

HMRC penalties – a discussion document
Response from the Low Incomes Tax Reform Group (LITRG)

1 Summary and list of recommendations

- 1.1 We are pleased to have the opportunity to respond to this important discussion document on HMRC penalties, which we welcome.
- 1.2 Our focus in this Response is on the effect of the present penalty regimes on the unrepresented low-income taxpayer, and we applaud the aim of the consultation to consider whether HM Revenue & Customs (HMRC) could ‘better differentiate between deliberate and persistent non-compliers and those who might make an occasional error for whom alternative interventions are more appropriate.’ We concentrate in particular on the automated regime for self-assessment (SA) late filing and late payment which makes no such differentiation, with the result that many of the penalties that become chargeable are out of all proportion to the tax at stake.
- 1.3 We agree that improved digital services should make it possible for compliant taxpayers to get things right all, or nearly all, of the time – but adequate provision must still be made for circumstances in which the digital systems do not work as intended, and especially for taxpayers who are either not comfortable operating within a digital environment, or for whom access to computers or the internet is impossible or exceptionally difficult owing to age, disability, inability to afford the necessary expense, or inadequate internet access where they happen to live or work. Nobody should experience an inferior service from HMRC because they are unable to access digital technology. It is also fallacious to think that proportionality and fairness can be achieved solely by reliance on digital systems.
- 1.4 While digital advances will facilitate some useful improvements, reform of the penalties system should not be held up in the meantime. We make a series of recommendations which can, and should, be implemented independently of any further development of HMRC’s digital capability.

1.5 **List of recommendations**

- A full review of the scope of ‘special reduction’: in particular whether it should be extended to cases where late filing is due to a taxpayer’s vulnerability, and the resulting penalty is disproportionate to the tax at stake; whether special reduction can be used to mitigate the ‘strict application of the penalty law’ when it produces a result that is ‘contrary to the clear compliance intention of that penalty law’ in a wider category of cases than at present; and whether HMRC officers actually do consider special reduction in all cases that they are required to.
- No penalties should be charged to late paper filers until at least after the online filing date, in order to remove the unequal treatment of paper filers, who may be into daily penalties at a time when online filers have not yet even incurred a late filing penalty.
- A technological solution to prompt those (200,000 on 31 January 2014) who failed to complete the online filing process simply because they had not clicked the final ‘submit’ button, or failing that a more lenient approach to such trifling infringements by sending a reminder or a caution instead of a penalty.
- Reintroducing capping penalties by the amount of unpaid tax, as most of the perceived injustices of the SA penalty regime occur where the amount of the late filing penalty is out of all proportion to the amount of tax at stake.
- Liaison with the Needs Enhanced Support (NES) Service where the taxpayer is known to be vulnerable in a way that would qualify them for such support.
- Align decision-making on reasonable excuse more closely with cases decided by the First-tier Tribunal (FTT) and HMRC’s own statutory review teams. This might, for example, involve rewriting the official guidance on reasonable excuse to take account of FTT decisions at a more detailed level.
- HMRC should be given a discretion to issue warning letters instead of penalties in appropriate cases.
- An appeal form should be sent with the penalty notice, drawing attention to (a) the possibility of reasonable excuse or special reduction, and (b) in the case of an inaccuracy penalty, the distinction between failure to take reasonable care, and an honest mistake despite taking reasonable care, inviting the taxpayer to appeal against the imposition of the penalty if they believe their conduct fits the latter description rather than the former.
- Where non-compliance arises from an inability to cope with the system, whether by reason of mental or other ill-health, bereavement or other life event, we recommend that compliance teams work with the NES service to ensure the taxpayer is guided towards compliance in the most customer-friendly way possible.

2 **Who we are**

- 2.1 The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998 LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes. Everything we do is aimed at improving the tax and benefits experience of low income workers, pensioners, migrants, students, disabled people and carers.

- 2.2 LITRG works extensively with HM Revenue & Customs (HMRC) and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help.
- 2.3 The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.
- 2.4 This response also takes account of matters raised by our colleagues at Tax Help for Older People, a service providing free, independent and expert help and advice for older people on lower incomes who cannot afford to pay for professional tax advice.

