

Compliance Reform Forum 27 February 2013

Agent members

Chas Roy-Chowdhury	Association of Chartered and Certified Accountants
Glenn Collins	Association of Chartered and Certified Accountants
Con Kelly	Association of Accounting Technicians
Tina Riches	Chartered Institute of Taxation
Bob Davies	Chartered Institute of Taxation
John Kimmer	Association of Taxation Technicians
Paul Hill	Association of Taxation Technicians
Robert Maas	Institute of Chartered Accountants in England & Wales
Andy Tall	Institute of Chartered Accountants in England & Wales
Samantha Mann	Chartered Institute of Payroll Professionals
Sue Cave	Federation of Small Businesses
Elspeth Orcharton	Institute of Chartered Accountants Scotland
Gary Rowson	Tax Investigation Practitioners Group
Robin Williamson	Low Incomes Tax Reform Group

HMRC members

Louise Boyle (Chair)	Enforcement & Compliance Change
Mark Leech	Enforcement & Compliance Change
Dave Stephens	Compliance Operational Policy & Guidance Unit
Luke Liddiard	Tax Administration Policy
Jenny Cowles	Agent Strategy & Engagement Team
Laura Pollard	Risk & Intelligence Service
Ralf Cook	Local Compliance
Jane Howard (Secretariat)	Local Compliance

Guests

Jennie Granger	Director General, Enforcement & Compliance
Simon Habesch	Enforcement & Compliance Change
David Edney	Anti Avoidance Group
Mike Brown	Specialist Employer Compliance
Carol Lunney	Tax Simplification Project

Apologies

Agent members: Jacqui Brennan (AAT), Gary Ashford (CIOT), Jane Moore (ICAEW), Brian Keegan (ICAI)

HMRC: Pete Robson (Criminal Investigations), Barry Charles (Specialist Investigations), Michael O'Callaghan (Large Business Service), Jayne Banner (Local Compliance Change)

Welcome and introductions

1. Louise Boyle welcomed everyone to the meeting and introduced Elspeth Orcharton, Gary Rowson and Robin Williamson as new representatives on behalf of their member bodies.

Last minutes and action points

2. HMRC confirmed the minutes of the previous meeting held on 14 November 2012 had been agreed and were available on the HMRC Internet.

3. AP1 - iForms: This will be taken forward by the Joint Initiative on Service Delivery group. They will review and prioritise what iForms are in the pipeline and what changes are required to meet agents' needs. Point closed.

4. AP2 – fee protection insurance: HMRC has provided industry representatives with information about business records checks to enable them to assess how any policies might be affected. It is HMRC’s view that professional fees insurance and what individual policies cover is a matter for the industry itself. HMRC will be happy to provide industry representatives with any further information required. Point closed.

5. AP3 – repayment risk system: A written update had been provided as part of the papers for the meeting. Point closed.

6. AP4 – a History of Powers: HMRC is collating all the Powers reports into a single document which will be published on the HMRC Internet. HMRC will advise agent representatives when this has happened. **(AP1)**

7. AP5 – single compliance process: HMRC advised that one of the measurable results they are monitoring as part of the trial is the overall elapsed times of cases. Specific information about the length of time until early and/or full disclosure is not being gathered. Point closed.

8. AP6 – penalty decision and action checklist: A demonstration of the checklist preceded the CRF meeting. Point closed.

9. AP7 – taskforce activity. Issues and discussion about taskforce activity will be taken forward as part of the new CRF Fraud sub-group. Point closed.

10. AP8 – tax and accountancy advice on HMRC evasion webpages. A link to HMRC guidance on getting help and advice has now been added. Improvements to HMRC’s help and advice pages are being considered as part of the transition to the new government website GOV.UK. Point closed.

11. AP9 – deliberate default guidance. HMRC progress on this guidance has been held up due to other work. HMRC will contact agent volunteer representatives to review the guidance when this is ready. Point closed.

Recognition and role of appointed tax agents in compliance work

12. In response to agents’ concerns that HMRC staff are increasingly bypassing appointed agents and communicating direct with clients, HMRC confirmed it has no wish to marginalise the role of tax agents. Where a customer wants an agent to act in relation to their tax affairs and has authorised that agent to do so, HMRC will respect that agent’s right to represent their client, as set out in the HMRC Charter. HMRC recognises the value that agents can add in guiding their clients through a compliance check and helping them to respond to queries fully and accurately.

13. HMRC makes it clear in the notes to the authorisation form 64-8 that it may have to deal with the customer as well as, or instead of, the agent. HMRC sometimes has to exercise this right to recognise statutory obligations, for example where a notice has to be served on a customer or if it believes that an agent is not representing the best interests of the customer.

