

New Charter, same problems?

Mark McLaughlin looks at the recently amended HMRC Charter and asks whether it is any more useful for taxpayers than the previous version

HMRC is required by law to prepare a Charter. This requirement came about in Finance Act 2009, which introduced section 16A of the Commissioners of Revenue and Customs Act ('CRCA') 2005. HMRC must regularly review the charter, and publish revisions (or revised versions) of it when they consider it appropriate to do so.

The latest version of HMRC's Charter was published on 5 November 2020. The HMRC Charter is accessible to all via the Gov.uk website ([tinyurl.com/HMRC-Charter-Nov20](https://www.gov.uk/guidance/hmrc-charter)).

However, HMRC's Charter is perhaps not as widely used as it might be, such as during an HMRC tax return enquiry. This article highlights some significant differences from the previous version, and the possible application of HMRC's Charter in enquiry work.

Out with the old...

The previous version of the Charter comprised seven taxpayer 'rights':

- Respect you and treat you as honest;
- Provide a helpful, efficient and effective service;
- Be professional and act with integrity;
- Protect your information and respect your privacy;
- Accept that someone else can represent you;
- Deal with complaints quickly and fairly;
- Tackle those who bend or break the rules.

...in with the new

The latest version of the Charter sets out the following standards to which HMRC aspire in respect of its services:

- Getting things right;
- Making things easy;
- Being responsive;
- Treating you fairly;
- Being aware of your personal situation;
- Recognising that someone can represent you;
- Keeping your data secure.

In addition, HMRC states (under the general heading 'Mutual respect'): "We'll always treat you in line with our values of respect, professionalism and integrity."

The Charter is accompanied by two further documents on the Gov.uk website. The first ('HMRC's principles of support for customers who need extra help') supports the Charter commitment to be aware of the personal situation of its 'customers'.

The second document ('HMRC Charter performance indicators') measures HMRC's performance against each Charter standard, based on data from surveys and performance statistics. The Commissioners for Revenue and Customs is required, at least once a year, to publish a report reviewing the extent to which HMRC have demonstrated the standards of behaviour and values required in the Charter (CRCA 2005, s 16A(4)).

For better, for worse

Is the current HMRC Charter any better for taxpayers than the previous version? Arguably not. For example, the 'old' Charter standard to 'Respect you and treat you as honest' has been removed. This included the undertaking: "We'll presume that you're telling us the truth, unless we have good reason to think otherwise." The 'new' Charter includes the standard 'Treating you fairly', which states: "We'll assume you're telling the truth, unless we've good reason to think you're not."

HMRC has therefore changed 'presume' for 'assume'. While those words are often used interchangeably in everyday parlance, they do not have the same meaning. 'Assume' supposes that something is true, without knowing or having any proof; 'Presume' means to believe or hold something as valid based on likelihood; in other words, the 'new' Charter standard does not appear to be as high.

The previous Charter standard to 'be professional and act with integrity' offered taxpayers some comfort about the behaviour of HMRC officers, such as during HMRC enquiries. This statement has disappeared, although both versions of the Charter state HMRC will ensure that taxpayers are dealt with by people with 'the right level of expertise'.

HMRC's new Charter states: "We'll always treat you in line with our values of respect, professionalism and integrity." However, HMRC also expects high standards from professional agents, and points out that HMRC can refuse to work with professional agents who fail to adhere to expected standards.

HMRC enquiries

As indicated, the HMRC Charter has a part to play in the conduct of tax return enquiries. This is acknowledged in HMRC's Enquiry manual, which states (at EM0020 'Introduction: 'Your Charter'): "You must always make customers aware of their rights and obligations at the appropriate stage of your enquiry."

A professional adviser's client will sometimes argue that HMRC is victimising them or treating them unfairly compared with other taxpayers who are not subject to an enquiry. Such accusations are often without foundation, as the taxpayer may feel indignant that they have been selected for an enquiry or frustrated by the disruption an enquiry can cause.

However, on some occasions the taxpayer's concerns may be justified. In such cases, the HMRC officer may need reminding of the Charter and also guidance in its Enquiry manual (at EM1601), which states: "Just because there is an enquiry, the taxpayer must not be treated in any way differently from other taxpayers, even if omissions have been discovered or admitted. HMRC's publication called 'Your Charter' explains taxpayers' general rights and obligations."

In addition, HMRC cautions its officers: “[Do] not presume or appear to presume that the taxpayer has committed an offence before you have evidence. Once you have discovered omissions or they have been admitted you must not adopt a moral or censorious tone, just deal with the facts”; and “[Do] not make premature and peremptory demands for information or documents, or meetings, nor should you make routine reference to statutory powers until it becomes necessary to do so.”

Both the ‘old’ and ‘new’ versions of the Charter include undertakings to keep taxpayer costs to a minimum. It may be helpful to remind the HMRC officer of this commitment during an enquiry, particularly if it appears that the enquiry has become unduly protracted, and/or if the HMRC officer has adopted an unreasonable position or is not dealing with the enquiry quickly or efficiently enough.

Practical issues

While it appears that the standards in the current HMRC Charter have been diluted compared with the previous version, HMRC is still accountable for its performance against the Charter. Nevertheless, many taxpayers and advisers would probably feel more confident and assured about HMRC standards if the Charter were drafted and monitored by an independent body.

It is perhaps understandable that HMRC officers may fail to appreciate or forget that tax return enquiries can be a stressful, time consuming experience for the taxpayer (and possibly their professional adviser), and potentially costly as well (e.g. additional professional fees).

Dealing with questions from HMRC officers during a tax return enquiry feels intimidating for many taxpayers. Fortunately, the vast majority of HMRC officers handle tax return enquiries in a professional and courteous manner. However, a small minority arguably do not (although the same could probably be said of some professional advisers).

Of course, there is a complaints procedure for taxpayers and advisers who consider that they have a genuine grievance about HMRC’s handling of their case (see www.gov.uk/complain-about-hmrc). However, it would clearly be preferable to manage the conduct of an enquiry before it reaches the complaints stage, and reference to the HMRC Charter may be of assistance in managing the enquiry process.

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