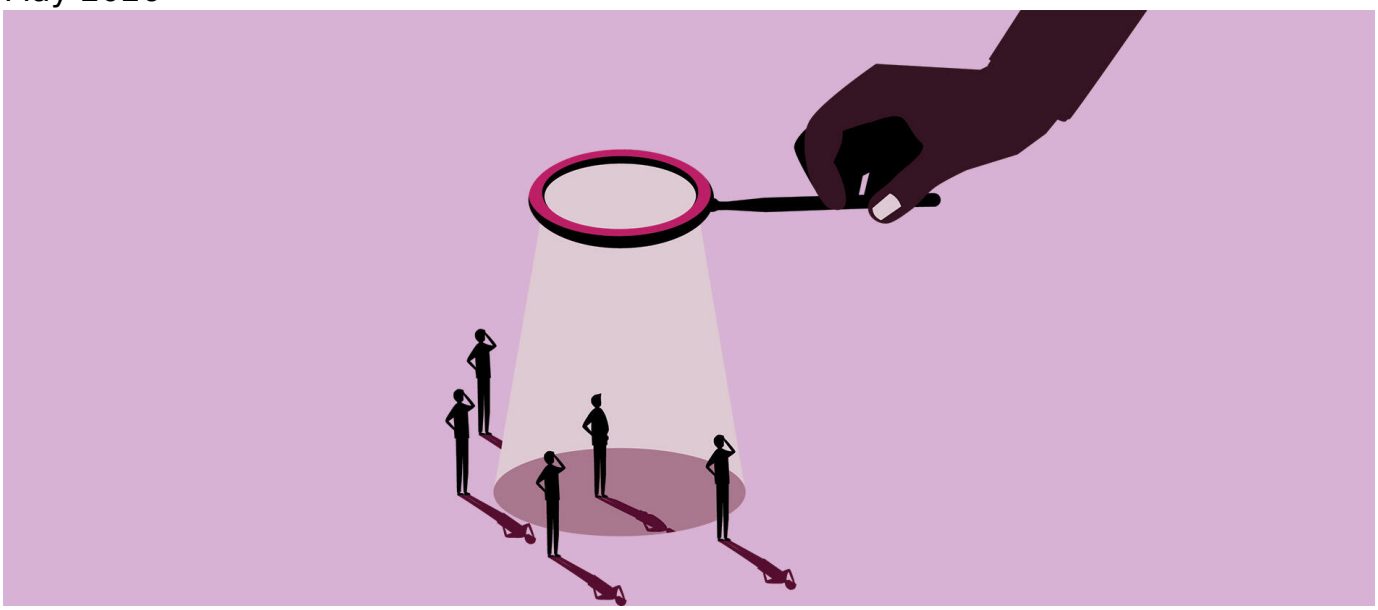
Sanctionable conduct: HMRC’s new enforcement powers

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From April 2026, HMRC’s new powers expand adviser liability, lower thresholds for misconduct, increase penalties, enable greater information access and introduce mandatory public naming.

Key Points

What is the issue?
HMRC has introduced enhanced enforcement powers from April 2026 targeting tax advisers who intentionally facilitate tax losses, replacing the old ‘dishonest conduct’ regime with a broader ‘sanctionable conduct’ framework, backed by stronger information powers, higher penalties and mandatory publication.

What does it mean for me?
The scope of who is caught is wider, the threshold for HMRC action is lower, and the

consequences are more severe. Advisers face greater scrutiny of their work, increased risk of investigation through file access notices, and potential reputational damage through public naming.

What can I take away?
Advisers should review internal controls, ensure that advice is well-documented and defensible, and maintain clear, evidence-based reasoning for positions taken. Strong governance, training and risk management are critical to mitigating exposure under the new regime.

From 1 April 2026, HMRC has enhanced enforcement powers designed to target advisers who intentionally facilitate tax losses. These are introduced by Finance Act 2026 ss 250-253 and Sch 22. Updated guidance is also included in HMRC's Compliance Handbook CH176100 to CH179600.

