

Code of Practice 9 – Case studies (Lecture P1440 – 12.11 minutes)

Code of Practice 9 is HMRC's process for the civil investigation of fraud, currently operated through the Contractual Disclosure Facility, the workings of which I have covered in a previous session. This session will look at three case studies, suitably anonymised, taken from the many hundreds of cases that I have dealt with in nearly 30 years of assisting clients who are subject to investigation under Code of Practice 9.

Case study one

The first example is one where I was not formally appointed, but the circumstances are so horrendous that they merit sharing.

I was approached by an accountant who had a client that had received a letter from HMRC saying that they suspected fraud. The accountant, who did not have any experience of dealing with Code 9 investigations, asked me to provide him with a template for the preparing of a disclosure report to HMRC. The accountant was openly brazen about his position, and said he was conscious that the fees for dealing with a Code 9 case can be significant, and he wanted those fees himself, and would not be engaging my services, as an investigation specialist. I explained that there wasn't a template for such cases, as each one is different, but that I was prepared to work with him, so that he, and his client, were protected, and could benefit from my experience. I did not hear from the accountant.

Roll forward two years, and I received another call from the accountant. He wanted to discuss the "template" case. He explained that he had not made progress in dealing with the matter, a disclosure report needed to be submitted to HMRC the following week, and the inspector had told him that he would be seeking a penalty of 80% (on a £1 million tax liability) from the client because of the lack of co-operation. He asked me what he could do.

I was extremely concerned, not least because, at the time, I would have expected a penalty in the region of 30%. I again offered to help, even at this very late stage, and offered to work with the accountant. The accountant decided to go it alone with HMRC, and I don't know the outcome of the case. It may be that the client was subject to a criminal investigation. If the matter continued along civil lines, the client paid, at least, £500,000 more than he needed to in penalties. Unfortunately, the accountant was more concerned about his fees than protecting the client. The accountant did not have sufficient knowledge or experience to deal with the Code 9 investigation, he did not appreciate the seriousness of the situation, and that was not conveyed to the client. However, the accountant also seriously compromised his professional indemnity insurance position, by dabbling in what is a specialist area. If the client had contacted me, or another investigation specialist, after settlement, they would have been advised that the penalty was excessive.

Case study two

In this case, I was approached by an accountant. Their client was being investigated under the Code 9 process. The client had appointed an investigation "specialist", and the client was due to meet with HMRC the following week for a settlement meeting. The accountant forwarded me a copy of the letter of offer that the client was going to sign – the amount to be paid to HMRC was £1.2 million. The accountant asked me to have a look at the disclosure report prepared by the "specialist", as the client thought the proposed settlement figure was too high.

I reviewed the document and was concerned by the content. There were numerous areas which I felt had not been covered in sufficient detail, and there were other areas where obvious questions had not been addressed. I explained to the client that I thought there were limitations in the report, but I was not sure what could be done, given the advanced stage of the investigation.

I was appointed by the client, and approached HMRC, to say that the settlement meeting would not be going ahead. I explained to the inspector that I would be carrying out further investigations and would update him in due course. I met with the client to discuss his disclosure in detail. Over the course of the next few months, I conducted further investigations, and asked the client to obtain further supporting documents and address matters not covered by the previous "specialist". To cut a long story short, a few months after my appointment, the client signed a different letter of offer, for £300,000, considerably lower than the figure put forward by the "specialist" who was previously advising the client. Also, the client did not attend a settlement meeting with HMRC, and the matter was concluded by correspondence. The previous "specialist" had failed to adequately investigate or consider all relevant areas and had failed to obtain documentation to support the client's position.

Case study three

The third case involves a client who was previously subject to a tax fraud investigation and had reached a settlement with HMRC for the relevant offences. I was asked to assist the individual, as they had committed further offences, again involving fraud. There was another aggravating factor, in that the individual was a professional, and would be deemed to be in a position of trust or responsibility under HMRC's criminal investigation policy. The client made a voluntary request for inclusion in the Contractual Disclosure Facility and was invited to participate in that process by HMRC.

An Outline Disclosure was submitted to HMRC, in accordance with the requirements of the Contractual Disclosure Facility. The submission was accepted by HMRC, and a formal disclosure report was subsequently sent to HMRC, following further investigation work into the irregularities. The report was accepted by HMRC without significant challenge, and, because of the client's circumstances, a settlement equating to, approximately, 20% of the accepted liability was agreed with HMRC.

Contributed by Phil Berwick (Director at Berwick Tax)