14. One area where HMRC thinks it is right to go direct to customers is where it is using ‘nudge’ techniques to encourage customers with a history of late filing, late payment or other non-compliance to change behaviour. HMRC believes this approach is helpful to customers and can also help agents to encourage their clients to comply. It may even encourage unrepresented customers to seek help.

15. Another area where there may be a good reason to bypass agents is in relation to aggressive tax avoidance schemes; partly due to confidentiality as the scheme may have been sold to customer through a third party and partly the need to ensure that the customer is aware that HMRC does not think the scheme works. There may be other

specific situations but as far as possible HMRC will give CRF agent representatives advance notice so that they are aware of HMRC's approach and the reason for it and can advise their members accordingly.

16. Agent representatives welcomed the reassurances given by HMRC. In particular, they noted that proposals are in hand to amend the single compliance process to take account of their views (see paragraph 47). They indicated they were satisfied with the approach provided that, where HMRC writes to a represented customer direct, HMRC send a copy of the letter to the agent. Or, that HMRC subsequently communicates direct with the agent if the customer confirms that they want their appointed agent to act. HMRC confirmed that they would expect staff to behave in accordance with the HMRC Charter.

17. HMRC is looking at new guidance for staff to reinforce the importance of the role of agents, including the possibility of shadowing an agent as part of a tax professional's training.

18. Agent representatives said it would be simpler if a client could authorise an agent to act for them on all tax/HMRC matters. HMRC advised that it has recently improved some internal processing and turnaround times but has no plans to overhaul the paper authorisation (64-8) process because it is being replaced by a new online system as part of the new Tax Agent Strategy. HMRC is working with agent representatives on how to gain the assurance that could allow an agent to self-authorise their clients in this new system.

Update on HMRC compliance strategy

19. HMRC's overall strategy – its customer centric strategy – covers the whole spectrum of work undertaken by HMRC, including compliance work. It has three objectives:

- Maximise revenue flows – getting in the right amount of tax
- Improve customer experience and reduce the cost of dealing with us
- Reduce HMRC costs – shaping services so they are as low cost as possible and best value for money

20. The strategy uses customer understanding, built up over years through detailed research, to focus HMRC's compliance efforts where they will have the biggest effect and achieve the objectives above. This means:

- making it easy for customers to comply and pay the right amount of tax
- correcting small errors and mistakes for the lowest cost to the customer and HMRC
- tackling those who deliberately attempt not to pay the right amount of tax both as a deterrent effect on others and to obtain the right amount of tax for the exchequer

21. The compliance roadmap, which was shared with CRF representatives in October 2011, sets out what sort of intervention HMRC uses for their different customer segments. In essence, HMRC will get tougher as customers move up the segments from those needing help, through potential rule breakers to rule breakers and organised criminals.

22. By 2014-15, using money reinvested by the government into HMRC, HMRC aims to have increased the number and capability of its compliance staff, improved the work they do, the processes they deploy and their technological capability. This will include spending additional government money on Connect, which is a computerised data matching and risking tool, to enable them to continue to get better and smarter at targeting resource to the right work.

23. The vast majority of compliance interventions are still light touch to correct errors and carelessness. HMRC plans to reduce this type of work by providing more help and support to individuals and businesses so that they submit correct tax returns. Where HMRC does need to intervene, it will increasingly do so remotely through its compliance centres and locally through face to face work where appropriate.

24. HMRC intends to increase their efforts on targeting both evasion and avoidance by:

- deterring people from rule breaking through its public evasion campaign
- using more nudge and behavioural change techniques in all its compliance work
- launching 30 new taskforces each year from 2012-13 to 2014-15
- continuing its campaign approach
- increasing the number of prosecutions for tax fraud from 165 in 2010-11 to 1,165 in 2014-15
- carrying out more offshore work
- detecting and closing down tax avoidance schemes
- expanding its Affluent Unit

25. Jennie Granger, HMRC Director General Enforcement & Compliance, shared her own views on HMRC's strengths and where she saw potential new tax risks coming from. She confirmed that HMRC is very keen to work more with agents to help deal with these.

26. More information about HMRC's plans is available in 'Closing in on tax evasion' published at Autumn Statement 2012 and the HMRC briefing 'Further clampdown on tax avoidance and evasion.

27. HMRC will arrange a demonstration of Connect for CRF agent representatives.
(AP2)

28. Agent representatives thanked HMRC for the update. They raised the following points:

29. Real Time Information (RTI) – there are concerns that this will increase the burden on small employers, driving people into self-employment to save employer-related costs. This in turn could potentially increase the number of customers who are a compliance risk. HMRC said it will be monitoring the introduction of RTI very closely to see where more help and support is required to help small employers with the new system.

