

I wish to register a complaint!

Mark McLaughlin looks at what can be done if a taxpayer has a genuine grievance about HMRC's actions and behaviours in a tax enquiry or investigation

For those readers old enough to remember, the title of this article is the opening line of Monty Python's famous 'dead parrot' sketch, in which a pet shop owner sold a customer a dead parrot, and the customer subsequently returned to the shop to complain after finally realising that the parrot he had bought was already dead.

Of course, most stores (the larger ones, anyway) have customer service departments, to which complaints can be made. However, what about HMRC's 'customers'? How can a taxpayer make a complaint (for example) about HMRC's handling of an enquiry into their tax return?

HMRC standards

HMRC's interaction with taxpayers, including during enquiries, is subject to 'Your Charter' (www.gov.uk/government/publications/your-charter/your-charter).

There is a legal requirement for the Charter to "...include standards of behaviour and values to which [HMRC] will aspire when dealing with people in the exercise of their functions" (CRCA 2005, s 16A(2)). The Charter features seven taxpayer 'rights'. The most relevant in the context of an enquiry are probably: 'respect and treat you as honest' and 'be professional and act with integrity'.

HMRC published a consultation document 'HMRC Charter' on 24 February 2020, seeking public feedback on a revised charter "to set out more clearly the experience that we want to deliver to our customers." The draft revised Charter features seven aspirations for HMRC's 'customer' service. One of these is 'Treating you fairly', which includes the following statement: "We trust you are telling the truth, unless we have good reason to think you're not." The consultation period closes at 11.45pm on 15 May 2020, and the revised Charter is due to commence in summer 2020.

Making a complaint

A further taxpayer right in the current Charter is 'Deal with complaints quickly and fairly'. Traditionally, complaints were often made to the HMRC complaints manager of the office or area which dealt with the enquiry in the first instance, followed by the head of that HMRC office or area.

These days, a recognised and structured complaints process is in place. The gov.uk website contains guidance on complaining about HMRC's service, including telephone numbers and postal addresses for complaints, and online forms for those with a government gateway user ID (www.gov.uk/complain-about-hmrc).

A different procedure applies in the (unlikely) event of serious misconduct by HMRC staff (tinyurl.com/HMRC-Complain-SM).

Independent review

The Adjudicator's Office (www.adjudicatorsoffice.gov.uk/) is an independent body that investigates complaints about HMRC maladministration. It has the power to recommend restitution in the form of apologies and (modest) financial payments. There is specific guidance on the Gov.uk website on how to complain to the adjudicator's office about HMRC ([tinyurl.com/HMRC-Complain-AO](https://www.gov.uk/guidance/how-to-complain-to-the-adjudicator)).

However, it should be noted that the Adjudicator's Office will only investigate complaints after an enquiry or investigation has ended; and it will not look at decisions made as part of the alternative dispute resolution process.

An alternative to the Adjudicator's Office is the Parliamentary and Health Service Ombudsman (PHSO) (<https://ombudsman.org.uk>). Access is via the taxpayer's Member of Parliament. It should be noted that a case referred to the PHSO cannot later be referred back to the Adjudicator (although the reverse is possible).

The PHSO's guidance on its website points out that there are statutory time limits for making your complaint to the Ombudsman; for complaints about a UK government department or another UK public organisation, a complaint should be made to an MP within a year. As indicated, the MP then needs to pass the taxpayer's complaint to the PHSO. The guidance states: "Normally, if we receive a complaint outside these time limits, we cannot investigate it. However, the law does give some flexibility on this. In some circumstances, we may still be able to investigate even if you complain outside of these time limits."

Having your day in court

It may sometimes be appropriate for HMRC's unfair actions to be drawn to the attention of the tax tribunals or the courts. An appeal to the First-tier Tribunal can be a relatively straightforward and inexpensive option in certain circumstances, such as in cases involving administrative or procedural errors, including in appeals and appeal hearings.

For example, in *Revenue and Customs v Ritchie* [2019] UKUT 71 (TCC), the Upper Tribunal (UT) considered whether evidence advanced by HMRC shortly before the end of an earlier First-tier Tribunal hearing gave the taxpayers adequate notice that HMRC intended to argue that their accountant's carelessness (rather than the taxpayers') resulted in a loss of tax for discovery assessment purposes. The UT held that HMRC had not raised this point (i.e. the taxpayers' representative understood HMRC's case was that the taxpayers themselves were careless); it was not fair for the point to be taken into consideration.

In some cases, a tribunal will not have the jurisdiction to consider an appeal. For example, in *White & Anor v Revenue and Customs* [2019] UKFTT 659 (TC), the First-tier Tribunal concluded that it did not have jurisdiction to consider the application of extra-statutory concession D49 following HMRC's refusal to apply it and allow the appellants' period of absence to be treated as a period of occupation for private residence relief purposes. An application to the High Court for judicial review is normally the solution in such circumstances. However, the process is generally expensive and the outcome is unpredictable.

HMRC's approach

Some insight into how complaints are dealt with can be found in the HMRC manuals, particularly the Complaint Handling Guidance manual and the Complaints and Remedy Guidance manual.

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