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Citizens as Customers – Charters and the Contractualisation of Quality in Public Services

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Abstract:

Citizen's charters, pioneered in the UK as an extension of the New Public Management reforms initiated by the Thatcher Government, have been adopted in many countries around the world. They are seen as powerful tools for improving standards of public service, as instruments for achieving greater accountability and transparency in service delivery and (in some countries) as a means of reinforcing democratic principles by 'empowering' the citizen. Charters can take many different forms, but most of them display at least some of the characteristics of 'soft' contracts, breaches of which may give rise to financial or other penalties, but seldom have legal consequences.

The paper explores the rationale of charters, with particular reference to the case of the UK, where the original charter idea has now become subsumed, to a point of near-invisibility, in the broader Blairite agenda of modernising public services. It also looks at the relevance of 'citizenship' to the development of charters. In particular, it examines the validity of depicting the user of public services as a 'customer' (particularly in the context of monopolistic services where true choice is absent), and the danger that, by emphasising people's 'rights' to high standards of service we may lose sight of the reciprocal 'obligations' that are a hallmark both of true citizenship and of authentic 'contracts'. It notes also the tensions that can arise from the exposure of junior front-line staff to the angry dissatisfaction of 'empowered' 'customers'. The paper ends by considering the contractual status of charters.

This paper discusses the actual and potential role of citizen's charters in lubricating the interface between citizen and state. The discussion focuses largely, but not exclusively on the UK experience. The kinds of charter considered here take many different forms, and bear a variety of different names ('customers' charters', 'performance pledges', etc), in different countries and in different public service sectors. But in their most commonly-found form they appear at first sight to exhibit least some of the characteristics of 'soft' contracts, based on negotiation, interpersonal bonding and mutual trust, breaches of which may give rise to interpersonal damage, and sometimes to financial or other penalties, but seldom have legal consequences. However, as will be argued in the concluding section, their claims to contractual – even soft contractual status – is debatable, and in some respects they display some hybridity between 'hard' and 'soft' forms.

The spread of Charters – an international phenomenon

In recent years – for a mixture of economic and political reasons – there has developed a growing international consensus that public bodies need to become more responsive to the users of public services (OECD, 1987). Many countries have launched charter initiatives to encourage those responsible for the delivery of such services to raise their standards of performance, to operate in a more transparent way, to be more responsive to the needs and expectations of their 'customers' and to improve their complaints procedures. In some countries part of the underlying message has been to promote the

empowerment of citizens by raising their critical awareness of the quality of services and (in theory at least) letting those who are dissatisfied seek out other providers. An important driver of this consumerist consensus, has been the desire to get better value for taxpayers' money. Charters can be seen as just one aspect of the sprawling agenda of new public management (NPM) and public service 'modernisation' (a fashionable Blairite word).

PUMA records Western European charter examples as including the UK, Belgium, France, Italy, Portugal and the Netherlands (<http://www.oecd.fr/puma/gvrnance/surveys/toc.htm>): indeed, it is now true to say that the phenomenon 'is a common one in almost all member states of the European Union' (Nikos, 2001, p. 39). In January 2001, the Swedish Government announced a 'Servicedialogue' pilot project, including a move to develop citizen's charters in every government agency (<http://www.servicedialog.nu/English/>). Charter initiatives are to be found in every continent. In a memorandum submitted to the UK House of Commons Public Service Committee in October 1996, the Cabinet Office's Charter Unit claimed that 'at least fifteen countries have implemented or are implementing programmes similar to that in the UK, including Argentina, Australia, Canada, the United States, Belgium and Singapore.'¹ Hong Kong has its Performance Pledges, Malaysia has its Client Charters programme. In 1997, the South African Government joined the charter family, with the publication of 'People First'. The Caribbean is also on board (e.g. Jamaica, 1994); so too, are Namibia, Costa Rica and, relatively recently, Samoa - with its Service Charter, first published in July 2002.

However, in looking at the long list of countries that have introduced charters we must remember that not only do the actual *contents* of charters differ from one country to another, but also that the *motives* for introducing them also vary widely from case to case. In some countries there has been substantial motivation to improve performance; in others the main goal seems to have been to justify government performance; while in some cases a major driving force has been pressure from aid donors.

Searches of the internet suggest that India is a current charter hot spot. A Chief Ministers' Conference in May 1997, resolved 'to formulate and operationalize Citizen's Charters at the Centre and in the States in sectors which deal with a large public interface such as Railways, Telecom, Post, Public Distribution Systems, hospitals, revenue, electricity, petroleum etc' (<http://persmin.nic.in/arp/ccc-concept.htm>). After the announcement of this initiative, some 70 federal government bodies and 180 state government organisations announced citizen's charters (Tandon, Agnihotri and Ramachandran, 2001, p. 517). However, the Indian experience has not been without its pitfalls (see Ghuman, 2002); Drewry 2005, p. 324).