30. Customer segments – in addition to the 'need help around specific life events' and 'always needs help' categories, there was possibly a third category around 'needs help with tax changes', for example RTI, universal credits. HMRC responded that it is keen to look at where it might need to give more targeted support to help customers become more tax proficient to smooth tax changes. It recognised the need to continually review its customer profile.

31. Digitalisation – not all customers have access to a computer. HMRC still has to make provision for these. HMRC agreed that it needs to continue to provide for customers who are not digitally able.

HMRC campaigns update

32. Laura Pollard, HMRC Campaigns Manager, reminded attendees what an HMRC campaign is and how it fits with the three HMRC customer-centric objectives. She said HMRC is constantly refining its campaign approach to encourage people to come forward voluntarily and to identify process improvements to help those who want to get their tax affairs right first time.

33. Campaigns launched so far have produced £547 million from voluntary disclosures and nearly £140 million additional tax from follow up action. Thirteen criminal investigations are underway with five successful convictions to date.

34. Agent representatives were concerned that customers who have made a genuine mistake might be put off by the campaigns approach, fearing that they will be treated too harshly. Also, studies suggest that where compliance work is targeted at specific areas this can have a negative impact on those areas not targeted as customers perceive that they will be able to get away with non-compliance.

35. Laura said that recent campaign publicity has made it clear that many people who come forward will not pay a penalty at all. This has been possible because of changes in the penalty regime. She explained that campaigns have covered a wide population and this was done deliberately to ensure coverage across many different types of customers where there is risk.

36. HMRC agreed to look at the scope for making it clearer that anyone can come forward at any time to put their tax affairs in order and explaining how they could do so.

General anti abuse rule

37. David Edney, Policy Team Leader with HMRC's Anti Avoidance Group, said that the General Anti-Abuse Rule (GAAR) to be brought in by the government will introduce a new 'double reasonableness' test that will determine whether avoidance schemes are abusive. The test will involve considering whether an arrangement can 'reasonably be regarded' as reasonable. It is not a case of finding one or more reasonable persons who assert that something is reasonable; the basis for the opinion must itself be a reasonable basis. Customers and agents will be encouraged by the GAAR to think about whether their tax arrangements could be viewed as 'reasonable' or not. It is a test that taxpayers can understand and does not rely on detailed legal analysis. Following consultation with agents and other representative bodies, the draft legislation will be supported by better guidance on 'double reasonableness' to help define borderline cases. HMRC will develop further guidance in light of experience of the GAAR. An advisory panel will be appointed to provide opinions on the application of the test of reasonableness.

38. In addition to the GAAR, HMRC is also working on 'high risk promoters' to try and stop them from marketing avoidance schemes. A consultation will be published after Budget 2013.

39. HMRC 'Spotlight' articles on the HMRC website highlight avoidance schemes which HMRC believes do not work, and why.

40. Agent representatives said more technical arguments and additional publicity about high risk schemes and what HMRC will not accept was needed to help tax agents warn clients off scheme promoters. HMRC confirmed that plans for such action were in hand as part of its approach to tackle avoidance.

IR35 work

41. HMRC has reviewed its approach for administering IR35 (the anti-avoidance intermediaries legislation). It has introduced better guidance to help customers assess whether they fall in or out of the legislation and is carrying out more focused and targeted checks. An IR35 forum monitors and provides advice on the application of the legislation. Minutes of the forum meetings are available on the HMRC internet.

42. Agent representatives were concerned that the forum was not fully representative and that they had not had a further opportunity to be involved in the development of the new guidance.

43. HMRC will review the IR35 forum stakeholders and consider the need for a sub-group to look at operational issues in more detail. **(AP3)**

Tax simplification project

44. Carol Lunney from HMRC outlined the proposals for introducing simpler rules for computing taxable profits of small unincorporated businesses. Currently they are required for tax purposes to compute trading profits in accordance with generally accepted accountancy practice. Under the proposals, a new cash basis system will be introduced with mandatory simplified expenses for cars and motorcycles. HMRC is still looking at ways to make the system less complex and is testing guidance and communications.

45. Agent representatives wondered how the new system would impact on business record checks. Potentially, the system could be more burdensome for small businesses and they could, inadvertently, fail a business record check. Carol said that HMRC would adopt a light touch approach during the introductory phase. Its aim was to ensure that small businesses are not overly impacted whilst keeping to the principles of a simpler system.

46. HMRC will include this subject on a later agenda for further discussion about any compliance issues arising out of a cash basis system. **(AP4)**

Single compliance process

47. Agent representatives were very concerned about HMRC's intention to contact represented customers direct seven days after the issue of an opening letter to help speed up its enquiry processes. A special meeting of the CRF Single Compliance Process (SCP) sub-group was held to consider this. Following a full and open debate, the sub-group had proposed several recommendations to allay agents' concerns. Subject to formal project approval, HMRC will now make the telephone contact with the agent at the seven day point unless the customer instructs HMRC not to do so.

