

TAX APPEAL STAKEHOLDER MEETING

5 MAY 2005

Attendees	Representing
Stephen Oliver	Chairman
Henry Russell	National Association of General Commissioners
Roger White	Section 703 Appeals
Gordon Coutts	Scottish Interests
Eileen Patching	HM Revenue & Customs
Robert Maas	Institute of Chartered Accountants of England and Wales
John Andrews	Low Incomes Tax Reform Group
Ian Menzies-Conacher	Confederation of British Industry
Judith Edwards	Council on Tribunals
Dick Lester	Tribunal Groups Operations, Department for Constitutional Affairs
Ron Downhill	Law Society
John Avery Jones	Special Commissioners
Nuala Brice	VAT & Duties Tribunal/Judicial Training
Penny Hamilton	Chartered Institute of Taxation
Michael O'Callaghan	HM Revenue & Customs
Jane Smeaton	Head of Senior President's Office
Leueen Fox	Department for Constitutional Affairs
Steve Wade	Department for Constitutional Affairs
Andrew Digby	Department for Constitutional Affairs
Vicky Molloy	Department for Constitutional Affairs

1. Introduction

Apologies were received from Malcolm Gammie and Peter Trevett. Dick Lester attended in place of Simon Hill, John Andrews in place of Jane Moore, and Michael O'Callaghan in place of Peter McCluskie.

Stephen Oliver (SO) told the meeting that he would be going to Scotland and Northern Ireland to host meetings to pick up on specifically Scottish and Northern Irish issues. The groups he would be meeting would be similar to the existing SCIT and VAT & Duties Tribunal User Group for Scotland. The hope is that a discussion group will identify issues that may not be captured by the 'generic' membership of the Stakeholder Group. SO asked the group for additional suggestions of bodies and people who might be encouraged to come to the Scottish and NI meetings.

Post meeting note: Steve Wade requests members of the Group to send him suggestions by close of Friday 13th May.

SO said the Tax Appeal Modernisation Project Board had met for the first time on the 28th April. The Board had approved the papers given to it subject to minor amendments. The Board had also stressed the importance of communicating to stakeholders.

2. Minutes of the last meeting

Penny Hamilton referred to the sections in the minutes of the last meeting headed 'Role of the Chairperson' and 'Non-legal Panels'. She said that there had not been general agreement at the last meeting that it would be possible to distinguish and ring fence cases that did not need legal input. She said also that it had not been agreed that there were some classes of cases, apart from s93(3) cases, that would be suitable for hearing by non-legal panels. Rather, she and other members of the Group had agreed that legal points can arise unexpectedly in all but s93(3) cases. Other members of the Group had agreed that legal chairs were needed to identify legal issues latent in cases. Eileen Patching and Nuala Brice agreed that this was also their recollection.

Michael O'Callaghan also referred to the section 'Composition of the Judiciary'. He noted that the Group had distinguished 'purely lay' members of the judiciary and members with recent and relevant experience; the Group had agreed that there was a role for the latter in the new tribunal. It was agreed that for the purposes of this group 'lay' would be taken to refer to tribunal members with no particular specialist qualifications or experience.

Minutes to be amended accordingly

3. Paper hearings as a means of alternative dispute resolution (SG03/02)

SO introduced this paper as for information.

John Avery Jones (JAJ) suggested that paper hearings tended to put the Revenue authority at an advantage while oral hearings allowed the panel to ask appellants questions in the way that would help them put their case to best effect. Ron Downhill and Henry Russell agreed.

Judith Edwards noted that the Council on Tribunals are giving consideration to paper hearings as one of a number of types of alternative dispute resolution. The Council were undertaking consultation exercises at the moment. Leueen Fox (LF) suggested that paper hearings would give those appellants who did not wish to attend hearings in person a chance to put their case. About half of the cases heard by General Commissioners last year were decided without the appellant or representative being present. The Group agreed that paper hearings should not be excluded from the costed model that it would consider. The Group would consider the issue of paper hearings at greater length at a later date.

