

Cutting a good deal - UK Uncut, Goldman Sachs and the challenge to administrative discretion

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Introduction

The starting point of this paper is the application by the pressure group UK Uncut for a judicial review of an agreement between the UK tax authorities, HM Revenue and Customs (HMRC), and the American investment bank Goldman Sachs to forgive £10 m interest due on the late payment of tax. The deal was struck at a meeting between Goldman Sachs and Dave Hartnett, then head of HMRC, and finalised with a handshake. The deal was subsequently queried by an HMRC panel that reviews such settlements, but Hartnett insisted that it was not possible for him to go back on his agreement because Goldman Sachs objected and had threatened to withdraw from a politically high-profit anti-tax avoidance scheme being piloted by HM Treasury (*R. v UK Uncut Legal Action Ltd* 2012:15). In May 2013 it was announced that Hartnett would be joining accountant Deloitte -the firm that had advised many companies at the heart of an ongoing storm about corporate tax avoidance activities in the UK (Foot, 2013).

Whilst an insignificant amount in the context of public revenue, the agreement was just one of a number alleged private deals to have been made between HMRC and large companies which involved the use of administrative discretion -the right of public bodies such as HMRC to depart from strict legal requirements when it is expedient and in the public interest to do so. In the context of this paper, the significance of UK Uncut's challenge lies not so much in the facts, or rights and wrongs, of the case, but what it reveals about the extent to which it is possible for third parties to exercise effective oversight of the exercise of administrative discretion in tax matters. In doing so, I also call upon a case from the late seventies where a trade lobby group, the Federation of Small Businesses, also attempted to obtain a judicial review regarding a private deal struck by HMRC with the newspaper industry.

In the next section I discuss in detail the need for administrative discretion and the problems that can create in terms of equity between taxpayers. I give consideration to the ways in which the exercise of administrative discretion may be the result of the operation of power and use Lukes (2005) model to provide a framework for the analysis of this. I then consider the means available to make authorities accountable for this use of discretion and highlight the constraints. In the third section I discuss the two cases in detail, explicating what they reveal about the operation of power in the system. This is followed by some concluding thoughts.

Discretion, accountability and power

Taxation is situated at the intersection of accounting and law. Problematically, there is no objective truth in either. Wickramasinghe (2006) argues that accounting, on which corporate taxation is ultimately based, is not an isolated, neutral technology, but rather a social and institutional practice. Accounting, law and taxation are all governed by detailed procedural rules concerning which factors may, must or must not be taken into consideration. Social rigidity and the power of incumbency have enabled the accounting profession to develop and perpetuate a mystique about the preparation of accounts (Ravenscroft and Williams, 2009, p. 771). Taxation is, similarly, a form of codified discourse in which there are detailed prescribed rules and procedures, which include judge-made determinations. These rules and procedures create regimes of truth as they define legitimate perspectives and fix norms, the effect of which is to make it almost impossible to think outside of these (Edgley, 2010). One specific procedure which Edgley (2010) identifies is that of dissenting judgements in judge-made law. The opinions of judges are all formed by highly qualified individuals who may take different and equally valid approaches. Lord (1972 cited in Edgley, 2010, p. 569) stated that a decision of the House of Lords is final not because it is right, but because no-one can say it is wrong except writers in legal journals. An opinion which has been defeated, possibly only narrowly, in the House of Lords or the Supreme Court is reduced to mere "noise" and its potential value may thereby be lost. If a Foucauldian perspective is adopted a practice should not therefore be immune from criticism, simply because it is conducted according to generally accepted, ostensibly technological rules and procedures.

James (2010) likewise argues that judges have considerable discretion in the way that they interpret the law in tax matters, despite being bound by legal precedent and the detailed, rules-based nature of statute. In contradistinction, an expectation of fairness and equity between taxpayers suggests that tax rules should be absolute and applied ubiquitously.

To square this circle, the civil servants who administer taxes have to be able to exercise a significant measure of administrative discretion because it is not always practicable or expedient to make highly scripted decisions. Thus HMRC has general discretionary powers to do anything "necessary and expedient in connection with the exercise of their functions or incidental and conducive to exercise of their functions" (Commissioners of Revenue and Customs Act (CRCA), 2005,s.9(1)). HMRC's exercise of discretion is generally circumscribed by the supremacy of parliament and the rule of law and, more specifically, Article 4 of the Bill of Rights Act (1689), the treaties of the European Union, the Human Rights Act (1998), the HMRC Taxpayers' Charter and case law.

Freedman and Vella (2011) identify several categories of Limitation on the discretion which HMRC may exercise. The first category is the non-application of the law when its interpretation is generally agreed which is the pertinent category in the Goldman Sachs case. The second category is in the interpretation of the law where this is not agreed. The third category is discretion in the management of litigation and the fourth category covers hybrid of the previous three. The first category may be subdivided into cases where HMRC interprets the law in a manner which goes beyond what parliament clearly intended, and cases where HMRC simply disregards a certain provision. An example of the former is *R v commissioner (ex parte Wilkinson) (2005) UKHL30* where, on judicial review, the courts ruled that HMRC did not have the discretion to grant Mr Wilkinson's claim for a widow's bereavement allowance because the word "widow" clearly excluded widowers; the choice of gender-specific nomenclature made clear parliament's intention and HMRC had no authority to extend this. The latter constraint on discretion (where there is a clear imperative in the legislation) formed the basis of UK Uncut's challenge of the agreement with Goldman Sachs. It should be noted that the

various safeguards against misuse are principles-based and therefore open to judicial interpretation (James, 2010).

This pragmatic approach to the administration of taxes is clearly commonsensical. However equity also demands not only that no taxpayer is treated more harshly than the law stipulates, but also that taxpayers are not able to preferentially obtain more generous treatment than the law and associated rules (such as the UK's Extra-Statutory Concessions) require. Problem might therefore arise where the exercise of discretion is, or is perceived to, unfairly advantage one taxpayer over another. This might result in a breakdown in trust in the equity of the tax system; such distrust might be particularly serious because the tax system constitutes a critical nexus between citizens and the state (Boden, 2012; Freedman and Vella, 2011). Diminished trust can lead to, significant problems of non-compliance, public disorder, civil disobedience or even revolution. Examples of the consequences of mistrust include the grievance of the barons which led to the signing of Magna Carta (Frecknall Hughes and Oats, 2007), the American and French Revolutions and the Poll Tax riots of 1990 which led to the resignation of Margaret Thatcher as prime minister (Seldon and Collings, 2000).

Freedman and Vella (2011) admit that the balance between efficient administration of the tax system and respect for taxpayer 'rights' is a difficult one and that there might be occasions where the fuzzy line between acceptable administrative discretion and unfairly lenient treatment is crossed. Officials might exercise their discretion inappropriately if they are, exceptionally, corrupt or incompetent. But a more pernicious and systemic problem arises if the tax system falls prey to regulatory capture. This occurs when certain interest groups come to dominate the policy-making apparatus and culture, constructing legal and administrative systems and practices to serve their own interests (Levin and Forrence, 1990).

Preferential treatment arising from the exercise of administrative discretion might be contentious if it appears to be systemic and the result of the exercising of undue influence or power (de Cogan, 2011). Lukes (2005) identifies three dimensions of power, the first of which is its overt exercise either through legitimate authority or through influence or coercion. In this dimension, the only power acknowledged or recognised is that which is directly observable. In a first-dimensional analysis of power, only the public, visible actions of HMRC and public responses to them are acknowledged as the operation of power.