Tax advisers who have been practising for more than a decade might recall earlier powers introduced to tackle dishonest agents, in Finance Act 2012 Sch 38. I wrote an article about this in 2014, in which I concluded: 'Most readers are unlikely to come face to face with these provisions in practice, and the legislation will become mere legend.' There are no official statistics on how often HMRC issued dishonest conduct notices or publicly accessible lists of those named and shamed under the old regime. The consensus in professional circles is that HMRC rarely used the dishonest conduct powers, if at all.

In all too familiar fashion, the regime has been rebooted. The amendments have revamped the former 'tax agents: dishonest conduct' legislation, now to be known as 'tax advisers: sanctionable conduct'. In short, the new rules introduce a lower threshold, broader definitions and mandatory publication of sanctioned advisers.

Background and rationale

HMRC describes tax advisers as the backbone of the UK tax system, ensuring that clients navigate complex rules and submit accurate returns. While most advisers act with integrity, HMRC is keen to address the minority of 'bad actors' who intentionally facilitate tax losses.

The enhanced powers are intended to address this by:

- redefining ‘sanctionable conduct’ and moving away from ‘dishonest conduct’ terminology;
- enabling HMRC to obtain information about the advice given to clients and assess the scale of any misconduct;
- encouraging co-operation and disclosure, while also penalising sanctionable conduct when it occurs; and
- increasing transparency by publishing details of the sanctioned adviser’s misconduct online.

The regime is also underpinned by a significantly tougher penalty framework, allowing HMRC to recover greater amounts where misconduct is identified.

The policy objective is clear: to build and maintain trust in the tax system, deter deliberate misconduct, and ensure that advisers who breach professional standards face meaningful consequences. More broadly, the reforms reflect a continued shift towards greater transparency and accountability in professional services.

Who is a tax adviser?

The legislation defines a tax adviser as any individual or organisation, acting in the course of business, who assists others with their tax affairs. The regime also applies to those appointed indirectly, for example, at the request of someone other than their client, as well as former advisers.

This reclassification from ‘tax agent’ to ‘tax adviser’ deliberately broadens the scope of the rules, not least because the previous regime did not apply to organisations. According to HMRC guidance, the definition now extends to:

- sole practitioners, partnerships and companies;
- partners or employees of an accounting practice, however constituted;
- bank employees, where that person provides tax advice;
- solicitors or barristers advising on tax matters;
- valuers providing valuations for tax purposes;
- partners or employees of a ‘repayment agent’; and
- business advisers.

The breadth of this definition allows HMRC to target a wide range of advisers and situations. The inclusion of business advisers seems to be deliberately vague. In

practice, anyone providing advice, acting as an agent, or assisting with documents relied upon by HMRC could fall within the scope of the new rules.

Somewhat surprisingly, HMRC's guidance also sets out a number of explicit exclusions. These include individuals providing advice free of charge (such as Citizens Advice staff), lecturers and those undertaking unpaid or 'pro bono' work. In-house tax professionals acting solely for their employer, and individuals giving informal advice to family members, are also excluded.

While the regime is clearly targeted at those acting in the course of a business, the distinction is not entirely straightforward. If the underlying policy objective is to deter abusive behaviour, it is reasonable to ask why similar conduct should be treated differently simply because it is unpaid. Would HMRC be criticised for taking action against sanctionable conduct merely because it occurred in a pro bono or informal context? Those acting honestly are unlikely to object to a broader approach.

What is 'sanctionable conduct'?

The original Finance Act 2012 Sch 38 legislation required dishonest conduct with a view to bringing about a loss of revenue. This imposed a high evidential bar, as HMRC needed to establish a particular state of mind.

'Sanctionable conduct' is now defined as any act or omission by a tax adviser, in the course of acting as a tax adviser, undertaken with the intention of causing a loss of tax revenue. There are two tests to establish sanctionable conduct:

1. Was the conduct carried out in the course of acting as a tax adviser? This includes providing advice to a client, submitting documents to HMRC, or failing to submit documents.
2. Was it done with the intention of bringing about a loss of tax revenue? This is a subjective test, seeking to establish the adviser's knowledge and intentions at the time they acted. An actual loss is not required, as only intention is needed. If the adviser did not intend to bring about a loss of tax, the test is not met, even if a loss ultimately arises.

