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HMRC internal manual

Complaints and Remedy Guidance

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

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CRG3200 - Mistakes: Misleading advice: whether a mistake

When it is clear that we have given a customer misleading or incorrect advice, whether in person, by phone or in writing (including in a leaflet or published guidance), that usually means we have made a mistake. The guidance and links at CRG3175 explain whether tax or tax credits should be given up. Giving up tax or tax credits is not the same as paying redress - regardless of whether or not we are bound by what we have said or written, you will still need to consider if financial redress is appropriate in respect of the mistake. The nature and amount of any financial redress will depend, as with any other sort of mistake, on the circumstances and on the impact the misleading

advice had on the customer. The same principles apply if we have given misleading advice in a public notice or leaflet, but in such circumstances you will need to liaise closely with the authors of the notice or leaflet in order to agree a co-ordinated approach.

In many cases there will be insufficient documentary evidence to establish exactly what happened, making it hard to determine beyond doubt that we made a mistake. That is particularly the case where the customer's complaint is based on a face to face meeting or unrecorded telephone conversation that took place some time ago. Memories inevitably fade over time and interpretations of what was said may vary. This means that the customer's recollection of what happened may be different from that of the staff member concerned. In these cases, carefully consider the customer's version of what happened, especially if they made a note at the time. Consider also any note of the conversation made by the member of staff concerned. In deciding what weight to give to this evidence you will need to make a judgement about the extent to which the customer's recollection fits in with what you know of the circumstances at the time; for example, whether the point at issue was frequently the cause of misunderstanding and the subject of other complaints. In such cases you should normally give the customer the benefit of the doubt and pay what financial redress, if any, you consider appropriate.

In many cases, there won't be any evidence apart from what the customer and the staff member recall, and their recollections will frequently be different. In these cases, you may have to accept that it is simply not possible to make a decision about what happened, and will need to explain to the customer that you are unable to uphold the complaint. You may need to explain that this is not because you think they are not telling the truth about their recollection of what happened but because, without further evidence, you are unable to favour one version of events over the other.

If, however, the customer obtains witness statements, the complaints handler will need to take these into account, even if they are a considerable time after the event. Weigh the strength of the

statements from the customer and the staff member before you decide whether to uphold the complaint.

Examples

- A customer telephoned their tax office and was told relief would be due on an additional voluntary contribution (AVC) to a pension scheme. The tax office confirmed the conversation in writing, although there was no note of the conversation in the file, and the customer paid the AVC. The tax office later correctly told him that relief was not due. The AVC was refunded by the Pension Scheme. We accepted that our misleading advice amounted to mistake and we made an ex gratia payment to reflect lost interest, and reimbursed the professional fees incurred by the customer.
- A customer complains that she telephoned her local office where a member of staff was aggressive in the way he spoke, to the point that the customer felt intimidated. The member of staff tells you that the customer was shouting and wouldn't listen to what was being explained to her. Although the member of staff accepts that he was firm with the customer, he does not feel he was aggressive or intimidating. There is no recording of the telephone conversation. In this case, you have insufficient evidence to reach a decision and will be unable to uphold the complaint. Explain to the customer that you fully accept how she felt, and that you are not calling that into question, but that without further evidence you are unable to reach a safe conclusion.

If you feel unsure about how to handle a case of alleged misleading advice, contact CCAST.

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