



## HMRC CHARTER

Issued 31 July 2020

ICAEW welcomes the opportunity to comment on the HMRC Charter published by HMRC on 24 February 2020, a copy of which is available from this [link](#).

This representation addresses the proposed changes to the HMRC Charter including whether the draft wording sets the right standards for HMRC customer service and whether it covers the areas that are most important to taxpayers. It also addresses how HMRC should monitor its performance against the Charter. ICAEW's view is that the accessible format of the draft should be retained but should be backed up with more detail on how the aspirations translate into actions with specific measurement criteria against each action. We also call for HMRC to be held more accountable for its performance against the Charter, perhaps through independent review by a body such as the National Audit Office.

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## KEY POINTS

1. The draft Charter is written in language that will be easier for taxpayers to understand. However, as a result, we consider that the standards have been diluted and the revised wording lacks clarity and precision. We suggest retaining the accessible wording but to back it up with more detailed explanation on how the aspirations translate into actions with specific measurement criteria against each action.
2. We do not consider that the draft Charter sets the right standards for HMRC's service to customers as the revised wording dilutes the standards expected of HMRC in a number of respects.
3. We consider that HMRC should be held more accountable for its performance against the Charter. Although the Customer Experience Committee that assists the Commissioners to fulfil the statutory responsibility to review performance against the Charter does have independent members it is not independent, and responsibility ultimately lies with the Commissioners. An independent review by, for example, the National Audit Office would provide useful insight and highlight problem areas.
4. We highlight a number of areas where HMRC could do more to educate and inform taxpayers about their responsibilities and about statutory changes that affect them, including the needed for progress on HMRC's guidance project.

## ANSWERS TO SPECIFIC QUESTIONS

### *Do you think the draft charter sets the right standards for HMRC's service to customers?*

5. The draft Charter is written in language that will be easier for taxpayers to understand. This will be welcomed by many taxpayers, particularly the unrepresented.
6. However, as a result, we consider that the standards have been diluted and the revised wording lacks clarity and precision. The draft wording reads more like a mission statement than a Charter. A solution might be to retain the accessible wording but to back it up with more detailed explanation on how the aspirations translate into actions with specific measurement criteria against each action.
7. We do not consider that the draft Charter sets the right standards for HMRC's service to customers. The revised wording dilutes the standards expected of HMRC in a number of respects, detailed below. In the light of Sir Amyas Morse's report into the loan charge and the House of Lord's committee report 'Treating Taxpayers Fairly' we would have expected that the revised Charter would set 'higher expectations of performance' but this is not reflected in the draft.
8. We suggest that HMRC draws on the significant amount of work that has been done on model International Taxpayers Charters <http://www.taxpayercharter.com/index.asp>. In particular, Article 4 of the model Charter sets out ten fundamental rights of taxpayers but also ten responsibilities – we believe that sets a good precedent in terms of balancing rights and responsibilities and they address many of the concerns mentioned above.
9. We believe that the Charter should be drafted and overseen by someone who is external to HMRC. This would create a level of objectivity and independence which would improve its standing as an important part of taxpayers' rights. Although the Customer Experience Committee that assists the Commissioners to fulfil the statutory responsibility to review performance against the Charter does have independent members, it is not independent and responsibility ultimately lies with the Commissioners.

### **Omissions, etc. from the draft Charter**

10. Section 1.1 of the current Charter says that HMRC 'will treat you even-handedly'. This wording has been omitted from the draft Charter. It has perhaps been replaced by the

reference to values of ‘respect, professionalism and integrity’ which, while worthy aspirations in themselves, are much less explicit.