The second dimension is where some individuals or groups have the power to organise certain issues onto or off the agenda, thus making them in/inaccessible to public discussion or scrutiny. For instance, legal tax rules and procedures might be written or interpreted so as to facilitate the exercise of power (James, 2010).

In a second-dimensional analysis the exercise of power is still observable, but consideration might be given to why and how the system is constructed as it is and why some decisions do not happen at all. This is what Schattschneider (1960 cited in Lukes, 2005, p. 20) defined as the "mobilisation of bias".

Under the first and second dimensions of power, actors are often aware of the disjuncture between their interests and what is attainable. In Lukes' (2005) third dimension of power, in contrast, there is no perceived disjuncture, since the interests and normalising assumptions of the hegemonic group have been internalised and there is a general consensus that these values and assumptions are legitimate and they are therefore not questioned. As such, the operation of power is hidden. In such circumstances, individuals may self-regulate their conduct in accordance with the discursive framework constructed by the hegemonic group, without the need for the exercise of overt power (Foucault 1978). In the third dimension, the dominant tax discourse might be one where global corporate

power within or over the tax system is legitimated because, for instance, such firms bring employment in their wake.

Lukes' (2005) theorisation provides a useful framework for consideration of power in the context of the use of administrative discretion. Two factors complicate any nuanced analysis of the power factors. First, the exercise of discretion is occluded by a technical facade (Boden 2012) and James (2010) draw attention to the oft-hidden operation of power in the social contract of tax compliance. These factors can make the administration of taxation appear purely neutral and objective, limiting analysis to Lukes' (2005) first dimension.

Second, it can be very rare indeed for specific instances of the exercise of administrative discretion (outside of the use of Extra-Statutory Concessions) to enter the public domain. This is because the CRCA (2005, s.18(1)) imposes a statutory duty of taxpayer confidentiality on HMRC. This effectively prevents decisions involving administrative discretion from being made public. Thus the third-dimensional aspects of power - for instance, when a corporate entity use its position and influence to shape the nature of the tax regime to its interests - remain hidden by virtue of the law. The only exception to this is where there is an accidental release of information or a whistleblowing action.

Where the use of administrative discretion does become public, it affords the opportunity for others to challenge the power exercised. Challenges can take two routes - the democratic and the legal. Democratic challenges do not form the focus of this paper but have become an important feature of UK public debate in 2012 and 2013. Parliament's Public Accounts Committee (PAC) has taken advantage of a series of whistleblowers to publicly call a number of corporations and HMRC to account for the nature of the discretionary relations between them (House of Commons, 2011). Whilst this has raised the level of public interest and debate, it should be noted that parliament has no ability to intervene directly with the administration of taxes. Its power lies purely in fuelling public debate - effectively "naming and shaming".

The legal route to challenge does form the focus of this paper. UK taxpayers may challenge the use of administrative discretion through HMRC's internal procedures, complaints to either the Adjudicator or the Parliamentary and Health Service Ombudsman and, finally, through a judicial review (Freedman and Vella, 2011). The Adjudicator may look into cases concerning HMRC's use of discretion (Adjudicator's Office, 2013) but it is unclear whether this covers the use of discretion in dealings with other taxpayers. Furthermore the opportunity for redress is limited because the Adjudicator can only require HMRC to apologise, meet additional costs incurred or make a small payment in recognition of the worry and distress caused by the error (Freedman and Vella, 2011). The Ombudsman may investigate complaints that HMRC has acted unfairly, although it is again not clear whether a complaint may be made concerning their treatment of another taxpayer, or has provided a poor service (Freedman and Vella, 2011).

In the UK, judicial review allows plaintiffs to ask the courts to rule, quite simply, whether or not a public body was acting within its powers. It can therefore allow taxpayers to challenge decisions on the grounds that HMRC exceeded its powers of discretion or applied its powers improperly. Judicial review is not a panacea for accountability for the use of administrative discretion. First, it is costly to undertake for the plaintiff. Second, plaintiffs need to establish to the courts' satisfaction that there are appropriate grounds for review. Reviews are limited in scope to narrow, technical considerations rather than broader notions of justice and equity (de Cogan, 2011). Judicial review cannot of itself overturn decisions and the threshold of unreasonableness is very high - being such that no reasonable person would have taken that decision (Freedman and Vella, 2011). And third, plaintiffs must demonstrate that they are entitled to seek a review - that is, they must have legal standing (locus

standz) (Ho and Ross, 2010). Taxpayers will almost certainly have standing in judicial review if they are directly affected by the HMRC's use of its discretion. For instance, in *R v Commissioner (ex parte Wilkinson)* (2005) UKHL30, Mr Wilkinson, a widower, claimed a widow's bereavement allowance for himself on the grounds that it was inequitable that such an allowance should be granted to widows, but not widowers. More contentious is the use of judicial review by third parties who are not directly affected. Taxpayers do not have a direct interest in the affairs of other taxpayers. However, if some taxpayers are permitted to pay less than they might otherwise because of the exercise of administrative discretion, then others must pay more or public expenditure must be reduced. The social contract implicit in taxation (Boden, 2012), which underpins notions of fairness and equity, suggests that taxpayers do have at a legitimate indirect interest in what others pay.

The question of precisely how direct an interest must be in order for it to be deemed sufficient to give a taxpayer standing therefore determines, inter alia, the extent to which it is possible to exercise oversight over the exercise of discretion by taxing authorities using judicial review. Ho and Ross (2010) admit that standing is one of the most controversial areas of US federal law. Jensen et al. (1986) describe the concept as "amorphous" and examine the consequences of adopting either a restrictive or a liberal doctrine, suggesting that this is not an objective concept, but one which is subjective and socially constructed. Winter (1988 cited in Ho and Ross, 2010) proposes an "insulation thesis", which holds that progressive Supreme Court justices invented the concept of legal standing to insulate government agencies from judicial review in order to ensure that these agencies were free to "experiment" with progressive legislation, a thesis that has gained some support (see, e.g. Sunstein, 1988 cited in Ho and Ross, 2010). Whilst Ho and Ross (2010) dispute this thesis, it does point to an admission amongst some legal commentators that standing might be deliberately used to permit or restrict access to judicial review.

The range of applicants and their interests who may petition for judicial review depends on whether the rules of standing are interpreted in a narrow or a broader, more relaxed, manner. More relaxed rules permit a wider range of litigants to petition the courts. Some of the arguments for or against a particular interpretation are practical. For example, advocates of narrow rules of standing argue that a broad interpretation will lead to a larger number of reviews leading to increased costs, much of which would have to be met from the public purse. Judges might also spend more time trying to "fireproof" decisions against subsequent reviews. Furthermore, restricting the right to those with a personal interest might give plaintiffs greater motivation and sharpen legal arguments. However, Hilson and Cram (1996) reject these criticisms, arguing that objections on grounds of cost prioritise the flow of government over legality, or functionalism over normativism, and that taking care to fireproof decisions can equally be viewed as ensuring higher quality decision making. They also argue that there is no evidence that ideological interest groups demonstrate any less motivation than those with a personal interest (Hilson and Cram, 1996, pp. 4-6).