4. Composition and function of the appellate tier (SG03/03)

LF introduced this paper as for information. It was written to address concerns about the expertise available to the second tier.

JA raised the issue of costs. Some appellants would be deterred from taking cases to the second tier for fear of having costs awarded against them. SO noted that current practice of the VAT & Duties Tribunal was to award costs on application save in smaller cases such as default surcharge appeals. In practice, HM Customs & Excise asked for costs only where the appellant had been unreasonable or vexatious.

[Post meeting addition: PH points out that Peter Brooke made a statement to the House in 1986 in which he clarified the policy of the then HM Customs & Excise on seeking costs. This was that the Department would only seek costs where the client had been unreasonable or vexatious or in substantial cases of exceptional cost or complexity, comparable to those that would go to the High Court for protection of

public funds. This excludes cases clarifying a significant general point of law. The text of his statement is reproduced as an annex to these minutes]. LF suggested that at some point the Group should be presented with a paper on costs as an overarching issue within the proposed reformed tribunals structure.

JA also raised the issue of judicial review. Increasing numbers of Tax Credit appeal cases were raising judicial review issues. JAJ asked whether it was envisaged that the first tier tribunal would have judicial review powers and functions. LF confirmed that the current thinking was that the first tier would have no judicial review function. The High Court would cede judicial review jurisdiction to the upper tier either on a case by case basis, or on a class basis.

Project Team to present paper on costs at some point in the future

5. Options for the reformed first tier Tax Appeal Tribunal (SG03/01)

SW explained that the paper had taken the principles that Group had agreed at the previous meeting and worked them up into a model. The model could deal with a workload similar to that of the current GCITs, was achievable within the given cost envelope, was operationally viable, and flexible enough to handle cases from the existing tax jurisdictions.

Paragraph 3 – Principles

JA asked that the principle that appellants would receive appropriate support when using the tribunal be added. SW explained that the principles of support for users was being looked at more broadly across the tribunal reform programme. The needs of tax appeals users would also be considered. PH asked that it be made clear that 'convenient access' meant access to the processes and procedures of the tribunal as well as physical access. SO asked that the first principle be amended to read 'a pool of judiciary with a range of recent and relevant expertise' rather than '...current, relevant expertise'.

Paragraph 5 – Case management

JAJ noted that staff undertaking a panel allocation sift would need detailed information about a case before being able to allocate it. NB added that this information currently came from the case stated. RM suggested that the case management process would have to accommodate changes in the grounds of appeal resulting from parties having negotiated since listing.

JE pointed out that negotiation would have a place in the reformed tribunal system as a form of ADR. LF reminded the Group that the model the Project Team were presenting had been drawn up in order simply to establish that an option that respected the principles outlined by the Group was both operationally feasible and viable in cost terms. The detail of the processes would be worked out at a later stage of the project.

IMC suggested that there is a potential dependency on the concurrent review of HM Revenue and Customs powers and therefore a need for liaison with the Department.

Paragraphs 13, 15, 16 and 17 – Training; Administration

EP asked that it be made explicit that training in this context meant both initial and continuing training. JA stressed the importance of training to ensure compliance with

the Disability Discrimination Act and to ensure appellants whose first language was not English were heard fairly.

Paragraph 14 – Written decisions

The Group discussed the level of detail required in decisions. The Group agreed that further thinking would need to be done on this issue in due course. It also agreed that different cases might require, as a matter of course, decisions of different levels of detail. EP noted that VAT & Duties Tribunal gave written decisions for all cases. For certain categories of cases, and where the parties agreed, the panel would give an oral decision on the day followed by a written decision. The length of the written decision depended on the issues at hand. NB suggested that the practice could serve as a model for the new tribunal.