11. Section 1.1 of the current Charter says: ‘we’ll presume that you’re telling the truth unless we have good reason to think otherwise.’ The draft Charter includes similar wording ‘we trust you are telling the truth, unless we have a good reason to think you’re not’. Although the proposed wording is similar to the current Charter, it reflects a significant watering down of HMRC’s acceptance that the taxpayer is telling the truth. The use of “presume” is important and reflects the presumption of innocence doctrine that underpins the fundamental right to a fair trial. The default position of a presumption of truth (in the absence of good reason to think otherwise) is more forceful and definitive as to what should be HMRC’s default position than the new wording which is more questioning. In this context, in responses from members a number have highlighted concerns about whether HMRC is always adopting the default position as set out in the current Charter. We believe that the existing Charter wording needs to be retained and that HMRC reaffirms to all relevant staff that the default position of a presumption that taxpayers are telling the truth must be applied at all times.
12. Section 1.2. of the current Charter states that ‘We’ll deal with the information you give us quickly, efficiently and will keep any costs to you at a minimum’. This has been removed from the draft Charter. Concerns over costs prevents many taxpayers from pursuing what they consider to be legitimate arguments with HMRC. Taxpayers find dealing with tax and HMRC stressful and difficult so HMRC working efficiently and quickly is essential to minimise uncertainty etc. Also, HMRC is given finite resources by HM Treasury so it should be efficient to make maximum use of those funds and give value for money. Working efficiently naturally keeps the costs down for both parties. We think this should be reinstated.
13. Section 1.3 of the current Charter says that HMRC will ‘make sure you are dealt with by people with the right level of expertise’. This has been removed from the draft Charter and should be reinstated. The draft Charter needs to be much clearer about the professional standards and knowledge to be expected of HMRC staff, in the same way that, for example, the Professional Conduct in Relation to Taxation is explicit about the standards expected of professional tax agents.
14. Section 1.3 of the current Charter says that HMRC ‘will be sensitive to any financial difficulties you might have’. This has been watered down with the wording for the draft Charter saying ‘we will be mindful of your wider personal situation’. Given that the revision is intended to be informed by the Sir Amyas Morse report into the loan charge, this dilution seems particularly surprising and needs reconsideration. We suggest that it be made explicit that ‘wider personal situation’ includes financial difficulties and health issues.
15. We suggest that the Charter should be explicit about when it is appropriate for HMRC to use third parties to fulfil functions normally carried out by HMRC staff and the extent to which taxpayers should be notified in advance of any third party involvement. Examples of the use of third parties are debt collection agencies and the now terminated contract with Concentrix to prevent or detect error and fraud in tax credits.
16. Section 1.4 of the current Charter says that HMRC will ‘explain why we need any additional information’. This has been removed from the draft Charter. We believe that this is an important safeguard and it should be reinstated.
17. Section 1.5 of the current Charter, which states that ‘HMRC accepts that someone else can represent the taxpayer, has been removed and been replaced by a much weaker statement that HMRC will ‘work with anyone you’ve asked to act for you’. We believe that the Charter should explicitly recognise that taxpayers may appoint an agent and if they do HMRC will in normal circumstances deal with the agent. Indeed, we would go further and suggest that where a taxpayer appoints an agent then the agent will be given full access to services such that they will be able to see and do all that the taxpayer could do. .
18. Section 1.6 of the current Charter on dealing with complaints quickly and fairly has been removed from the draft Charter. The draft Charter says only that HMRC will explain how to make a complaint. The Charter should include appropriate detail on the handling of complaints reflecting the recommendations in the reports of the Adjudicator. It would also be

a useful opportunity to explain the difference between appeals and complaints as this is commonly misunderstood by taxpayers.

19. The draft Charter uses the phrase “right amount of tax”. This phrase can be interpreted in different ways e.g. maximum amount or the amount HMRC considers correct. Perhaps it could be replaced with “correct amount of tax in accordance with UK law”.
20. The draft Charter states that “we will take firm action against the small minority who bend or break the law by not paying their tax”. However, this statement is vague and may not be understood by many taxpayers. Making it clearer would help taxpayers realise the actions that HMRC can take and may deter under-declarations of tax. We suggest inserting the paragraph from the current Charter which states “We’ll identify those who are not paying what they owe or are claiming more than they should and recover the money. We’ll charge interest and penalties where appropriate and be reasonable in how we use our powers”.
21. The following statement in the current Charter helps taxpayers understand what they should do: “Please work with us to make sure that your tax and payment affairs are right and that you’re paying and claiming the correct amount of money. Talk to us if there is anything you’re not sure about.” We suggest that this be reinstated.

***To what extent do you feel the draft charter sets out the areas which are most important to customers when interacting with HMRC?***