At a more principled level, the interpretation of standing might depend on whether a moral, strategic or a politically instrumental perspective is adopted (Vanhala, 2012). Liberal individualism places much emphasis on individual property rights and a narrow interpretation restricts standing to those whose property rights have been infringed. A broad interpretation might mean that, where a decision is reached after democratic debate by elected representatives, allowing parties other than those directly affected to litigate that decision might lead to the earlier debate being re-run, thus usurping the role of the elected representatives, and public law might focus on policy evaluation, rather than legal principle (Hilson and Cram, 1996, pp. 7-8). Hilson and Cram reject these criticisms, arguing that judges hearing judicial reviews do not have free rein and must adhere to the principles of administrative law. If any of these principles appear to give the judges free rein, the solution should be to develop tighter

principles, rather than restrict the right of standing. Permitting a broad interpretation of standing means that judicial review can be used as a means of promoting good administrative practices, which might prevent threats to individual liberty arising in the first place (Hilson and Cram, 1996, pp. 9-10). If courts are viewed as an important part of the democratic policy process and as a pluralistic and participative venue for debate, groups who may have been excluded in the original debate may be included (Vanhala, 2012). From a strategic litigation perspective, broadening the interpretation of standing increases opportunities for "winning", although Vanhala (2012) cautions that being granted standing does not equate to a good chance of winning, and cites statistics indicating that the record of non-governmental organisations (NGOs) in winning legal challenges is poor. However, NGOs must make a strategic choice on whether to pursue their objectives through political lobbying or litigation. If the political environment is not receptive to their cause, lobbying is unlikely to be effective and they are more likely to prefer litigation (Hilson, 2002), but from a politically instrumental perspective, the mere threat of legal action might give an NGO bargaining or lobbying power (Vanhala, 2012).

The question of standing in English law has evolved in a rather haphazard and ad hoc manner, but a review of cases in the 1980s and 1990s such as *Reg v Inland Revenue Commissioners ex parte National Federation of Small Businesses and Self-Employed* (1982), *Greenpeace Ltd v HM Inspectorate of Pollution No. 2* (1993) and *Reg (Friends of the Earth) v Secretary of the State for the Environment* (1994) shows a tendency to prefer a broader interpretation of standing (Hilson and Cram, 1996; Vanhala, 2012).

Hilson and Cram (1996) argue that applications from groups should be preferred to those from individuals on the grounds that groups are likely to possess greater expertise and in the case of *Reg v Inspectorate of Pollution and Reg v ex parte Greenpeace Ltd (No. 2)* (1994), Otton described Greenpeace as an entirely responsible and respected body with a genuine concern for the environment and that an important reason for granting them standing was that their experience and access to expertise meant that they were able to mount focused, relevant and well-argued challenge (cited in Hilson and Cram, 1996, p. 24).

In sum, taxation sits at the nexus of accounting and law, neither of which is objective and absolute but both of which have a techno-rational facade. This complexity means that the sensible administration of taxes requires that HMRC be given the power to exercise discretion in individual cases. These powers are enshrined in law but also subject to limitation. Considerations of the social contract that enwraps tax systems suggest that the exercise of discretion has to be justifiable on the grounds of fairness to all taxpayers or risk public distrust or resentment of the tax regime, with all that this implies for compliance and, indeed, public order.

Accountability around the use of discretion is the best way of ensuring public confidence in this system. The possibilities of accountability suffer a double bind. First, both law and accounting operate under a chimera of objectivity and rationality which create an impression of impartiality. Second, and less arguably, the law also provides that taxpayers have a right to total confidentiality in their tax affairs. This relieves the HMRC of any automatic obligation to be accountable for its use of discretionary powers except where the taxpayer directly affected takes action themselves (as in *R v Commissioner (ex parte Wilkinson)* (2005) UKHL30). Where third parties have an indirect interest in discretion exercised with regard to others, they must rely on the accidental release of information or acts of whistleblowing. Even when third parties come to know of discretionary treatment of others which they regard as unfair, the legal opportunities for redress are limited to judicial review. Review can be extremely costly, is narrow in scope and third party taxpayers may experience difficulty in proving their legal standing.

This state of affairs might not be problematic if there were guarantees that HMRC were not subject to the operation of power by either political interests or powerful taxpayers - but there remains the possibility of such regulatory capture. Lukes (2005) provides an appropriate lens with which to analyse how power might operate in such circumstances. Using the concept of first dimension of power, in normal circumstances there would be no cause for concern: the exercise of discretion remains invisible because of taxpayer confidentiality and there is a widespread acceptance of the neutral and objective nature of taxation. Using the second dimension of power, we can examine how certain forms of accountability are currently organised off the agenda. In particular, the difficulties that might beset concerned citizens from seeking judicial review point to a particular mobilisation of bias. A third-dimensional analysis of the way discretionary power is exercised might suggest that the interests of powerful taxpayers were woven into the fabric of HMRC's policy and decision-making apparatus or that individual tax officials have absorbed and internalised the ethos of an organisation which has been subject to regulatory capture, exercising their discretion in a partial way.

Lukes (2005) quite correctly identified that the operation of power in the second and third dimensions can only be captured and described via empirical observation and analysis - in short, we need to know what happens on the ground. Both the second and third dimension of power but especially the third, require analysis of critical incidents that act as windows through which glimpses of a world beyond the immediate and obvious can be glanced. That opportunity is afforded here by the FSB and UK Uncut cases. In the next section those cases are analysed in detail from a power perspective.

Troubling cases

The FSB case is a leading case on administrative discretion. In the days when the newspaper industry was based along Fleet Street in London, the "Fleet Street casuals" were around 6,000 casual print workers nominated by their trade unions to work for newspapers on specified occasions. These workers were given call slips and collected pay dockets from the unions in order to claim pay from their employers. A number of them gave false names (sometimes, allegedly, as blatant as "M. Mouse" or "D. Duck"), making it impossible for HMRC (then called the "Inland Revenue") to collect payroll taxes. The tax lost was estimated at around £1 m a year. The unions to which the casuals belonged had a full list of the workers' details and the payments made to each, but were not allowed to disclose these to third parties. A deal was made between employers, the unions and HMRC under which, in return for HMRC not pursuing tax already lost through these frauds, it was agreed that tax would be properly assessed and accounted for henceforth.

The FSB challenged this agreement on the grounds that it compared unfavourably with what it saw as the aggressive stance that HMRC took towards its members suspected of tax evasion. It wanted the Fleet Street tax amnesty to be ruled illegal and for HMRC to be required to collect the tax due from the workers for previous years. The FSB's application for a judicial review was refused by the Court of Appeal and on appeal to the House of Lords (at that time the highest court in the UK).

Whilst the majority of judges took a narrow perspective and rejected the FSB's application, in the Court of Appeal Lord Denning alone dissented, basing his judgement on much broader notions of equity and the public interest. The central issue of the case was whether the FSB had a sufficient interest in the affairs of other taxpayers by virtue of their perception that other taxpayers were receiving more favourable treatment than their members. Further issues were whether this interest might override the general principle of taxpayer confidentiality and whether the agreement reached exceeded the limits of HMRC's administrative discretion.

Denning was the only judge in the FSB case who considered the issue of the accountability of public bodies in detail (Reg v IR Commissioners ex parte Federation of Self-employed and Small Businesses Ltd (1980)). Denning argued that the public interest dictated that it was of paramount importance that there be oversight of public bodies in the way that they carried out their functions; if the FSB were unable to complain, there was nobody else who would be able to do so, excluding the possibility of oversight.

Denning stated that preventing oversight of public bodies might lead to "deplorable decisions", such as that in Reg v Lewisham Union Guardians (1897), where the guardians of the poor in Lewisham were obligated by statute to ensure that everyone was vaccinated against smallpox, but they failed in that duty, thus putting everyone at risk. In the Lewisham case the court decided that nobody had locus standing to complain. The consequence was that there was no way in which the public authority could be obliged to perform its duty. Lukes (2005) might argue that this was the mobilisation of bias characteristic of the operation of power in the second dimension.