We will consider later whether and in what senses Charters may be considered 'contractual'. If they are, then they must surely belong very much at the 'soft' end of the hard-soft continuum, not usually being designed to confer legally enforceable rights, even in countries that have strong traditions of administrative law. Thus the French Charte des Services Publics, adopted in March 1992, announced the intention of adding to the traditional French public service principles of equality, neutrality and continuity, new principles of 'transparency, participation and simplification.' The objectives of the French charter included taking account of service users' needs and explaining and helping them with procedures; encouraging participation by citizens;

cutting delays and simplifying procedures; increasing accountability, particularly through quality indicators, and more recourse to conciliation and arbitration with regard to disputes (Flynn, 1995). However, this charter is not a justiciable document. Indeed, it appears to have had a more limited purpose and to have been given much less publicity than some its counterparts elsewhere. The rather dismissive conclusion of a Council of Europe report is that:

The charter was designed for internal use. It has not been made available to the public. The Public Services Charter is the type of document which, as a rule, does not have any legal force. It is basically a declaration of intent by the French government concerning its administrative reform objectives, an exhortation to authorities to improve their relations with users. The charter remains largely unknown to the public and indeed to civil servants themselves. It has not been widely publicized and has had virtually no impact.ⁱⁱ

The UK Citizen's Charter

The original version of the UK Citizen's Charter was officially launched in a White Paper, published in July 1991 (Cabinet Office, 1991). Although it pursued themes (value for money, increased competition, privatisation, greater emphasis upon performance measurement, etc.) that were already well in train by the time Mr Major took over the premiership from Mrs Thatcher in 1990, the Charter was presented from the outset as encapsulating the prime minister's personal vision of the public services. The initiative had support from, among others, the free market think tank, the Adam Smith Institute (Pirie, 1992), and it remained a core part of the Conservative Government's programme until the change of government in 1997. It was then repackaged and relaunched by Tony Blair's Labour administration, and has become absorbed into the continuing process of 'modernising' public services.

The original Citizen's Charter reaffirmed the Government's continuing commitment to privatisation, to the further contracting out of public services, and to the extension of compulsory competitive tenderingⁱⁱⁱ; but it implicitly accepted that a lot of services should remain within the public sector - while arguing that they must be more consumer-sensitive. Its main themes (to paraphrase some of the relevant sections of the 1991 White Paper) were:

- **Higher standards:** publication, in clear language, of standards of service; tougher, independent inspectorates; a 'Charter Mark' scheme to commend bodies that abide by the terms of the Charter.
- **Openness:** elimination of secrecy about organisational arrangements, costs of service, etc. Staff to be identified by name badges.
- **Information:** regular publication of information about performance targets, and how well they have been met.
- **Choice:** 'the public sector should provide choice wherever practicable'.
- **Non-Discrimination:** services to be available regardless of race or sex; leaflets to be printed in minority languages where there is a need.

- **Accessibility:** ‘services should be run to suit the convenience of customers, not staff.’

- **Proper redress when things go wrong:** ‘at the very least the citizen is entitled to a good explanation, or an apology’; better machinery for redress of grievances (including, as originally envisaged, a system of local lay adjudicators to deal with minor claims for redress^{iv}); adequate remedies, including compensation where appropriate.

The White Paper also stressed the theme of value for money: ‘the Charter programme is about finding better ways of converting the money that can be afforded into even better services.’

The Charter was to apply to central government departments and their Next Steps executive agencies; also to local government, the National Health Service, the police – and even the courts, where there are special sensitivities about judicial independence. It also promised stronger powers for the regulatory agencies that oversee the privatized public utilities like British Telecom, and the gas, electricity and water industries (all of which have their own charters).

The Raison d’Être of the Charter Initiative - The ‘New Right’ Perspective

In a pamphlet published by the Conservative Political Centre, John Major’s Public Service Minister, William Waldegrave, wrote as follows about the post-war reforms of public services:

By a process that was, in retrospect, inevitable, it turned out that we had designed public services where the interests of the providers systematically outweighed those of the users, and which, driven only by the natural tendency of all provider organisations to claim that they can only do better with more money, contained an overwhelming dynamic for increased cost which was bound to end in conflict with reality. Many loyal public servants did good work within them - but the seeds of their own destruction were firmly embedded in the organisations' structures (Waldegrave, 1993, p. 8).

He conceded that the language used in support of policies of privatisation in the 1980s was not focussed ‘where in reality the focus of our concern is - on the user of the service - until the language of the Citizen's Charter began to turn the national debate in the right direction before and after the election of 1992.’ Moving away from expenditure as the only ‘index of compassion’ and reasserting the primacy of outputs is, he argued, a way of avoiding the presentation to the electorate of ‘a false choice between low rates of taxation and high standards of service’ (Waldegrave, 1993, p. 10).

He went on to claim that, internationally, Britain had been ‘blazing a trail on public service reform in the 1990s’ and that innovations like the Citizen’s Charter had influenced and anticipated changes and reform agendas in other countries - for instance, Osborne and Gaebler’s, *Reinventing Government* (1992; see also Gore, 1993).

