

HMRC, whistleblowing, and the need for accountability

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[This article of mine has been published on the Guardian's Comment is Free site this afternoon:](#)

The news that HM Revenue & Customs used privileges granted to it under the Regulation of Investigatory Powers Act of 2000 (Ripa) to [investigate Osita Mba](#), the lawyer and whistleblower who drew attention to the Goldman Sachs tax settlement (among other cases) is deeply worrying for a number of reasons.

First, as I have learned during the time I have known Mba, he is a deeply ethical man. He may have broken ranks precisely because he felt the law was not being complied with, but I am sure he was wise enough to have known that the case would have fallen apart if he broke the law in the process. Yet HMRC seemingly failed to appreciate that. Was the possibility that Mba might have acted entirely ethically and within constraints he knew existed beyond HMRC's comprehension? We should all worry about ethics being degraded within the HMRC.

Second, the allegation against Mba was that he had leaked to a newspaper ([the Guardian](#)) a document that it was known had already been supplied by him to the public accounts committee (PAC). Did the possibility that the many people involved in the PAC might have passed the document on to the press not occur to HMRC? . . . Taxpayer confidentiality is not the issue here. It is the management of HMRC that is under scrutiny, and rightly so. The evidence that Mba supplied to the PAC showed that HMRC senior management had gone off piste (to put it politely) in settling tax cases. The information they didn't want made public was about their [own conduct](#) and the PAC rightly highlighted this.

Third, there's the matter of the use of the Ripa. HMRC's [internal guidance on its website](#) on the use of Ripa is withheld from the public because the issue is considered so sensitive. What we do know from [other guidance](#) is that it "applies to a wide-range of investigations in which private information might be obtained. Cases in which it applies include: terrorism, crime, public safety [and] emergency services." That guidance also says that "when public authorities, such as the police or government departments,

need to use covert techniques to obtain private information about someone, they do it in a way that is necessary, proportionate, and compatible with human rights." I think it very unlikely that such guidelines were followed in this case. The crime being investigated was not serious: that Mba had leaked information was known, and acknowledged. The data was in the public domain and the impact was of consequence only for HMRC senior management. In that case, in my opinion, the use of Ripa was not necessary, was not proportionate and was not compatible with human rights.

Fourth, this pursuit of Mba suggests that HMRC's senior management think the authority is their own personal fiefdom, and that they can use its powers to defend their position. HMRC is a public service, and yet it is one that appears to increasingly be run by and for the benefit of big business, one whose management logic of privacy, counter attack, and the use of law to oppress criticism now appears to prevail. Could this culture of pursuing an individual who wished to uphold tax law have been fostered by the fact that the non-executive board is drawn exclusively from senior business people, many from the big four firms of accountants? Would it have happened if a culture of facilitating and cooperating with [big business](#) had not been introduced by the former permanent secretary for tax, Dave Hartnett, in 2006?

Someone claiming to be a senior tax inspector wrote (anonymously) [on my blog](#) recently: "I have said previously that the HMRC Large Business Service's philosophy is one of "customer facilitation" in other words "help" them to get their tax right rather than challenging them robustly by carrying out in depth transaction analysis (as used to happen). The relationship has become too cosy — evidenced by the preponderance of ex-private sector individuals on the HMRC board — we no longer have an impartial service."

I wonder if Ripa is now being used to trace him or her?

I am appalled by what has happened to Mba. But we have to remember he acted for a reason, which was to show what is going wrong in HMRC.

The version I submitted concluded with this (which made it too long):

Corporate interests appear to be capturing its management and their philosophy. As a result it appears far too likely that HMRC is now facilitating the tax arrangements it is actually meant to regulate and assess. Worse, the culture of corporate secrecy, using every instrument of the law whether appropriately or not, to suppress information flows and accountability now appears to prevail in an authority where transparency must be paramount if a corresponding and necessary openness from taxpayers is to be encouraged to beta tax avoidance and tax evasion.

There is something rotten in the state of HMRC. The inappropriate use of RIPA in this case requires investigation, and action if necessary. But more importantly the management and culture of HMRC needs radical reform if we are to have the tax

authority we need in this country. We're a long way from having that right now.