

# Tax agents: Dishonest conduct

We have given you this factsheet because we believe that you have engaged in dishonest conduct as a tax agent.

**It is an offence to conceal, destroy or otherwise dispose of any document that would help us establish the extent of your dishonest conduct.**

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## Who is a tax agent

A tax agent is an individual who, in the course of business, assists clients with their tax affairs.

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## What is dishonest conduct

An individual engages in dishonest conduct if, in the course of acting as a tax agent, they do something dishonest with a view to bringing about a loss of tax revenue.

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## What happens when we decide that you have been dishonest

If we decide that you have engaged in dishonest conduct as a tax agent, we will give you a 'conduct notice'. This will set out the evidence we have that supports our decision that you have engaged in dishonest conduct.

If you disagree with our decision, you can appeal.

Once we have given you a conduct notice and the appeal period has passed (or any appeal has been settled in our favour), we can:

- ask you or other people for documents or information to help us work out the full extent of your dishonesty
- charge you a penalty for your dishonest conduct
- publish your details (depending on the amount of the penalty).

We will expect you to do everything you can to help us establish the full extent of your dishonesty. If you give us false information you could face a criminal prosecution.

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## Asking for documents or information

If we need information or documents to help establish the extent of your dishonesty, we will discuss with you what we need and ask you to provide them voluntarily.

The documents we can ask for include, but are not limited to:

- tax, accounts and audit working papers and files
- documents used to prepare accounts and tax returns
- communications with clients and others regarding clients' affairs
- any other files and documents relating to clients
- time records, fees ledger accounts and fee notes.

If you do not voluntarily provide what we need, we can send you:

- a file access notice for documents
- an information notice for information.

## Customers with particular needs

If there is anything about your health or personal circumstances that could make it difficult for you to deal with this investigation, please tell the officer that is carrying out the investigation. Telling them will mean that they can help you in the most appropriate way.

For example, if:

- English is not your first language
- you would like us to use a certain format to communicate with you, for example, Braille or Text Relay
- you would like us to visit you at home because it is difficult for you to get to one of our offices.

For more information, go to [hmrc.gov.uk/contactus/particular-needs.htm](https://hmrc.gov.uk/contactus/particular-needs.htm)

## If you need help or more information

If you have any questions, please contact the officer dealing with the investigation.

You can also look for the information you need on our website.

Go to [hmrc.gov.uk](https://hmrc.gov.uk)

## Authorising a representative

You can authorise someone to deal with us on your behalf.

If you want to authorise an adviser to assist you with our investigation, you will need to write to tell us who you want to authorise and what you want them to deal with for you.

## File access notices

A file access notice legally requires you to give us the documents that we have asked for in that notice.

We must get permission from the independent tribunal that deals with tax before we give you a file access notice. Before we ask the tribunal for permission, you will have the opportunity to make representations to us about what we are asking for. We will provide the tribunal with details of any representations you make to us.

You cannot appeal against a file access notice.

If you do not comply with the file access notice by giving us everything that it asks for, we may charge you a £300 penalty. If you have still not complied with the notice by the time we have issued the £300 penalty, we may then charge you daily penalties of up to £60 a day for each day that you do not comply.

If we agree that you have a reasonable excuse for not giving us the documents, we will not charge you a penalty but we will still ask you to give us the documents (or replacement documents) within an agreed timescale. A reasonable excuse is normally an unexpected or unusual event that is either unforeseeable or beyond your control.

If you disagree with a penalty we charge for failing to comply with a file access notice, you can appeal against it. There is more information about appeals on page 4 of this factsheet.

## Asking other people for documents or information

Sometimes we may need to use a file access notice to get documents from other people to help with our investigation. We will tell you before we do this and give you an opportunity to make representations to us. If we ask other people for documents, we will also give them an opportunity to make representations.

If we ask other people for information, we will give them an information notice. If we do this, we will not reveal any more about you than is necessary to get the information we need.

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## Penalties for dishonest conduct

When we are considering whether to charge certain penalties, the European Convention on Human Rights gives you certain rights. There is more information about this on page 4 of this factsheet.

The **minimum** penalty we will charge you for your dishonest conduct is £5,000. The **maximum** penalty we can charge is £50,000.

When we work out how much penalty we will charge we will take account of:

- whether you told us about your dishonest conduct
- if you told us about your dishonest conduct, whether you told us before you had any reason to believe that we were about to find out about it
- how much help you gave us in establishing the full extent of your dishonesty
- how you complied with any file access notices we gave you.

We will charge you the minimum penalty of £5,000 if you tell us everything you can about your dishonest conduct and do everything you can to help us establish the full extent of your dishonesty. If you do not do this, we will charge you a penalty of more than £5,000.

If you do not tell us about your dishonest conduct and do nothing to help us establish the full extent of the dishonesty, we will charge the maximum penalty of £50,000.

If we charge a penalty of more than £5,000 we can also publish your details. There is more information about this on page 3 of this factsheet.

You can appeal against the amount of the penalty for dishonest conduct, but not about our decision to charge you a penalty. There is more information about appeals on page 3 of this factsheet.

## What if you are unhappy with our service

If you are unhappy with our service, please tell the person or office you have been dealing with. They will try to put things right. If you are still unhappy, they will tell you how to complain.

There is more information on our website. Go to [hmrc.gov.uk/complaints-appeals/how-to-complain/make-complaint.htm](https://hmrc.gov.uk/complaints-appeals/how-to-complain/make-complaint.htm)

## When these rules apply

The legislation that outline the powers described in this factsheet is in Schedule 38 of the Finance Act 2012.