3 Introduction

- 3.1 We welcome this consultation and are pleased to have the opportunity to respond to it. We also value the constructive meetings we have had with officials, and are impressed by the openness of their approach to the subject of penalties and willingness to consider options for reform.
- 3.2 We were closely involved in most of the consultations generated by the Review of Powers and sat on the Powers Implementation Forum from 2009 until its disbandment in 2013. It was clear to us throughout the Review that the interests of the low-income unrepresented taxpayer required particular attention, so we argued for – and obtained – a separate sub-group of the Powers Implementation Forum dedicated to examining the impact of the new powers on the unrepresented population.
- 3.3 On the whole, we believe that the safeguards put in place during the Review took into account the situation of the unrepresented taxpayer – for example the guidance on 'reasonable care' in the legislative code on inaccuracy penalties made it clear that different standards of care would be expected from, say, a tax adviser or accountant than from an individual with no experience of the tax system and/or poor literacy or numeracy skills.
- 3.4 However, that trend was reversed when, towards the end of the Review, the automatic penalty regime for SA late filing and late payment was introduced, the subsequent effect of which on the unrepresented community has been nothing short of oppressive. We are given to understand that some high net worth taxpayers, who would previously have gained financially from filing their returns and paying their tax as late as possible, do so no longer because the new penalties wipe out any such gains that they may previously have enjoyed through non-compliance. To that extent the new regime has succeeded in its main aim. But in doing so it has failed to distinguish between deliberate and persistent non-compliance and those largely non-culpable individuals who, owing little or no tax, nevertheless miss filing deadlines through ignorance, ill health or the intervention of life events such as bereavement, or who simply make mistakes.

- 3.5 We therefore applaud the aim of this consultation to restore that distinction. As our sole preoccupation is to safeguard the interests of the low-income unrepresented taxpayer, this response concentrates on the automatic SA penalty regime, but we also offer observations on other penalty regimes where appropriate, notably inaccuracy penalties.

4 The questions

Question 1. To what extent are the concerns expressed [in Chapter 4 of the discussion document] typical of actual situations?

- 4.1 The concerns expressed in Chapter 4 do indeed describe some of the flaws in the present system of penalties. There are others. Perhaps the main shortcoming of the system of SA automatic penalties is that they are indiscriminate, in that they apply equally to those who deliberately delay submitting their return and those who, usually owing little or no tax, either try but fail to file on time, or who are simply confused about what to do and cannot afford to pay for professional help. If the purpose of a penalty regime is to deter, then arguably imposing penalties on the latter is inappropriate – one cannot ‘deter’ a tendency to make mistakes (eg in following online processes), nor can one ‘deter’ a person from being confused or ignorant of the demands of a highly complex system. If penalties are used to deter or punish taxpayers for finding themselves in difficult situations, they will be perceived as unfair, disproportionate in relation to the ‘offence’, and that risks bringing the system as a whole into disrepute.
- 4.2 In the Appendix to this Response, we offer our own selection of ‘hard cases’ drawn from the experience of TaxAid and Tax Help for Older People which will illustrate how typical of actual situations these concerns can be. They also show that penalties often arise from the functioning of HMRC’s own processes: the pensioner who is put into SA because their PAYE income is insufficient to cover the tax on their state retirement pension; the itinerant taxpayer who cannot file online from abroad; the worker who was self-employed for two weeks and incurred penalties for non-filing despite being in PAYE at all other material times; the pensioner who filed six months early with the help of an HMRC officer but was sent late filing penalties when HMRC lost her return; the widower whose return on behalf of his late wife was submitted a week before the due date, but who was sent an automatic penalty because HMRC systems could not process it within that week. These cases all illustrate the indiscriminate nature of the automatic system. It may be argued that these are all isolated instances (even though they are indicative of many other cases which do not necessarily come to our attention), but the fact that they occur at all is an inherent flaw in any automated system which cannot discriminate according to taxpayer behaviour.
- 4.3 *Behavioural penalties for inaccurate returns.* Paragraph 4.9 refers to the distinction between careless and deliberate behaviours, and the need to ensure it is applied consistently. The code for inaccuracy penalties makes one other very important distinction: between careless inaccuracy and genuine mistake despite taking reasonable care. The former gives rise to a penalty, the latter does not. We have recently seen cases where an innocent mistake in a tax return has elicited an inaccuracy penalty of 15% of the potential lost revenue, suggesting that in practice HMRC do not always distinguish accurately between the two categories of behaviour.

Question 2. What do you consider to be the major areas of concern with our penalty regimes?