The definition casts a wide net. Crucially, however, the intention to cause a loss of tax remains a necessary element and must be evidenced.

Examples of sanctionable conduct include advising a client to claim relief to which they are not entitled (where the relevant facts are known), falsifying evidence of return submission, concealing known legal risks or deliberately submitting inaccurate information. More broadly, it may result in a taxpayer paying too little tax, paying tax late, receiving excessive relief or obtaining relief prematurely.

HMRC's guidance also gives examples of conduct that will not be regarded as sanctionable conduct. These include:

- taking a credible view of the law, even where it differs from HMRC's own view – although it will be interesting to see how this provision interacts with the new GfC13 guidance on ensuring that documents filed with HMRC are correct and complete (see tinyurl.com/4c9r2b2u);
- following published guidance, even if that guidance proves to be incorrect as a matter of law;
- relying on a published Extra-Statutory Concession; and
- making a genuine mistake or error in advice or in a document submitted to HMRC, even where this amounts to a failure to take reasonable care.

The burden is on HMRC to demonstrate sanctionable conduct on the balance of probabilities. In practice, HMRC is likely to seek to establish this through the use of a file access notice.

File access notices

What information HMRC can obtain

There are two scenarios in which HMRC can issue a 'file access notice':

- **Case A:** There are reasonable grounds to suspect that a tax adviser is engaging, or has engaged, in sanctionable conduct.
- **Case B:** A tax adviser has been convicted of a tax-related fraud or dishonesty offence after becoming a tax adviser (regardless of the capacity in which the offence was committed), and all appeal rights have been exhausted within the previous 12 months.

File access notices are a powerful tool, enabling HMRC to access an adviser's working papers and other documents used in assisting clients. A notice can relate to

documents created before 1 April 2026. However, such documents cannot be used to determine the penalty for sanctionable conduct, although they could still influence HMRC's decision about whether to pursue a criminal investigation of the tax adviser.

HMRC does not require tribunal approval before issuing a formal notice to a tax adviser suspected of sanctionable conduct. In those circumstances, the recipient has a right of appeal against the notice or any requirement within it. However, if HMRC seeks and obtains prior approval from the tribunal, there is no right of appeal. The guidance states that HMRC should notify the tax adviser in advance that they are planning to seek tribunal approval and give an opportunity to make representations, which will then be summarised for the tribunal.

HMRC may also issue a file access notice to a third party who is believed to hold relevant documents. In such cases, tribunal approval is required. The third-party recipient may appeal but only on the ground that it would be unduly onerous to comply with such a notice.

Under Case A, a notice may only require documents relating to the clients in respect of whom HMRC has reasonable grounds for suspicion of sanctionable conduct. According to HMRC guidance, this requires a factual basis for believing that the adviser's actions or omissions were undertaken with the intention of bringing about a loss of tax (see HMRC's Compliance Handbook CH177060). HMRC does not need to establish that actual sanctionable conduct has occurred at this stage, as the purpose of the file access notice is to help determine that question.

That being said, HMRC cannot make speculative or 'fishing' enquiries. It must be able to identify specific grounds for suspicion. A valid Case A notice must therefore identify the relevant clients, either by name or reference to a defined class or description.

What information HMRC cannot obtain

There are limits on what can be requested under both Cases A and B notices. The main exclusions include:

- documents not in the person's possession or power;
- information relating to a pending tax appeal;
- personal records;

- journalistic material;
- documents more than 20 years old; and
- information that is legally privileged.

These exceptions are familiar and match those found in the information and inspection powers in Finance Act 2008 Sch 36.

However, there is an obvious distinction from the Sch 36 exceptions list. Under the sanctionable conduct regime, HMRC can require access to a tax adviser's working papers, as well as any documents received, created or used in the course of assisting clients with their tax affairs. This represents a wider category of material than is typically accessible under Sch 36, subject only to the specific exclusions listed above.

