

Memorandum of Understanding

Between

**HMRC
and
Cabinet Office**

**For access to information from HMRC to assist honours
committees in making decisions about awarding honours to
individuals**

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1. Introduction

- 1.1 The purpose of this Memorandum of Understanding (“MoU”) is to set out the arrangements for the exchange of information between Her Majesty’s Revenue and Customs (“HMRC”) and the Cabinet Office in relation to checks undertaken prior to making decisions about honours awards. This MoU is not a contract or intended to create legally binding obligations.
- 1.2 The Cabinet Office requests government departments including HMRC to undertake checks on individuals in order to inform the honours committees’ recommendations on the suitability of individuals for an honour. Honours are given to reward outstanding service in a given field or area. As part of the nomination process, the Cabinet Office tries to minimise the risk that prospective candidates have behaved in ways likely to bring the system into disrepute. The Cabinet Office protects the integrity of the honours system by carrying out probity checks with a number of Government departments before names are submitted to the Prime Minister and HM the Queen for approval. Nominees are not aware that they have been nominated or which specific checks may be carried out to validate their particular nomination. It should be clear to the public – both nominators and potential nominees – that poor tax behaviour is not consistent with the award of an honour. Information on gov.uk is clear that checks with HMRC form part of the probity process for honours assessments. All information about an honours nominee, received from any source, is treated in the strictest confidence by the Honours and Appointments Secretariat and others involved in the assessment and selection of honours nominees.

2. Legal Basis

- 2.1 Section 18 of the Commissioners for Revenue and Customs Act 2005 (CRCA) places HMRC under a statutory duty of confidentiality not to disclose information it holds in connection with its functions except in the circumstances permitted by section 18. Unlawful disclosure relating to an identifiable person constitutes a criminal offence. The criminal sanction for unlawful disclosure is detailed at section 19 of the CRCA.
- 2.2 Section 18(2)(a) of CRCA provides HMRC with the lawful authority to make a disclosure of HMRC information where it is for a function of HMRC and does not contravene any restriction imposed by the Commissioners. This enables HMRC to disclose information in order for HMRC to carry out its functions of collecting and managing revenue.
- 2.3 The Commissioners believe that disclosure of HMRC information to Cabinet Office (Honours and Appointments Secretariat) to inform the honours committees' recommendations on whether an honour is to be awarded is necessary to fulfil HMRC's functions of collecting and managing revenue by:
- (i) Increasing the likelihood that the individual subject to the HMRC check will ensure that their tax affairs are in order and up to date;
 - (ii) Increasing the likelihood that other individuals in a similar position will be influenced to rectify their tax affairs if they become aware that poor tax behaviour is not consistent with the award of an honour;
 - (iii) Increasing the likelihood that taxpayers at large will maintain their trust in the integrity of tax administration by HMRC and comply with their tax obligations voluntarily if tax behaviour is seen as a factor when considering public reward and recognition via the honours system; and
 - (iv) Reducing the likelihood that taxpayers at large will lose their trust in the integrity of tax administration by HMRC and so fail to comply with their tax obligations voluntarily. Trust would likely be lost if an honour was awarded to someone with negative tax behaviours and those behaviours became linked to the positive recognition that accompanies the award of an honour.
- 2.4 The benefits of disclosure by HMRC are enhanced by the existence of these checks being in the public domain on GOV.UK, so that those nominated for an honour (and hence subject to an HMRC check), individuals in a similar position and taxpayers at large may become aware that HMRC carries out checks to inform the decision to award an honour.
- 2.5 The benefits to HMRC's functions outlined in paragraph 2.3 can be achieved through minimal disclosure of information in the form of a risk rating of low, medium and high reflecting the categories in the Annex 2 to this MoU and without disclosing any underlying detail about the tax affairs of an individual being considered for an honour.