Denning argued that accountability in the FSB case was necessary because it was undesirable that certain groups in society should be able to exert undue influence. Quoting Mr Hoadley (the Principal Inspector of Taxes involved in the negotiating the Fleet Street agreement) at some length, he made it quite clear that, in his opinion, Mr Hoadley believed that the attitude of the newspaper owners and of the print unions would frustrate a successful investigation and that more tax could be raised through the arrangement made. The HMRC was prepared to admit defeat in the face of these obstacles. It is worth noting that, under UK law, Mr Hoadley could have simply raised reasonable assessments against the workers and the onus would have been on them to produce the evidence to displace them. The argument that it would have been difficult or impossible to raise large amounts of tax through an investigation therefore appears dubious. The decision of the HMRC not to pursue the investigation might therefore be viewed as the operation of the third dimension of power.

Perhaps because of his commitment to the notion of public accountability, Denning was prepared to interpret the doctrine of standing broadly, arguing that the FSB did indeed have a sufficient interest. He reasoned that the Fleet Street casuals had been afforded special treatment because of their industrial muscle, which the FSB members lacked and that, if the FSB were unable to complain, there was nobody else who would be able to do so and there would therefore be no possibility of a remedy. He cited the words of Walton]. In the Court of Appeal in Vestey v IRC (1979) (cited in Reg v JR Commissioners ex parte Federation of Selfemployed and Small Businesses Ltd 1980:24), noting that they were quoted and stressed by Wilberforce when this case was heard in the House of Lords:

I conceive it to be in the national interest not only of all individuals [...] but also in the interests of the revenue authorities themselves that the tax system should be fair [...] One should be taxed by law and not untaxed by concession [...] A tax system which enshrines obvious injustices is brought into disrepute with all taxpayers accordingly, whereas one in which injustices, when discovered, are put right (and with retrospective effect if necessary) will command respect and support.

Denning argued that if the tax system is not fair and no remedies are available for injustices, then it will fall into disrepute.

Denning exercised his prerogative to reject the Lewisham precedent and establish a less restrictive interpretation of "sufficient interest", as argued in Attorney General of the Gambia v NJie (1961) (cited in Reg. v JR Commissioners ex parte Federation of Self-employed and Small Businesses Ltd 1980:421). In this judgement, he precluded a "mere busybody" from having standing, but included anyone with

a "genuine" grievance. In doing so he illustrated the power held by judges, to reverse decisions by ruling that a precedent is no longer compatible with contemporary values and society.

If judges exercise power in overturning precedents and extending the concept of standing, it follows that they are equally exercising power by refusing to do so. In his judgement on the FSB case in the House of Lords, Lord Wilberforce argued that:

As a matter of general principle I would hold that one taxpayer has no sufficient interest in asking the court to investigate the tax affairs of another taxpayer or to complain that the latter has been under-assessed or over-assessed; indeed there is a strong public interest that he should not (Inland Revenue Commissioners v National Federation of Self-Employed and Small Businesses Ltd 1982:633).

Wilberforce did not (and was not obliged to) elaborate on why it was not in the public interest to allow taxpayers to complain in such circumstances. However, the fact that what appears to be an objective exercise might actually be a somewhat arbitrary exercise of power may be discerned by contrasting his argument here with that he made in *Vestey v IRC* (1979) quoted above. Denning also cited similar statements by Wilberforce in *Gouriet v Union of Post Office Workers* (1978) and *Arsenal Football Club v Ende* (1979), in which Wilberforce emphasised the need for fairness in taxation and advocated a much more liberal concept of standing than he was prepared to allow in the FSB case. Wilberforce distinguished the latter case from the FSB one by the narrowly legalistic argument that the General Rates Act 1967 gave an "aggrieved person" the right to mount a challenge, whereas no corresponding right was intended by the income tax legislation (*Inland Revenue Commissioners v National Federation of Self Employed and Small Businesses Ltd 1982:633-634*).

The FSB therefore failed in its attempt to obtain a judicial review on the grounds that it had no standing, that the Inland Revenue's action fell within the administrative discretion permitted by statute and that there was therefore no public interest in overriding the statutory duty of taxpayer confidentiality. Thirty years later these principles were once again tested in broadly similar circumstances.

An interesting case

In October 2011 *The Guardian*, a UK broadsheet newspaper, reported that HMRC had agreed to forgive the American investment bank Goldman Sachs £10m of interest arising as a result of failed tax avoidance schemes. This deal was described by officials as a "cock-up" (Leigh, 2011), but they refused to disclose who was responsible. Disclosure of this agreement was not an isolated incident: in July 2010 the *Daily Telegraph*, another broadsheet, reported that HMRC had settled a long-running tax dispute with Vodafone (Armitstead, 2010), under the terms of which the company agreed to pay £1.25 bn over a five-year period. The precise amount of tax which might have actually been due is speculative, and was variously estimated between £6 bn (Sikka, 2011) and £8 bn (Mason, 2011). These agreements had entered the public domain due to Osita Mba, an HMRC solicitor who had turned whistleblower. They were often termed "sweetheart deals" and were widely criticised in the media. For example, Norman (2011) criticised the facts that HMRC's lawyers had little information about the deal because Hartnett had not consulted with them and were "evidently deeply uncomfortable about the settlement". He also criticised the lack of disclosure by HMRC, citing their counsel James Eadie who stated that, whilst HMRC had a general duty of confidentiality, it could make disclosures to a parliamentary body with an oversight role and the decision not to do so was Hartnett's. Similar criticisms were made elsewhere, for example, by Armitstead (2011). Outrage was not restricted to media coverage; a report by the PAC (House of Commons, 2011) accused HMRC of giving large firms favourable treatment and singled out Dave Hartnett, the then head of HMRC, for particular criticism,

accusing him of failing to conduct negotiations properly and adhere to internal procedures. These were clear accusations of regulatory capture the operation of the third dimension of power (Lukes, 2005). In the wake of this Sikka (2011) repeated the accusation in the PAC report that HMRC had a "cosy relationship with the tax avoidance industry" and argued that the deals had let multinational corporations off the hook, but that there was little public accountability. He cited as evidence that: HMRC officials attended numerous lunches, dinners and receptions organised by the Big Four accounting practices who work for such firms (which had been established by researchers at Bureau of Investigative Journalism, 2010); that this hospitality by the accounting profession was intended to further their own interests; and, that former ministers, such as Lord Mandelson and Lord (Digby) Jones, acted as consultants to these firms. Sikka was not alone and similar criticisms were made by, for example, BBC (2010). The National Audit Office (National Audit Office, 2012) then conducted an investigation headed by Sir Andrew Park, a former judge, into five large corporate deals in order to ascertain whether they were "reasonable" and in accordance with legal advice and internal HMRC guidelines. It concluded that all the settlements relating to tax and national insurance were reasonable, that the failure to charge Goldman Sachs interest appeared to be a deliberate decision which made sense in the context of reaching a deal on the various issues, and that officials may "genuinely have believed that there was a barrier [to demanding th interest]' . The NAO also made similar criticisms of HMRC's governance procedures as the report by the PAC (National Audit Office, 2012, p. 4).

Against this background, the grass root pressure group UK Uncut, which campaign against the public spending cut imposed by the Conservative-Liberal Democrat coalition government, announced on 20 December 2011 that it intended to seek a judicial review of the deal between HMRC and Goldman Sachs and a ruling that it was ultra vires. A press release stated that it had decided to seek the review after a "dismissive" response from HMRC to its letters (UK Uncut Legal Action, 2013).

