

## How to prepare for a meeting with HMRC (Lecture P1395 – 13.53 minutes)

This article will help you prepare your client for a meeting with HMRC. The article will also address the fundamental question of whether your client should be attending a meeting with HMRC. The guidance offered only extends to meetings in the context of HMRC's civil enquiry powers, but excludes cases where HMRC are investigating under the Contractual Disclosure Facility (Code of Practice 9).

*Is it necessary for the client to attend the meeting?*

Although this article is about preparing your client for a meeting with HMRC, advisers should, firstly, consider whether their client should be attending the meeting. There isn't anything in tax law which requires a client to meet with HMRC in the context of a civil enquiry. In my view, advisers should only be taking their client to a meeting with HMRC where there is a clearly defined benefit (for the client) for their attendance. In my experience, that is likely to exclude the majority of potential meetings at which a client has been requested to attend by the HMRC officer. The adviser needs to consider not only the circumstances of the case, but also the client. If the client is one who is likely to come across as nervous, the inspector may draw a negative inference from their demeanour, and that should be taken into consideration before deciding whether to take the client to a meeting.

I am firmly in favour of meetings with HMRC, but not, usually, where the client is present. Advisers should consider the client (how will they come across at a meeting), the nature of the enquiry, the stage of the enquiry, and the issues that the HMRC officer wishes to discuss with the client. The adviser needs to be satisfied that there is a need for the meeting, and also that it would be beneficial to the client for them to attend. The case might, as an example, be one where there are very technical matters to be addressed, and the client is the best person to explain the position, perhaps to avoid protracted correspondence with HMRC.

Even in this type of case, the adviser should firstly consider whether the information can be conveyed to HMRC in another way, including by correspondence.

It can be helpful for the adviser to attend a meeting with the HMRC officer (without the client present). A considered response can then be provided to the officer's queries, without putting the client through the stress of a meeting. A meeting without the client is also likely to be less stressful for the adviser. In such a meeting, the adviser can focus on the issues, and making progress, rather than constantly having to be aware of the client's actions and comments.

There is HMRC guidance on meetings, in the context of an enquiry, in the Enquiry Manual, at EM1822 to EM1865, as well as in the Compliance Handbook, including at CH204500. The Enquiry Manual, at EM1825, addresses the issue of resistance to attending a meeting. There are further comments on this issue in HMRC's guidance, at CH840300, although, unhelpfully, the relevant section includes the heading of 'poor agent behaviour'. The guidance states "Agents sometime consider that their clients' interests are best served by declining to bring their client to a meeting. This is perfectly legal and does not necessarily mean the client has anything to hide, but it results in a level of engagement which is unnecessarily adversarial and less than desirable in a professional 'Working Together' relationship". I do not consider that this is an "adversarial" approach. It is not in HMRC's interest to see a taxpayer who is, for example nervous and not able to give considered answers in the stressful arena of a meeting with the HMRC officer.

Advisers need to remember that there is nothing in law that requires that their client must attend a meeting with HMRC, and they should focus on the client's interests, rather than HMRC's, when determining whether the client attends the meeting with the HMRC officer.

When the adviser considers that their client should attend the meeting with HMRC, they must make the client aware that HMRC cannot legally insist on them being present. Advisers need to take care in this area, as they are exposing their client to a situation that they do not need to be in. This could have repercussions for the adviser's professional indemnity insurance, particularly if they have not adequately explained their client's rights.

Most clients will not want to meet with the HMRC, and those that do are likely to be unaware of the risks involved and any sense of bravado is misguided.

### *Before the meeting*

When the adviser has determined that the client is one who should be taken to a meeting with HMRC, and the client agrees to attend the meeting, the adviser must ensure that they, and the client, are fully prepared.

The adviser should ask the officer for a copy of their detailed agenda, and opening questions, for the meeting. The reality is that most officers will not provide their opening questions, and will only provide a very broad agenda. The adviser should also establish who will be present from HMRC, and what their respective roles are.

The adviser needs to consider what the officer's objectives from the meeting are likely to be. Similarly, the adviser should determine the objectives for his client in attending the meeting and ensure that he has a plan to meet those objectives.

