

## **GUIDANCE TO INLAND REVENUE STAFF ON HUMAN RIGHTS AND PENALTIES**

**The following guidance was issued to Inland Revenue staff on 11 September 2002.**

### **Summary**

This memo says what you should tell customers about their Human Rights at the stage in a case when penalties are likely to be considered. It also tells you how you should inform SA Taxpayers that they may be entitled to Public Funding (previously Legal Aid) in certain limited circumstances.

### **Background**

On 2 October 2000 the Human Rights Act came into force. From that date the provisions of the European Convention on Human Rights (ECHR) were incorporated into UK law. A citizen's rights under ECHR can now be enforced directly in the UK courts.

### **Why we have to give customers Article 6 advice**

Article 6 of ECHR entitles everyone to a fair trial. Where the person is charged with a criminal offence, this includes a right to silence and a right not to self incriminate. It is not clear whether any of our penalties are "criminal" for the purposes of Article 6. But if the courts ultimately find that some of them are, we want to be sure we have not accidentally infringed those rights. We have to make it clear to customers that they do not have any obligation to incriminate themselves, whilst at the same time drawing their attention to the potential to reduce penalties by making a disclosure and co-operating with the enquiry.

### **What you should say at a meeting**

At the stage where it is clear that penalties are likely to be considered, you should draw attention to any clear errors established from the examination of the records and the facts obtained at a meeting or in correspondence, and outline any more general areas of concern. This could be at the stage of a meeting where you have established the facts, or at the beginning of a meeting when you have serious concerns arising from the record examination. You should then tell the customer about the possibility of penalties and that they do not have to co-operate with your enquiry (or EC review). Make sure you cover the same points as in the draft letter (see next paragraph) but do so in your own words. If the customer says that they will not answer any questions you may also want to tell them you can use your formal powers to obtain information required to establish any tax, National Insurance or Construction Industry Scheme (CIS) deductions liability (or tax credit over claim or overpayment) and its amount. You should then hand out the appropriate penalty leaflet and the Public Funding Leaflet (see later in this memo). Ask if the customer understands, and explain again if they do not. At that stage, invite the customer to explain the errors and make any further clarification or disclosures. The notes of the meeting should record what was said, and a copy should be sent to the customer.

## What you should say in a letter

If the case is being conducted by correspondence or the customer refuses to attend a meeting, you should at the same stage (when it is clear that penalties are likely to be considered) write to the customer and enclose the appropriate penalty leaflet and the public funding leaflet. If the customer is represented, send a copy of this letter to the agent with your request for information or documents. Your letter should include the following;

### **ITSA or CTSA enquiries**

“We would welcome your co-operation with our enquiry and in establishing the correct tax and National Insurance. The extent to which you co-operate with us and provide us with information is entirely a matter for you. (For unrepresented customers - In making your decision you may wish to get help from a professional adviser.) Our enquiry may show that an offence has been committed for which you may have to pay a penalty which is worked out as a percentage of the tax or National Insurance underpaid or paid late (as described in leaflet IR160 Enquiries under Self Assessment - How settlements are negotiated). We will take into account in calculating the amount of the penalty the extent to which you have been helpful and have freely and fully volunteered any information about income or gains which were omitted or understated.

At the end of our enquiry if we are unable to agree with you any further amounts that you owe, the information or documents you provided during the enquiry may be used in any appeal proceedings to decide your liability to tax, National Insurance, interest and penalties ”

### **Employer Compliance reviews**

“We would welcome your co-operation with our review of your records the purpose of which is to establish whether you have complied with your statutory obligations as an Employer/Contractor. The extent to which you co-operate with us and provide us with information is entirely a matter for you. (For unrepresented customers - In making your decision you may wish to get help from a professional adviser.) Our review may show that an offence has been committed for which you may have to pay a penalty which is worked out as a percentage of the tax, National Insurance or Construction Industry Scheme (CIS) deductions underpaid or paid late (as described in leaflet IR109 Employer compliance reviews & negotiations). We will take into account in calculating the amount of the penalty the extent to which you have been helpful and have freely and fully volunteered any information about the obligations you have not complied with.

At the end of our review, if we are unable to agree with you any further amounts that you owe, the information or documents you provided during the review may be used in any appeal proceedings to decide the final liability.

### **Employer Compliance reviews - "tariff system" penalties**

Please note - there are a number of Employer Compliance penalties which work on a “tariff system”, are not tax based and do not reward co-operation. In EC reviews where this type of penalty is the **only** one being considered, you should leave out the words from “Our review may show that an offence” to “obligations you have not complied with”.

### **Tax credit enquiries**

“We would welcome your co-operation with our enquiry and in establishing the correct liability to repay tax credit. The extent to which you co-operate with us and provide us with information is entirely a matter for you. (For unrepresented customers - In making your decision you may wish to get help from a professional adviser.) Our enquiry may show that an offence has been committed for which you may have to pay a penalty which is worked out as a percentage of the over-claimed tax credit (as described in leaflet IR168 How tax credit settlements are negotiated). We will take into account in calculating the amount of the penalty the extent to which you have been helpful and have freely and fully volunteered any information about the correct level of the award to which you are entitled.