But other commentators have stressed that the pre-history of the Charter, and the credit for its invention lies elsewhere, particularly in local government. The public lawyer, Ian Harden, has noted the precedent of the 'customer contracts, pioneered by some English local authorities in the 1980s' (Harden, 1992, p. x). Rod Rhodes - citing his own experiences, working with York city council - states categorically that 'citizen's charters originated in local government, not with John Major' (Rhodes, 1997, p.129). And David Prior has concluded that charters 'arrived on the managerialist tide that flooded local government in the 1980s' (Prior, 1995, p. 100). In his foreword to the Charter White Paper (Cabinet Office, 1991), John Major himself wrote that, 'to make public services answer better to the wishes of their users, and to raise their quality overall, have been ambitions of mine since I was a local councillor in Lambeth over twenty years ago.'

While a 'consumerist' tendency in local government and elsewhere is an important element of the pre-history of the Citizen's Charter, it is clear that, in the early 1990s, the ministerial and civil service architects of the Charter were anxious to claim it as a logical extension of the Thatcherite New Right's public sector reform programme and, in particular, as being a natural evolutionary progression from the 'Next Steps' agency programme, launched in 1988 (Greer, 1994). The Charter became, from the outset, a prominent feature of the agendas of executive agencies and of the framework agreements that define their performance targets. Brian Hilton, the first director of the Citizen's Charter Unit in the Cabinet Office, saw the Charter as:

the next stage after Next Steps. Next Steps gets management sorted out and now we are saying with greater clarity what we want management to deliver. This is not a nine-day wonder. It is very much a long-term problem (quoted by Hennessy, 1991).

John Major's tenure as prime minister, which ended with his party's emphatic defeat in the general election of May 1997, saw his Citizen's Charter reach its sixth birthday. The main features of the Charter regime inherited by Tony Blair from his predecessor included:

- 41 national Charters covering the major public services: e.g. the Patient's Charter, the Parent's Charter, the Courts Charter, the Taxpayer's Charter.
- over 10,000 local charters, prepared by local agencies (e.g. doctors' surgeries, hospital trusts, schools, local authority services and local job centres) in consultation with service users.
- the annual Charter Mark award scheme, recognising excellence and innovation in public service (at the time of the consultation exercise, below, there were 645 holders of the award. Over 3,600 services had applied for the award, and more than 1,100 were successful^v).
- 24 Charter quality networks around the UK. These were established by the Charter Unit in 1994, and consisted of small groups of managers from public services and privatized utilities who met locally to exchange ideas on issues relating to customer service and quality.

- *A Good Practice Guide*, produced by a Citizen's Charter complaints task force, and published in June 1995, containing recommendations on how public services can improve their handling of complaints.
- The regular publication of performance league tables, notably in the fields of education and health services.

The initiative was signalled as John Major's 'big idea', something that would give a distinctive flavour to the Major era of public service reform, after ten years of Thatcherism. As noted in Waldegrave's apologia, cited above, although the Charter carried forward familiar 1980s New Public Management themes, it also hinted at a confession of past doctrinal (or at least presentational) error – perhaps even a tacit admission that 'the "minimising" elements of the government's reform strategy may have gone too far' (Löffler, 2003, p. 481). But unkind critics might interpret this, not so much as a disclaimer, but as an attempt to claim distinctiveness for what was, in essence, a populist re-packaging of Thatcherite reforms, perhaps designed implicitly to rebut Mrs Thatcher's famously dismissive observation that 'there is no such thing as Majorism.' As one commentator put it, 'the Citizen's Charter is partly a genuine article of belief for John Major and partly a vehicle for symbolically differentiating him from his predecessor' (Doern, 1993, p. 20).

New Labour, New Charter

In Opposition, 'New Labour' politicians had been scornful of some of the more ambitious claims made on behalf of the Charter by Conservative ministers, but its main specific objections were to do with the Charter's lack of enforceable rights and legislative 'teeth' (e.g. with regard to freedom of information). Under the leadership of Tony Blair in the 1990s, the Party had begun to adopt some of the ideas and rhetoric of the 'communitarian' movement – represented, for instance by Amitai Etzioni, who had written that:

Communitarians favour strong democracy. That is, we seek to make government more representative, more participatory, and more responsive to all members of the community. We seek to find ways to accord citizens more information and more say, more often (Etzioni, 1995, p. 235).

Lessons were also learned from the Clinton-Gore National Performance Review. And references to the desirability of creating a more socially inclusive 'stakeholder' society began to appear in the speeches of Blair and his party associates. There were regular references to the need to restore power and functions to local government and to improving mechanisms of public accountability. The Charter - suitably modified, and relaunched with appropriate New Labour packaging - was seen as having a contribution to make to the new government's goals.

Charterism – too much stick and not enough carrot?

From the outset the authors of the UK Citizen's Charter made it clear that one important principle underlying the initiative was to improve value for money for the citizen-taxpayer, by making public resources go further. This has been an important driving

force behind public sector reform in Britain, and in many other countries. Charters impose a discipline on service providers at relatively little central cost.