- 4.4 Our major area of concern, and the one with the biggest impact on unrepresented individuals, is the indiscriminate nature of the SA automated penalty regime as described in answer to question 1 above.
- 4.5 We also question the extent to which proper use is made of the safeguards or ‘defences’ set out in the penalties legislation – chiefly reasonable excuse and special reduction.
- 4.6 *Reasonable excuse* is usually given restricted scope by HMRC, while the appellate bodies (the FTT and HMRC’s own statutory review function) often applies a wider interpretation, overturning the decision maker in many instances. If decision makers were to learn from the decisions of the appellate bodies (we are aware that statutory review teams give feedback to decision makers) it might encourage better initial decision-making, and fewer cases being pursued to statutory review and the FTT, saving both taxpayer and Department unnecessary expense and inconvenience.
- 4.7 *Special reduction* allows HMRC to reduce a penalty, including staying a penalty or agreeing a compromise in relation to proceedings for a penalty, if ‘special circumstances’ apply. The initiative for applying special reduction lies with HMRC (“If HMRC think it right because of special circumstances . . .”). What constitutes special circumstances in HMRC practice is described at CH170600 with examples given at CH170800. Broadly, special circumstances are described as either (a) “uncommon or exceptional”, or (b) “where the strict application of the penalty law produces a result that is contrary to the clear compliance intention of that penalty law.” We raise here three questions about special reduction, and the way in which it is applied, which we recommend should be considered as part of this consultation.
1. The situation where an older or vulnerable taxpayer accrues disproportionately high penalties, having regard to the amount of tax owed, for a late filing that is due to the taxpayer’s vulnerability, is not specifically mentioned as a ‘special circumstance’ in CH170600 or any of the examples in CH170800. Clearly it should be, so why is it not?
 2. Are there other situations in which special reduction should apply, given its remit to mitigate the ‘strict application of the penalty law’ when it produces a result that is ‘contrary to the clear compliance intention of that penalty law’? For example, in answer to question 1, we mentioned situations in which the penalty law catches people out who are simply ‘trying their best’, or at least not knowingly doing anything wrong, only to be ‘deterred’ by the imposition of a penalty. Surely it must be right to apply special reduction in such cases?
 3. Are HMRC officers considering special reduction in all cases as they are required to?
- 4.8 *Penalising digital ‘illiteracy’*. Another concern of ours relates to the application of the penalty regime where a taxpayer has done their best to file online but has failed to follow the process correctly. In January 2014, leading up to the SA filing deadline, HMRC issued 15 tweets reminding taxpayers to check that their online returns had been properly submitted by clicking the submit button and checking that the screen showed 100% complete. Allegedly, about 300,000 returns had been started but not fully submitted two days before the deadline, diminishing to 200,000 by 31 January. The necessity for 15 tweets to remind people to press ‘submit’ suggests that disproportionate numbers are being caught out. It may be that in the brave new digital world, a

technological solution will be found. Failing that, could HMRC not be more lenient with those who simply missed the final step by not issuing a penalty but sending a reminder or caution instead?

- 4.9 In addition, taxpayers who file paper returns, either out of necessity or choice, incur penalties three months earlier than those who file electronically due to the different filing deadlines. We would argue this is unfair and is not well publicised by HMRC. For taxpayers who act on the standard notice issued by HMRC after the 31 January filing deadline has been missed and then submit a paper return, they are immediately into £10/day penalties and most are unaware of this. We recommend that no penalties should be charged to late paper filers until at least after the online filing date, in order to remove that inequity between paper and online filers.
- 4.10 Finally, the extent to which penalties can escalate in a relatively short period of time (increasing from £100 to up to £1,200 in six months) can cause taxpayers (usually those who are inherently compliant by nature) a very significant amount of distress, fear and worry when they often have underlying reasons for non-submission of the return. Early intervention by HMRC before the escalation of the penalties to establish whether there are reasons for the non-compliance may help to alleviate this, as of course would a much slower escalation or less severe regime. The underlying issues will often be matters such as ill health, bereavement, family breakdowns, etc. However, it will also include situations where there has been a misunderstanding of the taxpayers filing obligations due to the complexities of the system.

Question 3. What do you view as being the priority areas for the initial focus of this work?

