

TAX APPEAL STAKEHOLDER GROUP MEETING

7 APRIL 2005

Attendees	Representing
Stephen Oliver	Chairman
Henry Russell	General Commissioners
Nuala Brice	VAT & Duties Tribunal/judicial training
Gordon Coutts	Scottish interests
Roger White	Section 703 Tribunal
Eileen Patching	HMCE, appeals and complaints policy
Michael O'Callaghan	IR, cross cutting issues (including appeals)
Penny Hamilton	Chartered Institute of Taxation
Jane Moore	Low Incomes Tax Reform Group (LITRG)
Peter Trevett	Revenue Bar Association
Dick Lester	DCA, Tribunals Group operations
Robert Maas	Institute of Chartered Accountants for England and Wales (ICAEW)
Ron Downhill	Law Society
Ian Menzies-Conacher	CBI
Leueen Fox	DCA
Vicky Molloy	DCA
Steve Wade	DCA
Andrew Digby	DCA

1. Introduction

Stephen Oliver (SO) noted a number of people attending for the first time and asked all to introduce themselves. He also welcomed Ian Menzies-Conacher, from the CBI, to the group to represent corporate litigants.

Apologies were received from Judith Edwards, Malcolm Gammie, Simon Hill (Dick Lester attending in his place) and John Avery Jones, for whom Nuala Brice would be speaking.

Michael O'Callaghan (MO) advised the group that the Commissioners for Revenue and Customs Bill was due to receive Royal Assent on 07/04. The Bill was likely to come into force before the end of April. Eileen Patching (EP) explained that the new department would have a single set of commissioners who would have all the powers and prerogatives of the old commissioners. These powers would be appropriately ring-fenced e.g. so that powers in relation to VAT could not be applied direct tax.

Post meeting Note – Day one for HMRC since announced as 18/04.

2. Minutes

The minutes were accepted as correct. Further minor amendments had been made to the workload statistics (paper SG01/04A) for VAT in Scotland, however the papers had not been re-circulated.

3. Context of reform (paper SG02/03)

Leueen Fox presented paper SG02/03, setting out the proposed legislative infrastructure of the Courts and Tribunals Bill within which tax appeals modernisation would take place. Previous attempts to reform the tax tribunal system, most notably TARP, had attempted to build a 'stand-alone' edifice but had failed due to a lack of legislative opportunity. The work of this group needed to exploit the greater opportunities flowing from the establishment of the unified Tribunals Service and proposed legislation, creating flexible judicial structure and jurisdictional groupings as well as anticipating the future needs of HMRC. But these opportunities brought with them the need to think about reform from an entirely fresh perspective.

Key principles for the group to keep in mind were: What kind of appeals had to be heard? How best could the tribunals serve appellants and HMRC?

The main task was to create a structure that was flexible enough to deal effectively with both simple and complicated cases; with cases that called for both factual and legal expertise; and which guaranteed that each panel had the right mixture of qualification and experience to deal with the case in hand – wherever the case was heard. A number of points were made in discussing the paper:

Judicial Review

- in Scotland follows a process that is quite different from that in England
- HMCE had hitherto encouraged the resolution of issues that might otherwise go to judicial review to be taken to the Adjudicator (there was agreement that this generally worked well and that the balance should not be disturbed).

Initial Hearing at the First Tier

- That parties should be able to express a view about panel composition.
- Few exceptions to this rule, might encompass for example cases which seek to overturn existing law or raised significant points of law. The recent Marks & Spencer (freedom of establishment case) was a good example.
- Underlying the points made about choice was a concern to see cases heard by judiciary with the kind of experience and qualifications able to deal with them adequately. It was the responsibility of the President to ensure that this happened

LF suggested a more detailed paper on the appellate tier for the next meeting to encompass current proposals on judiciary and process would be a useful way forward.

4. Principles for reform (paper SG 02/04)

Steve Wade led discussion concentrating on areas where responses to the questionnaire indicated divergent opinions and confirming areas of agreement. The views expressed will enable the project team to develop a basic costed option and variants for tax appeal reform.

Local access - Responses to the questionnaire indicated that there was broad agreement that the new tribunals should offer local access, but that it was legitimate to offer appellants a trade-off between the convenience of local access against speed of expediting business. Issues noted included:

- Travel problems, especially in Scotland, Wales, East Anglia and the extreme South West;
- That the existing Special Commissioner and VAT & Duties judiciary were mobile;
- That the issue of local hearings was related to paper hearings. If tribunals could offer high quality paper hearings, fewer appellants might wish to attend in person. Paper hearings could mitigate the need for local hearings.

The general view was that the option should assume main centres, regional centres and possibility of local hearings (to be defined as no more than 1 hour's travel).

Composition of the Judiciary – There was consensus that the judiciary will include legally qualified chairs. There was wide agreement that non-legal expert members with current and relevant experience and qualifications (e.g. accountancy, surveying) could usefully contribute to the work of the tribunals. It was agreed that there was no role at all for the purely lay person, that is a person without relevant specialist qualifications or experience. Concerns about the conduct of hearings and the perception that lay members added a common-sense and informal approach could be adequately addressed by training. The group agreed that legal advice should always come from within the panel itself.

The Role of the Chairperson – Penny Hamilton (PH) suggested that it would not be possible to distinguish and ring fence cases that did not need legal input. Chairs therefore would need to be legally qualified. Other members of the Group agreed.

The Composition of the Panel - Legal Based Panels - General consensus was that where panels included the legally qualified, they should be in the chair. Concerns about the conduct of hearings (including the softer skills) should be addressed through training. Broad agreement that a legally qualified member of the judiciary could sit alone or with up to two other (either legal or non-legal) members.

Non-legal Panels – PH argued that legal points come up unexpectedly. It would be impossible to identify in advance of hearings classes or kinds of cases or individual cases that would be suitable for non-legal panels, with the exception of s 93(3) cases. Other members of the Group agreed. There were, in addition, a number of problematic issues relating to the idea of non-legal chairs, relating to their skills and remuneration.

Paper Hearings. - General consensus was that paper hearings could be offered but not imposed. To ensure that paper hearings would operate fairly there would need to be clear guidance and requirements for case management.

5. Training, research and user experiences (paper SG02/02)

SO noted that the paper dealt with matters which were for the most part outside of the remit of the group and should be considered for information only at this stage. The training implications for any agreed option would have to be considered at a later stage.

LF noted that suitably qualified chairs of panels would need to receive appropriate training. EP noted that this training could usefully include developing soft skills to ensure that tribunals were conducted in a manner that was appropriately informal.

6. Next steps and the focus of the next meeting

SO thanked members of the Group for their contribution at this meeting. He noted that the thoroughness with which the group worked was a vital part of enabling it to give account of its decisions when called to do so later. The Project Team would, at the next meeting, present a model for the reformed tribunal and variations.

Date of next meeting:

5th May, at DCA, Selbourne House, 48 Victoria Street, SW1. Papers will be circulated one week prior to the next meeting.

Copied to all attendees and:

John Avery Jones (Special Commissioners)
Judith Edwards (Council on Tribunals)
Malcom Gammie (Tax Law Review Committee)
Simon Hill (DCA)
Paul Stockton (DCA)
Louise Morris (DCA)
Jane Smeaton (DCA)
William Norris (Low Incomes Tax Reform)
Bianca Marsden (CIoT)
Severin Alexander (CIoT)
Peter McCluskie (HMRC)
Louise Speke (Law Society)
David Gibson (GCIT)
Pat Berry (GCIT)
Marion Loudon (F&TT)
Mervyn Wood (CBI)