

Compliance Reform Forum – Minutes of meeting held on 11 November 2016, 100 Parliament Street, Westminster, SW1A 2BQ.

External attendees

Joanne Walker	Low Incomes Tax Reform Group
Robin Williamson	Low Incomes Tax Reform Group
Andrew Tall	Institute of Chartered Accountants in England & Wales
Jason Piper	Association of Chartered and Certified Accountants
Brian Palmer	Association of Accounting Technicians
Will Silsby	Association of Taxation Technicians
Susan Cattell	Institute of Chartered Accountants of Scotland
Andrew McKenna	Chartered Institute of Taxation
Ian Browne	TaxAid
Sue Cave	Federation of Small Businesses
Samantha Mann	Chartered Institute of Payroll Professionals

HMRC attendees

Jennie Granger (chair)	Director General Customer Compliance
Melissa Tatton (Co-Chair)	Director, Individuals and Small Business Compliance
Heather Smith	Director, Customer Compliance Finance and Planning
Ann Roberts	Wealthy and Mid-sized Business Compliance
Philippa Madelin	Customer Compliance Finance and Planning
Damian Lazenby (sec.)	Customer Compliance Strategy Unit
Alison Brown (sec.)	Customer Compliance Strategy Unit

Speakers

Jennie Granger (chair)	Director General Customer Compliance
Melissa Tatton (Co-Chair)	Director, Individuals and Small Business Compliance
Matthew Vick	Individuals and Small Business Compliance
Ann Roberts	Wealthy and Mid-sized Business Compliance
David Stephens	Customer Compliance Finance and Planning; Compliance Operational Policy and Guidance Unit

Cathy Smith	Central Policy
Joanne Walker	Low Incomes Tax Reform Group
Robin Williamson	Low Incomes Tax Reform Group
Will Silsby	Association of Taxation Technicians

Apologies

Andrew Watt	Tax Investigators Practitioners Group
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Agenda Items

Transformation: Our New Groups
Lifting the Lid on Individual and Small Business Compliance
Update on the Wealthy: NAO Report
Penalties: Application and Suspension

Welcome and Introductions

1. Jennie Granger (JG) welcomed everyone to the meeting, outlined the agenda and introduced the HMRC representatives.

Transformation: Our New Groups

2. JG explained the recent changes in HMRC organisational design to members with the aid of the new operating model diagram, and the rationale behind the move of directorates and accountabilities between the Director General commands.
3. The physical majority of HMRC will sit in Customer Service and Customer Compliance with Customer strategy at the core and corporate Services and Transformation supporting the whole.
4. In the new design around 25,000 HMRC staff will be within Customer Compliance and 20,000 in Customer Service, out of a total of around 65,000.
5. The new structuring more fully aligns directorates with their core functions and accountability and will support us in streamlining and joining up how we deliver to customers
6. JG spoke in high level terms about the transformation of HMRC and how data analysis and customer insight were key planks in how HMRC would work going forward, and how HMRC was increasingly working with other Government departments and internationally in addressing non-compliance.
7. JG concluded by sharing her draft ambition for Customer Compliance with members and asking them for informal feedback in response.
8. Members engaged with JG in a brief discussion on the model including questioning how the interface between Customer Service and Customer Compliance would work in practice, and how in future they could raise matters of policy.
9. Members were assured by JG that the channels to contact HMRC would not be changing and that protocols are in place to hand off queries / issues to Customer Compliance or the central policy teams, also the regional centres would contain subject matter experts so that appropriate tax knowledge would be available on the ground.

Lifting the Lid on Individual and Small Business Compliance

10. Melissa Tatton (MT) and Matthew Vick (MV) presented on the approach and challenges to compliance in the individual and small business customer groups, including tackling the Hidden Economy and enforcing the National Minimum Wage (NMW) / National Living Wage (NLW).
11. MT invited feedback on the slide deck as it was in an early draft format and ISBC would like to develop it into their standard presentation pack.
12. The presentation included an overview of ISBC and how HMRC conceptualises and defines the segments, and highlighted the principle of driving compliance upstream, i.e. designing out non-compliance through better process and policy design, and helping customers avoid common errors.
13. MT and MV explained that individual customers accounted for a relatively small proportion of the tax gap as the bulk are within PAYE, but that the risk and tax gap were being closely monitored for any emerging trends. Small and micro-businesses, including the self-employed, present a greater risk due to the diversity of the population; high churn of businesses / failure rate; significant error rates seen; and the opportunity to engage in Hidden Economy activities.
14. Churn of the Small Business population is a factor HMRC has to take account of in planning and deployment as there has to be a lot of repeat activity to ensure compliance amongst first time businesses.