3. Procedure

- 3.1 Information identifying the individuals to be checked by HMRC is provided by named contacts in the Cabinet Office Honours and Appointments Secretariat ("Cabinet Office Honours Secretariat").
- 3.2 Upon receipt of the information HMRC will identify honours nominees and commission reports on the tax behaviour of such nominees. The reports are presented to senior HMRC officials who comprise the Checking Panel for the purpose of arriving at a risk rating. HMRC maintains internal standard instructions detailing how checks are undertaken and access to information is restricted internally.
- 3.3 HMRC will disclose the information described in paragraph 2.5 of this MoU to the Cabinet Office Honours Secretariat. The information communicated by secure e-mail will comprise name and risk rating only.
- 3.4 The Cabinet Office honours committees will take the risk rating from HMRC into account together with other information in order to reach a decision on whether to recommend the award of an honour to an individual.
- 3.5 The Cabinet Office Honours Secretariat will keep the information disclosed by HMRC confidential and without limiting its legal obligations under Data Protection legislation or otherwise, will ensure that:
 - (i) it only uses the information for the purposes that it is provided for namely, to inform a decision about whether to confer an honour on an individual;
 - (ii) any individual's HMRC risk rating of medium or high is not shared beyond the members of the Main Honours Committee, the named honours contact in the No.10 Appointments Team and the the Prime Minister; and
 - (iii) it does not onwardly disclose the information to any other parties.

4. Security and Assurance

- 4.1 The Cabinet Office will:
 - Only use the data for purposes that are in accordance with the legal basis under which it is received;
 - Only hold the data while there is a business need to keep it and in any event for a maximum of 12 months following the publication of the final honours list;
 - Ensure that restrictions are in place so that the data is not available on a widely accessible system and that only people who have a genuine business need to see the information can access it;
 - Store data received securely and in accordance with the prevailing central government standards, for example in secure premises and on secure IT systems;

- Move, process and destroy data securely i.e. in line with the principles set out in HM Government Security Policy Framework, issued by the Cabinet Office, when handling, transferring, storing, accessing or destroying information;
 - Comply with the requirements in the Security Policy Framework, and in particular Section 2.10, to be prepared for and respond to Security Incidents and to report any data losses, wrongful disclosures or breaches of security relating to information;
 - Apply the appropriate baseline set of personnel, physical and information security controls that offer an appropriate level of protection against a typical threat profile as set out in Government Security Classifications, issued by the Cabinet Office, and as a minimum the top level controls framework provided in the Annex – Security Controls Framework to the GSC; and
 - Provide written, signed assurance that they have complied with these requirements and outline how they have done so upon request.
- 4.2 The Cabinet Office will report any data losses, wrongful disclosures or breaches of security relating to information disclosed by HMRC to the designated contact immediately (within 24 hours of becoming aware). This includes both advising, and consulting with HMRC on the appropriate steps to take, e.g. notification of the Information Commissioner's Office or dissemination of any information to the data subjects.

5. Data Protection Act 1998 (DPA) and Human Rights Act 1998 (HRA)

- 5.1 Nothing in this MoU will limit the receiving department's legal obligations under the Data Protection legislation.
- 5.2 All the information transferred by HMRC will be relevant, necessary and proportionate to enable the Cabinet Office Honours Secretariat and Committees to carry out their task.
- 5.3 HMRC and the Cabinet Office will become the data controller of any personal data received from the other under the terms of this MoU.
- 5.4 Data Protection Legislation means the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

6. Freedom of Information (FOI) Act 2000

- 6.1 HMRC and the Cabinet Office are subject to the requirements of the Freedom of Information Act 2000 (FOI) and shall assist and co-operate with each other to enable each department to comply with their information disclosure obligations.

- 6.2 In the event of one department receiving a FOI request that involves disclosing information that has been provided by the other department, the department in question will notify the other to allow it the opportunity to make representations on the potential impact of disclosure.
- 6.3 All HMRC FOI requests must be notified to Central Policy FOI Team who will engage with the central FOI team in the supplying organisation.

7. Costs/charges

- 7.1 No charge will be made by either participant for the information exchanged between HMRC and Cabinet Office under this MoU.