22. Taxpayers are often unclear about their responsibilities. We suggest that as part of updating the Charter HMRC should consider how it can improve taxpayer understanding of their responsibilities. This is particularly the case for income tax payers who do not file self assessment tax returns, many of whom do not understand the need to check and keep HMRC updated on changes that affect their tax codes and year-end PAYE tax calculations. Increasing pre-population (eg, bank interest and in due course perhaps dividend income) will add to this lack of clarity about where responsibility lies as between HMRC, taxpayers and third-party providers of data. The update to the Charter would be a good opportunity to address this issue.
23. HMRC could do more to educate and inform taxpayers. For example, HMRC needs to do more to warn taxpayers about disguised remuneration and other schemes which are still being promoted, even after the loan charge and schemes are being targeted at NHS workers returning to assist with COVID-19 work. This also needs to extend to briefing other public sector departments.
24. Whilst there is a heading ‘treating you fairly’ the draft Charter does not currently undertake to treat taxpayers in similar positions in a consistent way. This should be inserted into the Charter, together with an undertaking to follow HMRC’s Code of Governance for Resolving Tax Disputes.
25. The Charter might include something around learning from mistakes. HMRC expects taxpayers not to repeat mistakes and taxpayers expect the same from HMRC. For example, some cases went to tribunal in the last year or so that really shouldn’t have (e.g. a homeless person with penalties for not filing returns). An undertaking that HMRC will reflect on cases lost at tribunal might be included. For example, e.g. a case that went through statutory review before the tribunal. If the reviewer reached the opposite conclusion to the tribunal this should be fed back to the case worker and reviewer and there be lessons learnt (and more widely if appropriate).
26. The current Charter includes a sentence saying “We’ll help you understand what you have to do and when you have to do it” which has no equivalent in the draft Charter. Taxpayers are generally compliant but they can only comply with obligations that they know exist. Not all taxpayers can afford professional advice. If a person doesn’t know of an obligation then (a) they’re less likely to realise they need to search gov.uk for information, (b) they’re less likely to use terminology in the search function on gov.uk that will generate a useful result and (c) some people are digitally excluded and cannot access information on gov.uk. We think HMRC could do much more to inform taxpayers clearly about changes that might affect them, eg High Income Child Benefit Charge and Non-residents CGT. A more recent example

is the new requirement for UK residents to report capital gains on UK residential property within 30 days which needs an extensive taxpayer communication campaign. We would be happy to work more closely with HMRC on such campaigns.

27. There have been a number of instances of HMRC changing its view on legislation and then litigating open years by reference to its changed view of the law; this undermines both certainty and trust between taxpayers and the tax authorities. HMRC's resiling from guidance undermines taxpayer's trust in the system. A recent example of this practice was the decision on 12 May 2020 in an Upper Tribunal pensions case (HMRC v Sippchoice Ltd [2020] UKUT 0149 (TCC)). HMRC is of course entitled to change its view but not so that where years are open it can act against taxpayers who filed returns etc in accordance with the guidance. The change should apply only from the actual date of the change of view. We suggest that this would be a positive taxpayer protection to include in the Charter. One suggestion is to adopt the 'Sheldon' statement that used to apply to VAT. This stated 'If a Customs & Excise officer, with the full facts before him, has given a clear and unequivocal ruling in writing or, knowing the full facts, has misled a trader to his detriment, any assessment of VAT due will be based on the correct ruling from the date the error was brought to the registered person's attention'.
28. Another issue raised by members is the standard of guidance and whether a taxpayer can rely on it. In 2018, the Office of Tax Simplification published a report **Guidance for Taxpayers: a vision for the future**. HMRC was subsequently tasked with appointing a "Director of Guidance" and an advisory panel but we are not aware of any progress on these actions. Unless guidance is up to date and reliable, taxpayers will always struggle with their obligations. ICAEW members report numerous instances of incorrect advice being received from HMRC contact centres and difficulty in being able to speak to an adviser with the necessary technical expertise.
29. HMRC's customer service standards should be enshrined in the Charter or referenced in a supplementary document which is updated on a regular basis. The current service standards are based on the funding available from government, but we think that they should be set higher and that most taxpayers would agree that they need to be improved.
30. Universal credit is handled by the Department of Work and Pensions but taxpayers often end up caught in the middle between HMRC and DWP when there is an issue affecting their universal credit. We suggest coordination with DWP on the Charter. This will be particularly critical when tax credits claimants are migrated to universal credit.

***How you would like to see HMRC measure and monitor how it is performing against the charter, including how it can best listen to feedback and take action on areas for improvement?***

31. We consider that HMRC should be held more accountable for its performance against the Charter. Although the Customer Experience Committee that assists the Commissioners to fulfil the statutory responsibility to review performance against the Charter does have independent members it is not independent, and responsibility ultimately lies with the Commissioners. An independent review by, for example, the National Audit Office would provide useful insight and highlight problem areas. It is difficult to see how, in the absence of such an independent review, the Charter can offer much more than a set of aspirational objectives. In our view, that is not sufficient to meet the definition of a Charter.
32. In many instances HMRC is being held back from making improvements to customer service by lack of funding to support the design of digital systems that will improve the customer experience. Much of the grit in the system is because of old systems which HMRC has not yet been able to replace. For example, HMRC has invested in developing the Personal Tax Account which has been successful, but the design is constrained by the underlying systems on which it relies. By way of contrast, MTD for VAT was developed alongside moving all VAT records to ETMP; this made the implementation more difficult but will reap benefits in the longer term. We suggest that HMRC publishes a clear road map for improving its systems and processes and that it be held accountable against that plan.

