-support-schemes), 13 October 2022, <https://www.gov.uk/government/publications/hmrc-issue-briefing-tackling-error-and-fraud-in-the-covid-19-support-schemes/tackling-error-and-fraud-in-the-covid-19-support-schemes>

² Tackling error and fraud in the Covid-19 support schemes, [Gov.uk](https://www.gov.uk/government/publications/hmrc-issue-briefing-tackling-error-and-fraud-in-the-covid-19-support-schemes/tackling-error-and-fraud-in-the-covid-19-support-schemes), 13 October 2022, <https://www.gov.uk/government/publications/hmrc-issue-briefing-tackling-error-and-fraud-in-the-covid-19-support-schemes/tackling-error-and-fraud-in-the-covid-19-support-schemes>

³ HMRC Annual Report and Accounts 2021 to 2022, [Gov.uk](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1091379/HMRC_Annual_Report_and_Accounts_2021_to_2022_Principal.pdf), 18 July 2022, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1091379/HMRC_Annual_Report_and_Accounts_2021_to_2022_Principal.pdf

⁴ Tackling error and fraud in the Covid-19 support schemes, [Gov.uk](https://www.gov.uk/government/publications/hmrc-issue-briefing-tackling-error-and-fraud-in-the-covid-19-support-schemes/tackling-error-and-fraud-in-the-covid-19-support-schemes), 13 October 2022, <https://www.gov.uk/government/publications/hmrc-issue-briefing-tackling-error-and-fraud-in-the-covid-19-support-schemes/tackling-error-and-fraud-in-the-covid-19-support-schemes>

21/22	£226m
Total	£762m

The revised estimate for total recovery for the Taskforce by the time it winds down is £525m–£625m (reduced from £800m to £1bn). Jim Harra, HMRC Chief Executive and First Permanent Secretary, identified that this will be approximately 25% of the best error of fraud and error, leaving over £3.3bn unrecovered⁵. While lower than the previously reported £4.3bn⁶, this is still a significant sum.

In addition, the National Audit Office (NAO)⁷ has raised concerns that the estimated returns will not be achieved, identifying that forecast yield for 22-23 is £343m but open enquiry cases at April 22 only indicate returns of £150m,⁸ potentially leading to greater unrecovered amounts.

Resourcing

Although additional funding was announced for HMRC to form a Taskforce of around 1,250 staff, the posts were filled by moves from elsewhere within HMRC⁹. The £100m funding is in fact being provided to HMRC over a period of five years from 2020-21 to 2025-26 to compensate for the diversion of staff from other compliance activity¹⁰. The Treasury reported external recruitment was used to backfill vacancies created by these moves¹¹ but, when asked, HMRC did not provide details of numbers recruited in relation to the Covid scheme funding and two-and-a-half years later there still appear to be billions of pounds outstanding that have not been recovered.

Harra stated in October 2022 that there had been 4,200 staff recruited into the compliance group¹². It seems likely this includes staff funded by the Covid scheme investment, but also from other investment in compliance previously announced for HMRC¹³. Harra stated that training and mentoring recruits diverts trained resources from compliance work, so that overall they anticipate reduced total returns up until 2023, with returns recovering from 2024 onwards¹⁴. The suggestion is that these lost amounts will be recovered when new staff are fully functional in later years.

However, legislative time limits in relation to opening enquiries and raising assessments will mean it is not possible to pursue all older cases, and investigation and recovery becomes harder as time passes because people move on, spend money and businesses cease.

⁵ Including the figures for 2020/21 (ie. pre-Taskforce) of £536m, HMRC estimates a total recovery of £1,061m – £1,161m

⁶ HMRC's record on Covid support and tax fraud under the microscope, TaxWatch, 14 February 2022, https://www.taxwatchuk.org/hmrc_record_covid_support_fraud/

⁷ Delivery of employment support schemes in response to the Covid-19 pandemic, National Audit Office, 13 October 2022, <https://www.nao.org.uk/wp-content/uploads/2022/10/NAO-report-Delivery-of-employment-support-schemes-in-response-to-the-COVID-19-pandemic.pdf>

⁸ Delivery of employment support schemes in response to the Covid-19 pandemic, National Audit Office, 13 October 2022, <https://www.nao.org.uk/wp-content/uploads/2022/10/NAO-report-Delivery-of-employment-support-schemes-in-response-to-the-COVID-19-pandemic.pdf>

⁹ Funding to fight covid related tax and benefits fraud, TaxWatch, 29 December 2021, https://www.taxwatchuk.org/covid_fraud_spending_dwp_vs_hmrc/

¹⁰ Delivery of employment support schemes in response to the Covid-19 pandemic, National Audit Office, 13 October 2022, <https://www.nao.org.uk/wp-content/uploads/2022/10/NAO-report-Delivery-of-employment-support-schemes-in-response-to-the-COVID-19-pandemic.pdf>

¹¹ Rishi Sunak's Covid fraud unit staffed with novices, The Times, 29 April 2022, <https://www.thetimes.co.uk/article/rishi-sunaks-covid-fraud-unit-staffed-with-novices-h2vztwhm8>

¹² Oral evidence: HMRC Annual Report and Accounts 21-22, HC 686, Public Accounts Committee, 20 October 2022, <https://committees.parliament.uk/oralevidence/11385/default/>

¹³ ((Autumn Budget and Spending Review 2021, Her Majesty's Treasury, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1043688/Budget_AB2021_Print.pdf

¹⁴ Oral evidence: HMRC Annual Report and Accounts 21-22, HC 686, Public Accounts Committee, 20 October 2022, <https://committees.parliament.uk/oralevidence/11385/default/>

This all raises concerns about the success of the Taskforce and whether the creation of a separate compliance team was the most efficient way to tackle Covid scheme fraud and error, particularly given that Covid scheme compliance activity is planned to continue in 2023 but within ordinary compliance teams.