Paragraphs 9, 18 and 11 – Composition of the panels; Local access

SW explained that non-legal panels were not one of the main panel formats in the preferred model. The current workload statistics suggested that there were few cases that could be easily identified as suitable for non-legal panels. And, as many group members had suggested, it is often impossible to gauge beforehand whether legal issues will arise or not. Non-legal panels would have to depend on external legal support and this would transgress the principle agreed by the Group that legal advice should come from within the panel. In any case, there was no over-riding reason why the model should have wholly non-legal panels

HR noted his strong disagreement. He argued that experience showed that panels with non-legal chairs worked well. Very few appellants made complaints about the GCITS as they worked at present. This was evidence that appellants were happy with the service they got. Other tribunals, such as the Rent Assessment Panels, worked with non-legal chairs effectively.

Others argued that there was no obvious place in the new system for non-legal panels as one of the main panel formats. The following reasons were given:

- The first tier tribunal would hear VAT cases that often gave rise to complex issues of EU law
- The need for specialist expertise, for example to hear PAYE cases, could be met without recourse to non-legal panels
- Concerns about formality and appropriate conduct could be met by training
- It would be very difficult to list cases for a non-legal panel to hear without significant expense and delay

LF noted that no other central government tribunals sat with non-legal chairs, with the special exception of the Lands Tribunals, some of whose cases were heard by qualified surveyors. SO said that there was a need for flexibility in the new system. He would like to leave open the possibility that some cases would be heard by non-legal panels, at the President's discretion.

JAJ raised concerns about the standard for convenient local access being set at fifty miles or ninety minutes. LF said that the figures were a guide. The standard would be the one set by the Tribunals Service for all tribunals. The Project Team had suggested fifty miles and ninety minutes only as a way of establishing what kind of aspiration for access there should be. JE said that more work needed to be done to

establish user need before introducing e-communication and alternatives to attending in person such as tele- and video-conferencing.

It was agreed that the Group would consider a costed option at the next meeting.

Date of next meeting:

2nd June, at Selborne House, 54 Victoria Street. Papers will be circulated one week prior to the next meeting.

Copied to all attendees and:

Paul Stockton (Department for Constitutional Affairs)
Simon Hill (Department for Constitutional Affairs)
Malcolm Gammie (Tax Law Review Committee)
Peter McCluskie (HM Revenue & Customs)
Peter Trevett (Revenue Bar Association)
Jane Moore (Low Incomes Tax Reform Group)
Bianca Marsden (Chartered Institute of Taxation)
Severin Alexander (Chartered Institute of Taxation)
Louise Speke (Law Society)
David Gibson (General Commissioner of Income Taxation)
Pat Berry (General Commissioner of Income Taxation)
Marion Loudon (Finance & Taxation Tribunals)
Louise Morris (Department for Constitutional Affairs)
William Norris (Low Incomes Tax Reform Group)
Mervyn Woods (Confederation of British Industry)

Annex - Customs and Excise Policy about Costs

The following is an extract from a written answer by the Minister of State, Treasury, (the Hon Peter Brooke MP) (Hansard Vol 102, 24 July 1986 Cols 459-460) to a parliamentary question:

“As a general rule, Customs and Excise do not seek costs against unsuccessful appellants. They do, however, ask for costs in certain narrowly defined cases so as to provide protection for public funds and the general body of taxpayers. They will, therefore, seek to continue to ask for costs at those exceptional Tribunal hearings of substantial and complex cases where large sums are involved and which are comparable with High Court cases, unless the appeal involves an important general point of law, requiring clarification. They will also continue to consider seeking costs where the appellant has misused the Tribunal procedure - for example in frivolous or vexatious cases, or where the appellant has failed to appear or to be represented at a mutually arranged hearing without sufficient explanation, or where the appellant has first produced at hearing relevant evidence which ought properly to have been disclosed at an earlier stage and which could have saved public funds had it been produced timeously.

The new penalty provisions and right of appeal to the value added tax tribunals have made no change to this policy.”

HM Customs and Excise later issued a clarification of this statement, to the effect that the Department considers that appeals involving tax avoidance schemes and any other form of artificial avoidance will generally be substantial and complex in nature and they may seek costs in such cases.

