

Contractors are closer to payback for revenue mistakes

Contractors who receive unfair treatment from the Revenue or who suffer from HMRC mistakes can expect some payback, under proposals that are taking shape at the [Law Commission](#).

Concrete Proposals This Year

ContractorCalculator has learned that concrete proposals on this subject are due from the Law Commission either before the end of this year, or in January of next year. Even more important, the Law Commission expects the Government to consider and implement these proposals by 2009.

These proposals may take one of several forms. According to legal sources, the Commission is considering a number of alternative frameworks within which monetary redress (or redress in some related form) for mistakes or unfair treatment by state agencies like HM Revenue and Customs could be made. One form that the Law Commission is considering is the imposition of 'duty of care,' which makes a public organisation responsible for the welfare of the citizens who work with it. But this is not the only proposal under consideration. A form of statutory remedy is also one of the frameworks being considered.

Heralds Major Change

"The work of the Law Commission could herald major and positive changes for all taxpayers," says Bill Dodwell, a tax partner with the consultancy [Deloitte](#) in London. "There is no reason why the Revenue should be exempt from responsibility for its actions, particularly given the large range of powers that HMRC enjoys."

The London-based [Professional Contractors Group](#) continues to call for the imposition of 'duty of care' on the Revenue. 'Duty of Care' is a legal obligation requiring that the person or organisation concerned adhere to a reasonable standard of care while performing any acts that could foreseeably harm others. But this may not be the form that the Law Commission recommendation takes. It may call for specific legal remedies for specific contexts instead. "We continue to call for 'duty of care,' but we support and welcome the work of the Law Commission in this area, and we look forward to the consultation that will emerge at the end of the year," says John Kell, policy director at PCG. "This may be an effective way forward."

“ The work of the Law Commission could herald major and positive changes for all taxpayers ”
Bill Dodwell - Deloitte

We Won't Have To Take It

What emerges from all of this is that we will not, in the future, have to accept ill treatment by the Revenue or by other public bodies.

The Law Commission is an independent organisation charged with cleaning up British legal affairs, but it is not part of the Government, and the Government has no obligation to accept its findings. Nonetheless, because the Law Commission represents the best thought within the UK legal community, pressure from that community for the Government to take action will be considerable.

Currently, the UK is remarkably deficient in this area when compared to international standards. Public agencies of many types have no legal obligation to do their work properly.

Amazing Examples

The Law Commission gives a rather amazing example: an authority responsible for certifying the seaworthiness of merchant ships negligently certifies that a certain vessel is seaworthy. The ship sinks with the loss of its cargo. A cargo owner has no claim for compensation against the authority.

Similarly, if the Revenue decides that you owe 100 million pounds in taxes when you only earn 20,000 per year, and goes on to seize your house and throw you on the street, you have no right to compensation.

How is this possible? The Law Commission points out that British law has always treated public agencies like the Revenue in a different way from private individuals. If a person you know sells you a battery, and it bursts into flame when you use it, that person is liable for negligence. Not so, under British law, are public agencies which, according to legal tradition, operate under a different set of rules.

“ This could be an effective way forward ”
John Kell - PCG

But the Law Commission is hopefully preparing to take a great step forward in changing all that, and we all look forward to the next stage of its work.

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