UK Uncut's decision to pursue the Goldman Sachs case and not the Vodafone one merits explanation, especially as the latter involved far greater sums. The Vodafone case involved disputed tax on the application of the Controlled Foreign Companies (CFC) legislation[!] to profit arising on the acquisition of the German company Mannesmann through Vodafone' Luxembourg subsidiary dating back to 2000. Although HMRC had prevailed in the Court of Appeal (Vodafone 2 vs HMRC (2009)) and Vodafone had been refused leave to appeal to the Supreme Court, there remained the possibility that the decision might be challenged in the European Court of Justice on the grounds that applying the UK CFC legislation to transactions within the EU contravened European law. Vodafone had indicated its willingness to pursue a lengthy and costly dispute to the bitter end. HMRC was willing to negotiate a settlement in order to avert an expensive case that it had no guarantee of winning, even though the case had been finally settled as far as the UK judicial system was concerned. Armitstead (2010) claims that this approach is evidence of a policy shift by the Government, dubbed the "dash for cash" - that is, a desire to relieve ailing public finances now rather than hang out for possibly greater amounts in the future. Vodafone were clearly exercising the power that comes from having a significant war chest for such battles and knowing that i payments could make a significant effect on public finances. Problematically from UK Uncut's perspective, any European case was highly contestable and would have been the subject to much abstruse legal argument. This would have made HMRC's exercise of discretion appear more justifiable on the grounds of expediency.

In contrast, the sum in the Goldman Sachs case related to interest payable on tax which had initially been underpaid due to the failure of tax avoidance schemes relating to staff bonuses. Goldman Sachs had that the tax itself was due and that it had been paid late. The addition of interest to the bill in such circumstances would normally be automatic and non-discretionary in law - yet HMRC had forgiven it

(Social Security (Contributions) Regulations, SI 2001/1004 reg.67). Pursuing the more clear-cut case allowed UK Uncut to focus on the important issue of the extent to which it is possible to subject the system of tax administration to public scrutiny and hold it to account for the way in which it exercises discretion.

UK Uncut decided to petition for a judicial review in December 2011 after what it described as a "dismissive" response from HMRC to its letters (UK Uncut Legal Action, 2013) and following the publication earlier in the month of a report by the PAC (House of Commons, 2011), which seriously criticised HMRC's handling of large tax disputes. Like the FSB, UK Uncut also had to prove that it had legal standing and that there was a case to answer in order to pursue its challenge and an initial hearing was held in June 2012 to adjudicate this issue (*R v Revenue and Customs Commissioners* 2012). HMRC advanced three arguments as to why the review should not proceed. First the proceedings had been commenced more than three months after the claim became public knowledge in *Private Eye* in April 2011. Second, UK Uncut did not have standing. Third, there was an alternative remedy as the PAC was already investigating the matter.

The judge rejected all three arguments. First, whilst the claim may have been public knowledge in April 2011, it was arguable that UK Uncut was entitled to wait until the outcome of the PAC report which was published in 14 December 2011 (House of Commons, 2011), since this report carried much more weight and authority than the piece in *Private Eye*. Assembling and marshalling the evidence necessary to conduct a judicial review entails considerable cost, and UK Uncut were entitled to wait until they had authoritative evidence before proceeding. Indeed, if UK Uncut had petitioned the courts on the basis of evidence contained in *Private Eye*, this might well have been deemed to be insufficient grounds. This detail points to the reliance on leaks and whistleblowing to bring such matters into the public eye. HMRC's attempt to divert examination of the issue to parliament would have effectively ensured that fewer details of the actual deal would have come out as its powers of examination are considerably weaker and it has no right to declare decisions *ultra vires*.

Second, the judge held that UK Uncut had a legitimate argument that were a category of persons as set out in the FSB case who could take advantage of a more relaxed view of the categories of persons who had standing, i.e. parties who had an indirect issue in the matter. The judge said that the issue of standing would not by itself prevent the application being granted (*R. v Revenue and Customs Commissioners* 2012). As well as adjudicating the issue of standing, the initial hearing also determines whether the plaintiff has a *Prima facie* case and UK Uncut therefore had to present their evidence. Although it is not known what evidence was presented, this might have included the e-mail of 7 December 2010 from Dave Hartnett and the judge may therefore have concluded that the public interest was sufficient to allow this review.

Third, the judge noted that whilst the PAC might express an opinion on a number of issues connected with this case, it could not rule on the legality of the arrangement (*R. v Revenue and Customs Commissioners* (2012)). The judge did not elaborate on this statement, but may well have meant that a finding by a judicial review that the arrangement was unlawful would be more severe criticism than the findings of PAC. UK Uncut, therefore, achieved more than the FSB by succeeding in obtaining a judicial review and thereby calling HMRC to account for the way in which it used its administrative discretion.

Calling to account

The FSB case was never heard fully as the plaintiff had no standing. However, the judges did adumbrate on the extent to which HMRC might have exceeded its powers as part of their

consideration of the public interest of the case (and therefore of standing). The UK Uncut case did go to review, so full consideration was given to the question of whether the HMRC had exercised its discretion legitimately. Both cases raise interesting points.

UK Uncut put forward three arguments why the settlement should be ruled unlawful. First, it breached the guidelines in HMRC's Litigation and Settlement Strategy (2007) in the following ways:

1. The settlement with Goldman Sachs resolved a number of issues for the payment of an agreed sum and was therefore a "package deal", i.e. an agreement where a number of issues are settled for a single payment that is not subdivided between individual disputes. Officials are instructed not to enter into such deals.
2. The dispute with Goldman Sachs involved a single point of law and should therefore have been settled on an all-or-nothing basis. However, in the settlement HMRC conceded some issues and Goldman Sachs conceded others and the parties therefore effectively "split the difference", in contravention of the guidelines.
3. Officials should not undercharge tax, interest or penalties in the interest of quick settlement, even if doing so would constitute a good return on time spent on the case and officials should always consider whether the settlement terms do enough to promote positive taxpayer behaviour and discourage non-compliance. Furthermore, the guidelines instruct officials not to accept settlements for < 100 per cent of the tax and interest due, if HMRC's advice is strong (Litigation and Settlement Strategy 2007 cited in UK Uncut Legal Action Ltd v Commissioners of HMRC 2013:9).

Second, Dave Hartnett had taken account of immaterial considerations in reaching the agreement. In support of this argument they presented an e-mail sent by Hartnett on 7 December 2010 in which he states that going back on the agreement would cause HMRC, and him personally, great embarrassment and reputational harm because of the mistakes they had made. Furthermore, when a colleague broached the matter of the interest with Goldman Sachs they "went off the deep end" and threatened to withdraw from the code of conduct on taxation which the Chancellor of the Exchequer had persuaded the major banks to sign up to, thereby causing great political embarrassment (UK Uncut Legal Action Ltd v Commissioners of HMRC 2013:15 & 33). Third, there was a breach of equality, since the case was settled on different terms from those of other companies who had adopted the same arrangement as Goldman Sachs, but had settled in 2005 (UK Uncut Legal Action Ltd v Commissioners of HMRC 2013:33).

