

HMRC's Complaints Process (Lecture P1385 – 11.38 minutes)

This article covers HMRC's complaints process and the circumstances in which advisers dealing with tax enquiries and disputes should consider using it.

The need for a complaints process

Advisers will be aware that HMRC have extensive powers to investigate a taxpayer's affairs. In addition, HMRC officers have wide-ranging information and inspection powers. It is inevitable that, given the large number of enquiries and disputes that HMRC handle, mistakes occur, or something goes wrong, and there needs to be recourse for taxpayers to seek redress, and, where appropriate, compensation. HMRC's Complaints Handling Guidance recognises that there will be complaints, and that some of these complaints will be justified (see CHG305).

HMRC has a complaints procedure for taxpayers, and their agents, to use when appropriate. The process is not a remedy for all grievances there may be against HMRC, and advisers need to ensure that the complaints process is the appropriate route to use.

The complaints process used to be contained in a Code of Practice, but is now found on the gov.uk website, <https://www.gov.uk/complain-about-hmrc>.

What can you complain about?

The complaints process can be used if your client is unhappy with the service provided by HMRC. This can include where there have been unreasonable delays, or other unsatisfactory service, including mistakes and poor or misleading advice.

If an HMRC officer has failed to follow the correct procedure, perhaps by not issuing the relevant factsheet at the right time, that may be a justifiable cause for a complaint. Whether it is worth pursuing a complaint in any given situation is considered later in this session.

What can't you complain about?

The complaints process is not appropriate for dealing with all grievances about HMRC. Where the client disagrees with a tax decision or a penalty, the appropriate appeals procedure, or judicial review, as relevant, should be followed.

In addition, complaints about serious misconduct by HMRC staff are dealt with by a different process. The gov.uk website states that serious misconduct includes assault leading to death or serious injury, corruption, fraud, and unauthorised disclosure of customer information. HMRC's handling of these complaints is overseen by the Independent Office for Police Conduct.

How to complain

While other parts of HMRC are encouraging interaction with it through online channels, that does not apply to the complaints process, at least as far as agents are concerned. Advisers will need to complain on behalf of their clients by post, as the online process is, currently, reserved for taxpayers complaining directly to HMRC. That can be expected to change in the future.

It is recommended that advisers submit their complaints in writing, in accordance with the procedure, to ensure an audit trail, rather than complaining by telephone. The relevant contact details can be found on the gov.uk website, at the following link: <https://www.gov.uk/government/organisations/hm-revenue-customs/contact/complain-about-hmrc>.

The postal address given for complaints about a compliance check or a HMRC enquiry is:

Customer Compliance Complaints
HM Revenue and Customs
BX9 2AB
United Kingdom

The complaint should set out all relevant facts, and refer to any material correspondence or documents, evidencing the poor service by HMRC. Where HMRC have not followed their procedures, or the HMRC Charter (see <https://www.gov.uk/government/publications/hmrc-charter/the-hmrc-charter>), this should be referenced in the complaint. The submission should also indicate the required remedy, and this should be established with the client. There is not a time limit for making a complaint, although HMRC indicate that they would expect a taxpayer to let them know about poor service “as soon as possible”.

Full details of any costs incurred should be provided and supported by receipts. The usual costs in such circumstances may include, postage, phone charges, and professional fees. When considering whether to refund the claimed costs, HMRC will take a view as to whether those costs are reasonable. The complaint should also detail any compensation sought in addition to the costs incurred, including for anxiety and distress. This should be included in the initial complaint. The level of compensation paid by HMRC, if any, in excess of claimed costs, is, in most cases, likely to be minimal, and will be made on an ex-gratia basis.

Where the client has suffered a financial loss due to the HMRC mistake or delay, you can seek a refund of those amounts. In addition, compensation may be sought for worry and distress, where the client was aware of the HMRC error.

HMRC operates a two-tier structure for its complaints process. Initially, the complaint is subject to a ‘first tier’ review. HMRC do not provide a timetable for their response to a complaint, but they should respond quickly. Advisers should consider chasing HMRC if they have not received a response within four weeks. A further delay in dealing with a complaint may form the basis for a separate complaint or add to any claim for compensation.

If the client is not happy with the substantive response from HMRC to the First-Tier review, the case can be escalated to a tier two complaint. The case is reviewed by a different officer, who will report their findings. The original complaint handler’s position may be upheld, or the tier two complaint handler may reach a different decision. The tier two review is the end of the HMRC complaint process. If the client remains unsatisfied with the outcome, they will have recourse to the Adjudicator’s Office, and, potentially, the Parliamentary and Health Service Ombudsman (which is accessed through the client’s MP). The Adjudicator’s Office will only consider the complaint after it has been subject to a first and second tier review by HMRC.

HMRC state, on the gov.uk website, that they “will not treat you differently because you’ve made a complaint”, and “They will handle your complaint fairly, confidentially and investigate the issues thoroughly”. Advisers should ensure that these aims are met.

The complaints process should not be used as a reason to withhold payment from HMRC, where there is tax due. Advisers should ensure that their client continues to make any payments that are due, subject to the appeals and postponement process, to avoid the imposition of interest or penalties.

Is it worth complaining?

Each case must be considered on its merits, taking into account what has gone wrong, the level of culpability, the impact on the client, and the client's wishes. The adviser may consider that the matter can be resolved by liaising with the enquiry officer, without recourse to the formal complaints procedure.

When advising my clients, my starting point is that it is usually better to finalise the enquiry, or resolve the dispute, before making a formal complaint. Making a complaint can be a distraction, and cause delay, or additional delay, while the matter is being investigated by HMRC. There will, however, always be exceptions, and advisers will need to form a view taking into account the circumstances of the case. It may be necessary to make a complaint while the enquiry is ongoing, and, if so, advisers should ensure that they have established the relevant facts, and collated any supporting documents, including those relevant to a claim for compensation.

Advisers should be aware that the client may decide not to pursue a complaint. When the enquiry is finalised, the client may be happy that a conclusion has been reached, and not instigate a complaint, particularly where there has not been a significant loss.

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