8. Contact details

8.1

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8.2 Other queries

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9. Reporting and review arrangements

- 9.1 This MoU will take effect from 27 March 2017 and will remain in force for a period of 5 years. Each participant will be free to propose amendments or additions during the term of the MoU.
- 9.2 The participants may prior to the date of expiry of this MoU agree in writing to extend the term of this MoU for a further period to be agreed subject to such changes as the participants may agree in writing in which event the term of this MoU shall (subject to provision for earlier termination) continue until expiry of such extension period.
- 9.3 The participants will keep the operation of this MoU under regular review, including at the end of each honours round.

10. Resolving issues

- 10.1 Any complaints, problems, issues etc. that are specific to the information exchanges covered by this MoU should immediately be referred to the contacts named in section 8. If these cannot be resolved they should be reported, in writing to:

	For HMRC	For Cabinet Office
Name		

OFFICIAL

Job Title	Data Exchange Champion	
Team	Cyber Security & Information Risk	
GSI email		
Telephone		

11. Signatories

For HMRC

For Cabinet Office

(name)

.....(role)

..(role)

23.3.17

.....(date)

23 March 2017

.....(date)

Annex Checking Risk Categorisation – INDIVIDUALS – 26.01.2017

Based on the level of potential reputational risk to HMRC and the likely adverse impact on tax compliance should the honour recipient's tax behaviour become generally known

THE BEHAVIOUR TYPES LISTED ARE INDICATIVE ONLY. CATEGORISATION OF AN INDIVIDUAL DOES NOT NECESSARILY MEAN THAT HMRC CONSIDERS THE INDIVIDUAL TO HAVE COMMITTED THE EXAMPLE BEHAVIOUR TRAITS LISTED.

HMRC looks back over the last 5 years and seeks to apply the same objective standard to all candidates irrespective of individual circumstances or the nature or status of their vocation or achievements. Each case should be assessed on the particular facts of the case.

For MEDIUM and HIGH risk ratings, the direction of travel may be shown as “down” if the taxpayer is actively engaging with HMRC to regularise affairs and there is no evidence that new activities that cause concern have commenced within the last 12 months.

<p>LOW or NONE</p> <p>No known tax behaviours considered likely to cause adverse public comment.</p>	<p>MEDIUM</p> <p>Disclosure of tax affairs likely to cause adverse comment.</p>	<p>HIGH</p> <p>Disclosure of tax affairs very likely to cause strong adverse comment.</p>
<p><u>Individual with no markers on HMRC's records to indicate an enquiry or only minor issues found during a check or enquiry.</u></p> <p>Typically compliance checks, not more detailed investigations. Minor issues.</p> <p>Use of personal service companies</p> <p>Acceptable tax planning</p> <p>Straightforward disputes on bona fide issues of contention</p> <p>Reasonable excuse, mistake despite taking reasonable care and careless mistake</p> <p>Past history of tax avoidance or evasion that would have merited MEDIUM or HIGH but no evidence of such behaviour during the last 3yrs or a shorter time at the panel's discretion</p>	<p><u>Individual may still be or have been involved in behaviours which cause concern.</u></p> <p>Currently participating in one or more avoidance schemes</p> <p>Currently subject to a COP 8 investigation into a serious tax loss</p> <p>Frequent delays in submitting returns and/or dealing with HMRC correspondence</p> <p>HMRC needs to or has needed to: use a production order / use a tribunal approved information notice / seek penalties for non-cooperation</p> <p>Was or would have been HIGH if this assessment had been carried out between 1yr and 3yrs ago</p>	<p><u>Individual with serious areas of non-compliance; either current or in the recent past (concluded within one year) or who is currently involved in other serious non-compliant arrangements.</u></p> <p>Use of avoidance schemes on a serial basis with at least one current intervention</p> <p>Evidence of offshore evasion</p> <p>Previous (within the last three years) evidence of criminal activity</p> <p>Currently within HMRC's Managing Serious Defaulters Programme</p> <p>Currently under investigation for a criminal offence or suspicion of serious tax fraud (COP 9)</p>