



Response to

HM Revenue and Customs consultation “Reform of behavioural penalties”

18th June 2025

Introduction

The emergence and rapid growth of the well-functioning umbrella market has been a positive contributor to UK growth, productivity and wealth. Compliant bona fide umbrellas – also known as Specialist Payment Intermediaries (SPIs) – provide certainty and security to the workers engaged by them, ensuring that; they receive the full protections required by employment law, their tax affairs are simplified, and all required taxes are remitted to HMRC.

The Freelancer & Contractor Services Association (FCSA) is the UK's leading professional membership body dedicated to raising standards and promoting supply chain compliance for the temporary labour market. Our members provide umbrella employment (via an Overarching Contract of Employment), self-employed services, accountancy, and business support solutions to the contingent workforce.

At time of writing, FCSA has more than 80 Accredited Members who collectively represent circa 220,000 workers engaged as employees; making them, collectively, one of the largest employers in the UK. Around 1 in 3 of the workforce represented by FCSA are women. Annually, FCSA members alone collect circa £12.5 billion in taxes and NICs which are timeously remitted to HMRC.

FCSA has worked extensively with government and other stakeholders to promote the highest possible standards in the industry, most recently providing labour market intelligence and umbrella regulation advice to directorates in the Department for Business and Trade (DBT), such as Labour Market Enforcement and Employment Agency Standards and HM Treasury, as well as working with HMRC across a number of areas including the off-Payroll Working Forum.

It has also assisted Parliament, giving evidence to the All-Party 'Parliamentary Loan Charge and Taxpayer Fairness Group', 'Modernising Employment Group', and the House of Lords Finance Sub-Committee, as well as being an expert advisor to the DBT-supported JobsAware initiative, the Better Hiring Institute.

This submission outlines our position and recommendations, emphasising the need to balance enforcement with education to foster a system that drives compliance at source. Where penalties and deterrents are needed, we have included ideas to make them more robust and effective – we agree that more needs to be done to drive out non-compliance.

FCSA continues to promote compliance within the sector for the benefit of individual workers, HM Government, and the supply chain. As a representative of a unique subsection of the labour market, it has also submitted various bodies of evidence to Government with market-led recommendations on how to drive non-compliance out of the supply-chain.

Consultation Questions

Question 1: What are your views on removing the minimum 10% penalties for:

- 1. inaccuracies disclosed after 3 years**
- 2. failures to notify disclosed after 12 months for non-deliberate behaviour?**

FCSA favour a 'sliding scale' for penalties. Arbitrary timescales can encourage the wrong behaviours, such as deliberately waiting for longer than 3 years before reporting a mistake. Instead of there being a fixed timeframe of 3 years, there should be a more general consideration of how quickly someone has reported an issue within the context of any given case.

As a general principle, greater dispensation should be given to those who have notified HMRC of an issue sooner. The sooner a problem is reported, the easier it is to remedy. Ignorance for 3 years, is no excuse as firms should have proper procedures in place to ensure that mistakes are picked up. HMRC need to incentivise faster reporting by showing greater leniency earlier.

Question 2: What are your views on the ways in which HMRC could:

- 1. simplify penalty reductions for unprompted disclosure**
- 2. simplify penalty reductions for the quality of disclosure?**

The Penalty Ranges for both need to be completely revised. There should not be comparable penalties for prompted carelessness, as there is for unprompted deliberately concealed disclosures.

These tables need to be revised to take proper account of human behaviour and how to positively influence it. FCSA do not see any merit in having 2 different categorisations of "deliberate" (concealed and not concealed).

Question 3: With reference to the existing inaccuracy and failure to notify penalty ranges, what would you consider to be proportionate and appropriate penalty rates for both deliberate behaviour and repeated instances of deliberate behaviour? Which factors should be considered when applying these?

We would recommend a penalty capped at 200%. i.e. full redress + a 100% penalty.

Multiple instances of non-compliance should be defined as going against a penalty notice. I.e. an offence cannot be counted as a second offence, unless it occurs after the first penalty notice has been issued.

Question 4: How could penalties for offshore non-compliance be simplified whilst still acting as an effective deterrent?

“Deliberate but not-concealed” should cease to exist. FCSA do not see any merit in having 2 different categorisations of “deliberate” (concealed and not concealed).

We would challenge HMRC to consider how can a disclosure be both unprompted and concealed? Equally, how can it be prompted and yet not concealed?

Those who have come forward and are proactively trying to remedy a mistake should not be treated similarly to those concealing their mistakes. This is the distinction that matters and there should be a greater disparity between deliberate and non-deliberate penalties.

Question 5: How could HMRC simplify penalty suspension while retaining an effective prompt to taxpayers to address the source of the inaccuracy?

FCSA do not agree with automatically suspending penalties without conditions – there needs to be conditions in order to ensure the taxpayer is addressing their inaccuracies.

We favour Option 2 of issuing a ‘Caution’. However, if there is a repeat similar offence, there should be no leniency shown and it should therefore attract a higher penalty.

Question 6: What do you see as the opportunities and challenges of this approach? Do you think that a new legislative model would be preferable to simplifying existing penalties, as outlined in Chapter 3? If so, how could any potential transitional costs be minimised?

FCSA would prefer to reform the existing model – a new legislative model does not make sense unless there is wholesale reform across the tax system.

A safeguard could be to ensure that two separate individuals (from separate teams) review a prospective penalty and come to the same conclusion independently of one another. A penalty should not get senior sign-off without passing the ‘2 sets of eyes’ test.

Question 7: What is your view on HMRC’s use of tougher non-financial sanctions to deter and respond to deliberate and repeated non-compliance and to promote future compliance?

The punishment needs to fit the crime – financial penalties are needed for financial misdemeanours. However, we would also support “naming and shaming” i.e. publishing the most serious penalty notices online – particularly for repeat offenders.

FCSA would also advise that HMRC report individuals to their professional bodies if applicable. In the most serious cases, HMRC could take steps to suspend individual's passport – treating the offence as if it was a fraud conviction.

We would strongly caution against some of the examples of other non-financial sanctions suggested from other parts of the public sector. For example, Driving License disqualification is a particularly dangerous idea that can bring about consequences that could affect others. Taking away a serial law breaker's Driving License is unlikely to physically stop them from driving. What it will do though is encourage more people driving without insurance, putting other third parties at physical and financial risk.