

## Association of Business Recovery Professionals

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 Director General, Customer Services Group  
 HMRC  
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 100 Parliament Street,  
 London, SW1A 2BQ

Post and email: [REDACTED]

Wednesday 5 July 2023

Dear Ms. Lloyd

### **HMRC's management of insolvency from a tax perspective: impeding the insolvency process to the detriment of creditors**

I write further to my letters to you dated September and November 2021, and to the subsequent meetings in 2022.

I am R3's Chief Executive Officer and I am writing to you again to highlight the issues surrounding HMRC's management of insolvency from a tax perspective which is still causing real practical problems for the insolvency profession, which is ultimately to the detriment of creditors (including HMRC) in insolvency proceedings.

Whilst the previous letters to you were prepared solely in association with R3's Tax Working Group, this letter has been written in collaboration with the Recognised Professional Bodies ('RPBs')<sup>1</sup> of insolvency practitioners (IPs). The reason for this is to emphasise the negative effects of resource allocation and prioritisation across HMRC, a public organisation, is continuing to have on the profession from a regulatory and operational perspective. We collectively represent thousands of insolvency professionals who provide essential support for businesses across the UK, from small and microbusinesses to large multinationals.

#### **Overview**

The UK's insolvency and restructuring profession plays a crucial role in the economy, helping to resolve financial distress, restoring economic value and maximising returns to creditors. In carrying out their role, insolvency professionals are responsible for protecting creditors' interests in insolvencies, engaging fairly with debtors, as well as working to minimise the impact of insolvencies on individuals, employees, and other key stakeholders.

These responsibilities are set out in statute and supported by an extensive set of regulations, compliance with which is overseen by a well-established framework of RPBs which are, in turn, overseen by the Insolvency Service.

We increasingly hear from insolvency professionals about the severe delays, business disruption and frustration that has become a regular occurrence when dealing with HMRC. Current issues cause delays in returning funds to HMRC and other creditors, incur additional and unnecessary costs which impact on the returns to creditors, result in regulatory burdens for the profession by prolonging the duration of the insolvency process and cause frustration for those having to deal with HMRC on a daily basis.

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<sup>1</sup> Institute of Chartered Accountants ('ICAEW') in England and Wales / Insolvency Practitioners Association ('IPA') / Institute of Chartered Accountants of Scotland ('ICAS') / Chartered Accountants Ireland ('CAI')

Whilst we acknowledge that there have been improvements in HMRC's management of insolvency from a tax perspective in some areas, for example the turnaround of VAT repayments (VAT 426 and VAT returns)<sup>2</sup>, the number of problems insolvency professionals face daily with HMRC is just not acceptable.

The HMRC Charter defines the service and standard of behaviour that customers should expect when interacting with HMRC. Whilst there are a number of standards<sup>3</sup>, the following appear most relevant: -

"Getting things right

*We'll give you accurate, consistent and clear information. This will help you meet your obligations, and understand your rights and what you can claim. When we ask for information, we rely on you to give us full, accurate and timely answers. If you disagree with us, we'll tell you about options available to you and work with you to reach an appropriate outcome quickly and simply.*

Making things easy

*We'll provide services that are designed around what you need to do, and are accessible, easy and quick to use, minimising the cost to you.*

Being responsive

*When you get in touch with us, we'll make sure that the people you deal with have the right level of expertise. We'll answer your questions and resolve things first time, or as quickly as we can. We'll also explain what happens next and when you can expect a response from us. If we make a mistake, we'll put it right as soon as possible. If you're not satisfied with the service you've received, we'll explain how you can make a complaint."*

If you were to ask an insolvency professional whether they thought the above HMRC standards were applied to interactions with the insolvency profession, the majority would answer 'no'. There still remains a feeling amongst professionals that despite the creation of an insolvency profession within HMRC, HMRC does not recognise IPs' as customers and therefore issues in respect of insolvency matters do not receive sufficient attention.

It remains evident across the insolvency profession that HMRC's management of insolvency from a tax perspective continues to create a number of problems for insolvency professionals. The problems range from being unable to progress insolvency cases to closure, to delays in distributions to creditors (including HMRC) and the resulting increased costs associated with this. While these are problems for insolvency professionals, they are ultimately problems for creditors, directors, and other stakeholders, at a time when a smoothly functioning insolvency framework will be increasingly important to the health of the wider economy, especially with insolvency numbers expected to continue to rise considerably in 2023.

As advised in my previous letter, we appreciated HMRC acknowledging that some of the issues being experienced by the insolvency profession, had been due to a combination of a failure of IT systems and the redeployment of staff due to the pandemic – the impact of which we fully appreciate had been significant. However, this can't really be accepted as the explanation for the problems faced by the insolvency profession in 2023.

This letter intends to provide an overview of the problems and issues faced by insolvency professionals on a daily basis and illustrate that HMRC is not meeting its own Charter standards when it comes to insolvency matters.

**Issues and areas of concern**

Lack of voting

A huge frustration for insolvency professionals is the lack of clarity from HMRC and its position on voting on remuneration (and other requests) in insolvency proceedings. Furthermore, the general reluctance of HMRC to vote on remuneration when they are a secondary preferential creditor is particularly concerning given this special status requires more of an active participation in insolvency proceedings.