Penalties for non-compliance

File access notices are statutory, and failure to comply may result in penalties unless the recipient can demonstrate a reasonable excuse and remedies the failure without unreasonable delay.

There will be an initial penalty of £300 for failure to comply. Continued failure after notification of the initial penalty gives rise to daily penalties of up to £60 a day for each day the failure continues. If the failure continues for more than 30 days after daily penalties began, HMRC may apply to the tribunal to increase the daily penalty, up to a maximum of £1,000 per day.

Penalties for inaccuracies

Providing documents that contain inaccuracies may also give rise to penalties. A penalty of up to £3,000 per inaccuracy may apply where the behaviour is deliberate or arises from a failure to take reasonable care. It may also apply if the adviser knows a document is inaccurate but submits it without informing HMRC, or subsequently becomes aware of the inaccuracy and fails to take reasonable steps to notify HMRC.

It is also a criminal offence to conceal, destroy or dispose of a document required under a file access notice, meaning that recipients could be prosecuted or charged penalties.

Conduct notices

A conduct notice may be issued where HMRC determines, on the balance of probabilities, that a tax adviser is engaging, or has engaged, in sanctionable conduct. The notice must set out the grounds for that determination and be approved by an authorised HMRC officer. This gives the adviser a final opportunity to respond before penalties are imposed.

A conduct notice may be withdrawn at any time, in which case HMRC must notify the adviser. Importantly, a conduct notice is also to be treated as withdrawn if HMRC does not issue a penalty notice within the applicable time limit (see below).

Penalties for sanctionable conduct

Receipt of a conduct notice means that a penalty notice will invariably follow.

Where potential lost revenue is attributable to the sanctionable conduct, the penalty is calculated as a percentage of that amount. This starts at 70% of the potential lost revenue, subject to a cap of £1 million for a first penalty. This may be reduced to 20% or 35% where there has been voluntary or prompted disclosure.

Penalties increase significantly for repeat behaviour within a 20-year period. Where a person has received between two and five sanctionable conduct penalties, the rate increases to 85% and the maximum penalty rises to £5 million. Where there are six or more penalties, the rate increases to 100% and the maximum penalty cap is removed.

A minimum penalty of £7,500 applies where potential lost revenue cannot be determined or is nil. Where only the minimum penalty applies, HMRC will not publish the adviser’s details.

HMRC may agree to a special reduction in limited circumstances. Penalties may be appealed to HMRC and ultimately to the tribunal.

Publishing details of sanctionable conduct

HMRC must publish details of advisers who incur penalties for sanctionable conduct exceeding £7,500, subject to a public interest test. The guidance describes this as a

duty to publish, similar to that of the deliberate tax defaulters regime, albeit with a lower threshold reflecting the position of trust held by tax advisers.

Published information may include:

- the adviser’s name, trading names and pseudonyms;
- the business in which the adviser is employed, but only if needed to make their identity clear;
- the postcode of any address used;
- other identifying information; and
- details of the penalty and the reasons for it.

There is no right of appeal against publication. However, the adviser may make representations, for which HMRC should allow a minimum of 30 days. HMRC must consider those representations and then notify the tax adviser of its decision.

HMRC must update or remove published information where circumstances change, for example, if the penalty is withdrawn, the adviser ceases to practise for five years, the adviser dies, or if publication is no longer in the public interest.

Practical implications for tax advisers

HMRC’s enhanced powers mark a significant shift in the regulation of tax advisers. With tougher penalties and the prospect of public naming, the regime places greater emphasis on intent, transparency and ethical conduct.

For advisers and firms, this is a clear prompt to review compliance frameworks, strengthen training and quality assurance, and ensure that advice is carefully documented, clearly communicated and capable of being defended. While the rules are not aimed at those who make genuine mistakes or adopt credible interpretations of the law, advisers must remain alert to the risk of challenge.

Ultimately, the new regime is a wakeup call for the profession. Proactive risk management, clear client communication and high standards of integrity are essential to protect advisers, clients and reputations, as the consequences of sanctionable conduct become more severe.

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