- 4.11 In our view, reform of the current penalty regime for late filing of SA returns is urgently needed.
- 4.12 Access to more accurate and comprehensive data about taxpayers will assist in the development of a more proportionate regime. For example, better information systems will enable HMRC to consider questions such as: has this taxpayer been previously compliant? And if so, is a full automatic penalty really appropriate for a first offence? Or – are HMRC aware that this taxpayer has episodes of mental ill-health? If so, would some other form of intervention (such as an offer of help in completing the return, perhaps via the Needs Enhanced Support (NES) Service) be more appropriate than a penalty?
- 4.13 While such digital improvements will help, reform of the regime should not be held up pending their introduction, but should proceed in the meantime. Specifically, we would recommend the following interim measures.
- Reintroducing capping penalties by the amount of unpaid tax, as most of the perceived injustices of the SA penalty regime occur where the amount of the late filing penalty is out of all proportion to the amount of tax at stake.
 - Automatic liaison with the NES Service where the taxpayer is known to be vulnerable in a way that would qualify them for such support.
 - Align decision-making on reasonable excuse more closely with cases decided both for and against HMRC at the FTT. This might, for example, involve rewriting the official guidance on reasonable excuse to take account of FTT decisions at a more detailed level.
 - A review of special reduction taking account of the three numbered points we make at para 4.7 above.

Question 4. Do you agree the principles set out at para 5.3 should govern the design of our penalty regimes? If not what other or additional principles should apply?

- 4.14 We agree that the principles set out at para 5.3 are sound. The principles we regard as particularly important are numbers 2 (proportionality, and the capacity to take into account past behaviour) and 3 (fairness). We recommend an extension to the third principle, to the effect that customers who try their best to be compliant, whether or not they succeed in every particular, should be in a better position than those who are deliberately and/or persistently non-compliant.
- 4.15 The question arises to what extent penalties can be proportionate and fair in a world which is primarily digital, when both proportionality and fairness require the exercise of human judgment. A digital system can produce a result based on whether or not a set of factors are present, but it cannot decide what weight to accord to each factor in the final analysis. We remain of the view that a digital system can go some of the way towards producing a workable system, but to produce a fair one will always require human intervention.

Question 5. Do you think that an approach which focused more on individual behaviour would help?

- 4.16 In our view, the inaccuracy penalty regime in FA 2007, Sch 24 was the best of the regimes brought into being during the review of HMRC powers, because it drew sound distinctions between deliberate default, failure to take reasonable care and innocent mistake (with the last attracting no penalty); recognised that whether a level of care was reasonable depended largely on the capacity and situation of the taxpayer concerned; and made it possible for a 'careless' defaulter to receive a suspension of their penalty if they took steps to prevent a recurrence of the error. (Of course, if the error is innocent, there can be no penalty in law, and the question of suspension does not arise.) The main reason why the automatic penalty regime has given rise to the concerns expressed in Chapter 4 of the consultation document is because it has deviated from the precedent set by Sch 24 to such an extent that it contains no recognition at all of degrees of culpability, and no acknowledgment that if the error is genuine and not careless, then no penalty can accrue.

Question 6. What would be the impact if we were to remove penalties for 'short' failures (a day or two late) and how would we incentivise compliance (would a higher interest rate work for example)?

- 4.17 Removing penalties for short failures (ie a period of grace, as with some PAYE penalties) might help some taxpayers who, for example, found it difficult to navigate online systems, but would make no difference to the underlying unfairness of the current system, nor would it make the essential distinction between the deliberately non-compliant and those who make occasional errors.
- 4.18 A higher interest rate would provide a disincentive to non-compliance in terms of late payment or late filing if it was sufficiently high so as to exceed the interest receivable by the defaulter on tax paid late. But too high an interest rate might be seen as disproportionate where the tax owed was small or negligible. One suggestion might be a staged increase in interest chargeable so that it increased sharply once the tax outstanding reached a substantial level. Similarly, late filing penalties could be geared to the amount of tax found to be outstanding either when a return is submitted or

a determination issued – a low penalty where the tax at stake is small, rising steeply where the tax unpaid is high. This method of charging interest and penalties would restore the link between the filing of the return and the tax payable, the severance of which in 2011 we believed was mistaken, and now that digital systems provide the means to retrieve so much more information about taxpayers than was possible in 2011, we see no justification for its continuance.

Question 7. What do you think should trigger a penalty?

- 4.19 A penalty should only be triggered by a non-compliant act or omission that is careless or deliberate.

Question 8. Are there incentives HMRC could consider to encourage compliance?