The lack of voting is particularly frustrating for those insolvency professionals working on small cases where there are insignificant funds resulting in creditors not being willing to engage. This leaves the IP with the only option of making an application to court for fee approval, which will be at a cost.

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<sup>2</sup> Although, these improvements are in relation to current reclaims and not historic reclaims, which are still taking some time to process.

<sup>3</sup> [HMRC Charter as of October 2022](#)

With regard to voting as a secondary preferential creditors, we have seen examples where IPs have proposed to pay a dividend of 100p in the £ to HMRC, however, HMRC do not engage in the voting of remuneration leading to delays in progressing the case to closure.

We would welcome clear published guidance from HMRC on its policy on voting on remuneration (and other requests) in insolvency proceedings. Also, we would welcome a designated address (and email address) for insolvency professionals to submit requests to as it is unclear where requests should be directed.

#### Tax clearance and Members' Voluntary Liquidation ('MVL')

Insolvency professionals are still seeing delays in obtaining tax clearance in MVLs in respect of historic requests. We understand that current requests are being processed in adequate time. These delays lead to shareholders becoming aggrieved with IPs for not paying distributions, which can lead to bad reviews or no future work. Furthermore, delays result in further costs where annual reports need to be issued to creditors/shareholders simply to report that the case cannot be closed due to HMRC delays.

It would also be helpful to understand what HMRC means when 'clearance' is provided; pre and post appointment.

#### Lack of expertise and poor customer service

Despite being made aware of the education/information available to HMRC staff, IPs and their staff are still reporting issues with talking to staff (phone and email) who are trained adequately on insolvency matters. Often this leads to confusion on both sides, leading to delays in resolving queries and the progression of insolvency proceedings.

It's concerning that HMRC has not sought the assistance of the profession in providing training, despite this being offered, and we'd like to understand why this is so

#### Delays in registrations and deregistration

As reported in 2021, the delays in processing new appointments are exacerbated by IPs then facing delays in both the issue of new VAT registration numbers following an insolvency process or being able to deregister at the end of an administration. Both contribute to delays in the timely running of cases and in particular the inability of HMRC to process registrations/de-registrations has prevented IPs being able to close cases and distribute amounts to creditors (including HMRC itself).

#### Turnaround of VAT repayments (VAT 426 and VAT returns)

The turnaround of VAT repayments has improved significantly since 2021, however, insolvency professionals are still seeing delays in repayments being issued. For example, one firm has c.£1.5m of refunds due across their portfolio of cases, including £195,000 on a case related to returns dated March and June 2021.

#### **Licence holder experiences with HMRC**

Attached at **Appendix 1** is a summary of the experiences of licence holders together with specific examples of disruption caused by HMRC.

#### **Conclusion**

Whilst the general consensus amongst the insolvency profession is that HMRC does not recognise IPs as customers (particularly compared to solvent entities and especially the larger businesses), we do acknowledge the positive work HMRC is undertaking in the background to aid the profession e.g. extra resource being provided to [REDACTED] and her team. However, this is not widely known and should be disseminated to ease the current view amongst insolvency professionals. We can help promote this message.

We value the regular contact we have with HMRC via the meetings with [REDACTED] and her team, attendance at the Representative Body Steering Group and the recent insolvency VAT specific meeting. We understand [REDACTED] and her team are undertaking detailed reviews of a number of processes within HMRC to make life easier for insolvency professionals, however, we think it is only right to report the issues contained within this letter to you now and urge HMRC to commit to sustained investment in the area of insolvency to avoid these issues continuing. Current service levels and HMRC's failure to meet it's own Charter are simply unacceptable.

Specifically, in addition to the process changes arising as a result of the reviews being undertaken, we would call for:

1. HMRC to fully engage as a creditor when voting requests are received (we acknowledge that in some circumstances HMRC will wish to exercise its right to vote against a resolution).
2. The setting up of a designated email address to which voting requests may be submitted to facilitate a HMRC response within the statutory deadlines for a vote to be submitted. This would include consideration of Restructuring Plan proposals.
3. A clear commitment to clearing the backlog of historic MVL clearance requests.
4. Clarification of what 'clearance' actually means from an HMRC perspective.
5. The setting up of a dedicated helpline for insolvency professionals and their staff to use which is manned by staff adequately trained in insolvency matters.
6. A commitment to clearing the backlog of VAT repayments within a certain timeframe.
7. A commitment to identifying and addressing the issues causing current delays with regards to the processing of VAT registration and de-registration.

R3, ICAEW, IPA, ICAS and CAI recognise the role we too must play in ensuring insolvency professionals adhere to guidance issued by HMRC and we will continue to do this. Furthermore, will continue to assist HMRC in addressing the concerns and issues raised in this letter in any way possible. For now, however, we formally request that you provide a full response to this letter, including plans for how you propose to address the issues identified.