48. The sub-group also recognised that HMRC should be robust in its use of its power and issue a Schedule 36 penalty notice at the 30 day point if there has been unsatisfactory progress in a case.

Record keeping penalties

49. HMRC has set up a project team to ensure that record keeping obligations for compliance checks into IT and CT self-assessment business records are consistently considered across HMRC.

50. The project team will take the following concerns expressed by agent representatives into account:

- the possibility of 'double jeopardy' in that HMRC could potentially charge two separate penalties – one for inadequate records and one for a consequential inaccuracy, both flowing from issues over record keeping
- the interaction between Schedule 24 Finance Act 2007 and Section 12B Taxes Management Act 1970 and whether HMRC's stated aims could be met through more focused application of Schedule 24
- conflicting approaches to 'suspension' within Schedule 24 and Section 12B
- that, even when reduced to nil, the Section 12B penalty will affect future penalty levels

51. A CRF Section 12B sub-group has been set up to consider HMRC's proposals for monitoring the application of record keeping penalties. The sub-group will report back to the main CRF.

Alternative dispute resolution

52. HMRC confirmed in a written briefing to CRF that, following successful trials, its new alternative dispute resolution service for small and medium businesses and individual customers who are unable to resolve their VAT and direct taxes compliance checks will become part of normal business from April 2013.

Repayment risk assessment system

53. HMRC provided a written update on its plans to introduce a new automated, near real time, risking system for IT self assessment and VAT repayments. HMRC expects the new system to improve the repayment process for legitimate customers whilst also improving its ability to identify fraudulent claims or claims made in error.

54. The new system will introduce a similar pre-repayment checking process for IT self assessment customers as that currently established for VAT customers.

High volume repayment agents

55. Building on the successful project initiated in February 2012 to reduce the number of incorrect tax returns submitted by agents who deal with high volumes of repayment claims, HMRC advised that they plan to contact more high volume agents in 2013-14.

56. Again, the focus of the project is to seek ways to improve the assurance processes used by the agents and to work with them to help them improve their clients' record keeping enabling the submission of accurate returns.

Managing deliberate defaulters

57. A CRF sub-group meeting was held earlier in the month to consider HMRC's plans to expand the scope of its Managing Deliberate Defaulters (MDD) programme. The sub-group agreed proposals for submission to the Treasury for approval. The sub-group also agreed that, to recognise the wider scope of the programme, 'Managing Serious Defaulters' was a more appropriate name.

58. One CRF agent member had serious concerns about one of the proposed new entry criteria. As there was not enough time to discuss the matter, he asked for this to be deferred to the next CRF meeting. HMRC asked that any concerns be fed back to the CRF MDD sub-group to consider. **(AP5)**

Debt management issues

59. At the previous meeting agent representatives raised a number of debt management issues with Graham Brammer, the HMRC head of Debt Management & Banking.

60. HMRC advised that Graham has asked for all the issues to be considered as part of the Joint Initiative on Service Delivery's (JISD) focus on debt management. Agent representatives were invited to feed in direct or provide any further information to the JISD representatives. **(AP6)**

Powers implementation oversight forum

61. The Powers Implementation Oversight Forum (POIF) was set up to oversee the initial implementation of HMRC's new powers and safeguards. Now that the Powers review has ended, it has been agreed to close the forum.

62. It was recognised however that, in order for any significant issues about the use of HMRC's powers, deterrents and safeguards to be raised, a new sub-group should be formed. This sub-group will be part of the CRF. HMRC will share draft terms of reference

with CRF members for comment and suggestions about the new sub-group and who should be on it.

63. Once signed off, HMRC will also share a copy of the last POIF report for information. **(AP7)**

Fraud forum

64. A new CRF sub-group has been set up to consider and consult with representative bodies on policy and operational issues affecting HMRC's approach to tax fraud. Minutes of the sub-group meetings will be shared with CRF members before publication.

Next meeting

65. 24 June 2013.

Action points	What
AP1	HMRC to advise when 'A History of Powers' is published.
AP2	HMRC to arrange a Connect demonstration.
AP3	HMRC to review tax agent representation on IR35 forum.
AP4	HMRC to include cash basis system on a future agenda.
AP5	Agent representatives to let CRF MDD sub-group have details of any concerns about proposals to expand the programme.
AP6	Agent representatives to feed in direct or provide any further information about debt management issues to JISD (Joint Initiative on Service Delivery) representatives.
AP7	HMRC to let CRF representatives have copy of last report of the Powers Oversight Implementation Forum.