



Tax Appeals Stakeholder Group

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**Paper No. 4 – General Commissioner
jurisdiction: data, decisions and
judicial qualifications**

SG01/04

Foreword

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Document Purpose This document provides data about the General Commissioners and their workload together with information about the extent of their jurisdiction and an analysis of the broad qualifications that the judiciary hearing those cases might require.

Amendment History

Issue	Date	Amended By	Amendment Details
0.1	25/02/05	Leueen Fox	First draft for comments.
1.0	28/02/03	Vicky Molloy	Final Version for Stakeholders

1. This paper complements and builds on the position paper (SG01/02) which sets out a broad description of the four existing tax tribunals. Its purpose is to describe the caseload and decisions of the General Commissioner jurisdiction to enable the stakeholder group to recommend an option enabling the General Commissioner jurisdiction to be encompassed within the legislative framework envisaged in the proposed Courts and Tribunals Bill.
2. The General Commissioner jurisdiction is the current focus of work for three main reasons:
 - it has attracted most comment and criticism (see Annex A to Position Paper SG01/02);
 - the mismatch between judicial resources and caseload and
 - its support and administration is all derived locally i.e. not within DCA (which is responsible solely for payment of fees and expenses) rendering it, of all the tax tribunals¹, most incompatible with the plans for the Tribunals Service and the new legislative framework.
3. Further and subsequent work, across all the tax tribunals, will be required to establish the ambit of the first and second tier taxation tribunals' jurisdictions as well as whether and how existing judiciary might move into the reformed structures.
4. This paper sets out
 - basic, but detailed information on the current workload of the General Commissioners across the UK. It also includes some details of the workloads of the Special Commissioners and VAT and duties tribunal for comparison;
 - appeal rights within the General Commissioner jurisdiction (NB Annex B should not be taken as exhaustive although it does include all major items); and
 - some analysis of the qualifications required by the judiciary to hear the current General Commissioner caseload.

GENERAL COMMISSIONER JURISDICTION: DATA ANALYSIS

5. Overall the General Commissioner workload has drastically reduced since 2000 - to the extent that in 2004 90% of the appointed judiciary were not able to meet the Lord Chancellor's recommended sitting level (and 62% sat on two or fewer occasions)
6. Annex A, Figure 1 and Table B show the tail off in workload that General Commissioners have experience since the introduction of self-assessment. Figure 1 does show an increase in cases decided for the past two years but this is due to the Inland Revenue initiative to target taxpayers that fail to submit returns.

¹ The Special Commissioners and VAT and duties tribunal are not part of the detailed considerations at this stage. Their support and administration is currently provided within DCA and will transfer automatically to the Tribunals Service. The Section 703 tribunal will be subject to consultation in the near future.

7. Figure 2 demonstrates that, since 2001 the proportion of applications to appeals has been completely reversed. Applications (the vast majority of which are daily penalty ratifications²) now comprise 80% of the workload and 20% of tribunal time. Table D demonstrates that appeals withdrawn; adjourned and postponed have all declined in line with the decrease in appeals work.
8. Figures 3 and 4 show graphically the absence of opportunity for the majority of General Commissioners to sit. The Lord Chancellor recommends a sittings number of 6 a year to keep skills and knowledge current however only 10% of General Commissioners currently meet that criterion.
9. Figure 5 demonstrates the retirement fall out rate for General Commissioners until 2009, which remains steady, tailing off to just under 2,000 by 2009. This shows that there is no foreseeable point at which workload and judicial resources will match.

APPEAL RIGHTS AND APPLICATIONS

10. As stated previously there is a great degree of overlap between the General and Special Commissioner jurisdictions. In practice, taxpayers self-select their preferred forum and it is rare for the Special Commissioners to refer a case to the General Commissioners.
11. Annex B sets out the majority of the applications and appeal rights that currently lie to the General Commissioners (although a number of these can also be heard by the Special Commissioners). As this demonstrates, the General Commissioner jurisdiction covers a broad range of cases ranging from those which rely on matters of fact and the 'reasonable' test through to complex tax cases requiring legal knowledge.
12. Table E shows the distribution in types of applications and appeals over the past 4 years, whilst table F gives an indication of the time³ (and range of time) taken to hear these various case types. These tables suggest that significant (both in numbers and duration) areas of the appeals caseload are personal income tax and sub-contractor's certificates⁴. It is not possible to analyse the hearings relating to these case types any further from the statistics at hand.