It is plausible to suggest that the new disciplines of a charter may usefully focus the minds of service providers, operating at the interface between a State and its 'empowered' citizen-customers, on finding ways of improving standards when resources are having to be squeezed. But, given the hierarchical nature of many public service institutions the definition of the 'provider' can be problematical. Much of the immediate impact of charters falls upon relatively low paid and/or junior state employees (e.g. railway station staff, school teachers, hospital receptionists, front line officers in tax and benefits offices) who have to bear - without extra rewards, and sometimes with little or no extra training - the brunt of complaints and criticisms by 'empowered' customers. A newspaper article published a few months after the launch of the Charter quoted an assistant manager in the Benefits Agency as saying that 'most of us see it as quite a cynical exercise to paper over the cracks in the service'; the general secretary of the Civil and Public Services Association was quoted as saying that the Charter is 'all stick and no carrot' (Willmore, 1992).

Health Service Charters – the Problem of Impatient Outpatients

Thus the goal of empowering citizens by informing them of their entitlements and encouraging them to complain if they think they have been short-changed can sometimes backfire. Critics have pointed out that use of the word 'citizen' in the context of the original Charter initiative was misleading, because the Charter did not seek to match its catalogue of customer rights with corresponding civic and social obligations – the hallmark of citizenship.

One apparent instance of this was in the National Health Service with its Patient's Charter – containing, in its original version, ambitious promises that, for instance, all patients should be assessed within 30 minutes of arrival in a hospital accident and emergency department, and that no one should wait more than 30 minutes for an outpatient's appointment. A report by the King's Fund (Farrell, Levenson and Snape, 1998) found many defects in the Patient's Charter – not least that most patients knew little about it and most staff found it unhelpful (though NHS managers apparently liked it). Frank Dobson, then Health Secretary, opined subsequently that the Charter had raised unreasonable expectations among patients and their relatives, and that the consequent frustrations had contributed to an increase in violent attacks on NHS staff. He promised to replace the Charter with a new version in which patients would have responsibilities – including that of behaving decently towards staff - as well as rights.

The new approach was incorporated into a new document, *Your Guide to the NHS*. Its first section comprised a set of 'core principles', stated in very general terms (e.g. a reaffirmation of the universality of the NHS's services, 'based on clinical need, not ability to pay'); the second section set out 'your commitment to the NHS' – including (to paraphrase) look after your own health and lifestyle, donate blood, pay NHS charges promptly and be polite to staff and other NHS users.

This writer came across an interesting Canadian echo of the UK experience, from the Ontario Hospital Association. Responding to an Ontario Government undertaking, in 1999, to introduce a Patients' Bill of Rights, Elizabeth Carlton cautioned as follows:

Many hospitals fear that such a document may raise expectations to an unrealistic degree. In this new era of health care consumerism, Canadians are more informed and knowledgeable than ever before and as with any other product or service, have high expectations and are becoming increasingly vocal in articulating their needs. The difficulty with this is that resources do not currently match those increasing demands, but are in fact more constrained than ever. A Patients' Charter will do nothing to solve this growing problem.

And, she continued:

There are also concerns that rights will be emphasized to the exclusion of responsibilities. A Patients' Bill of Rights or Charter that is truly reflective of the collaborative nature of the health care relationship cannot just be about rights, but must be balanced, setting out both the rights and responsibilities of patients. A one-sided document that simply speaks to rights places an inordinate burden on providers and may only serve to perpetuate the already disturbing disparity between public expectations of the health care system and the ability of the system to meet these increasing demands (<http://www.oha.com/oha/perspec.nsf/0/7563>).

Thus the NHS version of the UK Charter has been reinvented in the light of experience – which accounts for the disappearance of the Patient's Charter, at least in England (it still survives in Northern Ireland, Scotland and Wales). The numerous local patients' charters, specific to particular medical practices and hospital trusts that can also be found on the web, are illustrative of the progressive trickle-down effect of the original, centrally-driven, Charter programme; and it is noticeable that these local documents invariably take care to avoid making promises that are too specific.

It might be noted, in the context of our particular interest in 'contractualisation', that the one-sidedness of charters, as originally conceived – requiring no reciprocity on the part of the consumer – is a negation not only of the classical notion of citizenship but also of one of the key features of a contract. Contracts are mutual agreements between (more or less) equal parties. Thus any move to balance service quality entitlements with customer obligations, as in the case of the UK health service, goes at least some way towards enhancing the contractual credentials of a charter. We will return to this in the concluding section.

Consumerism and Citizenship – that telltale apostrophe

It can be gathered from the foregoing remarks that, at the heart of any discussion about charters lie difficult conceptual and ideological issues to do with citizenship and the nature of the state. Critics of the UK Charter have pointed out that its invocation of 'citizenship', in the context of an exercise that is primarily to do with the public as consumers of public services, is misleading. It has been noted that the position of the possessive apostrophe in the word 'citizen's' signals that John Major's original version of the Charter was aimed at the rights and grievances of the *individual* rather than at the *collectivity* of citizens. This approach it has been argued, debases the classical collectivist concept of citizenship, as a status conferred by membership of society, by redefining it in individualistic and pseudo-contractual terms. It has further been

suggested that this was entirely consistent ‘with the Thatcherite mission to atomise through the avowal that there is no such thing as society’ (Kingdom, 1996, p. 10; see also Deakin, 1994). As Stewart and Walsh observe:

The emphasis [in the Charter] is upon individual rights to choice and to quality, with little reference to citizens' duties. Accountability is seen as market-based.... The public is seen as having acquired rights to services through the payment of taxes rather than community membership. The model of the state's relationship with citizens is one of contract rather than embodying any idea of commitment and responsibility. The state's role is to guarantee rights, rather than provide services. The justifying basis is liberal individualism rather than civic republicanism (Stewart and Walsh, 1992, p. 507).