33. We suggest that HMRC undertakes a concerted data cleansing campaign and introduces measures to improve and maintain data quality. Monitoring data quality could have a significant knock-on benefit on customer service.
34. One way to measure the health of the tax system would be for HMRC to publish more information about the penalties that it has charged. For example, other than a press release about the number of taxpayers missing the self assessment deadline, no information is published about when those returns are eventually filed or withdrawn and the late filing and late payment penalties charged and/or successfully appealed on the grounds of reasonable excuse.
35. HMRC might also publish statistics on the average length of enquiries and an aged analysis of open enquiries.
36. A further example might be statistics on the number and total value of inaccuracy and failure to notify penalties, analysed by behaviour (careless, deliberate and deliberate and concealed). Information on the number of carelessness penalties suspended and whether the suspension conditions were met would also be useful.
37. If the Tax Disputes Resolution Board rejects a taxpayer's position (see the annual report statistics), presumably the case goes to the courts – HMRC should publish statistics on whether they get extra yield from this ie, is the whole governance process resulting in more yield for HMRC?
38. HMRC might also publish annual statistics on Managing Serious Defaulters (including the number of people penalised whilst in the programme and within five years of leaving) so that its efficacy could be assessed.

## APPENDIX 1

When gathering evidence for this representation, some ICAEW members raised issues which relate to HMRC's performance against the Charter rather than the questions in the consultation. This appendix includes these comments.

### **Integrity of the data in HMRC's records**

Concerns were raised about the integrity of data held in some HMRC systems, sometimes resulting in calculations which are inaccurate because they are based on incorrect information.

Examples include:

1. Mismatches between information held in the NPS (National insurance and PAYE service) and self assessment systems on self-employment status. This has resulted in Class 2 national insurance contributions not being collected and will lead to gaps in national insurance records affecting benefits entitlements in years to come. HMRC has indicated to the professional bodies that it is not in a position to improve the system at this time.
2. A number of unrepresented taxpayers have been unable to claim self-employment income support grants because they reported their income in the wrong section of their self assessment tax return (CIS income reported as employment income, self-employment income reported as other income). These errors should have been picked up by HMRC systems and processes; there has been a loss to the exchequer because Class 2 and Class 4 national insurance contributions have not been paid.

These two data issues have significant implications for the introduction of MTD for income tax as HMRC will need to be able to accurately identify those who are within scope.

3. Tax codes and PAYE tax calculations. We understand that tax codes are a major source of calls to HMRC helplines. There are many arcane rules in the system which are not transparent to taxpayers and HMRC makes many assumptions in arriving at tax codes (such as rolling forward employment expenses, other income, gift aid and pension contributions and uprating estimated income from pensions). We suggest a fundamental review of the system of tax codes as a way of telling employers how much PAYE to deduct, with a view to developing a system that is more transparent to taxpayers.
4. Seven years after the introduction of RTI many employers are still unable to reconcile their PAYE account and we still hear of cases where debt management is pursuing sums that are not due.

### **Taxpayer right to be represented**

It has become more difficult for taxpayers to appoint an agent for certain services and agents do not have access to all the information and services available to taxpayers. Examples of where it has become more difficult to appoint an agent include the CGT 30-day residential UK property reporting service and the trust registration service. It remains the case that taxpayers cannot appoint more than one agent for the same head of duty; it is not unusual for a taxpayer to have more than one agent during a transition period or when specialist advice is needed in addition to routine tax return services. Examples of where agents do not have access to the services they need to act for their clients include access to information and services in personal tax accounts and access to payments and liabilities for Employer PAYE and for VAT for taxpayers not in Making Tax Digital (MTD).

### **One to many letters**

Another area reported by members where HMRC is not getting things right is in relation to 'one to many letters' being sent to taxpayers. There are many examples of HMRC writing to taxpayers where the letters are based on information that has not been checked first. Examples include:

- Letters sent to taxpayers who have not signed up to MTD for VAT. These letters were received by a number of taxpayers who had an agreement in place with HMRC that they are digitally excluded and do not need to comply with the requirements. Some of

these letters were sent to taxpayers who do not meet the turnover requirement for needing to comply with MTD for VAT.

- HMRC automatically renewed many more tax credit awards in 2020 but omitted key information from many of the letters that were sent. The automatic renewal of awards was inappropriate in many cases (eg, the self-employed) where the taxpayer did in fact need to provide information to HMRC by 31 July.
- The letters sent to taxpayers following the receipt of information about foreign income through common reporting standard reports were not checked before being sent. In many cases a check of the taxpayer's record and returns would have revealed that the income had been reported or did not need to be declared. Given the lack of any check (except for those whose tax affairs are managed by the Wealthy Unit) it was particularly inappropriate to include a disclosure certificate which is not mandatory even if there is income to disclose.