Mr Justice Nicol rejected all of UK Uncut's arguments, ruling that the agreement to waive interest was lawful and that HMRC was acting within its powers of administrative discretion. However, he also noted, with lawyerly understatement, that "[t]he settlement with Goldman Sachs was not a glorious episode in the history of the Revenue" (UK Uncut Legal Action Ltd v Commissioners of HMRC 2013:66). He rejected the argument that the settlement contravened HMRC's Litigation and Settlement Strategy (2007), stating that interest and principal were treated as separate issues and that an all-or-nothing approach was taking on each of these, with HMRC getting all of the principal and nothing of the interest. He did not comment on whether this treatment was correct, given that interest arises due to the late payment of the principal, simply noting that the treatment was consistent with the settlements reached with the other companies in 2005 (UK Uncut Legal Action Ltd v Commissioners of HMRC 2013:36). He also accepted (as had Sir Andrew Park National Audit Office, 2012, p. 85) that HMRC had genuinely believed that there was a technical barrier to recovering the interest, although he states that this was a mistaken assumption and also criticised Hartnett for not consulting with their lawyers on the matter and not obtaining approval from the Programme Board (UK Uncut Legal Action Ltd v Commissioners of HMRC 2013:37). Despite these criticisms he ruled that the settlement was not

unlawful because the Commissioners were dealing with an exceptional situation (UK Uncut Legal Action Ltd v Commissioners of HMRC 2013:38) and they believed that it represented a "good deal for the Revenue" (UK Uncut Legal Action Ltd v Commissioners of HMRC 2013:41). The fact that the correctness of HMRC's position was less important than what they believed recalls Humpty Dumpty's assertion (Carroll 1871 cited in James, 2010) that words could mean what he wanted them to mean and is the third dimension of power where subjectivity is hidden behind a techno-rational, legal justification (James, 2010).

Mr Justice Nicol also rejected UK Uncut's second argument that Hartnett had taken irrelevant considerations into account in reaching the settlement. Whilst these factors included personal embarrassment and reputational harm due to the admission of errors it also included the accusation that he had given in to threats by Goldman Sachs and this makes for an interesting comparison with the FSB case. It was common ground between Denning and his colleagues that Inland Revenue had wide administrative discretion and the disagreement between them concerned not whether this discretion extended to giving in to outside pressure and threats, but whether they actually did so. Denning agreed that HMRC should have the power to negotiate with taxpayers, but stressed that the threat of industrial action had been a significant factor in the decision to settle. He cited an affidavit by Mr Hoadley, the Inspector of taxes, which said:

[...] I considered that if any solution was to have a real prospect of being effective the agreement of the employers and the co-operation of the casual printing worker and their union representatives was essential. I feared that if this co-operation could not be achieved, the employers would be unlikely to agree to any solution because of the real possibility of industrial action being taken (emphasis in original, Reg v IR Commissioners ex parte Federation of Self-employed and Small Businesses Ltd 1980 1 Q.B. 418-419).

Whilst Wilberforce made much of the difficulty of obtaining large sums of money from uncooperative workers and employers, he dismissed the idea that HMRC bowed to pressure from the unions and employers due to the threat of industrial action, describing Mr Hoadley's reasoning as "all part of the process of obtaining the agreement" (Inland Revenue Commissioners v National Federation of Self-Employed and Small Businesses Ltd 1982:635). He therefore considered that, in coming to the arrangement "the Inland Revenue [...] were acting genuinely in the care and management of the taxes under the powers entrusted to them", that they "acted in the bona fide exercise of the wide judicial managerial discretion conferred on them by statute" and that this discretion should be exercised so as to generate the "highest net return that is practicable having regard to the staff available to them and the cost of collection" (Inland Revenue Commissioners v National Federation of Self-Employed and Small Businesses Ltd 1982:635-7).

The disagreement between these two judges was therefore one of interpretation of the facts, rather than a point of law. It is not clear whether the employers and/or unions actually made any explicit threats or representations to HMRC. However, even if they did not, the mere possibility of this might have been enough to cause Mr Hoadley to hesitate and, arguably, he was responding to the potentiality of overt power. Boll (2011) argues that the act of tax compliance is socially constructed and that one means by which it is constructed is by the elements of actors' behaviour that the tax authority is able and/or chooses to see. Wilberforce's _denial that Mr Hoadley was influenced by the power of the employers and unions is reminiscent suggests a similarly partial and subjective process. If Wilberforce had viewed Mr Hoadley's behaviour as the product of trepidation based on the previously militant behaviour of the print unions, this might have taken him in a direction he did not wish to go. That is, it is possible that Wilberforce, consciously or unconsciously, was exercising his power to construct the behaviour of HMRC.

In the UK Uncut case the e-mail from Dave Hartnett meant that, unlike Wilberforce, Mr Justice Nicol could not simply pretend that Dave Hartnett was not influenced by threats and he acknowledged that Dave Hartnett was worried that going back on the agreement would damage a relationship with Goldman Sachs which had been very difficult and might lead to more aggressive future behaviour (UK Uncut Legal Action Ltd v Commissioners of HMRC 2013:20). However, he ruled that this, like the embarrassment, both personal and to HMRC, was irrelevant, because Dave Hartnett would have reached the same conclusion even in the absence of these factors (UK Uncut Legal Action Ltd v Commissioners of HMRC 2013:45-65).

Furthermore, it was for the decision maker (i.e. the HMRC official) to decide which factors were relevant or irrelevant, subject to any statutory limitation. Therefore, even though Mr Justice Nicol considered these factors to be irrelevant, it was not irrational for Dave Hartnett to have considered them and it was therefore not unlawful for him to have done so (UK Uncut Legal Action Ltd v Commissioners of HMRC 2013:62). This again recalls Boll's (2011) argument that tax compliance is constructed by the factors which the tax authority wishes to view and those it chooses to ignore.

Since Mr Justice Nicol dismissed UK Uncut's appeal the question therefore arises whether the challenge has actually achieved anything and the conclusion therefore discusses whether it might have any significance, despite the defeat.

Conclusion

In this paper I have discussed the issues raised by UK Uncut's legal challenge to the agreement between HMRC and Goldman Sachs to waive approximately £10 m of interest relating to the late payment of national insurance contributions, which are the importance of democratic oversight of the way in which public bodies carry out their functions, the extent to which this can be permitted or denied by the rules of legal standing and the extent to which HMRC's administrative discretion can be legally challenged. I have compared this case with the FSB case which raised similar issues in the 1980s. Whilst UK Uncut achieved more than the FSB by obtaining a judicial review, their challenge was defeated, the review did not raise any fundamental issues which had not been raised by the reports of the PAC or the National Audit Office, and the reasons given for dismissing their case were very similar to those in the earlier case. However, the review forced Dave Hartnett to give evidence, thus making HMRC more accountable for the way in which it carries out its duties and his evidence, particularly the widely reported e-mail of 7 December 2010, provided additional richness of detail concerning HMRC's relationship with large taxpayers and exposed clearly the operation of power. Furthermore, in contrast with the FSB case, it has gained wide press coverage and, in the age of the internet, the full judgement, Dave Hartnett's evidence and e-mail were all posted on UK Uncut's web site (UK Uncut Legal Action, 2013) within hours of the decision being released. The details of the behaviour of HMRC and Goldman Sachs and the extent of HMRC's administrative discretion have therefore received much more publicity and have provoked more comment (e.g. The Guardian, 2013) than would otherwise have been the case, although much of this has possibly been unnuanced and/or ill-informed. There is, however, only a limited benefit from exposing the operation of power, if this does not then lead to any changes. Campaigning organisations, such as UK Uncut, usually use litigation as one part of their campaigning strategy and have an attitude of "losing the battle, but winning the war" in relation to a specific campaigning goal (Vanhala, 2012, p. 544). Although law and legal procedures may appear to have the characteristics of Foucauldian truth regimes they are not static and immutable, but dynamic. Epp (2009 cited in Vanhala, 2012, p. 526) has found that law emerges both out of the interests and power of elite and out social relationship, rather than being imposed from above. The drive for legal change can therefore be "bottom-up" as well as "top-down" and Hilson

(2002) reminds us that elites can ensure that their interests are heard through effective lobbying, whereas litigation is more likely to be a tool used in "bottom-up" pressure for change. The emergence of movements such as UK Uncut can be seen as a shift away from the law and courts as drivers of law and social change towards multiple locations of social movements (Paris 2010 cited in Vanhala, 2012, p. 526).

