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29 March 2023

BY EMAIL TO: barronj@parliament.uk; greg.smith.mp@parliament.uk

Dear Mr Wilson and Mr Smith,

I write in response to your letter of 16 February 2023. I apologise that my response is somewhat delayed, however, I needed to clarify certain facts before replying.

Whenever someone takes their own life, it is a devastating tragedy for their family and loved ones. The impact of sudden deaths is something that is painfully familiar through our work. Our decisions in relation to these matters is by no means to diminish the recognition of these bereavements. However, I hope the context and explanations provided below will provide you with a better understanding of the limits to our role and the decisions we have made.

Before answering the specific questions set out in your letter, I thought it might be helpful to outline the context to our decisions and explain further the statutory framework within which we operate in relation to HMRC.

### **IOPC Jurisdiction in relation to HMRC**

The IOPC jurisdiction in relation to HMRC matters is limited. Our jurisdiction is set out in Regulation 28 of the Revenue and Customs (Complaints and Misconduct) Regulations 2010. In broad terms, the IOPC jurisdiction in relation to HMRC matters extends to:

- Deaths and serious injuries when someone is under arrest or otherwise detained by an officer of HMRC, or where direct or indirect contact with an officer in the execution of their duties may have caused or contributed to the death or serious injury;
- serious complaints regarding the conduct of HMRC staff; and
- allegations of serious criminal offences or serious misconduct.

Regulation 9 defines what a complaint, conduct matter and death or serious injury matter are for the purposes of the handling of matters by the IOPC.<sup>1</sup>

The IPCCs jurisdiction was extended to HMRC in 2005 through the Commissioner for Revenue and Customs Act 2005. The policy intent in extending the IPCC jurisdiction to HMRC was broadly to offer oversight of the use of coercive powers, such as arrest,

<sup>1</sup> [The Revenue and Customs \(Complaints and Misconduct\) Regulations 2010 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

detention and search powers, and to offer independent oversight to criminal and serious misconduct matters.

The IOPC expressly cannot consider “direction and control” matters relating to HMRC Commissioners and their officers. In practical terms, this means we cannot consider complaints regarding the administration of someone’s tax affairs. Such complaints are considered by HMRC with an appeal route through the Parliamentary and Health Services Ombudsman. The term “direction and control” also includes consideration of tax policy, so the IOPC would not be able to offer an opinion on the fairness of any particular tax measure.

### **Referral to the IOPC and IOPC action on referral:**

When the IOPC receives a referral from HMRC, we must make a decision (1) whether it is necessary within the IOPC jurisdiction to investigate the matter and, if so (2) what form the investigation should take. The second of these decisions is referred to as the mode of investigation decision. If the IOPC do not consider it is necessary within our jurisdiction to investigate, the matter will be returned to HMRC for them to handle in any manner they see as appropriate.

Where HMRC are concerned, if the IOPC consider it is necessary to investigate, we can mandate a local investigation, a supervised investigation, a managed investigation or an independent investigation.

### **Right to Appeal:**

IOPC oversight in these matters is not simply provided through independent, managed or supervised investigations. In all death and serious injury matters subject to a local investigation, the IOPC carries out an investigation review at its conclusion.

Where there is a referable public complaint, the complainant has a right of appeal to the IOPC.

### **Matters referred to the IOPC:**

It is our understanding that HMRC has previously updated the APPG that they have referred HMRC contact prior to the suicide of ten people facing HMRC action in relation to disguised remuneration schemes. All of these referrals were death and serious injury matters; none were referred following a public complaint.

Of those ten referrals, we returned seven to HMRC to deal with as they felt was appropriate and we mandated a local investigation in three of them.

Following the three local investigations we have carried out three reviews. In all three instances, we agreed with the HMRC assessment that no member of staff had behaved in a manner that warranted disciplinary proceedings or committed a criminal offence. In one instance, we identified learning for HMRC (more on this below).

In addition, HMRC has referred further serious injury matters or complaints relating to serious injury matters following contact with customers within the relevant period (since

2019). None of these referrals have resulted in independent, managed or supervised investigations; in some instances we have mandated local investigations.

We have carried out one serious injury review following a local investigation. This review agreed with the HMRC assessment that no member of staff had behaved in a manner that warranted disciplinary action.

### **Learning following IOPC consideration:**

An important outcome to investigations into adverse incidents is the learning they can provide to prevent recurrence and drive improvement. The IOPC has a statutory ability to make recommendations to HMRC as part of its general function.

The HMRC local investigation into one of the deaths identified learning regarding the way vulnerable customers are handled by HMRC. In addition, the IOPC Review identified further learning regarding the contemporaneous recording of information relating to contact with vulnerable customers on HMRC systems. More recently, following a further review relating to a local investigation into a serious injury matter, we agreed with learning identified by HMRC in relation to the recording of information regarding vulnerability and information flow.

