

## TAX APPEAL STAKEHOLDER GROUP MEETING

3 MARCH 2005

<b>Attendees</b>	<b>Representing</b>
Stephen Oliver	Chairman
John Avery Jones	SCITs
Henry Russell	General Commissioners
Nuala Brice	VAT & Duties Tribunal/judicial training
Gordon Coutts	Scottish interests
Roger White	Section 703 Tribunal
Judith Edwards	Council on Tribunals
Eileen Patching	HMCE, appeals and complaints policy
Peter McCluskie	IR, cross cutting issues (including appeals)
Jane Moore	Low Incomes Tax Reform Group (LITRG)
Malcolm Gammie	Tax Law Review Committee (TLRC)
Peter Trevett	Revenue Bar Association
Simon Hill	DCA, Tribunals Group operations
Robert Maas	Institute of Chartered Accountants for England and Wales (ICAEW)
Leueen Fox	DCA
Vicky Molloy	DCA
Steve Wade	DCA

### 1. Introduction and welcome

Stephen Oliver (SO) welcomed members of the group to this first meeting. Brief round the table introductions were made. Apologies were received from Penny Hamilton (Chartered Institute of Taxation), Malcolm Gammie (MG) had agreed to report back to her regarding the meeting.

SO spoke briefly about how the group would operate. He stressed that this group would be formulating and discussing options and subsequently making recommendations for tax tribunal reform. As such the papers for the group would be largely factual (e.g. the statutory extent of jurisdiction or caseload statistics) or discussion papers and this should be kept in mind and made clear when considering consultations with colleagues within the organisations represented around the table to avoid misleading assumptions and expectations SO advised members that papers and minutes would be made public as far as possible.

Leueen Fox (LF) explained the relationship between this group and the proposed project board. The stakeholder group would make recommendations to the project board who would have final responsibility for the design of a reformed tax tribunal. There would be a follow through in membership from the stakeholder group to the project board however the main focus of the project board would be the department's ability to deliver a reformed tax tribunal and its chair and membership would reflect that. LF also gave a brief update on the project's progress through DCA internal project assurance requirements. The project board is yet to be officially convened and the project is about to be reviewed by the Department's internal assurance board.

## **2. Terms of Reference (TOR)**

SO asked for comments / agreement / disagreement on the terms of reference (paper SG01/, and the following points were made by members:

1. Jane Moore (JM) raised the issue of alternative dispute resolution (ADR) in terms of whether it is part of the work of this group to determine the best mechanisms for tax.
2. Judith Edwards (JE) thought there should be an additional objective around the user experience and what the user requires of the tribunal.
3. JM mentioned that LITRG are hoping to get funding to undertake some research that will look at user experiences for the unrepresented appellant.
4. LF mentioned that there is ongoing work within DCA on both ADR and user experiences and agreed to provide a paper for the next meeting setting out what issues are being addressed as part of the wider tribunal reform programme.
5. Nuala Brice (NB) pointed out that indirect tax was omitted from the objective under paragraph 2 in the TOR.

***The TOR were agreed subject to considering additional objectives around the ADR /user experience points and the amendment to include indirect taxation.***

## **3. Option Appraisal Criteria**

Gordon Coutts (GC) questioned the viability of criteria in relation to judiciary who are representative of society particularly in reference to legally qualified judiciary. LF pointed out

that the DCA is committed to this principle. SO suggested that the representative appointment criteria might be expanded by adding “so far as is expedient in a specialist tribunal”.

Robert Maas (RM) raised a concern regarding the criteria requiring consistency. Steve Wade (SW) clarified that this objective was around common standards across the jurisdiction rather than a desire for decisions or “uniform“ processes.

***It was agreed that the appraisal criteria would be accepted subject to amplification of both points above.***

#### **4. Position Paper**

SO invited amendments / comments on the position paper that was intended to provide neutral background information. The following amendments were requested:

1. Para 7 – Footnote to be added to clarify law on listing
2. Para 20 – Final sentence to be clarified
3. Para 43 – Can this group consider the right of election between the General and Special Commissioners
4. Para 8 – In reference to requirement to pay tax due – that it is “usually postponed”
5. Para 5 – Onward appeals of 5 was intended to reflect number of cases that “leapfrogged” straight to the Court of Appeal rather than went via the normal High Court route

**Post meeting note in relation to point 3:** Under the proposed tribunal structures the right of election will disappear as the separate roles of Special and General Commissioner will not exist. Part of the work of this group will be to decide how cases should be assigned to ensure justice is proportionate.

#### **5. Existing Caseload**

SO invited discussion on the statistics provided in paper SG01/4A that showed the reduction in cases going to the General Commissioners over recent years both in terms of overall numbers and the effect on opportunities to sit.