At the end of our enquiry, if we are unable to agree with you any further amounts that you owe, the information or documents you provided during the enquiry may be used in any appeal proceedings to decide your liability to repay tax credit, interest and penalties.”

### **Amendments to Codes of Practice and penalty leaflets**

Words similar to those in the above draft letters will be added to the relevant Codes of Practice and penalty leaflets over the next few months.

### **What to do if the customer refuses to co-operate**

If the customer decides at a meeting or in a letter not to answer any questions or co-operate, and you need to obtain further information or documents, you will have to use your formal powers (for example under S19A or S20 TMA 1970, or Para. 27 Sch 18 FA 1998) then if necessary ultimately take the case before the Commissioners or other tribunal.

### **CTSA enquiries**

Please note that the provisions of ECHR apply to companies as well as individuals.

### **Public funding for Commissioners Hearings**

Public funding (formerly legal aid) is now available for taxpayers in certain cases before the General and Special Commissioners of Income Tax. Funding may be granted in the following limited circumstances

#### **Circumstances when Public Funding can be claimed**

- the proceedings concern penalties which the courts have declared to be criminal within the terms specified by the European Convention on Human Rights (ECHR) or where an applicant seeks to argue that issue and
- it is in the interests of justice for an applicant to be legally represented and
- the applicant satisfies the means test.

The leaflet in both English and Welsh (attached to this memo) explains in more detail when public funding may be due. Decisions on funding are made by the Legal Services Commission.

**Public Funding is not available for proceedings before Commissioners in Scotland or Northern Ireland.** There are separate legal systems in those countries. The

Community Legal Service only has responsibility for public funding for legal services in England and Wales.

### **When you must issue the Public Funding Leaflet**

Although we have not conceded that our penalties are criminal for the purposes of Article 6 of ECHR, this leaflet must be issued to all taxpayers who could elect for a Hearing before the Commissioners in England or Wales in the following circumstances

- in all enquiry cases at the stage where it appears likely that a penalty will need to be considered and the penalty leaflet is issued or
- at the time a formal penalty determination is made (for example under S93(3), S93(5), S 95, S97AA, S98(1) or S98(2) TMA 1970) if one has not already been issued
- if the taxpayer or agent requests it.

The leaflet must be issued even if the taxpayer is already represented. The appropriate leaflet in English or Welsh should be printed from this Memo.

### **Public Funding and companies**

Companies are not eligible for public funding. You should therefore not issue the leaflet where the penalty would be charged on the company (as opposed to the director personally).

### **Public Funding and tax credit appeals**

Tax credit appeals are currently heard by the Unified Appeals Tribunal, and therefore this part of the memo about the availability of funding for proceedings before the General and Special Commissioners is not relevant to them. You should not issue the public funding leaflet in any tax credit enquiries.

### **Public Funding and small fixed penalties**

We also believe it does not apply to our small fixed penalties (for example a £100 penalty under S93(2) TMA 1970 for failure to submit a return), but if a taxpayer wishes to argue before the Commissioners that a small fixed penalty is criminal they should be given the leaflet.

### **Public Funding Leaflets and IREC or Customer Service staff**

If you are asked for a copy of the public funding leaflet (for example if you work in an IREC or in Customer Service) you should print out the appropriate version of the leaflet from this Memo and give it to the customer. Explain that applications for funding should be made via a solicitor or another authorised organisation and not via the Revenue. Any queries about funding should be addressed to the Legal Services Commission's Cambridge Office. If the customer wants to talk to somebody about the actual enquiry rather than matters concerning funding, you should find out who is the case owner and direct the enquiry to that person.

### **Date of changes**

This guidance applies from the date of publication of this memo.



## **Public Funding for Legal Advice and Representation Before the General and Special Commissioners of Income Tax**

Public funding (formerly legal aid) is now available for certain cases before the General and Special Commissioners of Income Tax. If you plan to appeal the decision made by the Inland Revenue, you may wish to apply for public funding. Funding is available for legal advice prior to the tribunal and legal representation at the tribunal, providing you qualify.

Funding may be granted in the following limited circumstances: the proceedings concern penalties which the courts have declared to be criminal within the terms specified by the European Convention on Human Rights or where an applicant seeks to argue that issue; and it is in the interests of justice for an applicant to be legally represented. In practice funding is most likely to be available where you are seeking to contest a penalty, which is substantial either in terms of its amount or its impact, and which has been imposed beyond your assessed liability. The applicant must also be financially eligible for funding. Applicants on Income Support and income-based Jobseekers' Allowance are automatically financially eligible.

Each application is considered on an individual basis and is subject to the statutory tests of the applicant's means and the merits of their case. Applications for funding are considered by the Legal Services Commission, which is a statutory body independent of any Government Department.