And, in the words of another commentary, written soon after the launch of the Charter, the New Right rhetoric of John Major's Citizen's Charter, was to be seen as resurrecting:

the category of the citizen in order then to graft it onto the identity of this consumer, who as such is not the bearer of needs, but an economic actor. What this suggests, in turn, is that the consumer's legitimate expectation of quality in the context of contracts for services may in fact be akin to a constitutional right where those services are provided by public sector agencies. The ideological cement which constitutes the link between citizen and consumer is the ideal of freedom and, ultimately, it is in respect of the association of markets with freedom that the concept of citizenship has mutated into a useful technique for the legitimation of the government's strategy with regard to public services (Barron and Scott, 1992, p. 543).

It is the great elasticity of the charter idea that gives it such widespread appeal. On the one hand charters can – particularly with the evocative word ‘citizen’ attached - be used by New Right, public choice orientated, politicians as a stick with which to beat budget-maximising bureaucrats, who can then be blamed for the shortcomings of (in some cases, arguably, underfunded) public services. On the other hand they have much to offer the communitarian New Left, promising the empowerment of local communities (rather than of individual citizen-consumers), as a counterweight to an over-powerful and over-bureaucratized centre. According to this approach, decentralization and privatisation are seen as giving opportunities for the enhancement of democratic politics. To sum up, in the words of an American commentator:

Empowerment varies in context. Conservatives (and others) emphasize the consumer choice through market mechanisms. Entrepreneurs, whether businesses, not-for-profits, or lower units of government, compete for customers who can vote with their feet. Consumers are empowered in that they have something that the entrepreneurs need and want... Liberals, too, question large, centralized bureaucratic institutions in education, social welfare, and local government services; they seek much more local control. And more radical communitarians want face-to-face citizen government (Handler, 1996, p. 9).

Charters - 'Rights' without Laws?

Alongside controversies about the ambiguities of 'citizenship' are other issues associated with making reference to a 'charter', a word that has formal and legalistic connotations. But despite the resonance of the language with grand constitutional statements of the past, such as Magna Carta, the UK Citizen's Charter was not a constitutional document. And it has been a feature of the UK Charter that it does not directly imply the conferment of *legal* entitlements.

The Citizen's Charter offered no Bill of Rights (though it talked a lot about rights), nor a Freedom of Information Act. It comprised a melange of aims and exhortations, rendered more amorphous by the diversity of the services and institutions to which it applied. In the words of the 1991 White Paper:

The Charter programme will be pursued in a number of ways. The approach will vary from service to service in different parts of the United Kingdom. The Citizen's Charter is not a blueprint which imposes a drab and uniform pattern on every service. It is a toolkit of initiatives and ideas to raise standards in the way most appropriate to each service (Cabinet Office, 1991, p. 4).

The Charter itself was never intended to be a justiciable document, conferring legal rights that could be enforced in the courts. William Waldegrave, true to the British tradition of regarding law and lawyers as impediments rather than as aids to good government, told the House of Commons Treasury and Civil Service Committee, with reference to the improved redress of grievance systems promised by the Charter, that 'if we can avoid getting too many lawyers involved in these redress systems, except when issues are very, very serious, so much the better I think...' ^{vi}.

This approach is symptomatic of the historic resistance of the British political and bureaucratic culture to the development of administrative law and administrative codes. As the political scientist Fred Ridley - a European comparativist, well placed to observe the peculiarities of the British resistance to public law - once observed, 'the idea of 'political' rather than 'legal' protection of citizens against administration is deeply embedded in British political traditions and has imprinted itself on British ways of thought' (Ridley, 1984, p. 4).

There have been some important recent developments in UK public law. We now even have an Administrative Court, and the Blair Government's decision to incorporate the European Convention on Human Rights into domestic law by enactment of the Human Rights Act 1998 has already had an impact on law and administration. The development in New Public Management contexts of more contractual, quasi-contractual and pseudo-contractual modes of service delivery also has important implications, some with legal significance (see Taggart, 1997; Hardern, 1992; Harlow and Rawlings, 1997, chs 8 and 9; Fortin and Van Hassel, 2000).

But the fact remains that, compared with many other countries - particularly some of the UK's continental European neighbours, such as France - public law has a relatively low profile, as does the concept of legally enforceable rights. As one British commentator has put it:

‘When talking to an audience elsewhere in Europe, this appears to them the most striking feature of the Charter initiatives. Coming from a different tradition of public law, their expectation is that a document of this kind should have legal force and that recourse to the courts should follow if there are breaches of commitments formally entered into by the state’ (Deakin, 1994, p. 55).