The NAO reported that, within returns from individual enquiry cases for 2021-22, £122m arose from Fraud Investigation Services (FIS). FIS are a pre-existing team of specially trained investigators that tackle the most serious cases of tax fraud and avoidance across all taxes and reliefs. It seems likely that they would have investigated the largest and most complex Covid relief scheme cases regardless of the additional investment (though per the NAO their staff working on these cases are included in Taskforce numbers).

The FIS returns suggest that the specific Taskforce resources only brought in £104m in that year, less than half of the total returns. In addition, a single case worked within FIS brought in £83m. This one case worked outside the Taskforce will have distorted the return on investment (ROI), suggesting that in fact, excluding that case, it is significantly lower than the reported 4:1 in 2021/22, though it should be noted that return on investment is expected to be higher in 2022-23.

More importantly, the Public Accounts Committee previously reported an ROI on compliance activity across the board for HMRC at 17:1¹⁵ suggesting that diverting limited staff for this work may have actually resulted in lower returns for HMRC. There will be permanent opportunity costs in terms of non-Covid relief cases that cannot be pursued with subsequently increased resources. HMRC themselves recognised in late 2020 that reallocating staff to deal with error and fraud in the schemes would reduce overall compliance returns for the department, but that there was no other option as there would be an 18-month lag to recruit and train additional staff¹⁶.

An HMRC spokesperson said “We remain dedicated to tackling error and fraud in the Covid-19 support schemes. The Taxpayer Protection Taskforce was the appropriate response to the fraud risk faced at the time, and it will recover £625m across its lifecycle. Looking ahead, moving this work into business-as-usual compliance activity is the most efficient way to ensure we protect and recover taxpayers’ money from those trying to cheat the system.”

Civil and criminal penalties

Another area of concern is the lack of more serious consequences for the vast majority of cases identified so far. Where a civil investigation has taken place, HMRC are able to charge a penalty up to 100% of amounts incorrectly claimed but only where there was deliberate behaviour by the taxpayer in not reporting those amounts within certain deadlines. The burden of proof is on HMRC to demonstrate such behaviour, which is difficult in many circumstances.

By March 2022, the only civil penalties charged were as follows¹⁷:

Scheme	CJRS	SEIS
Amount	£1.1m	£3.5m
Percentage of total recovered	0.5%	7%

¹⁵ HMRC Performance in 2020-21, Public Accounts Committee, 11 February 2022, <https://committees.parliament.uk/publications/8862/documents/89198/default/>

¹⁶ Implementing employment support schemes in response to the Covid-19 pandemic, National Audit Office, 23 October 2020, <https://www.nao.org.uk/wp-content/uploads/2020/07/Implementing-employment-support-schemes-in-response-to-the-COVID-19-pandemic.pdf>

¹⁷ Delivery of employment support schemes in response to the Covid-19 pandemic, National Audit Office, 13 October 2022, <https://www.nao.org.uk/wp-content/uploads/2022/10/NAO-report-Delivery-of-employment-support-schemes-in-response-to-the-COVID-19-pandemic.pdf>

This indicates that only a tiny proportion of civil investigations resulted in financial penalties being charged, meaning that the majority of those that did fraudulently claim on the schemes received no financial penalties.

In addition to this, at March 2022 there were 24 criminal investigations ongoing into suspected fraudulent claims of £13m, including 23 arrests in relation to nine cases¹⁸. HMRC updated this to 29 criminal investigations into claims totalling around £15m in October 2022.

Conclusions

Even with concerns about return on investment and design of compliance teams, all evidence indicates that properly investing in HMRC compliance resources produces a net positive return to the exchequer. It is therefore not clear why more resources could not be put into recovery of incorrect amounts claimed from the Covid schemes and compliance more generally.

HMRC has previously said that they have not formally written off these amounts¹⁹ but effectively they will not be actively pursuing them so there is little likelihood of significant recovery. The failure to pursue these, along with very limited punishment for incorrectly claiming support, creates little deterrent effect against taxpayers behaving in a similar way in the future.

This also puts a focus on problems with one-off funding pots for specific HMRC compliance activity, which potentially results in less efficient deployment of limited resources. While it is welcome news that HMRC have recently recruited significant numbers of compliance staff, as identified at the PAC, investment in new trained resources takes time and has opportunity costs in terms of diversion of trained resources.

This all points towards the benefit of long-term, consistent funding of HMRC compliance efforts being the most efficient way to tackle fraud and error, rather than piecemeal allocations of funding.

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- *Alex Dunnagan, Acting Director, TaxWatch. Contact him at alex@taxwatchuk.org*

¹⁸ Delivery of employment support schemes in response to the Covid-19 pandemic, National Audit Office, 13 October 2022, <https://www.nao.org.uk/wp-content/uploads/2022/10/NAO-report-Delivery-of-employment-support-schemes-in-response-to-the-COVID-19-pandemic.pdf>

¹⁹ HMRC's record on Covid support and tax fraud under the microscope, TaxWatch, 14 February 2022, https://www.taxwatchuk.org/hmrc_record_covid_support_fraud/