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## The Taxpayers' Charter – a toothless tiger? Jonathan Fisher QC, 23 Essex Street

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In recent years, Parliament has conferred on the Revenue some extraordinarily wide investigation powers. FA 2009 Sch 38 dramatically increases the investigatory tools at the Revenue's disposal and traditional safeguards have faded away into the distant sunset. No longer does the Revenue need a judicial search warrant before entering a taxpayer's home. In the brave new world, a citizen is required to give the Revenue the keys to his front door where, for example, he is a

home worker not using his home solely as a dwelling.

If a taxpayer were to allow his concerns about over-zealous use of power to be assuaged by the recent publication of the Taxpayers' Charter, he would be making a great mistake.

To begin with, the statutory obligation resting on the Revenue to prepare a Taxpayers' Charter is weasel worded. Parliament requires the Charter to include 'standards of behaviour and values to which HMRC will aspire when dealing with people in the exercise of their functions' (FA 2009 s 92(2)). But lofty ambition is no more than an expression of hope, and as Samuel

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Johnson remarked, it is the road to hell which is paved with good intentions. The Revenue is required to make an annual report reviewing the extent to which it has demonstrated the standards of behaviour and values included in the Charter. What happens if the Revenue fails to meet its expectations? Nothing more serious than a rap over the knuckles from the Treasury Select Committee is the inevitable outcome. The professional bodies worked hard to attain a Taxpayers' Charter and it is a matter of enormous regret that Parliament did not address the Charter's legal standing. Are Revenue officers legally obliged to take account of the Charter's terms when performing their duties? Will a breach of the Charter trigger disciplinary proceedings against a Revenue officer or the prospect of an action for damages? If the Revenue breaches the Charter, can and/or should the Court take the breach into account when determining the incidence of liability between a taxpayer and the Revenue? The answers to these questions have been delegated to the judges to determine. To date, the omens are good. The status of the Taxpayers' Charter has been considered obliquely by the Tax Tribunal in two cases (*Williams v HMRC* [2010] UKFTT 86(TC); *Fleming v HMRC* TC00405). In both instances, the potential impact of the Charter was kicked into the long grass.

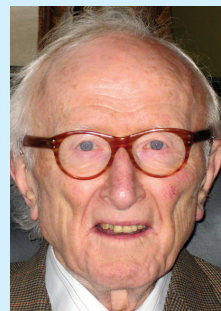
Unless the Courts follow the approach of the Irish Supreme Court and hold that the Taxpayers' Charter has legal effect and must – as a matter of law – influence the manner in which the Revenue acts (*Keogh v Criminal Assets Bureau* [2004] IESC 32), the UK's Taxpayers' Charter will become a toothless tiger in the fullness of time.

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## Do Taxmen's powers encourage harassment and oppression?

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Consider this example. A Company delivered its tax return and accounts for the accounting period ended on 31 March 2005. HMRC Special Investigations responded quickly with a Notice under FA 1998 Sch 18 para 84. The Company's accountants, providing detailed information, insisted that the 2005 return and accounts correctly continued previously established practice, computing profits under Case 1, Schedule D. Nearly a year later HMRC withdrew the Notice, describing it as a 'mistake'. But HMRC substituted a new para 84 notice, seeking information which *might* show whether, under para 84(2), the Company's profits might be computed on an alternative basis. The correctness of the Company's 2005 return was no longer challenged. But Special Investigations at the same time issued a Notice under TMA 1970 s 20(8A) as amended, requiring disclosure of documents from which it might be able to judge whether other taxpayers had been responsible for losses of tax revenue. The

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Company has spent much time on its objection to the Notice. The objection available under s 20(8B) is that compliance would be unduly onerous. The Company has explained that compliance would be a serious burden on its resources and limited staff. The Inspector issuing the s 20(8A) Notice did so on the ground that what was required should be 'readily available'. On review the first reviewing inspector said his attention had not been drawn to circumstances which made compliance more difficult for this Company than for others in the same business. The Company, having no knowledge of any business but its own, asked for a second review before formally appealing.

For more than three years the Company has been faced with successive notices on different bases, long delay, and the need to spend time and money in opposing what, as it has explained to HMRC, is both legally mistaken and unfair. Harassment and oppression? Obviously Yes.

The recent Coalition Government programme tells us (section 29) that 'we will make every effort to tackle tax avoidance ...'. Tax rules and powers conferred on Taxmen were, and they should be, enforceable only if free from uncertainty, equivocation and ambiguity. The clear difference once made between avoidance and evasion needs to be restored. Matters of national debt and deficit need immediate attention; but we should also insist that over-wide powers conferred on HMRC lead, inevitably, to that form of abuse which denies certainty and fairness to taxpayers and makes confident advice to taxpayers unreasonably difficult.