

Why are tax advisers so dumb?

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[Accountancy Age](#) has reported that:

The government has decided to drop the controversial instances of the term 'HMRC thinks' from the finance bill. The wording, which was used in the bill in relation to tax penalties, was strongly criticised by the tax profession for opening up the possibility that HMRC would not have to base a decision on fact.

The Age notes that:

CloT president Rob Ellerby said: 'Where penalties are concerned, the test should always be objective rather than subjective. We believe that in the proposed legislation the words 'HMRC think that' are superfluous. The words come from legislation where the inspector is exercising judgment. In the case of penalties, that is not the position. Either there has been an offence giving rise to a penalty or there has not.'

What a simple word these tax people live in. Plain black and white. No element of doubt, apparently. Which is, of course, complete nonsense. Tax penalties are, first of all, civil penalties. And even if under the Human Rights Act criminal standards of proof are required, meaning that the penalty is appropriate beyond all reasonable doubt the assessment is based upon consideration of the evidence. As the [HMRC manual says](#):

Once all the evidence is in, the Commissioners have to look at the totality of that evidence and see whether the appellant has discharged the primary onus of proof which lies on him. If he has not, the decision must go against him, but if he has then obviously he will win. It is therefore very important to pay attention to the way that the evidential burden shifts as the hearing progresses.

Put simply, it's not a matter of whether there has been an offence giving rise to a penalty, or not. It's whether someone thinks that. And if the evidence does not go to the Commissioners that someone is HMRC.

I do wish accountants and tax advisers would live in the real world and tell things as they really are. Who do they think they are kidding by pretending that a) the world is

simple b) tax is a black and white issue c) they can't handle anything else? The first two are not true and the last is not a good marketing pitch.