Henry Russell (HR) commented that the statistics clearly demonstrate both the decline in workload and that currently daily penalties made up large section of the work of General Commissioners. John Avery-Jones (JAJ) suggested that in terms of the current hours sat, the existing caseload could be dealt with by around 9 full time equivalent legal members sitting alone (with a time allowance for travelling and writing up built in). Peter Trevett (PT) added that recent experience within his Chambers suggested vanishingly small numbers of cases that he and colleagues deal with go to the General Commissioners.

## **6. Judicial Skills – expertise**

Paper SG01/04 set out briefly some broad points about the types of cases within the existing General Commissioner jurisdiction to stimulate discussion on whether case categorisation was possible and what skills and expertise would be required by those hearing particular categories of cases.

There was some discussion around the types of cases that might or might not be suitable for hearing by non-legal panels sitting without legal advice. In particular it was noted that S20A applications (relating to IR applications to require documents from an accountant) required legal knowledge while penalty applications were unlikely to. HR gave a brief outline of S93(3), daily penalty applications. The group agreed that these did not require a legal chair and could comfortably be dealt with by an entirely non-legal panel without the need for legal advice.

Overall the group agreed that some case categorisation would be possible however it was likely that the majority of appeals could not be clearly identified as **not** requiring legal input and it would be expedient for those case to be heard by a tribunal including legal expertise. The group agreed that the chair of a panel should not automatically be the legally qualified member. MG felt that the group needed to recognise intermediate categories of types of members and that they cannot be simply categorised as lay or legal e.g. a qualified accountant who has tax expertise. HR concurred and mentioned that the Tax Appeal Reform Project (TARP which had been stood down in 2003) had come up with the term “suitably qualified” to encompass non-legal experts. However it was noted that panels selected for their particular expertise in area (in particular in relation to a type of business) might bring particular prejudices to bear on a case. JM raised question of whether tribunal will be investigative, and there was some discussion around whether this skill is more often manifested by the lay element of the current tax tribunals.

JE felt that this was a training issue, and that more emphasis needed to be placed on ongoing training needs

The issue of election was raised, in particular in relation to appeals being heard in a manner and by a tribunal proportionate to the dispute to ensure that the hearing process would not be excessively formal or legalistic where not warranted. In discussion, SO suggested that appellants might be able to opt for a special (legal members) or general list within the jurisdiction. JM thought that choosing between such lists was an unrealistic expectation to put on the unrepresented person, as most would not have sufficient understanding of the process and differences between such lists to choose. She suggested that allocation of cases to a suitable panel should be the responsibility of the Tribunals Service (as with the Appeals Service or VAT and Duties tribunal currently).

PT raised the issue that the new jurisdiction must be capable of covering both indirect/direct taxation cases as it would seem to be a logical consequence of the IR / HMCE merger that all tax issues for a customer should be dealt with in a one stop shop.

On the issue of local knowledge / local access it was broadly agreed that local knowledge was less important. The group agreed that it should be possible to devise a system (similar to that for the VAT and duties tribunal) which can be responsive to requirements for the location and urgency of the hearing. The group was concerned that appellants should not be discouraged from attending their hearings by time, cost or travelling distance. Eileen Patching noted that although appeals against seizure decisions can be heard local to the appellant's address they are most often heard at the seizure location and that this does not seem to discourage appeals.

SO noted that there were a number of issues that the group would need to discuss and make recommendations on in the near future and that hearing locations would be particularly sensitive.

**In conclusion it was agreed that:**

All stakeholder group papers noted for amendment above would be re-circulated with the minutes.

Papers to be tabled at the next meeting will include: a summary of the further work within DCA in relation to proportionate dispute resolution; research on tribunal users and better information for appellants; A paper outlining the constraints of the Courts and Tribunals Bill; A summary of the basic principles questionnaire which will include options for case categorisation and panel constitution.

## **7. A.O.B.**

JM asked whether substitutes or alternates could attend. The group agreed that this was sensible to ensure progress. Vicky Molloy asked that she be given contact details for nominees so that they could receive papers as a matter of course to keep them up to speed.

### **Date of next meeting:**

7<sup>th</sup> April, at 45 Bedford Square. Papers will be circulated one week prior to the next meeting.

Copied to all attendees and:

Paul Stockton (DCA)

Ron Downhill (Law Society)

Penny Hamilton (CioT)

Bianca Marsden (CioT)

Severin Alexandra (CioT)

Louise Speke (Law Society)

David Gibson (GCIT)

Pat Berry (GCIT)

Marion Loudon (F&TT)