BROAD QUALIFICATIONS REQUIRED

13. Most tribunals have legal qualified panel members (whether or not supplemented by non-legal wing members). However the existing General Commissioner jurisdiction is heard by lay panels. Whilst those appointed do include those with legal; accountancy and other professional qualifications that was not the basis for their appointment. Legal advice to the General Commissioners is currently

² See Section 93(3) Taxes Management Act 1970 – where a taxpayer has failed to make a return, an officer of the Board of the Inland Revenue can impose an additional penalty (or penalties) of up to £60 a day if directed by the General or Special Commissioners. These applications are limited in law to establishing that the returns in question have been requested and not made. Whilst these are *ex-parte* applications there is an associated right of appeal against the penalty once levied. There are no indications that the workload will change significantly in the near future although 2005 figures so far indicate that the numbers of Section 93(3) hearings are still on the increase (as Inland Revenue roll this initiative out to more processing units).

³ Because appeals/applications are not individually itemised on statistical returns these durations have been derived from hearings where that case type is the only one listed.

⁴ Income and Corporation Taxes Act 1988, s562

provided by the Divisional Clerk although there is no legislative requirement for them to be legally qualified (and a number are not).

14. Within the existing jurisdiction it is possible to identify some classes of cases that rest on matters of fact or the test of what is reasonable and which, therefore, do not require legal input at the hearing. For example the daily penalty applications deal with matters of fact; applications from tax payers for enquires to be closed down rest on whether the Inland Revenue has shown reasonable grounds for the enquiry to remain open and the same test of what is reasonable is applied to allowing a late appeal.
15. But it is more difficult to categorise the remainder of cases within the jurisdiction where the skills, expertise and knowledge to understand the case best may be a combination of all or any of the following – questioning skills; chairing skills; common sense; legal expertise; business experience and accounting knowledge.
16. There are additionally three factors particular to the General Commissioner jurisdiction which should be noted and considered. Whilst not part of the law in relation to the tax tribunals, these three themes characterise this jurisdiction and the stakeholder group are asked to consider their relative merit in the design of a reformed jurisdiction:
 - ‘keeping it local’ both in terms of the availability of hearings but also with local judiciary who understand the local economy
 - ‘judgement by peers’ the lay General Commissioners have been described as resolving disputes with common sense rather than solely relying on the law
 - relative informality – in many instances General Commissioners have no knowledge of the appeal before the hearing—anecdotal evidence suggests that presenting the evidence to the panel can lead to the parties resolving their dispute without a formal determination.
17. However whilst these features are characteristic of the existing General Commissioner jurisdiction, it does not necessarily follow that they should remain key components of a reformed system. The General Commissioners’ system is unique in its ‘local’ nature but is an understanding of the local economy more crucial than an understanding of the related law or accountancy practice? To what extent is the locality of the hearing important, are taxpayers prepared to travel further for earlier hearing dates? The use of the Special Commissioners certainly implies that some are willing to travel to have their cases heard in a particular way by legally qualified judiciary. The VAT and duties tribunal seem to have come to a workable compromise between the proximity of the hearing centre and speed of hearing.
18. A tribunal’s function is to ensure that decisions are made within the law. The existing General Commissioner system has no internal judicial oversight and onward appeal is rarely undertaken (perhaps because it is to the High Court and the issues of representation and award of costs arise) – the extent of consistency or inconsistency of decision making is therefore unknown. Many hearings have little written record and rely on oral statements and discussions – does that necessarily make them informal or good justice? What types of hearings best ensure consistency of decision making within the law and across the UK?

CONCLUSION

19. The stakeholder group are not asked to consider in detail at this stage whether it is possible precisely to identify the types of cases that require particular qualification to hear them and what that might be. The group are asked however

- To agree the characteristics of the existing caseload
- To consider whether, in principal, it is possible to separate classes of cases or to establish criteria by which cases can be categorised
- To identify the broad types of skills; expertise and knowledge that the jurisdiction requires
- If it is possible to categorise the caseload, to provide a steer on the skills, knowledge and expertise that would be required to hear different categories of cases