15. Touching on the NMW/NLW which featured at the CRF in March 2016 MT and MV talked briefly about this activity, HMRC's relationship with the policy owner, BEIS, and future developments in labour market enforcement (BEIS was expected to confirm the appointment of a new independent Director of LME imminently).
 16. Specialised areas of activity within ISBC also include Customs, International Trade, and Excise (CITEX). ISBC works closely with colleagues in dedicated specialist teams and tax agents to secure compliance in these areas.
 17. MT and MV spoke and engaged with members in a wider discussion about the dynamic nature of business models in the modern economy e.g. student business model, retiree business model, the increase in self-employment, and the impact changing employment models were having on non-compliance involving disguised remuneration / employment status. The discussion also touched on trends within the small business population e.g. decreasing profit and turnover among self-employed over time, and the importance of life events and their impact on compliance e.g. early retirement leading people into lifestyle businesses.
 18. Risk has grown and changed in the self-employed population, it isn't static so HMRC has to constantly learn about the customer populations. In particular risks around specific business models, and around changes in life circumstances/ the life cycle.
 19. Members recognised this, and the example of public bodies outsourcing and moving from direct employment of staff to contract working was cited.
 20. MV asked the members about any similarities and differences in the use of Hidden Economy descriptors including *Ghosts* (no tax footprint) and *Moonlighters* (partial tax footprint). Members used slightly different nomenclature but similar e.g. *phantoms* not ghosts.
 21. Members raised a concern in this context about the £1000 de-minima allowance. Members felt that if customers were not obliged to tell you about additional business earnings under £1000 they were unlikely to tell you when it went over £1000. MT indicated that HMRC would be monitoring behaviours around this £1000 level to see if this was the case going forward, and spoke of the enhanced tools and powers now available to HMRC in tackling the HE.
22. ***AP1: Could HMRC supply members with details of the most common errors made in returns so that they could publicise to members and help reduce contact pressure on HMRC?***
 23. ***AP2: CRF to do a deep dive on self-employment and disguised remuneration to a future CRF, focusing on the compliance approach as opposed to the legislative changes examined at March 2016.***
 24. ***AP3: HMRC to provide a tax gap pie chart to members***
 25. ***AP4: Members asked that the CRF be updated and take a closer look at how the new model is working once it has bedded in, in particular the hand off between Customer Service and Customer Compliance.***
 26. ***AP5: Members asked to take a closer look at the "enhanced support team" service, the usage figures and the user population.***
 27. ***AP6: HMRC work on labour market enforcement to be brought back to the CRF once the new Independent Director of Labour Market Enforcement is appointed.***

Update on the Wealthy: NAO Report

28. Ann Roberts (AR) took the members through the main points from the recent NAO report.
29. AR explained that WMBC did not look just at High Net Worth individuals but that there were wealthy teams looking at Affluent individuals. The recent NAO review, however, had looked at HMRC's response to the wealthiest i.e. those with £20M or more net assets.

30. This customer group typically has more complex tax affairs, and are one to one marked by CRMs who seek to actively manage these affairs which presented particular compliance risks around a relatively small population in terms of numbers but not in terms of tax at risk.
31. These populations have been the subject of much media attention recently and it was important that HMRC was clear on its strategy, which is based on everybody paying the correct tax at the correct time regardless of their personal circumstances or public standing. HMRC was not out to “get” any customer group but was focused on creating and maintaining a level playing field in terms of taxation treatment. In this HMRC’s approach is aligned with and compliant with OECD principles.
32. Going forward the new HMRC Organisational Design has brought together different teams focusing on these populations and presented an opportunity to be increasingly joined up in delivering the HRMC compliance strategy in this area.
33. Members discussed and questioned some of the figures from the NAO report and the presentation, in particular the 1 in 3 under investigation figure for the “Super Rich”. AR explained that the high figure was inherent in the closer scrutiny of the wealthiest by virtue of the CRM model for this customer group. Interventions are mainly attributable to marketed avoidance and “legal interpretation”.