- 4.20 We do not agree that there should be general incentives, such as a discounted tax bill, to encourage compliance. Discounts may be built into the pricing structure of goods or services to encourage customers to purchase a particular item rather than an alternative produced by a competitor, or to purchase it when its sell-by date is close. Tax is levied by statute in order to finance public goods and services; citizens who benefit from those goods and services should be expected to pay what is required of them in full and on time as part of the democratic process, and we do not believe it is appropriate to offer discounts or other incentives for doing so.
- 4.21 However, it may be legitimate to offer reduced or suspended penalties, or reduced interest, on tax debts to encourage the taxpayer to co-operate in quantifying the debt, or (for example) to a previously non-compliant individual who wishes to become compliant and for whom a requirement to pay the full penalty and interest normally chargeable would be a serious obstacle to their becoming so.

Question 9. What could HMRC do better to explain sanctions and the role penalties play within them?

- 4.22 This is an important question, as there is nothing more detrimental to voluntary compliance than slapping a penalty on a taxpayer who is trying their best to comply but has unwittingly infringed some obscure provision of the tax code.
- 4.23 For those who are able to operate a digital account, the systems – if they are sophisticated enough – should prompt them to do the right thing at the right time, and warn them off making an error, by means of automated devices. If the systems work as they should, compliance will – in a sense – become the only option, and there should be no further need for sanctions – always assuming the taxpayer is by nature compliant and engages with the system.
- 4.24 But for occasions when the systems do not work as they should (very few systems are fully functional all the time), and for those who are unable to operate in the digital world,¹ information

¹ Many taxpayers are uncomfortable operating within a digital environment, or find access to computers or the internet is impossible or exceptionally difficult owing to age, disability, inability to afford the necessary expense, or inadequate internet access where they happen to live or work. It is apparent from the 2014 survey Internet Access - Households and Individuals (ONS) that 16% of households are still without a computer or internet access (pp12, 13).

about the consequences of non-compliance will have to be available in other formats including hard copy, and given to taxpayers at the point where the relevant obligation has to be met. Such information should not be one-sided, focusing only on HMRC's powers, but should also fully explain the possibilities of mitigation and appeal, and other safeguards, and what the taxpayer must do to activate them.

- 4.25 For a first offence, it may be appropriate to issue a warning letter rather than a penalty, in which case the letter could outline the penalties (including safeguards) that might apply if the non-compliant act or omission were repeated. That way the taxpayer is put on notice that although they have filed their tax return late this time, there will be no penalty but if they do it again within the next (say) two or three years, then there will be a penalty. This would be akin to the system of suspending penalties for inaccuracy. We recommend HMRC are given a discretion to issue warning letters of this kind instead of penalties in appropriate cases.
- 4.26 Once a penalty has been incurred, HMRC's obligation to provide appropriate information does not end there. The taxpayer should still have the benefit of being told about the safeguards available. We recommend that an appeal form should be sent with the penalty notice, drawing attention to (a) the possibility of reasonable excuse or special reduction, and (b) in the case of an inaccuracy penalty, the distinction between failure to take reasonable care, and honest mistake despite taking reasonable care, inviting the taxpayer to appeal against the imposition of the penalty if they believe their conduct fits the latter description rather than the former.

Question 10. If we were not to charge penalties in all the circumstances that we do currently, how could we still get a strong message across to our customers which they will take notice of?

- 4.27 Where taxpayers' non-compliance is through ignorance of the law (and it has to be said that the UK tax code is notoriously complex) rather than deliberate, a warning letter might be all that is needed to ensure future compliance. Most people wish to comply and once pointed in the right direction will do so voluntarily.
- 4.28 Where non-compliance is through inability to cope with the system, whether by reason of mental or other ill-health, bereavement or other life event, and a warning letter might simply scare them away, more direct forms of intervention might be appropriate. This is where we recommend that compliance teams should work with the NES service to ensure the taxpayer was guided towards compliance in the most customer-friendly way possible.

Question 11. To what extent does the present penalty regime help agents and advisers to influence their clients' compliance, and how might this be different if we were not to charge penalties in all the circumstances that we do currently.

- 4.29 The experience of voluntary sector agents whom we have consulted suggests that the initial £100 penalty is an incentive for many who might not otherwise be so inclined to file on time. Those who

HMRC has a legal obligation under human rights law to cater for the needs of the digitally excluded (see *LH Bishop Electrical Co Ltd & Ors v HMRC Commissioners* [2013] UKFTT 522 (TC)).

are not persuaded to file promptly by the prospect of incurring the penalty are often spurred into action once they receive the penalty notice, at which point they may seek out an adviser or contact HMRC to get the return cancelled. A very small number (some 2% in the experience of one voluntary sector adviser) wait until the daily penalties bite before filing.