Continental Europeans (including those operating in EU contexts) tend to associate the word charter with formal and justiciable instruments. The UK Citizen’s Charter and its derivatives are not statute-based (though some statutes have flowed from them^{vii}); their status in public law is peripheral. However, the juxtaposition of the Charter with the Human Rights Act 1998 and with the Freedom of Information Act 2000 (which came into effect in January 2005) may have interesting implications.

One aspect of charterism that is of particular interest to public lawyers is the promise of improved machinery for redress of grievances - important weapons both in the empowerment of citizen-customers and in keeping those responsible for public service delivery on their toes. In 1996 the then Deputy Leader of the Labour Party (later Deputy Prime Minister), John Prescott was quoted as promising that his party would ‘turn this sham Citizen’s Charter into a real people’s Citizen’s Charter’. He went on to say that complainants should be seen as an asset and not a liability - how else, he asked, do you improve the quality of service? ‘We want complainers because complainers are not satisfied and won’t be fobbed off with second best. We tend to treat them as whingers and moaners, but they are very important’ (*The Times*, 31 July 1996).

There is an interesting tension here. On the one hand, *reducing* complaints may be seen by a service provider as a positive performance indicator, reflecting greater customer satisfaction. On the other hand, charter advocates see an *increasing* incidence of complaints as a healthy sign of citizen-awareness.

So, where is the UK Charter Now?

Fourteen years on from the unveiling of John Major’s ‘big idea’, references to the Citizen’s Charter are seldom heard. But in this context appearances are deceptive. Across the whole range of UK public services, the Charter initiative has undergone an incremental metamorphosis which goes most of the way to explaining its apparent disappearance. In June 1998, the Blair Government revamped and renamed its predecessors’ Charter as ‘Service First’. A year later, the main elements of Service First were in turn incorporated into the Government’s White Paper, Modernising Government (Cabinet Office, 1999). And, following upon an announcement in that White Paper, on 9 February 2001 the Government announced a new ‘consumer focus’ for public services.

So the spirit of the original Citizen’s Charter lives on – albeit with new nomenclature and as part of a wider agenda of ‘modernisation’ and ‘consumer focus’. The heavy top-down pressure from the Cabinet Office in the early days, reflecting strong prime ministerial involvement, has become less necessary as the Charter principles have become absorbed into the bloodstream of public services – and are taken largely for granted by both the producers and the users of those services. The central drive for improved service delivery remains very strong (even a cursory glance at the Cabinet Office web site makes this abundantly clear) but new drivers – such as the Public

Service Agreements on which the Treasury's departmental and executive agency budget allocations are now based, and Comprehensive Spending Assessments in local government – have become much more important since the election of the Blair Government. Meanwhile, there has in a sense been a 'hollowing out' of charterism, as charter thinking has trickled downwards and outwards from the centre. Centrally, 'Service First' is still embedded in the subculture of the Cabinet Office and the Prime Minister's Office, but practically the only centralized features of the original 1991 Charter that remain visible are the annual Charter Mark exercise and the nationally published performance league tables – particularly in the fields of Health and Education.

A web-search for 'Citizen's Charter' still produces dozens of entries, which turn out on closer examination to be, almost exclusively, local and/or sectoral in scope. The original, rather ponderous child of the Major years has produced numerous small offspring, scattered across the public services – and has itself perished, or at least atrophied, in the process.

Charterism - Something for Everyone?

There is plenty of scope for philosophical debate and ideological dispute about the meaning and the merits of charterism. But, for practical purposes, it is probably appropriate to regard these charters, not as a universal and rigidly pre-ordained schedule of principles and objectives but as a series of packages, of broadly similar shape, but with different wrapping paper to suit the location and the occasion. As has been noted, variants of the charter package can comfortably be embraced both by New Right free market individualists and by New Left collectivists with communitarian leanings. The wrapping paper - the rhetoric used to discuss charters, and the relative emphasis placed on one aspect rather than another - may vary, but the actual contents, can often, in the end, look very similar.

Charters are to be found in states with strong traditions of administrative and constitutional law, as well as in the UK, where these characteristics are much less evident. However, one would expect more legalistic systems of public administration to have different perceptions of what charters mean and how they are to be enforced. The 'empowerment' ingredient of charters may be played down in countries with weak traditions of electoral democracy; or played up in countries whose governments want to encourage more civic awareness and participation. Charters exist in unitary states with highly centralized systems of governance (paradoxically, they can be used both to reinforce central control of decentralized institutions, and as a counterweight to excessive centralization); they are also found in countries with federal arrangements and/or strong traditions of localized public administration.

To pursue the 'package' metaphor a little further, there is a danger that attractive wrapping paper may raise unrealistically high expectations that are doomed to disappointment when the package is opened. This is particularly the case if (as some critics of the original UK Charter complained) some of the contents turn out to be recycled items from the past. A charter package can be made to look very appealing. The ostensible message of charters - simultaneously bureau-sceptical and appealing to democratic and populist sentiments - is hard for anyone to quarrel with. The promise of

better and more user-friendly services with no extra burdens falling on the taxpayer may seem almost too good to be true.

