

Where's the safeguarding?

Do HMRC do enough to recognise the truly vulnerable? Do they understand the stress a prolonged investigation brings to bear? The Contentious Tax Group's Nick Davies shares some thoughts

2pm on 11 January 2023. The first meeting of the year for the Contentious Tax Group, and still just about early enough in the month for us to be wishing each other a happy and prosperous 2023 and to share general chit chat and comparisons of our festive seasons before we got down to business.

So far, so normal, but on this occasion one of our number shared the tragic news that during the holiday period a client had seen fit to take their own life.

Obviously, this was shocking news. But what was far more shocking was the manner in which story after unhappy story quickly poured out from our group members. It very rapidly became depressingly clear that a large majority of us had similar tales, and in some cases more than one.

As a group, we think we are representative of the individuals who are at the frontline of dealing with HMRC disputes on a daily basis. We are fairly evenly split between lawyers and tax practitioners and our ranks reflect a wide cross section of our respective professions, from Big 4 accountancy practices and leading London law firms all the way through to boutique practices such as mine. There were around 30 of us at the meeting and if we, a relatively small group, had so many awful experiences between us, how many more were there out there?

We dispensed with the day's agenda and focused on a problem that all of us had already known existed to some degree but hadn't realised exactly how prevalent it might be. We still don't know that because there are no readily accessible statistics to inform us.

We do know, from our own experiences and from anecdotal evidence from colleagues outside of our group, that the number of people who elect to end their life whilst they are subject to an HMRC investigation of some sort is significant. And we started to ask ourselves why this might be.

At times, many of us make semi frivolous comments along the lines of needing to be 50% tax practitioner and 50% counsellor, but there is a sad and serious truth behind that statement. By the nature of what we do, everyone we represent is under a degree of heightened stress. Any HMRC enquiry carries some stress, but we are frequently dealing with the very serious end of the scale – COP9 and criminal cases, where an awful lot is at stake. We see at close quarters the effects that stress can have and, crucially, we see the corrosive impact of prolonged stress – and COP9 and criminal cases tend to be the most protracted. The effects are no more or less marked on the 'innocent' or the 'guilty'. As the song says, everybody bleeds.

Purely anecdotally, we are seeing a marked deterioration in mental health and a move towards suicidal thoughts in those cases that drag on for years without a clear resolution in sight. Alongside this, we are seeing criminal investigations opened but with no charging decision being taken for four or five years. At the time of writing, I am dealing with a COP9 case that will shortly 'celebrate' its fifth birthday. That is quite simply an intolerable length of time for a person to be left in the purgatory of not knowing whether their financial future, or even their freedom, might be at stake.

Irrespective of what they might or might not have done, we are dealing with human beings who have loved ones.

As a group, each of us has ideas on various reasons for what we perceive to be high levels of suicide amongst those undergoing investigation by HMRC. Some of us wonder whether HMRC as an organisation does enough, or even anything meaningful, to safeguard those who are flagged as being particularly vulnerable. Others think that slavish adherence to the Litigation & Settlement Strategy leaves HMRC caseworkers with insufficient leeway to settle cases quickly and sensibly where there is a real risk of a suicide.

At this point I will stress that each of us recognises that the blame does not lie with individuals on the frontline of HMRC. We work closely with them, and we recognise them to be almost uniformly sympathetic to the vulnerable and as shocked as we are when a tragedy occurs. We also recognise that their hands are often tied. If HMRC do carry any blame for the situation it is a cultural issue, driven from the top.

We are also fully supportive of HMRC's need to investigate wrongdoing and have no issue with that whatsoever. Our only concern is the lack of effective safeguarding for the vulnerable.

As stated, we have our suspicions over the causes, and some are mentioned above. We intend to publicly highlight the problem and open a debate, and this article is one of the first steps on that journey. However, because of the nature of our work, we are an evidence driven bunch. So, before we can shout those suspicions from the rooftops and begin to agitate for whatever change we identify as being necessary (and that will certainly be happening) we need to gather further evidence, and we are doing exactly that.

As a starting point, we know what we see with our own eyes and, whatever other reasons there might be, we think that the sheer length of time taken to conclude serious investigations is a big one, if not the biggest. As a result, as a starting point, we made a Freedom of Information (FOI) request on 3 May 2023 as follows:

Please can you supply me with the following information for the period 6 April 2017 to 5 April 2022:

- The number of criminal investigations commenced per tax year.
- The number of cases included at 1. above that ended in no charges and the average length of time that elapsed between commencement of the investigation and the decision to take no further action.
- The number of cases at 1. above, resulting in charges and the average length of time that elapsed between commencement of the investigation and the date of the charges.
- The number of Code of Practice 9 investigations opened by HMRC per tax year.
- The average length of the investigations referred to in point 4. above.

We received a response from the Freedom of Information Team on 2 June 2023 which was, frankly, disappointing. HMRC have confirmed that they hold the information at points 2, 3 and 5, but that they have refused our request under Section 12(1) of the FOIA. In other words, providing the information to us would exceed their cost limits. We are seeing a familiar pattern develop on FOI requests generally, and the statistics bear this out.

However, they have invited us to submit a new request that excludes points 2,3 and 5. They have also, more helpfully, provided us with the following information for investigations commenced per tax year:

Financial year	Criminal investigations	COP9 investigations
2017/18	929	926
2018/19	764	919
2019/20	600	706
2020/21	213	484
2021/22	271	417
2022/23	396	430

Despite the decrease in numbers driven by the pandemic, this still represents an awful lot of high-level and prolonged stress.

We have now made a further FOI request as we continue to gather the data we need, and we will continue to do so until we are satisfied. We invite you to watch this space. We know there is a serious problem, we intend to discover the scale of it and the reasons for it and, when we do, we will be shouting about it, very loudly.

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If you feel that you might be a good fit for the Contentious Tax Group, please get in touch and we will pass on your details– email Tony@hmrctaxinvestigation.co.uk