

Where's the duty of care?

Is HMRC really concerned about the welfare of the taxpayer? Nick Davies does some digging through HMRC's own resources...

Readers may recall my article on behalf of the Contentious Tax Group last year (HMRC EIP, August/September 2023) in which I highlighted what we considered to be the continuing scandal of high levels of suicide among vulnerable taxpayers who are subjected to the most serious and protracted HMRC investigations.

At that stage the evidence that we held was largely anecdotal, and I reported that we had recently been frustrated by the response from HMRC to our Freedom of Information request regarding the duration of criminal and COP9 investigations. Our request was rebutted because, although confirming to us that they held the information requested, it would be too time consuming (and therefore too costly) for them to collate and provide it. Further FOI requests are currently in hand.

Despite this, and channelling the spirit, energy and persistence of Alan Bates, we are undeterred in our resolve to force and facilitate a proper public debate into the issue, and I thought it appropriate to update readers on what has been happening over the past few months.

The first point to make is that our evidence around the number of suicides remains largely anecdotal, but our efforts are continuing to identify meaningful figures. Having said that, the anecdotal evidence is becoming compelling, and here I will set out a couple of very recent examples.

1. At the Contentious Tax Group meeting held in London on 20 March 2024, I asked for a show of hands from the 21 people present, all front-line tax dispute professionals. The question was: "Have you had the misfortune of a client taking their own life during the course of a HMRC investigation?"

Ten of the 21 attendees reported that they had, with a number having had this experience on more than one occasion. The members of our group are at the very forefront of tax dispute activity on a daily basis, so clearly this will be wholly unrepresentative of the tax profession as a whole. It is, however, a damning figure.

2. My partner at NHD Tax Solutions, Sarah Scala, shared the following experience with me: "I had a client who had used a contractor loan scheme. Little communication was coming through from HMRC. The communication that was received did not have a named individual on it and HMRC could not offer any updates or say what was owed. My client had only used the scheme for a matter of months and was convinced she had paid all tax owed via a subsequent time to pay arrangement. She was very distressed that there could be more to pay.

By drawing upon named individuals I was in communication with at HMRC, I managed to get an officer to look at this client's case and find out what was happening. I told him that this was causing her mental health issues and in an email he asked me to briefly explain the effect and gave an example, such as "causing some impact on day to day life".

I replied to him offering a direct quote from one of my client's emails where she said "if this carries on I might as well kill myself". The gentleman at HMRC said that this was not sufficient to merit us having a named individual assigned to the case."

Next, let's take a quick look at a couple of recent Sky News headlines:

- 18 January 2024 '–Thousands are being targeted by harsh HMRC tax collecting scheme linked to 10 suicides'
- 19 March 2024 '–HMRC accused of “airbrushing” Loan Charge scandal amid calls for an inquiry'

Of course, these headlines relate specifically to the ongoing saga of the Loan Charge, but the March article carries a particularly interesting quote from HMRC head Jim Harra in response to the Loan Charge Action Group (LCAG) that: “We do not play with people's emotions. We recognise that there is a human story behind each one of these cases and we take our Charter responsibilities very seriously.”

I will make no comment on the veracity of that statement, but will simply invite readers to consider whether it chimes with their own experiences of representing vulnerable taxpayers.

HMRC claim that they do have sufficient safeguarding in place to support vulnerable taxpayers so, as an experiment, I decided to have a look at what this looks like in practice. My starting point was to Google 'HMRC mental health helpline'. This guided me to 'Get help from HMRC if you need extra support: Help you can get' (<https://www.gov.uk/get-help-hmrc-extra-support>).

This page tells us that you can get extra support if your health condition or personal circumstances make it difficult when you contact HMRC. Mental health conditions like depression, stress or anxiety sit at number four in a list of health conditions.

We are then told that if we need extra support we can get a phone or video appointment with the extra support team and we are prompted to “ask your advisor when you call an HMRC helpline” (would those be the helplines that HMRC want to wean us away from?), for which a link is provided, or to “use the extra support webchat service”, for which a link is also provided.

If we follow the first link we arrive at the standard 'Contact HMRC' page, and we are provided with a huge alphabetical list of helplines. We then scroll down to the 'Extra Support Team' link. The resulting page is not really helpful and tells us only the following:

Online

Appoint someone to deal with HMRC on your behalf.

If you find it difficult to deal with HMRC yourself, you can appoint someone to deal with HMRC for you.

Webchat

You'll need to check if you can get help from the Extra Support Team before you can contact them. Have your National Insurance number with you before you start.

The Extra Support Team can only help you with questions about:

- PAYE
- Self Assessment

Despite being told that I can only obtain help with questions about PAYE or Self Assessment, I hit the button to check if I can get help from the Extra Support Team and find myself confronted by a questionnaire. The first question is whether or not I'm a tax

agent. For the purposes of this experiment, I'm assuming that, at this stage, I am an unrepresented taxpayer, and I hit 'No'.

I am asked if HMRC has contacted me about a compliance check '–Yes'. I am then told that I need to contact my compliance officer, and that I can find their contact details in the letter that HMRC sent to me. So, having a named officer dealing with my affairs presumably means that I am not eligible for help from the Extra Support Team.

I am, however, prompted to 'Find more information about compliance help and support'. This takes me to a page called 'HMRC compliance checks: help and support'. This page contains fairly detailed guidance on the process of compliance checks and includes a number of explanatory videos. If I am suffering with my mental health I am possibly going to be quite triggered by the sections that discuss penalties and, in particular, criminal investigations. There is no mention whatsoever on this page of any additional support. So, it's all the way back to the 'Get help from HMRC if you need extra support' page, and this time I hit the button for the 'extra support team webchat service'. This takes me straight back to the Extra Support Team page, and tells me again that they can only help me with questions about PAYE or Self Assessment.

It appears that my only recourse is to speak to the caseworker who is investigating me, but it is entirely possible that my poor mental health means that I am already terrified of having any contact with them. What if I speak to them and get the sort of response that Sarah Scala received on behalf of her client in the example above? What if this all feels too much alongside everything else that might be happening with my mental health and my life generally?

Of course, the obvious answer is to obtain professional representation, but sadly too many vulnerable taxpayers don't do this at the outset of an enquiry and attempt to self represent, often because of fear of the professional fees they might incur if they appoint a specialist.

At this point I'm going to head back to Jim Harra's quotes in his response to the LCAG. He denied accusations that HMRC operates without scrutiny, saying "it is simply not the case that HMRC is unaccountable" and "we act under the general direction of ministers". He also stated that "we do not accept claims that we have been deliberately heavy handed". If that is the case, then I have to question why there have been so many suicides? Something isn't right somewhere.

But we note and take on board the comments regarding the general direction of HMRC by ministers, and this is just one of the angles we are now pursuing. On 15 November 2023 the Contentious Tax Group held its monthly meeting in Committee Room 9 of the House of Commons, and we were able to gain traction and open a dialogue with a number of MPs who were quite shocked by what we told them of our experiences. This dialogue is continuing, and we will build upon it, and we will continue to apply pressure in whatever ways we are able to.

I will keep readers posted.

• Nick Davies, Founder & Senior Partner of NHD Tax Solutions Ltd. Email Nick@nhd-tax.co.uk