UK Uncut has been extremely successful in shaping public opinion, because, since it was founded in late 2010, there has been an upsurge of public interest in, and consciousness of, the tax arrangements of large companies and wealthy individuals, thus subjecting them to greater scrutiny. Similarly, HMRC has been called to account and the power relations which underpin the relationship between them and large companies. The reports of the "sweetheart deals" in 2011 have been followed by press reports of how little tax wealthy individuals pay (Wintour, 2012) and the use of the "K2 scheme" by celebrities such as Jimmy Carr, who was forced to admit that his involvement was "a mistake" (Sky, 2012). By Autumn 2012 Parliament had become involved, with the PAC interrogating Amazon and Starbucks on their tax affairs (Kiss, 2012), as a result of which Starbucks "volunteered" to pay £20m of corporation tax (Neville and Treanor, 2012). Google were similarly interrogated in May 2013 (Bowers and Syal, 2013). These proceedings were widely reported; the interrogation of Google being a lead item on the BBC News that day and the subject of a question on BBC's Question Time and resulted in a report (House of Commons, 2013). The following weekend the *TJze Guardian* (2013) wrote in an editorial that Google's and Amazon's tax arrangements smelt bad and that the ruling that the Goldman Sachs arrangement was lawful was evidence that "something really stinks" and the *Sunday Times* (Duke and Ungoed-Thomas, 2013) reported that a whistleblower within Google was preparing to hand over a cache of over 100,000 e-mails giving details of an "immoral tax scam". The subject of corporate tax avoidance has also been put on the agenda internationally. On 22 May 2013 the EU Commission discussed the issue (European Council, 2013) and it is reported that it will be discussed at the GB summit in June 2013 (Reuters, 2013).

There are many who have been critical of UK Uncut. For example, Prof Judith Freedman (KPMG Professor of Taxation at Oxford University) accused UK Uncut of polarising the debate on taxation and of being selective in its targets (Drucker, 2013). The involvement of the PAC has also been controversial and the chair of the committee, Margaret Hodge has been widely criticised in the professional press for meddling in areas which she does not understand and which Parliament should not concern itself with. For example, Truman (2013) gave Margaret Hodge the "award" of "tax prat of the year". Whilst press reports are rarely nuanced and cannot always be relied upon to be accurate, particularly where complex areas of law are involved, their cumulative effect should not be underestimated. The press coverage has questioned the "morality" of the structures used by these individuals and companies, these reports and the earlier reports of the "sweetheart deals" are all of a piece in that they reflect a growing concern that wealthy individuals and large companies are able to use their power to avoid paying tax. A shift in public opinion challenges the power relations which underpin it and where this happens, to quote the well-known phrase from *Star Trek*, resistance is futile. Although the law is a codified discourse with rules and procedures which generate a Foucauldian truth regime, it is also dynamic and these rules and procedures and therefore the nature of the truth regime can evolve over time. Judges have a large degree of discretion in judicial interpretation and this discretion is often applied to produce rulings which accord with contemporary values and attitudes (James, 2010). Denning cited the case of *Attorney General of the Gambia v N'jie* (1961), in which he overturned *Reg v Lewisham Union Guardians* (1897) as an example of this and, more recently, *Radmacher v Granatino* (2010) for the first time allowed a court to recognise a pre-nuptial agreement. In the area of taxation James cites several cases relating to Excess Profits Duty and Excess Profits Tax in which the judges' legal arguments in ruling against the taxpayers seem so bizarre

and inconsistent, that the most likely explanation for the rulings would seem to be that they were responding to the patriotic imperative that everyone should contribute financially to the war effort and to the distaste for wartime profiteering. Whilst these might be extreme examples, the publicity might have a similar effect and influence judges' reasoning in tax avoidance cases. Furthermore, it might conceivably lead to fundamental changes to the basis of company taxation, such as replacing the territorial basis of taxation where countries tax companies on profits arising in their territory with the unitary basis of taxation. Such a shift in public opinion is usually gradual and cannot occur unless people become aware of the hidden operation of power which holds status quo in place. By holding I-WRC accountable for its relationship with Goldman Sachs, UK Uncut has achieved a significant success by illustrating Lukes' (2005) argument that power, however, complete and hidden, can never be absolute and that there are always critical windows of opportunity through which its hidden operation becomes apparent. There is, indeed, a long way between a matter being on the political agenda and effective action being taken, but if public opinion and the political process does lead to such action against corporate tax avoidance, history may well conclude that, whilst UK Uncut may have lost this particular battle, it helped to win the war.

References

Adjudicators Office (2013), available at: www.adjudicatorsoffice.gov.uk/howwork.html

Armitstead, L. (2010), "Vodafone in £1.25bn tax settlement with HMRC", Daily Telegraph, 24 July, available at: www.telegraph.co.uk/finance/newsbysector/epidvodafone/7907375/Vodafone-in-1.25bn-tax-settlement-with-HMRC.html (accessed 29 May 2013).

Armitstead, L. (2011) "Taxman accused of 'cover-up' over Goldman's bill", Daily Telegraph, 14-17 October 2012, available at: www.telegraph.co.uk/finance/newsbysector/banksandfinance/8830518/Taxman-accused-of-cover-up-over-Goldmans-bill.html (accessed 18 June 2012).

BBC (2010), "MPs attack HMRC's 'cosy deals' with big business", available at: www.bbc.co.uk/news/business-16253205 (accessed 18 June 2010).

Boden, R. (2012), "Tea parties, tax and power", in Oats, L. (Ed.) Taxation: A Fieldwork Research Handbook, Routledge, Oxford, pp. 126-133.

Boll, K. (2011), Taxing Assemblages - Laborious and Meticulous Achievements of Tax Compliance, IT University of Copenhagen, Copenhagen.

Bowers, S. and Syal, R. (2013), "MP on Google tax avoidance scheme; I think you do evil", The Guardian, 16 May, available at: www.guardian.co.uk/technology/2013/may/16/google-told-by-mp-you-do-do-evil (accessed 29 May 2013).

Bureau of Investigative Journalism (2010), "Bureau Publishes Comprehensive Civil Service Hospitality Database", available at www.thebureauinvestigates.com/2010/06/17/bureau-publishes-comprehensive-civil-service-hospitality-database/ (accessed 18 June 2013).

Commissioners of Revenue and Customs Act (2005), available at: www.legislation.gov.uk/ukpga/2005/11/contents (accessed 18 June 2013). de Cogan, D. (2011), "Tax, discretion and the rule of law", in Evans, C., Freedman, J. and Kreyer, R. (Eds), The Delicate Balance, IBFD, Amsterdam, pp. 1-14.

Drucker, J. (2013), "Occupy Wall Street stylists pursue UK tax dodgers", Bloomberg, 11 June, available at: www.bloomberg.com/news/2013-06-11/occupy-wall-street-stylists-pursue-u-k-tax-dodgers.html (accessed 18 June 2011).

Duke, S. and Ungood-Thomas, J. (2013), "Google insider Exposes 'immoral' tax scam", SundayTimes, 19 May.

Edgley, C.R.P (2010), "Backstage in legal theatre: a Foucauldian interpretation of 'Rationes Decidendi' on the question of taxable business profits", Critical Perspectives on Accounting, Vol. 21 No. 7, pp. 560-572.