Penalties: Application and Suspension

34. Robin Williamson (RW), Joanne Walker (JW) and Will Silsby (WS) gave a detailed presentation on HMRC’s approach to the application of penalties and the suspension of the same, with the aim of setting the background for a debate on the subject.
35. A relatively small number of cases at Tribunal are actually found in favour of the tax-payer. That some HMRC decisions are overturned is to be expected, but the vast majority are upheld at this stage. Why do the cases get this far? How does HMRC see these cases? Is HMRC correctly interpreting and applying the rules around FTRC (Schedule 24 FA 2007). Innocent error v deliberate failure. Concern that FTRC could be being treated as an automatic minimum penalty in response to every inaccuracy. What is and is not a reasonable excuse? How will HMRC apply penalties and suspensions as part of its move to digital? Concern that guidance at CH83143 may be contrary to legislation and recent tribunal cases. Concerns over legislative interpretation and of some unclear CH guidance.
36. The presenters looked in detail at a number of individual tribunal cases (mainly 2016) to example the concerns and principles they wished to discuss. Important to remember that the burden is on HMRC to prove that error was careless, but concern that HMRC might be taking this as the default position and looking to customers to prove it isn’t, similarly with careless and deliberate. There should be a starting point that the taxpayer is innocent and has taken reasonable care. And similarly there can only be “discovery” when there has been careless behaviour at a minimum.
37. Suspension of penalties - Is there a consistent approach within HMRC? Is it seen as a good thing by HMRC officers to suspend?
38. David Stephens (DS) and Cathy Smith (CS) responded on behalf of HMRC prior to a round table discussion. HMRC would expect to lose a number of tribunal cases as part of an independent review of HMRC’s interpretation of law as it applies to the facts of any given case, which by its nature requires the exercise of subjective judgement. 12% being upheld in favour of the customer was purely the inverse of HRMC’s judgement being up held 88% of the time, and this gives us a degree of assurance about our guidance, interpretation, and the technical skills of our officers. Additionally, only a small proportion of total appeals reach tribunal stage which occurs after case review / reconsideration by a second HMRC officer.
39. DS acknowledged that there was always room for improvement in guidance and processes and that they were regularly reviewed following legal advice and the outcome of tribunals. However,

a single case was not usually enough to lead to a change, as tribunal decisions themselves were matters of best judgement; sometimes in contradiction of one another, and had to be weighed in aggregate.

40. DS also informed members that in the light of recent judgments, HMRC was minded to revisit CH 83143 and that the matter had been raised by our legal team. CS acknowledged that the presenters had previously asked HMRC to consider whether provision to suspend penalties should be an aspect of the sanction that supports the requirement to keep digital records, and confirmed that consideration was being given to the role suspension might play in such a penalty.
41. A discussion followed on the implication of specific cases for the general approach to penalties and suspensions, with members observing that HMRC could do more to publicise decisions, their implications for customers and impact on interpretation for tax professionals. Members asked for the opportunity to help review CH83143.
- 42. AP7: DS to report back via the secretariat on the possibility of CRF members being consulted on any redraft of CH831413.**
- 43. AP8: Andy Tall (AT) to send DS details of a specific "discovery" case which was of concern / interest.**
- 44. AP9: DS to send members details of the HMRC process for reviewing the position following a decision in the taxpayer's favour. And any available statistics on the number of cases that go to review and how many subsequently to tribunal. Also any analysis that is available on the split by customer segment. I.e. do people on low / high incomes put in more or fewer appeals.**

Action Points and Administrative Matters

45. It was agreed these would be taken by correspondence after the meeting.
46. No exceptions to the sub group minutes were raised.

AOB

- 47. AP10: Members wished to raise the proportionality of recent taskforce activity in SE Cornwall, points of principles and procedure – details to be emailed to secretariat with cc to MT as she leads on Taskforces.**
48. Status of employment to be brought back by MT and Mary Aiston, possibly as a joint item with members. See earlier Action Point.

Summing Up

49. Samantha Mann (CIPP) briefly summed up her impressions and thoughts of the meeting, in particular the positive and engaged tone, and welcoming the opportunity for members to have a dedicated slot to bring their concerns to HMRC.

Next Meeting

50. The next meeting will be on the 1st February 2016 at 100 Parliament Street.

Action Points	Detail
AP 11.16/1	<i>Could HMRC supply members with details of the most common errors made in returns so that they could publicise to members and help reduce contact pressure on HMRC?</i>
AP 11.16/2	<i>CRF to do a deep dive on self-employment and disguised remuneration t a future CRF, focusing on the compliance approach as opposed to the legislative changes examined at March 2016.</i>
AP 11.16/3	<i>HMRC to provide a tax gap pie chart to members</i>
AP 11.16/4	<i>Members asked that the CRF be updated and take a closer look at how the new model is working once it has bedded in, in particular the hand off between Customer Service and Customer Compliance.</i>
AP 11.16/5	<i>Members asked to take a closer look at the “enhanced support team” service, the usage figures and the user population.</i>
AP 11.16/6	<i>HMRC work on labour market enforcement to be brought back to the CRF once the new Independent Director of Labour Market Enforcement is appointed.</i>
AP 11.16/7	<i>DS to report back via the secretariat on the possibility of CRF members being part of the redrafting of CH831413.</i>
AP 11.16/8	<i>Andy Tall (AT) to send DS details of a specific “discovery” case which was of concern / interest.</i>
AP 11.16/9	<i>DS to send members details of the HMRC process for reviewing a case before it goes to appeal. And any available statistics on the number of cases that go to review and how many subsequently to tribunal. Also any analysis that is available on the split by customer segment. I.e. do people on low / high incomes put in more or fewer appeals.</i>
AP 11.16/10	<i>Members wished to raise the proportionality of recent taskforce activity in SE Cornwall, points of principles and procedure – details to be emailed to secretariat with cc to MT as she leads on Taskforces.</i>