- 4.30 Notwithstanding that, we also understand that HMRC issue some one million £100 penalties each year. It may be that the majority of those are unrepresented taxpayers, but it is nevertheless a very substantial proportion of the SA population.
- 4.31 Perhaps the biggest problem consists of those who take no action, whatever penalties are charged, until collection action starts to be taken. For some, the accumulation of penalties, particularly over a few years at a rate of £1,600 per annum, become so overwhelming they just ignore all correspondence relating to them, particularly if they are also dealing with other serious issues such as health, family breakdowns, wider business problems such as cash-flow, and so forth. Others are understood to believe that the issue of an SA return is a mistake by HMRC which will sort itself out in time. Either way, if neither the prospect nor the notification of penalties have any effect at all, then HMRC must reach out in some other way if they genuinely want the outstanding returns to be submitted. The only effective way, in our submission, is by direct human contact.

Question 12. Do you have any comments on the likely impact of any changes, or can you contribute to our evidence base?

- 4.32 If the changes which we recommend are implemented, it is likely that HMRC will be better able to identify why taxpayers submit their returns late, or not at all, and to take appropriate action to secure their compliance – whether that be in the form of penalties, or warning letters, or some other intervention, whichever is perceived to be fair by the taxpaying public. Taxpayers are more likely to comply voluntarily with what they perceive to be a fair system.
- 4.33 We have made recommendations throughout this response and they are listed in the summary. As a contribution to your evidence base we offer the case histories we have set out in the Appendix.

LITRG

12 May 2015

APPENDIX**CASE 1**

Mrs H's husband had died in 2010 and she had inherited his National Insurance contributions (NIC) so that her State pension was enhanced (£10,493 in 2010/11). Because HMRC could not collect the tax due through PAYE, she was required to complete a 2011 SA return. The return was sent to her in July 2012.

Initially, due to her distress and confusion following the recent bereavement, she failed to complete the 2010/11 return. After several reminders, she completed the return, which was returned as incomplete. After several more attempts, the return was accepted.

Eventually, she received the Tax Calculation, showing the tax due of **£103.72**. However, in that time, she had incurred late filing penalties of **£1,300**. Tax Help were able to get the penalties remitted, although that did not stop the debt collecting agency pursuing Mrs H day and night for two months for a debt that was no longer due.

CASE 2

Tax Help assisted a client in distress over a late filing penalty. She was just recovering from extensive cancer treatment – revealed that she had to file a tax return because she had started renting out a property in January 2013. She had gone to the local enquiry centre where a helpful officer completed the form, filed it online for her and gave her a complete photocopy as a record. It was dated 2 July 2013, ie six months to go before the filing deadline. Further enquiry established that it had indeed been filed from Dorchester on 2 July but had since been lost by HMRC. The client had been sent an automatic penalty, and subsequently pursued by debt collectors, because HMRC had lost her return.

CASE 3

This taxpayer seems to have had an underpayment in 2010/11 of £94 due to ESA/SSP. She tried to negotiate with HMRC but was unsuccessful and must have been put into SA.

She had her home repossessed and was caring for her mum until she died and HMRC refused reasonable excuse for late filing – 2010/11 tax return issued 26 April 2013 with filing date of 3 August 2013.

CASE 4

Small self-employed for 6 months. Told Local Enquiry Centre (EC) she was moving and self-employment had ceased (income below personal allowance for year). Did not understand from EC she would still need to complete tax return for final year. Moved to shared house, worked on PAYE, moved again. Only contacted HMRC when got late filing penalties. TaxAid helped her file final year tax return and appeal penalties: cancelled.

CASE 5

South African national, a 'model' who was in UK for 3 years to 2008; then in Australia, back to South Africa, and currently in Vietnam. Low income itinerant lifestyle – but returns periodically to UK and gets work from agency here. She had sought help from Kensington HMRC EC – but was unaware that on HMRC system is unable to file non-resident pages.

She also successfully filed online while in UK, but was unable to file from South Africa.