There has been a lot of discussion - the UK and elsewhere - whether charters really 'work'. Some of this debate is of a technical kind: to do, for instance, with the authenticity of performance measurement - what do 'league tables' of schools (based mainly on examination performance) and hospitals (based, for instance, on waiting times for surgery) or police forces (based on such indicators as crime clear-up rates and the time taken to respond to emergency calls) really tell us? And, even if the technical controversies about performance rankings could be resolved, what, in the real world, can the empowered citizen, whose choices of alternative service providers are often limited, do with this information?

The impact of the Charter Mark scheme is currently being investigated in various public service organisations, beginning with the Court Service of England and Wales, the first organisation to undertake a corporate programme of Charter Mark applications and to adopt Charter Mark as its national service standard. The consultancy company, ORC International, analysed data from 17,877 civil and family court customers across 218 courts, collected between February 2001 and February 2004. It found that that service at public counters received significantly higher satisfaction ratings (88%) than those without the award (80%); satisfaction with telephone service was 83% for Charter Mark courts, compared with 74% for non-Charter Mark courts; for written correspondence the respective figures were 80% and 74%; and for complaints handling they were 36% and 26% (Thompson, 2005).

These findings obviously relate to only one aspect of charterism, in one service sector, and need to be interpreted with caution. Establishing cause and effect relationships in quality-improvement schemes is notoriously difficult.

The British experience does suggest that the Citizen's Charter has probably had beneficial effects on quality of service. However, there have been intermittent allegations (many of them anecdotal) that performance outcomes may sometimes be manipulated by those involved - e.g. police officers who are reluctant to log reports of crimes that they know they cannot solve; students being entered for examinations only if their school is sure that they will pass; railway timetables adjusted so that trains are seldom 'late'; postboxes re-labelled with the last collection time rather than with a series of detailed collection times from morning until evening.

When addressing the question 'do charters work?', two related considerations must be borne in mind. First, that what 'works' in one national or sectoral context may not work in another. Secondly, and perhaps more crucially, it must be remembered that charters - although they contain a lot of uncontentionably sensible messages about improving service quality and efficiency, and about increasing citizen satisfaction - are not value-neutral documents. Their purpose and content is strongly driven by political considerations. There is a political message to be read between every line of every school performance league table.

Charters – How ‘Contractual’?

A movement towards contractual arrangements, of varying degrees of ‘hardness’ and ‘softness’, has been a pervasive feature of public management reform in many countries around the world in the past two or three decades. However, in their introduction to a volume of essays, published five years ago under the auspices of this study group, the editors, Yvonne Fortin and Hugo Van Hassel, observed that regular usage of the term ‘contract’ in public management contexts is comparatively recent. They noted that ‘the terms agreement, convention, commitment and pact had often been favoured, especially when indicating those agreements with no legal value’ [i.e. what we might nowadays refer to as soft contracts, see below] (Fortin and Van Hassel, 2000, p. 4). And they went on to suggest various explanations for the growing dominance of the term in public management discourse, the first being the nature of some of a contract’s technical attributes:

The contract represents a tried and tested legal technique that serves to implement a mechanism along with a set of arguments easily acceptable to lay audiences; included herein would be: the necessity for the two parties to be distinct entities, the principle of equality between both parties, the principle of negotiation, the notion of reciprocity and the fulfillment of commitments (*ibid.* p. 6).

They also observe that the perceived neutrality of the term contract makes it an attractive device for politicians seeking to build a consensus for public sector reform; it has international currency; and

It also conveys an aura of the private sector, and in particular a commercial tone, which within today’s context of economic competitiveness and attraction for the private sector’s latest generation of management tools gets interpreted as a stamp of seriousness and efficiency (*ibid.*).

The UK provides many illustrative examples, including agency framework agreements and internal markets (soft) to private finance initiatives (hard). However, in practice, the hard/soft dichotomy is seldom clear-cut: for example, the hard contractual bottom line of a private finance initiative may need softening along the way, though negotiation and mutual trust, in order to make it work.

Harlow and Rawlings (1997, p. 211, see also chapter 5) use the term, ‘pseudo-contracts’, noting ‘the link with the idea of citizen as consumer expressed in the Citizen’s Charter: the portrayal of the relationship in contractual terms – services in return for taxes...’ At one level, the use of such pseudo-contractual language can be seen as an attractive addition to the armoury of political rhetoric (cf. Fortin and Van Hassel, above). So the contractual resonance of a citizen’s charter is at least as much presentational as substantive.

When we look more closely at how far, if at all, citizen’s charters fit into the contractual picture, with particular reference to the hard/soft dichotomy, an interestingly ambiguous picture emerges. A convenient overview of the main characteristics of hard and soft models of contracting is to be found in Anne Davies’ account of contracting in the UK National Health Service, (Davies, 2001, p. 92):

‘Hard model:

- Low trust relationship between the parties
- Standard-setting through adversarial negotiations
- Comprehensive and precisely drafted standards
- Monitoring through ‘policing’
- Enforcement through sanctions, particularly exit

Soft model

- High trust relationship between the parties
- Standard-setting through collaborative negotiations
- Broadly drafted, general standards and written assumptions
- Monitoring through shared information or trusting the provider to comply
- Enforcement through ‘persuasion’

