

Flexibility, not rigidity

Sean Wakeman relates a tax case that highlights how HMRC's inflexibility and intransigence betrays the interests of all taxpayers

The recent case of *Majid v HMRC* [2024] UKFTT 00491 (TC), gave us a 'David and Goliath' situation where HMRC took a full-blown case to the First Tier Tax Tribunal for disputed penalties of just £1,152.

Mr Majid was unrepresented and had, by the time of the hearing, already offered to pay the penalty at £100 per month. Taking such a case through the various layers of decision, independent review, ADR and Tribunal showed not only a lack of common sense but also a blatant disregard for and waste of public funds. It was somewhat ironic, and perhaps out of a sense of sympathy with the taxpayer, that the case was dismissed on the grounds that HMRC had not satisfied the necessary burden of proof.

How many professionals reading this article (I hazard all) will have had the pleasure of dealing with the collection service of HMRC? Of course, by the time liabilities reach this stage they are set in stone, which does not always mean they are necessarily correct. How many times have officers (formerly known as Inspectors of Taxes) been heard to say in cases of genuine lack of means to pay, 'I note what you are saying but you will have to tell that to the Debt Management team' (formerly Collector of Taxes)? When you do so, you are usually met with the totally inflexible line of 'I cannot accept anything but full payment of the outstanding' debt!

Different circumstances

Different clients will, of course, have different circumstances, different levels of assets and different levels of income. Some will require the adviser to negotiate a Time to Pay arrangement (usually too late by the time you reach the Debt Management Unit); others will be either completely impecunious or only able to pay a proportion of the duties owing.

In a recent case, a client of mine owed about £250,000 of tax and interest; no penalty was deemed due and therefore none pursued. The type of tax and the reasons why it was owed are unimportant. What is of relevance and importance was the decision by HMRC not to pursue a penalty, which tells us that either the taxpayer had taken all due care or that the matter was technical. For my client, he had taken care, and the issues that led to the tax underpayment were technical.

The client had around £185,000 in banked savings, a couple of low value flats, which was his only source of income (but which importantly were mortgaged to a third-party majority creditor). The client was committed to paying back what he owed but he was limited by his small income which was largely covered by reasonable personal expenses (and some). An offer was therefore submitted to repay the whole indebtedness by a lump sum and equal instalments over a five-year period. The offer was rejected as the repayment period was deemed too long.

A statement of assets & liabilities was completed as well as a statement of personal income and expenditure to support the bona fides of the offer which had been made in good faith. HMRC explained that the available assets (including cash) were more than enough to cover the liabilities. It

was explained to HMRC that the client could not sell the properties since they were charged to the organisation to which he owed the most money. At the same time, it was pointed out by me that a debtor should not prefer one creditor over another.

Our next step was to sit down with the client to try to come up with a new offer that not only was realistic but also achievable (bearing in mind the financial information that we held). We therefore formulated an offer that comprised a lump sum with equal instalments over a 12-month period; 12 months being the length of time that is generally acceptable to the Debt Management teams without specific permissions needing to be obtained.

Rejected out of hand

The offer proposed to repay approximately 85% of the indebtedness. It was rejected out of hand with me, and my client being told that only payment in full would be acceptable.

On reading this article you might think that this all happened very quickly – quite the contrary, in fact. There were significant delays from HMRC with occasional visits being made to my client and calling cards left. There were calls to me, often at unsociable hours, asking me to call back. Every time you deal with the Debt Management teams you speak to a different person and they assure you that all the information will give to them verbally or in correspondence is on computer so that it can be picked up by any person manning the lines. The frustration is only added to by the fact that when you do call back you are often held for over an hour before being connected to someone.

By this time, HMRC had issued a statutory demand threatening our client (a family man with two very young children) with bankruptcy proceedings, albeit with a rider that our client should pay in full within seven days or call to discuss his liabilities.

With the passage of time, my client's personal asset position (over a two-year period) had only worsened, but still he was determined to make his best possible offer. We therefore made one final attempt to reach agreement by making a so-called composite offer in full and final settlement for the full value of the tax owed payable by a single payment, which represented a recovery of 67% of the total debt with no additional collection risk to HMRC; we were just asking HMRC to waive the interest on the tax. Again, the offer has just recently been refused, as our client did not qualify to make a composite offer as he was still trading (our client advised HMRC two years ago that his trade had ceased) and his total assets (including the value of his home of which his wife had a 50% entitlement) exceeded the level of the debt. Re-run the explanations that HMRC were not his only or indeed his largest creditor, and that some of his assets were charged and could not be sold. It was also pointed out that even if these assets could be sold that would deprive my client of the rents which were his sole source of income.

HMRC inefficiencies

Given the delays, most of which stem from HMRC inefficiencies, my client has moved from a position of offering HMRC the full £250,000 (with a structured arrangement) to offering £167,000. There is still no resolution in sight and the client faces the prospect of losing his home, his income source and his dignity given the spectre of bankruptcy.

He may have to consider an Individual Voluntary Arrangement, in which case HMRC is likely to receive probably no more than £0.40 in the pound or a recovery of £100,000. Surely this jobsworth approach to the 'robots' who man the Debt Management phones is crazy. The one-size-fits-all approach is antiquated and not fit for purpose. Whatever happened to old fashioned, common sense and value judgements to get the maximum returns for the Exchequer?

It is hoped that the new Chancellor, Rachel Reeves, will not only announce new measures to bridge the tax gap in her Budget (at the end of September the government started by announcing on LinkedIn that they were recruiting 5,000 more compliance officers), but also that they will be undertaking a radical overhaul of collection practices and procedures that are currently a major source of tax leakage through outdated practices. This need not necessarily mean wielding bigger sticks but rather boxing clever and working with genuine people who owe tax and have every intention on repaying. We need flexibility, not rigidity.

The first guideline to get rid of is that debts must be cleared within a maximum 12 months. Practitioners will be used to agreeing settlements with the Inspectorate spread over usually a maximum of five years, so why can the Collector not adhere to the same rules? We also need to stop the practice of allowing officers who determine amounts of tax to pass the collection ball to their counterparts, particularly where there is not only an uneven but a totally different playing field. This is just an abrogation of responsibilities. You cannot just sit officers behind desks with a rulebook that cuts them (or their line managers) no slack to exercise discretion and make judgement calls (with a second pair of eyes if necessary).

Let's have a modern collection service that is fit for purpose where common sense reigns. However, I fear that AI processes will probably replace the 'robots' and only make the situation worse!

- Sean Wakeman is a Partner in the Tax Resolutions team at Crowe UK LLP. Call 020 7842 7100 or email sean.wakeman@crowe.co.uk