

## Red letter days

[How fair to claimants and advisors is HMRC's seemingly scattergun approach to issuing FIS letters? Here Paul Rosser shares some thoughts](#)

Back in 2022, it became apparent that some companies which had submitted a claim for R&D tax relief subsequently received a letter from HMRC's Fraud Investigation Service (FIS), which stated that the R&D claim had "triggered an alert" on HMRC's system, and "caused HMRC to believe that you have fraudulently claimed money to which you were not entitled".

Obviously, receiving a letter from HMRC's FIS team would be concerning for most companies, especially as the letter in question also included a disclaimer at the bottom which read: "At this time, HMRC has not opened a criminal investigation into this suspected fraud. However, you should be aware that HMRC reserves the right to open a criminal investigation into any suspected fraud committed against the R&D scheme."

The letter also stated that if the company believed it was entitled to this money then it should provide additional information to HMRC within 30 days, so that HMRC can re-examine the R&D claim and consider reinstating the payment.

If a response was not received within the allowed 30 days, HMRC would remove the R&D claim from the company's tax return, using its powers under Schedule 18, Paragraph 16 FA1998.

Schedule 18, Paragraph 16, for those not familiar with it, says that an officer of HMRC may amend a company tax return to correct it where there are obvious errors or omissions, or where there is anything else in the return that the officer has reason to believe is incorrect, based on the information available to the officer.

This was quite a big change from HMRC's usual method of working. Historically, if HMRC believed an R&D claim was invalid or fraudulent it would open a compliance check, rather than simply removing the R&D claim from the company's tax return.

Throughout 2022 and 2023 HMRC continued to remove R&D claims in this way and by the end of 2023 confirmed that over 2,800 claims had been challenged. In 80% of cases no response was provided by the company, and out of the 20% that did respond only 3% had been accepted as valid following a full compliance check.

Based on the stats provided by HMRC at the end of 2023, this new method of rejecting R&D claims appeared to be working effectively and had resulted in nearly £140 million not being paid out to companies. But that should only be considered a success if those claims that had been rejected were invalid.

HMRC made the assumption that if no response was received following the FIS letter then the claimant had made the decision not to respond as they knew the claim was invalid. However, there are many reasons why a claimant may not respond to such a letter.

- Did they receive the letter in time to respond? We know from experience that letters from HMRC can take weeks to arrive, or may not arrive at all.
- Could they afford additional charges that their advisor may request for responding to the letter?

- Were they scared off by HMRC's numerous mentions of 'fraud' and 'criminal' in its letter?
- Did they decide that the claim value was minimal and didn't warrant the effort of engaging with HMRC?

To say that those who didn't respond must not be confident in their claim is far too simplistic.

During 2024 and into 2025, HMRC has continued to issue FIS letters and then use its Schedule 18, Paragraph 16 powers to reject R&D claims without a compliance check, leaving claiming companies having to decide if they simply accept HMRC's decision, or to resubmit their R&D claim knowing that the most likely outcome would be a (probably lengthy) compliance check.

The criteria HMRC are using to determine which companies should receive a FIS letter is unknown as, for obvious operational reasons, HMRC can't tell us.

We have evidence that seems to show that HMRC may be targeting specific advisors, with some advisors reporting that large amounts – in some cases all – of their clients' R&D claims receive a letter from HMRC's FIS team. Initially, this appeared to only be aimed at the types of dubious advisors you would expect to be submitting fraudulent claims, but more recently HMRC appear to have widened its net somewhat.

I've personally spoken to several advisors finding themselves in this unenviable position and I cannot find any "obvious errors or omissions" in many of their clients' claims that have received a FIS letter.

This leads to questions with regards to how good HMRC's, presumably automatic, systems are for deciding which R&D claims end up with FIS. We know from experience, and by its own admission, that HMRC's compliance check filtering systems don't always work effectively, so could the same be true here?

If an advisor is targeted in this way, then this can cause serious damage to the client relationship, as no client wants to receive a letter from HMRC suggesting wrongdoing, and even less so when it's coming from a department with 'Fraud' in the title. It can also have serious financial consequences for the advisors who usually don't receive payment until the client sees a benefit from the claim.

One advisor, wishing to remain anonymous, who believes they have been targeted by HMRC via FIS this year told me: "Prior to February 2025, we had minimal interaction with HMRC's Fraud Investigation Service, with just two letters in three years which were dealt with appropriately. Since then, every R&D claim we have submitted has been incorrectly flagged by an automated fraud system, triggering FIS letters and blocking payments.

"HMRC has since acknowledged these were triggered in error and introduced a manual review step, but none of our clients, many of whom are early-stage companies relying on this funding, have received the credits they are owed. As a contingent fee advisor, this has had a direct impact on our business, too. We have had to let a valued team member go, and with no clarity on when claims will be processed, we are now having to seriously consider the future of the company."

Whilst most advisors accept that HMRC should challenge fraudulent R&D claims, this method of rejection without a proper compliance check and no right of appeal if a company replies to the FIS letter and they still decide to reject the claim, appears to be a bit of a stretch of HMRC's powers under Schedule 18.

There are many competent advisors in the R&D industry who want to work with HMRC to repair the damage caused by the fraudulent/incompetent R&D advisors who have been running amok the past few years and to guard against this happening again.

If HMRC is targeting certain agents then there seems to be no consideration for the collateral damage should a good agent be targeted in error. HMRC have already commenced an agent engagement programme trying to upskill existing advisors, at an unknown cost to the public purse – but should it really be engaging in activities that could lead to already competent advisors deciding to leave the field, or being forced to due to cashflow issues created by HMRC?

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