



LITRG guide to complaining about misleading information from HMRC 2019/20

This guide analyses the way in which you can challenge an underpayment shown on a Pay As You Earn (PAYE) P800 tax calculation where you feel HM Revenue & Customs (HMRC) have given you misleading or incorrect information and/or advice.

If you made contact with HMRC in a year prior to or during the year under dispute and:

- you believe that HMRC did not act upon information given by you; or
- you received an assurance that your tax affairs were in order; or
- you believe that you received misleading information which influenced the underpayment; or
- you did not receive guidance and help from HMRC which would have avoided the underpayment;

then you may have grounds for an official complaint against HMRC. This could result in a consolatory payment or compensation or, in some, but we stress rare, cases, reduction or elimination of the underpayment.

What evidence do you need to make a challenge?

Clearly it is very helpful if you have retained copies of letters you have either sent or received. Indeed, you might have looked at the GOV.UK or HMRC's website and been misled by information you found there – perhaps you saved or printed a copy? Or, if you remember when it was, you might be able to find a copy in the National Archive (see http://webarchive.nationalarchives.gov.uk/*/http://www.hmrc.gov.uk/). This would be useful evidence.

If you think you were misled during a telephone conversation or while speaking to someone in person at an HMRC Enquiry Centre it is a little more difficult. We always recommend when you call HMRC that you record the date, the time, the name of the HMRC telephone adviser and who said what.

But what if you did not do that or HMRC have a different record of what was said? This is where it is important for you to know your rights to obtain information that may be held within HMRC files.

In the jargon of the Data Protection Act you can make a 'subject access request' where you can ask a Data Controller, in this case HMRC, for copies of any or all telephone conversations, computer records and correspondence about you and between you, or someone acting on your behalf, and HMRC.

An example of such a letter is set out below [adjust as appropriate where shown in square brackets]:

Sample letter

HM Revenue and Customs
[Address from P800]

Dear Sir

[Your own name]
[Your National Insurance number]

I have received your tax calculation[s] for [2019/20, or other year as relevant] which show[s] an underpayment of [£xxx].

As far as I was aware my tax affairs were in order and for the following reasons I believe that you:

[failed to act on information I gave you in my letter of..... [or in my telephone calls]]

[informed me that my tax affairs were in order]

[gave me misleading information which caused the underpayment]

I hope that you will agree to write off the underpayment in these circumstances.

If you do not agree I would like to examine the evidence of my tax file. Would you please, in that case, provide me with all the information I am entitled to under Section 45 of the Data Protection Act 2018 for the year in which the underpayment arose, [and the prior and subsequent years].

Yours faithfully

[Sign and date in ink]

Armed with the additional information received from this request you may be able, perhaps with the help of a tax professional, to continue the challenge. The above letter limits the request for information to the year in which the underpayment arose. You might find that you need information for earlier years if the problem originated further back.

If at the end of this process, you do not consider that you have been treated fairly or correctly, you can go on to make a complaint, (see <http://www.litrg.org.uk/tax-guides/tax-basics/when-things-go-wrong/how-do-i-complain-to-hmrc>).

Note that a small fee can be charged by HMRC in respect of the data request and they have 40 days to comply with the request.

What can you expect from HMRC

HMRC set themselves high standards. If they fail to maintain them they may write off tax, they may reimburse your costs and they may make consolatory payments. So it is worth understanding how HMRC have behaved in relation to the years for which the underpayments have arisen.

GOV.UK provides advice on what you can do where the service you have received is worse than you would have expected.¹ This is supplemented by Your Charter² which was updated in 2016 and sets out the things you can expect HMRC to do for you as follows:

- to respect you and treat you as honest;
- to provide a helpful, efficient and effective service by helping you to understand what you have to do and when you have to do it;

- to protect your information and respect your privacy;
- to put mistakes right as soon as they can;
- to act within the law and their published guidance;
- to consider any financial difficulties you may be having;
- to make it as cheap as they can for you to contact them;
- to explain clearly what they need from you and why;
- to accept that someone else may deal with tax matters for you;
- to deal with complaints quickly and fairly.

Recent years have not been happy ones for HMRC in the PAYE arena and much of the confusion caused to taxpayers has been of HMRC's making. Millions of incorrect coding notices have been issued through computer error and very often it has not been possible to get through to HMRC helplines to ask for explanations or to get coding notices corrected.

¹ See <https://www.gov.uk/complain-to-hm-revenue-and-customs>

² Read the full text of Your Charter at <https://www.gov.uk/government/publications/your-charter>

These difficulties may have affected you and may have contributed in whole or in part to an underpayment. Even if you do not meet the criteria for Extra-Statutory Concession A19, or there was no employer/pension payer error (see our other two guides for more information), it may be that your treatment by HMRC over the years in question justifies a formal complaint.

How to complain

We have referred above to HMRC's guidance on making a complaint and our own website guidance elaborates upon that.³

The important thing to recognise is that beyond HMRC's own processes there are two independent bodies, the Adjudicator and the Ombudsman, which, in their slightly different ways, give the taxpayer protection against HMRC failing to operate its own processes or to give insufficient recognition of the levels of understanding that the ordinary citizen should need in dealing with their tax affairs.

It is particularly important to understand that those people who have been turned down for an ESC A19 write-off can take that rejection onwards to the Adjudicator.

³ See <http://www.litrg.org.uk/tax-guides/tax-basics/when-things-go-wrong/how-do-i-complain-to-hmrc>