The penalty rules in this factsheet apply to dishonest conduct that occurred on or after 1 April 2013.

We can issue a file access notice for documents that existed before 1 April 2013.

## Funded legal assistance

You can find more information in:

- England and Wales by going to the Civil Legal Advice website at [gov.uk/legal-aid/how-to-claim](https://gov.uk/legal-aid/how-to-claim) or by phoning **0845 345 4345**
- Scotland by going to the Scottish Legal Aid Board website at [slab.org.uk](https://slab.org.uk) or by phoning **0845 122 8686**
- Northern Ireland by contacting a solicitor who is a member of The Law Society of Northern Ireland. Go to [lawsoc-ni.org](https://lawsoc-ni.org)

## Telling us about any special circumstances

If there are any special circumstances that you believe the officer dealing with the investigation should consider when calculating the penalty, you should tell them straightaway. We can only take special circumstances into account if we are going to charge you the minimum penalty of £5,000.

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## Publishing your details

If we charge you a penalty for dishonest conduct of more than £5,000, we can also publish your details.

What we publish can include:

- your name and address (business or private)
- the amount of the penalty we have charged
- the nature of your business
- the periods to which your dishonest conduct relate
- any other details we think are necessary to identify you clearly
- details about any link between your dishonest conduct and anything that we publish under the deliberate tax defaulters provisions.

If you worked for an organisation, we can publish details about the organisation in order to clearly identify you. Before we do this we will tell the organisation and give them at least 30 days to make representations to us about whether their details should be published.

Before we publish your details we will tell you and give you 30 days to make representations to us about whether the details should be published. You cannot appeal against our decision to publish your details.

We will publish your details on our website at [hmrc.gov.uk](https://hmrc.gov.uk) The details will remain there for up to 12 months from the date we first publish them.

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## Disclosing your conduct to your professional body

We can disclose details of misconduct we discover to any professional body of which you are a member. We will tell you when we do this.

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## What to do if you disagree

We will write and tell you when we make a decision that you can appeal against. We will also explain the decision and tell you what to do if you disagree. You will usually have three options. Within 30 days you can:

- send new information or arguments to the officer you have been dealing with
- have your case reviewed by an HMRC officer who has not been involved in the investigation
- arrange for your case to be heard by an independent tribunal.

You can find more about this in factsheet HMRC1 *HM Revenue & Customs decisions - what to do if you disagree*. You can get a copy from our website. Go to [hmrc.gov.uk/factsheets/hmrc1.pdf](https://hmrc.gov.uk/factsheets/hmrc1.pdf)

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## Your principal rights and obligations

- You have the right to be represented. You can appoint anyone to act on your behalf.
- You have the right to consult your adviser. We will allow a reasonable amount of time for you to do so.
- We will protect information we obtain, receive or hold about you.
- We can only ask you for what is reasonable for us to carry out our investigation. What is reasonable will depend on the circumstances of your case.
- You have the right to complain if you believe that we have not treated you fairly.
- You have an obligation to take care to get things right.
- If you have an adviser, you must still take reasonable care to make sure that any documents or details they send us on your behalf are correct.

*Your Charter* explains what you can expect from us and what we expect from you. For more information go to [hmrc.gov.uk/charter](http://hmrc.gov.uk/charter)

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## The Human Rights Act and penalties for dishonest conduct

Article 6 of the European Convention on Human Rights (ECHR) gives you certain rights when we are considering charging penalties for dishonest conduct.

### Your rights under Article 6 when we are considering penalties

We always welcome your cooperation with our investigation and in establishing the full extent of your dishonesty, and the amount of the penalty. The degree to which you cooperate with us and provide us with documents and information is entirely your choice.

When we are considering penalties you have the right under Article 6 not to answer our questions. This is sometimes referred to as the right not to self-incriminate or the right to silence. This right does not cover documents or information that already exists. This means that you must provide us with the documents or information that already exists, if we have a legal right to ask for them.

In making a decision about how much you are going to cooperate with us, you have the right to get help from an adviser. If you do not already have an adviser, you may want to consider consulting one.

You have the right to have the matter of penalties dealt with without unreasonable delay.

The penalty amount is between £5,000 and £50,000. The penalty amount depends upon the degree to which you help us establish the full extent of the dishonesty.

We will tell you how much penalty is due when we have established the full extent of your dishonesty. However, if you do not help us establish the full extent of your dishonesty we can charge you the maximum penalty.

You can appeal against the amount of the penalty.

You have the right to apply for publicly funded legal assistance or Legal Aid.

In some circumstances, funding may be available to help you bring certain appeals before the tribunal. If you intend to appeal against the amount of the penalty, you may want to check whether your case qualifies for legal assistance and the type of help that may be available. We are not involved in decisions about whether or not your case will qualify for legal assistance.

The way you can check what help is available and the qualifying conditions depend on where you live in the United Kingdom. You can find more information in the right hand panel on page 2 of this factsheet. You can also get more information from Citizens Advice or you can apply for funded legal assistance or Legal Aid through a solicitor anywhere in the UK.

**If there is anything you do not understand about these rights or what they mean for you, please tell the officer who is dealing with the investigation straightaway.**

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We have a range of services for people with disabilities, including guidance in Braille, audio and large print. Most of our forms are also available in large print. Please contact us on any of our phone helplines if you need these services.

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These notes are for guidance only and reflect the position at the time of writing. They do not affect any right of appeal.

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