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HMRC internal manual

# Complaints and Remedy Guidance

From: **HM Revenue & Customs**  
**(/government/organisations/hm-revenue-customs)**

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## CRG5500 - Financial redress: Compliance costs: other costs relating to the review and appeal process

A Tribunal does not consider costs associated with the enquiry which gave rise to the decision under appeal. These are “pre appeal” costs. There are two scenarios when we will consider pre appeal costs:

1. A Tribunal decides in favour of the customer -  
The Tribunal or Senior Courts Costs Office makes a binding decision relating to the costs but can only consider the costs incurred from the date of the decision or assessment under appeal to the date of the substantive Tribunal decision

(see [CRG5475 \(https://www.gov.uk/hmrc-internal-manuals/complaints-and-remedy-guidance/crg5475\)](https://www.gov.uk/hmrc-internal-manuals/complaints-and-remedy-guidance/crg5475)).

We can, however, consider costs incurred for the period prior to the decision/review. If you are in doubt about which costs may have been included in the Tribunal costs, CCAST will happily give advice.

2. The dispute was settled partly or wholly in favour of the customer prior to formal proceedings commencing - These cases can be considered by complaints teams (as there is no binding agreement preventing review).

In both cases, conceding an argument does not necessarily mean that we have made a mistake. A key facet of our litigation and settlement strategy is to review our position on each individual case constantly, in light of arguments developing and emerging on both sides. Where agreement cannot be reached, cases are prioritised considering all the potential advantages and disadvantages of litigation. These are all considerations properly made under our litigation and settlement strategy, and generally have no read across to whether or not HMRC have made a mistake.

Nevertheless, where our original view of the law was manifestly flawed or wholly unreasonable at the time it was taken, as opposed to a respectable difference of opinion between ourselves and the customer about the law, we have made a mistake and would consider a claim for reimbursement of costs from the customer.

You might not be able to judge whether HMRC's interpretation of the law was reasonable without consulting the appropriate specialists. They may have had a significant role in advising the local office how to proceed, and effectively taking the decisions on, for example, complex issues such as VAT or Capital Gains Tax. You may need to clarify with them how the technical arguments developed.

This analysis is important because, even if the initial challenge was sound, we may have persisted unreasonably in holding to our view before conceding, thereby arguably giving rise to unnecessary costs. Where specialist divisions have

been involved you should look to them for advice and guidance to help you decide whether financial redress is justified.

## Examples

- An Inheritance Tax account included property in which the deceased had a half share. The agent claimed that the deceased did not have an interest in possession in the other half. We took a contrary view through much correspondence. We eventually referred the case to our specialists who asked relevant questions and clarified the matter in favour of the agent's argument. The case should have been referred to the specialists 18 months earlier, in accordance with our instructions, thus reducing correspondence and avoiding the need for the estate to seek Counsel's Opinion. We reimbursed the additional unnecessary costs.
- An Inspector took up legitimate enquiries about whether expenditure qualified for capital allowances, but quoted a tax case that was totally irrelevant because he had misunderstood a phrase in it. He persisted with his view despite opposition from the accountant who spent time researching the case and running a counter argument. We reimbursed the direct costs of the accountant's unnecessary work.
- An officer challenged whether a trader could recover VAT input tax on certain legal expenses, eventually deciding that he could not. Shortly before the tribunal hearing the specialist noticed that the officer had misunderstood the nature of the expenses and that some of the technical arguments were flawed. We reimbursed the costs of correspondence on the matter.

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