The officer will spend time in advance of the meeting, reviewing the available documents and information, which is likely to include items not supplied by the client.

The adviser needs to mirror the actions of the officer in this regard, as far as possible, and make sure he is familiar with the information provided to HMRC. The adviser is working to different considerations to the officer, who can spend numerous hours in advance of the meeting. The adviser will, usually, need to justify the time spent to the client when it comes to billing, although fee protection insurance may soften the blow.

The adviser should, ideally, meet with the client, to help prepare them for the meeting. This can be done a couple of weeks in advance. The adviser should explain to the client how the meeting will unfold and go through the agenda points from the officer. The client needs to be made aware of the different type of questions that the officer will ask, broadly, open and closed, and how to respond. The exact questions asked will depend on the case, and the stage at which the meeting is being held. When an open question is asked, the client needs to know how much information to give in response to the query. There can be a tendency for clients to ramble and end up giving more information than is necessary to answer the query, which can lead to further questions. When an answer has been given, the officer may stay silent, waiting for the client to fill the silence, and give further information. Clients should be advised to give concise answers to the officer's queries, and the adviser can, if necessary, prompt the client to provide further details.

The officer may want to question the client about their standard of living, particularly where means may be an issue. It is important to ensure that the client is ready for this, and that they give accurate and considered answers, as it can take months to unravel the position where inaccurate responses have been given, albeit innocently, which gives the officer a false picture of the client's

circumstances. Any questions about such personal matters need to be proportionate to the officer's aims, under the Human Rights Act 1998 (Article 8), and the adviser should intervene where necessary.

Consideration needs to be given to the venue for the meeting. This should usually be in the adviser's office, or a neutral venue, rather than HMRC's premises or the client's business premises, and certainly not the client's home.

#### *At the meeting*

On the day of the meeting, the adviser should ensure that the client arrives early, to help settle any nerves, and cover any relevant points.

HMRC should not record the meeting, whether by an audio or video device. If the adviser or client asks to make a video recording of the meeting, the officer will normally refuse the request. Where the client or adviser wishes to make an audio recording of the meeting, the officer will normally allow this (although, legally, they cannot prevent such a recording). If an audio recording is made, the officer will ask for a copy of the recording at the end of the meeting, or a full typed transcript of the recording. The officer will take notes of what is said at the meeting, and the adviser should do the same.

It is important to ensure that adequate breaks are taken during the meeting, and that any health issues are taken into consideration. The client can request an adjournment at any time during the meeting – this may be a comfort break, or to discuss a matter with the adviser. If the adviser considers it necessary, or appropriate, to request an adjournment, he should do so.

A situation may arise where the client provides new information during the meeting, and the adviser may want to discuss this with the client before deciding whether to proceed. Where the client indicates that there is, for example, a new irregularity to disclose to HMRC, the adviser should end the meeting so that the matter can be fully explored with the client, and update the officer as appropriate.

The adviser may also note a behavioural change in the client, and seek a brief adjournment to discuss. Although adjournments are a normal part of a meeting with HMRC, the adviser needs to ensure that there are not too many. If there has been adequate preparation of the client, and the adviser is fully briefed, this should not be an issue. If there are frequent adjournments without good reason, the HMRC officer may draw negative inferences. The adviser needs to remember that the officer is there to get the client's explanations and answers. However, the adviser should not be passive during the meeting. The adviser should clarify the officer's questions, where necessary, or clarify the client's response, where it is apparent that the client has misunderstood the question. The adviser should also intervene where further information may help the officer's understanding of the client's answer.

The adviser should ensure that they, and the client, are always courteous to the officer, or officers present. The officer(s) should act in the same way. They may ask questions in an assertive way, but that should never become aggression. If the officer becomes aggressive, the meeting should be terminated. If the client is one who is likely to become aggressive, they should not be taken to the meeting in the first place. If, however, the client becomes aggressive, the officer is likely to terminate the meeting. If that does not happen, the adviser should do so.

*Contributed by Phil Berwick (Berwick Tax)*