She received penalties and recently filed online to get all years up to date. TaxAid successfully appealed late filing penalties on basis that tax returns could have been cancelled as she was non-resident and had no UK self-employed income, and had clearly made attempts to be compliant. Client received no response to her own written 'appeal' direct to her SA reference.

CASE 6

Youngster aged 18 working on short term contracts. Some work employed, some self-employed through agency which seems to have set him up as self-employed. Agency made deductions 'on account of tax', but did not pay this over to HMRC (Agency claimed it was held as a 'tax reserve' – but only paid over if worker asked for it). Three tax returns to do – appeal accepted.

CASE 7

A 19-20-year old, put into SA for two weeks self-employed work 2008/09. No tax returns done at the time (he moved around, all other jobs PAYE/JSA until four weeks CIS in 2012). Tax returns done with TaxAid's help and penalties cancelled.

CASE 8

Husband and wife partnership where wife had mental health problems. Partnership appeal by client failed; appeal successful for partner with mental health problems, but not for husband. He was shouldering failing business, and support for wife (eventually became full-time carer shortly before business folded after 20 years). TaxAid requested review of his late filing penalties – and also explained how complex the tax affairs of business were to close down (terminal loss, overpayment relief claim as errors in prior years, etc).

CASE 9

'Reasonable excuse' rejected on first attempt by client (subsequently accepted on TaxAid appeal).

Client had put in appeal and been given 'extension' of 30 days to complete tax return. He had serious depressive problems, and was incapable of dealing with records of multiple complex CGT issues re share transactions – certainly not within 30 days. TaxAid eventually helped him file returns – and requested statutory review. This was rejected – apparently on the grounds that if client was able to appeal, he should have been able to file. When we filed appeal to Tribunal, appeal was agreed by HMRC Appeal Review Unit – en route to Tribunal.

CASE 10

Client appealed before tax return completed, appeal rejected as no further info within 30 days. Client was very unwell with withdrawal effects from medically prescribed drugs – not opening correspondence, not able to cope at all much of the time; TaxAid helped him complete tax return (it took eight months) and made a further (successful) appeal.

CASE 11

The taxpayer tried unsuccessfully to cope herself. She said she did not receive a return/notice for 2011 and did not realise that she had to submit until she received a £100 penalty. Did not know that penalties could be charged from 2011 even if there was no tax liability and that she should have submitted online to minimise penalties.

A friend used to help with her returns but cannot do so now. Penalty for 2010/11 return of £1,619 as paper return submitted 30/4/12 – but not shown as captured by HMRC by April 2013. She does not use a computer. She is a therapist and total income or profit is £5,300. Caught out by change in penalty system; previous tax returns timely filed, 2011/12 filed 12/09/2012.

Appeals rejected, but Tribunal stood case over as taxpayer was unable to pay the penalty due to hardship.

CASE 12

A taxpayer had two jobs as shop assistant on each of which she had been allocated a personal allowance via PAYE code. Dual allowance problem was not spotted by HMRC until she received her state pension. She was sent a tax return for that year (2010/11) but no arrears were demanded for previous years. The taxpayer was, in the words of the adviser, 'utterly baffled' and threw away the return as she understood that SA returns were only for the self-employed, so she had been sent one in error. Further returns followed for 2011/12, 2012/13 and 2013/14, along with non-filing penalties amounting to £3,900. By this time, unrelated to the tax problems, the taxpayer had developed mental health difficulties and was on medication.

When a Tax Help adviser intervened, HMRC agreed to cancel the returns and associated penalties, take the taxpayer out of SA, and charge her just the £350-odd which she owed from the year in which she first received her state pension. A satisfactory result, but it took an independent adviser to mediate between the taxpayer and HMRC in order to achieve it.

CASE 13

Following the death of his wife from cancer, the widower (who was also the executor) was provided with manual returns both outstanding and to the date of death. It appeared HMRC could not cope with providing a continuation of previous online submissions.

So the widower/executor submitted a manual return for his late wife some two weeks before the due date and took the precaution of having it transmitted by recorded delivery. Notwithstanding this submission he received a penalty notice followed by another threatening missive some couple of weeks after the due date.

In some distress, he telephoned HMRC, and was kept waiting for 32 minutes to speak to a human being. He was told that the HMRC system had recorded receipt of the return some seven days prior to the due date. So – he enquired – why was a penalty notice issued? The response was: “Oh well Sir, it has not been processed yet so you cannot expect us to stop the automated penalty system can you?”

4 February 2015