HMRC is better placed to outline the work it has undertaken to date to improve the service offered to vulnerable customers and reduce the impact of its work and to set out the challenges inherent in aligning processes, practices and procedures across a large department. However, we were encouraged by the desire to learn and change following these incidents and the positive response to our recommendations to date.

### **Questions asked in the letter of 16 February:**

- 1. Why has the IOPC declined to investigate all ten of the suicides of people facing the Loan Charge and associated HMRC action regarding the use of 'disguised remuneration' schemes?**

Each of the 10 disguised remuneration matters was referred to us as a death or serious injury matter, not as a public complaint or because an allegation of misconduct on the part of an individual came to light. This means that there was a concern, on the part of HMRC, that a death by suicide had occurred following contact with them and that the matter was referable to the IOPC. However, no one who was adversely affected by the death had complained about HMRC action at the time of the referral, and HMRC had not identified any actions on behalf of its staff that caused it to believe they may have behaved in a way that justified disciplinary proceedings.

In each case, the decision whether to investigate and on the mode of investigation was determined on the basis of the referral. I will not go into the particulars of each case, but will make some general observations:

- A final determination whether any contact with HMRC caused or contributed to a particular death would be for HM Coroner to ultimately determine as part of an inquest. We are not aware of any judicial finding to this effect in these cases.

- When considering whether it was necessary within our jurisdiction to investigate these matters, following careful assessment of the referrals, we did not see evidence of an identifiable causal link between any actions of members of HMRC staff and the deaths. It is important to note these matters had not been investigated at this stage and no final determinations had been made by the IOPC. The information provided at the point of referral was assessed to decide whether there was a necessity to investigate and the mode of any investigation. If further information comes to light, the assessment and interpretation of information can change.
- In the three local investigations reviewed by the IOPC we agreed with the HMRC assessment that no staff had behaved in a manner that justified disciplinary proceedings or committed a criminal offence.
- None of the matters referred to the IOPC involved the use of coercive police powers, such as arrest, detention or search.
- As outlined above, the IOPC would not be able to offer an opinion on the merits or otherwise of the Loan Charge, which is a matter of tax policy and is for the Government to propose, Parliament to determine and, where necessary, the Courts to clarify.

**2. Has the IOPC looked at each of these ten suicides in isolation or have they been looked at as a group of suicides, which was what they are?**

In considering these matters, those making decisions have been aware of the surrounding context of concerns regarding the levy of the Loan Charge, and the Parliamentary and press interest in these matters. However, the decisions on the need to investigate and the mode of investigation for each suicide were made on the basis of the individual referral, as they must be.

In addition, our oversight team who have responsibility for liaison with forces and other bodies regarding their complaint handling have been aware of these matters and the HMRC investigations, and have maintained contact with HMRC regarding them.

**3. Has the role of the Loan Charge and HMRC's pursuit of and the impact of HMRC's engagement with the individual, however lawful, been considered?**

As outlined above, the IOPC cannot consider matters of direction and control. We would not be able to offer an opinion on the merits or otherwise of the Loan Charge, which is a matter of tax policy and is for the Government to propose, Parliament to determine and, where necessary, the Courts to clarify.

We have set out above the learning from these cases and how the consideration of the impact of engagement is shaping future contact with vulnerable customers. As we have outlined, HMRC would be better placed to discuss their work in this area.

**4. Did the IOPC contact any of the families and/or tax advisers/other professional representatives of the deceased as part of deciding not to investigate the suicides? If not why not?**

The IOPC did not contact the families, tax advisors or other professionals in these cases. All of the suicides were referred as death or serious injury matters by HMRC not as a result of a complaint.

It would not be routine practice for the IOPC to contact representatives of the deceased at the point of referral where they are not a complainant. Where the IOPC determines we will investigate a matter, we would contact interested persons to find out whether and how they would like to be involved with the investigation.

In matters investigated locally, we reminded HMRC of its responsibility to keep those identified as interested parties to the investigation updated following the conclusion of our review.

**5. Has HMRC contacted any of the families and/or tax advisers/other professional representatives of the deceased as part of their internal investigations into the ten suicides?**

This is a question for HMRC and cannot be answered by the IOPC.

I hope that what is outlined above assists you in understanding the current extent of referrals, how we have handled the matters sent to us and why we have made the decisions we have.

Yours sincerely,

A handwritten signature in blue ink that reads "Miranda Biddle". The signature is written in a cursive style and is underlined.

Miranda Biddle  
Interim Director of Operations  
Independent Office for Police Conduct

CC Treasury Select Committee  
House of Lords Economic Affairs Committee  
Financial Secretary to the Treasury, Victoria Atkins MP  
HMRC

