

## Contractor battle with revenue offers hope

Contractor Neil Martin has been fighting for two years to obtain redress for losses that were caused by the Revenue's taking too long to process papers. With a Court of Appeal (Civil) decision rendered on October 25, Martin may finally see some compensation for what he has suffered.

### Revenue Can Have Responsibility

But the case is important for all contractors who could suffer from mistakes made by the Revenue. Says John Kell, policy director for the London-based [Professional Contractors Group](#): "The judges, unfortunately, did not rule that the Revenue has a 'duty of care,' meaning that the Revenue does not have the responsibility to assure the welfare of citizens as it goes about its administration. We at PCG are actively campaigning for that. But the judges did rule that because the Revenue did have some responsibility in the matter they must compensate Martin at least in part.

### Delayed CIS Status

Martin, who works in construction, in 1999 sought authorised status as a an approved subcontractor under the Construction Industry Scheme which had been made obligatory by the Treasury.

Martin didn't handle the matter with ideal precision himself--but of course when such schemes are imposed the small businessman always suffers from the complexity of the demands. Nonetheless, HMRC admitted in the course of the proceedings that Martin's paperwork was not handled properly. In fact, it was delayed for several months. When Martin's solicitors calculated the value of the losses caused by the delays, they came to £474,242.

### Persistent Error

At first the Revenue rejected all of Martin's claims. But when he took his case to the Parliamentary Ombudsman, things changed. A letter from the Revenue's director "We made a number of mistakes in dealing with the company's application. As a result, the certificate was delayed by some six or seven weeks, and Mr Martin had to have some further unnecessary delays with Furness Tax Office in July and August. I think our shortcomings amount to persistent error within our Code of Practice on Mistakes and, therefore, we would be pleased to consider a claim from Mr Martin for any reasonable costs he has directly incurred as a result of our errors.

But Martin had lost too much, and the Revenue decided to fight the claim in court anyway. Martin lost the first round. The Appeals Court declared that HMRC has no 'duty of care' to the public, and so Martin had no right to claim his losses.

This appeal of October 25 is too complex a judgement to qualify as an all-out victory. Although through it Martin will receive some compensation, the circumstances are extremely specific, and due largely to the fact that not only did the Revenue delay in filing Martin's application for CIS status, but some of the forms which were filled out incorrectly, and which therefore delayed Martin's application, were filled out by workers at the Revenue themselves. Interestingly, the judges ruled that the Human Rights Act did not apply to these issues.

There will be further hearings in the matter, and perhaps a bit more clarity may come out of it all. But what would have the greatest effect would be the imposition of 'duty of care' on the Revenue, so that the citizens it regulates had the right to expect fair treatment.

### Reasonable Dispatch

The judgement is ambiguous in this matter, but it does cite the words of a famous English jurist on the subject: Lord Atkin in his dissenting speech in *East Suffolk Rivers Catchment Board v Kent* [1941] AC 74, 91-2:

"I treat it therefore as established that a public authority whether doing an act which it is its duty to do, or doing an act which it is merely empowered to do, must in doing the act do it without negligence, or as it is put in some of the cases must not do it carelessly or improperly....I suggest that it would be difficult to lay down that a duty upon a public authority to act without negligence or not carelessly or improperly does not include a duty to act with reasonable diligence by which I mean reasonable dispatch."

Surely we must all join with PCG and support the fight for laws that will make not only the Revenue, but all public authorities, bound to follow Lord Atkin's prescription.

“ This case does show that the Revenue can be held responsible for its mistakes under highly specific circumstances. Whether it will be applicable to all contractors is something we must study. ”

John Kell -PCG

“ A public authority must act without negligence ”

Lord Atkin

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