European Council (2013), "Conclusions of European Council meeting", 22 May, available at: www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/137197.pdf (accessed 29 May 2013).

Foot, T. (2013), "Sweetheart deal' taxation Dave Hartnett joins accountancy firm Deloitte", Independent, 28 May, available at: www.independent.co.uk/news/uk/politics/sweetheart-deal-taxman-dave-hartnett-joins-accountancy-firm-deloitte-8633686.html (accessed 18 June 2013).

Foucault (1978), Discipline and Punish, (Trans by A. Sheridan from the French) Penguin Books, London.

Frecknall Hughes, J. and Oats, L. (2007), "King John's tax innovations -extortion, resistance, and the establishment of the principle of taxation by consent", Accounting Historians' journal, Vol. 34 No. 2, pp. 75-79.

Freedman, J. and Vella, J. (2011), "HMRCs management of the UK tax system; the boundaries of legitimate discretion", in Evans, C., Freedman, J. and Krever, R. (Eds), The Delicate Balance, IBFD, Amsterdam, pp. 79-119.

Greepeace Ltd v HM Inspectorate of Pollution No. 2 [1993] EWCA Civ 9.

(The) Guardian (2013), "Multi-nationals and tax, a bad smell", The Guardian, 17 May, available at: www.guardian.co.uk/commentisfree/2013/may/17/mutinational-tax-bad-smell-editorial (accessed 29 May 2013).

Hilson, C. (2002), "New social movements: the role of legal opportunity", journal of European Public Policy, Vol. 9 No. 2, pp. 238-255.

Hilson, C. and Cram, I. (1996), "Judicial review and environmental law -is there a coherent view of standing?", Legal Studies, Vol. 16 No. 1, pp. 1-26.

Ho, D.E. and Ross, E.L. (2010), "Did liberal justices invent the standing doctrine? An empirical study of the evolution of standing 1921-2006", Stanford Law Review, Vol. 62 No. 3, pp. 591-667.

House of Commons (2011), Public Accounts Committee 61st Report -HM Revenue & Customs 2010-11 Accounts; Resolution of Tax Disputes, available at: www.publications.parliament.uk/pa/crn201012/cmselect/cmpubacd1531/153102.htm (accessed 29 May 2013).

House of Commons (2013), Public Accounts Committee 9th Report -Tax Avoidance Google, available at: www.publications.parliament.uk/pa/cm201314/cmselect/cmpubacc/112/11202.htm (accessed 18 June 2013).

Inland Revenue Commissioners v National Federation of Self-Employed and Small Businesses Ltd [1982] AC 617.

James, M. (2010), "Humpty Dumpty's guide to tax law; rules, principles and certainty in taxation", Critical Perspectives on Accounting, Vol. 21 No. 7, pp. 573-583.

Jensen, M.C., Meckling, W.R. and Holderness, C.G. (1986), "Analysis of alternative standing doctrines", *International Review of Law and Economics*, No. 6, pp. 205-216.

Kiss, J. (2012), "Google, Amazon and Starbucks face questions on tax avoidance from MPs", *The Guardian*, 12 November, available at: www.guardian.co.uk/technology/2012/nov/12/google-amazon-starbucks-tax-avoidance (accessed 29 May 2012).

Leigh, D. (2011), "Goldman Sachs let off paying £10 m interest on failed tax avoidance schemes", *The Guardian*, 11 October, available at: www.guardian.co.uk/business/2011/oct/11/goldman-sachs-interest-tax-avoidance (accessed 29 May 2013).

Levine, M. and Forrence, J. (1990), "Regulatory capture, public interest and the public agenda: towards a synthesis", *Journal of Law, Economics & Organization*, Vol. 6 Special issue, pp. 167-198.

Lukes, S. (2005), *Power - A Radical View*, 2nd ed., Palgrave, London.

Mason, R. (2011), "Taxman accused of letting Vodafone off £8bn", *Daily Telegraph*, 7 November, available at: www.telegraph.co.uk/news/politics/8875360/Taxman-accused-of-letting-Vodafone-off-8-billion.html (accessed 29 May 2013).

National Audit Office (2012), *Settling large tax disputes -report by the Comptroller and Auditor General*, available at: www.nao.org.uk/large-tax-disputes-012 (accessed 29 May 2013).

Neville, S. and Treanor, J. (2012), "Starbucks to pay £20 min corporation tax over next two years after customer revolt", *The Guardian*, 6 December, available at: www.guardian.co.uk/business/2012/dec/06/starbucks-to-pay-10m-corporation-tax (accessed 3 June 2013).

Norman, J. (2011), "The taxman must account", *The Guardian*, 14 October, available at: www.guardian.co.uk/commentisfree/2011/oct/14/goldman-sachs-tax-inland-revenue?newsfeed=true (accessed 18 June 2012). /

R (on the application of UK Uncut Action Ltd) v Revenue and Customs Commissioners {2012} Queen's Bench Division (unreported).

Radmacher v Granatino {2010} UKSC 42. Ravenscroft, S. and Williams, P.F. (2009), "Making imaginary worlds real: the case of expensing employee stock options", *Accounting, Organizations and Society*, Vol. 34 No. 6, pp. 770-786.

Reg (Friends of the Earth) v Secretary of the State for the Environment {1994} 2 CMLR 760.

Reg v Inspectorate of Pollution and another ex parte Greenpeace Ltd (No. 2) [1994] 4 All ER 329.

Reg v IR Commissioners ex parte Federation of Self-employed and Small Businesses Ltd [1980] 1 Q.B. 407.

Reuters (2013), Trade, tax, transparency, June G8 Meet Agenda, available at: <http://uk.reuters.com/article/013/01/02/uk-britain-g8-presidency-idUKBRE90100020130102>(accessed 29 May 2013).

Seldon, A. and Collings, D. (2000), *Britain Under Thatcher*, Seminar Studies in History, Longmans, London.

Sikka, P. (2011), "HMRC has a cosy relationship with the tax avoidance industry", *The Guardian*, 20 December, available at: www.guardian.co.uk/commentisfree/2011/dec/20/hmrc-tax-avoidance-industry (accessed 29 May 2013).

Sky (2012), "Carr: tax avoidance was terrible error", available at: <http://news.sky.com/home/showbiz-news/article/162750> (accessed 29 May 2013).

Social Security (Contributions) Regulations (2001), SI 2001/1004, available at: www.legislation.gov.uk/ukxi/2001/1004/contents/made (accessed 18 June 2013).

Truman, M. (2013), Tax prat of the year, Taxation 7 February, pp. 8-10.

UK Uncut Legal Action (2013), Taking action against the cuts, available at: <http://ukuncutlegalaction.org.uk> (accessed 29 May 2013).

UK Uncut Legal Action Ltd v Commissioners of HMRC [2013] EWHC 1283 (Admin).

Vanhala, L. (2012), "Legal opportunity structures and the paradox of legal mobilization by the environmental movement in the UK", *Law & Society Review*, Vol. 46 No. 3, pp. 523-555.

Vodafone 2 v HM Revenue & Customs [2009] EWCA Civ 446.

Wickramsinghe, D. (2006), "Power and accounting; a guide to critical research, methodological issues", in Hoque, Z. (Ed.), *Accounting Research*, Spiramus Press, London, pp. 339-359.

Wintour, P. (2012), "Treasury reveals how little tax the super-rich pay", *The Guardian*, 15 April, available at: www.guardian.co.uk/society/2012/apr/15/treasury-reveals-super-rich-tax-rates (accessed 29 May 2013).