HMRC - MLR1PP11100 - What To Include In A Pre-Penalty Notice

A pre-penalty notice must consist of a standard covering letter, with a table of failures, and a statement attached, which explains in detail how the proposed penalty has been calculated. This table of failures and statement will also form part of the penalty notice.

In cases where a warning letter has also been issued in advance of a pre-penalty notice, the table of failures should have already been sent out with the warning letter, listing the specific regulations which have been breached and the changes the business needs to make. See MLR1PP6250

(This content has been withheld because of exemptions in the Freedom of Information Act 2000)

Details which should be included in the pre-penalty notice and attachments:

Details of the Regulations that have been breached. This must state the Regulations which have been breached and the requirements of the Regulations.

Details of how we concluded that the Regulations were breached. This should explain what the business failed to do and how this has been identified. For example, being negligent by not following the advice in a warning letter when one has been issued or at earlier Compliance Visits. It should also say how many penalty or warning letters we have previously issued. Where appropriate the compliance officer should include a schedule of the transaction testing they have carried out which shows the non compliance. This ensures our evidence is transparent.

Details of the period when the breaches took place (the relevant period). This must state the relevant period for each breach.

Details of the calculation and the figures used to arrive at the final penalty figure.

The penalty administration charge

The reasons for the breaches, the compliance history of the business, and any penalty reductions we are prepared to allow. The notice must explain:

which behaviour resulted in the breaches, for example, failure to take reasonable steps, deliberate failure

how many penalties have previously been issued, and the total percentage reduction from the penalty reduction table after taking account of these two factors.

Details of any further reductions we are prepared to allow and the reasons why. The notice should include details of:

any disclosures that have been made

the size of the reductions for disclosure

Details of the action the business must take to correct the breaches and the underlying failings and weaknesses that led to the breaches. This must explain what action is now needed by the business in order to become compliant with each of the Regulations, and the timescale for becoming compliant. This should be as detailed as possible because the Compliance Officer who conducts the next Compliance Visit will use this as a reference point to establish if the breaches have been corrected.

Details of any other action the business should take to become fully compliant. This must be included in the notice when other procedural weaknesses have been identified which currently are not serious enough to warrant a penalty. This is a warning to the business that in addition to correcting the breaches for which they have been penalised, they must also correct these other weaknesses for which they are now being warned, otherwise these will also be subject to a penalty in the future. This is effectively a warning letter embedded into a penalty notice. Further information about warning letters can be found in MLR1PP6000.

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