Applications should be made via a solicitor or another authorised organisation. Any solicitors' firm with a General Civil Contract is authorised to carry out this work. You can find a solicitor by consulting the Community Legal Service Directory, which is available in most local libraries. Alternatively, you can log on to the CLS website at [www.justask.org.uk](http://www.justask.org.uk) or phone the CLS directory line on 0845 608 1122. All applications should be made to the Legal Services Commission's Cambridge Office at 62-68 Hills Road, Cambridge, CB2 1LA.

The Legal Services Commission will authorise other organisations under contract to carry out this work. This may include solicitors with a General Criminal Contract and some other organisations who have experience in providing representation before the General and Special Commissioners. If you already have an advisor who you would like to represent you, you may wish to ask them to apply for a contract with the Commission to carry out your case.

Any queries about the information contained in this note should be addressed to the Commission's Cambridge Office at the above address.





## Nawdd Cyhoeddus ar gyfer Cyngor Cyfreithiol a Chynrychiolaeth gerbron y Comisiynwyr Cyffredin ac Arbennig Treth Incwm

Mae nawdd cyhoeddus (cymorth cyfreithiol yn flaenorol) ar gael nawr ar gyfer rhai achosion gerbron y Comisiynwyr Cyffredin ac Arbennig Treth Incwm. Os ydych yn bwriadu apelio yn erbyn penderfyniad gan Gyllid y Wlad efallai y dymunwch wneud cais am nawdd cyhoeddus. Os ydych yn gymwys, mae nawdd ar gael ar gyfer cyngor cyfreithiol cyn y tribiwnlys a chynrychiolaeth gyfreithiol yn y tribiwnlys.

Gellir rhoi nawdd yn yr achosion arbennig canlynol: mae'r achos yn ymwneud â chosbau a ddyfarnwyd gan y llysoedd i fod yn droseddol o fewn yr amodau a benodwyd gan Gonfensiwn Ewrop ar lawnderau Dynol neu pan fo apelydd yn gwneud cais i ddadlau'r pwynt hwnnw; a'i bod er lles cyfiawnder i'r apelydd gael cynrychiolaeth gyfreithiol. Yn ymarferol, bydd nawdd yn fwy tebygol o fod ar gael pan fyddwch yn gwneud cais i herio cosb, sy'n sylweddol naill ai o ran swm neu o ran ei effaith, ac sydd wedi ei rhoi y tu hwnt i'ch rhwymedigaeth a aseswyd. Mae'n rhaid i'r ymgeisydd hefyd fod yn gymwys yn ariannol ar gyfer nawdd. Mae ymgeiswyr sydd yn derbyn Cymhorthdal Incwm a Lwfans Ceisio Gwaith ar sail incwm yn gymwys yn ariannol yn awtomatig.

Caiff pob cais ei ystyried ar ei ben ei hun a bydd yn amodol ar y profion statudol o incwm yr ymgeisydd a rhinweddau y cais. Caiff ceisiadau am nawdd eu hystyried gan y Comisiwn Gwasanaethau Cyfreithiol, sy'n gorff statudol annibynnol o unrhyw Adran o'r Llywodraeth

Dylid gwneud ceisiadau drwy gyfreithiwr neu gorff awdurdodedig arall. Mae unrhyw gwmmi cyfreithwyr sydd â Chytundeb Sifil Cyffredinol wedi'i awdurdodi i wneud y gwaith hwn. Ceir enwau cyfreithwyr yng Nghyfeirlyfr Gwasanaeth Cyfraith Cymunedol (CLS) sydd ar gael yn y rhan fwyaf o lyfrgelloedd. Fel arall, gallwch ymweld â gwefan CLS ar [www.justask.org.uk](http://www.justask.org.uk) neu ffonio llinell gyfarwyddol CLS ar 0845 608 1122. Dylid gwneud pob cais i Swyddfa Caergrawnt y Comisiwn Gwasanaethau Cyfreithiol yn 62-68 Hills Road, Cambridge, CB2 1LA.

Bydd y Comisiwn Gwasanaethau Cyfreithiol yn awdurdodi cyrff eraill sydd dan gytundeb i wneud y gwaith hwn. Gall hyn gynnwys cyfreithwyr sydd â Chytundeb Troseddol Cyffredinol a rhai cyrff eraill sydd â phrofiad o roi cynrychiolaeth o flaen y Comisiynwyr Cyffredin ac Arbennig. Os oes gennych ymgynghorydd eisoes yr hoffech iddo/iddi eich cynrychioli, efallai yr hoffech ofyn iddynt wneud cais am gytundeb gyda'r Comisiwn i ddelio â'ch achos.

Dylid cyfeirio unrhyw ymholiadau ynglŷn â'r wybodaeth yn y nodyn hwn i Swyddfa Caergrawnt y Comisiwn yn y cyfeiriad uchod.