How do these characteristics (and those noted by Fortin and Van Hassel) apply to UK-type citizen’s charters? In the remarks that follow, I take ‘the parties’ to be the service provider on the one hand and the citizen-customer on the other. However, a more elaborate analysis would require us to factor in the relationship (sometimes a pseudo-contractual one) between the provider and the State/government, particularly in so far as the government may have been the active initiator of a charter programme, which then trickles outwards and downwards into each service sector:

- (1) *Nature of relationship between the parties*: one important object of a charter is to encourage improved trust between citizen and provider, through improved transparency and accountability; in a democracy, regime legitimacy (sometimes a fragile commodity) might be taken as an analogue of trust. However, the ‘empowerment’ subtext of charterism might be regarded as actively fostering ‘distrust’ – encouraging citizens to look more carefully at quality of service and not to take what they are told at face value. The ‘equality’ and ‘reciprocity’, highlighted by Fortin and van Hassel are often conspicuous by their absence, though we have noted (with reference to the UK National Health Service) recognition that consumer entitlements may need to be balanced against reciprocal social and civic obligations.
- (2) *Standard-setting*: in general, the content of charters is unilaterally determined by the providers. There is no negotiation, though providers sometimes take steps to ascertain consumers’ attitudes and preferences.
- (3) *Formality and precision of the drafting*: charters are drafted in general and informal terms (usually by non-lawyers).
- (4) *Monitoring*: varies in scope. Charters themselves are seldom explicitly ‘policed’. But sometimes service-quality outcomes are linked to other mechanisms, such as the framework agreements of next steps executive agencies, and breaches may have implications e.g. for the tenure of chief executives and their performance-related pay. Performance league-tables (e.g. school exam results, hospital waiting lists) are regularly invoked by ministers, who hold the purse-strings of public funding, and may link to more formal quality measurement regimes, such as ‘best value’. Regulatory bodies have regard to service quality criteria (some of which may appear in charters) e.g. when allowing the Post Office to increase postal charges or franchised railway companies to increase their fares.

(5) *Enforcement*: charters involve no legal enforcement. ‘Exit’, identified by Davies as a common sanction associated with hard contracts, is also potentially a bottom line of informed consumer choice (though is easier said than done in what are often monopolistic or near-monopolistic contexts). Another area of enforcement has to do with what happens inside the provider-organisation itself - the role of a charter as a management tool (cf. earlier reference to ‘sticks and carrots’).

My general conclusion from all this is that citizen’s charters do indeed have a place in the realm of government by contract – albeit as pseudo-contracts, which go nowhere near to satisfying the criteria of mutuality, parity, reciprocity and legal enforceability that are minimal requirements for true contractual relationships. To some extent, the adjective ‘soft’ overlaps with the prefix ‘pseudo’ but the citizen’s charter case suggests that they are not quite identical. Informal drafting and non-enforceability in court are common factors, but the possibility of financial sanctions in some contexts and (if Davies is right) the potential for consumer exit gives this curious species of soft-pseudo contract a slightly hard edge.

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NOTES

- ⁱ. Quoted in updated version of the memorandum submitted by the Charter Unit to the Select Committee Enquiry into the Citizen's Charter. The Select Committee's Report, with a separate volume containing this and other evidence, was published in March 1997, HC 78, 1996-97.
- ⁱⁱ European Committee on Legal Co-operation, Project Group on Administrative Law, 11th meeting, Strasbourg, 23-26 November 1998, [http://www.coe.int/T/E/Legal_affairs/Legal_co-operation/Administrative_law_and_justice/Texts_&_Documents/CJ-DA\(1998\)1E.asp](http://www.coe.int/T/E/Legal_affairs/Legal_co-operation/Administrative_law_and_justice/Texts_&_Documents/CJ-DA(1998)1E.asp).
- ⁱⁱⁱ In November 1991 the Government published another White Paper, Competing for Quality: Buying Better Public Services, Cm 1730. This announced an expansion of compulsory competitive tendering (already well established in local government and the National Health Service) throughout the public sector, and the introduction of a market testing programme in central government departments and agencies. The progress of market testing featured prominently in the subsequent annual reports on the Citizen's Charter. The White Paper also stressed the importance of another Charter theme, the extension of performance related pay as an incentive to managers to improve the quality of service and value for money.
- ^{iv} This scheme never materialized, because of concerns about its cost. However, there have been a number of appointments of non-statutory 'complaints adjudicators' as quasi-ombudsmen in departments and next steps agencies, notably in the Inland Revenue and Customs services, in the Prisons Service and in Companies House.
- ^v For the current position of the Charter Mark scheme see the Cabinet Office web site <http://www.chartermark.gov.uk/>
- ^{vi} House of Commons Treasury and Civil Service Committee, Sixth Report, 1992-93, HC 390-II, *The Role of The Civil Service, Interim Report*, vol. II, Minutes of Evidence and Appendices, Q27
- ^{vii} One of the most explicit legislative reference to the Charter was in the Local Government Act 1992, Part I of which comprised 'Citizen's Charter Provisions', giving the Audit Commission additional powers, including the power to direct local authorities to collect and publish information relating to their performance standards, and to produce comparative league tables of performance.