If you or your officials require any further information, please do not hesitate to get in contact with R3's Head of Technical, Ben Luxford, on 020 7566 4218 or at [ben.luxford@r3.org.uk](mailto:ben.luxford@r3.org.uk). We look forward to hearing from you shortly on the important matters raised above.

Yours sincerely,



**Caroline Sumner**  
On behalf of R3



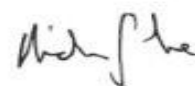
On behalf of ICAEW



On behalf of IPA



On behalf of ICAS



On behalf of CAI

c.c.

Jim Harra, First Permanent Secretary and Chief Executive, Room 2/74, 4th Floor, 100 Parliament Street, London, SW1A 2BQ.  
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## APPENDIX 1

**Licence holder experiences with HMRC**ICAEW licence holder experiences

- Post-appointment VAT reclaims being rejected if individual invoices haven't stated 'X Limited – in administration / in liquidation', even if the tax point is correctly post-appointment. The consensus is that this does not appear to relate to current reclaims which are generally being paid promptly, but older ones are still taking a significant amount of time and almost appear to have fallen into a black hole.
- Delays in getting VAT reclaims paid.
- Conflicting approaches about repayment supplements where in some cases they have been withheld due to outstanding pre-appointment returns. In at least one case HMRC subsequently paid the supplement but that was after considerable input / challenge by the IP firm which has cost implications for the IP / estate.
- Delays in getting tax clearances on MVLs. While IPs are aware of the limitations of the clearance, in some cases it is part of their firm's internal risk requirements and in other cases it is considered necessary because of complex transactions.
- Different HMRC staff having 'different playbooks' / approaches.
- Delays in processing VAT 769 notices and VAT 100 forms.
- Differing approaches in particular to statutory interest – some staff enforce payment, others waive it; a published de minimis level would be useful.
- The PAYE team doesn't seem to understand insolvency and won't speak to the IP's firm, instead insisting on speaking to the insolvent company.
- A sense that HMRC staff are unable to refer issues upwards and won't allow IPs to speak to someone more senior – they suggest that the only route to get something resolved is to complain but that adds 2-3 months into the timeframe for resolving the issue.

IPA licence holder experiences

- General failure by HMRC to respond promptly to correspondence.
- HMRC only being able to communicate by letter rather than email.
- Backlogs of emails & letters not responded to.
- The risk of all IPs being subject to regulatory action by their RPB for failing to progress cases as a result of HMRC's inability to respond.
- The reputational harm being suffered by all IPs as a result of HMRC's inefficiency preventing IPs from working efficiently.
- The impact that HMRC's inefficiency has on its own cashflow due to delays in the payment of dividends as a result.
- HMRC's policy of not responding to fee resolutions as a secondary preferential creditor if they are not going to receive a dividend.
- The daily frustration of all IPs and their staff of having no option but to engage with HMRC where it is not sufficiently well resourced to provide an acceptable response. The amount of time that is wasted as a result.

- HMRC failing to lodge claims/amended claims in a timely manner, which often leads to delays in distributions and increased time costs on behalf of the IP.

#### ICAS licence holder experiences

- Lengthy delays (over 12 months on one case) in getting CT Refunds.

- Correspondence re differences on the loss amounts between CT returns and accompanying computations received across a large number of MVLs.

- Lengthy delays for MVLs awaiting tax clearance (some dating back to 2020/2021) and an apparent refusal by HMRC to discuss the progression of clearance requests over the phone. On the other side of this, two of our IPs did state that they seem to be seeing things moving more quickly on their more recent MVLs.

- The processing of VAT de-registrations still stated to be an issue but noted that a new mailbox and form have been released that will hopefully assist. One IP advised that HMRC will not confirm deregistration dates on the phone (apparently HMRC staff can see them but advise that they are not allowed to discuss).

#### **Specific examples**

##### IP 'A'

Due to a restriction on the number of appointments the IP could formally take, the IP had to request for an increase as he/she was unable to close cases because of outstanding VAT refunds and tax clearances.

##### IP 'B'

The IP was willing to admit a claim for unpaid corporation tax based on the company's accounts and pay a dividend to creditors in the liquidation. However, HMRC insisted Form CT600 be submitted, which the IP was unable to complete. The IP could not find anyone within HMRC who was able to agree to a sensible conclusion.

##### IP 'C'

The IP was having difficulty in obtaining confirmation of HMRC's petitioning costs despite numerous requests being submitted to various individuals within the organisation.

##### IP 'D'

The IP experienced delays in receiving final claims from HMRC caused by a changeover in IT systems where returns were lost. Resulting in a delay in a distribution to creditors.

##### IP 'E'

Unable to get a response from HMRC as petitioning/largest creditor about acceptance of a lump sum payment in full and final settlement of a family trust's ongoing liability to a debtor where the IP is acting as Trustee.

##### IP 'F'

"The deregistration unit simply do not reply at all. You need to keep checking whether deregistered, I have one case where I have requested 3 times and it's still active, if applications are being rejected, they don't notify that."

"If you are lucky to get through to someone on the telephone, as I was three weeks ago, you are advised they will not discuss specific cases over the phone, it must all be in writing."