



Tax Appeals Stakeholder Group

5th May 2005

Paper No. 1 Options for the reformed first tier Tax Appeal Tribunal

SG03/01

Foreword

Document Control

Document Reference: Tax Appeals Modernisation – SG03/01
Version No.: 1.0
Author: Andrew Digby

Document Approver Tax Appeals Stakeholder Group

Signature _____

Date _____

Document Purpose This paper describes the preferred model for reform first tier Tax Tribunals. It describes how the model will work, lists its key benefits and key advantages over the General Commissioners.

Amendment History

Issue	Date	Amended By	Amendment Details
0.1	19/4/05	Andrew Digby	First draft for internal comment
0.2	21/4/05	Andrew Digby	Following comments from Project team
0.3	22/4/05	Andrew Digby	Following comments from Project team
0.4	27/4/05	Andrew Digby	Following comments from Project team
1.0	28/4/05	Andrew Digby	Final draft for Stakeholder Group

Introduction

1. At the second Tax Appeals Modernisation Stakeholder Group meeting, stakeholders agreed a number of principles that should guide the operation of the reformed first tier Tax Appeals Tribunal. This paper presents a preferred model for the first tier based on the Group's recommendations, describes how it will work in practice and lists its benefits.
2. The model described would absorb the existing jurisdictions of the Special Commissioners and VAT & Duties Tribunal as well as that of the General Commissioners. The direct effects on the work of the Special Commissioners and VAT & Duties Tribunal is likely to be minimal as they already work within the parameters described below. Preliminary costings work has therefore focused on the General Commissioner jurisdiction and it has been established that the features described here can be achieved within the existing cost envelope for the General Commissioners.

Principles guiding the reform

3. The Stakeholder Group identified a number of key principles that should guide the operation of the reformed first tier:
 - A pool of judiciary with a range of current, relevant expertise
 - Progressive and proportionate case allocation and case management system
 - All cases to be dealt with by panels of the right experience and qualifications
 - Adequately trained judiciary
 - Convenient access to Tribunals for all appellants
 - Efficient administration for delivery of service

The preferred model and how it will work

A pool of judiciary with a range of current, relevant expertise

4. The model proposes that there be a pool of judiciary large enough to make up panels to hear cases throughout the United Kingdom. The pool will include both legally qualifiedⁱ and non-legally qualifiedⁱⁱ judiciary. The non-legally qualified judiciary would have a range of qualifications and experience relevant to the work of the tax tribunals. These would include such things as a formal qualification in accountancy or in land valuation; or perhaps current and relevant business experience. The size of the pool would be set so that all members of the judiciary would sit frequently enough to keep their panel experience current. Tribunal administrative staffⁱⁱⁱ would maintain a register of the members of the judiciary with details of their expertise and availability. This would enable the judiciary to be deployed and governed effectively.

Progressive and proportionate case allocation and case management process

5. The model proposes that there be a progressive and proportionate case management process. Legally qualified members would manage this process and oversee it. However, the governing principle would be that as much as sensibly possible of the case management and allocation work be delegated to administrative staff. The process would work by sifting cases ever more finely. Administrative staff could, for example, carry out an initial and relatively automatic sift. This would separate out cases that fall into readily identifiable and easy-to-work categories, such as reasonable excuses cases, and appeals against fixed penalties. The administrative staff would batch up these cases and send them to a panel of a pre-determined format.
6. There are two ways the remaining cases could be handled. The first would be for a member of the judiciary to review each case in more detail, sorting them into categories determined by the kind of panel that is best suited to hear them. Categories would include: cases that raise a point of law but do not need subject specialist expertise to

settle; cases that raise a point of law and that could benefit from the input of a member with subject specialist expertise; and complex cases that would benefit from a higher degree of legal input.

7. The other way of handling the cases after the administration stage would be to introduce a second sift. This would take place between the initial, more mechanical sift undertaken by administrative staff and the judicial member's review. This intermediate sift would be undertaken by a legally qualified authorised officer^{iv}, similar to a Registrar at the Lands Tribunal. Working with the cases that remained from the first, administrative sort, the legally qualified officer would sift out those that won't require direct judicial input. The officer would deal with these himself, delegating work to administrative staff where possible. The cases that remained after the first two sifts would then be passed to the legally qualified member of the judiciary. The member would list appeals and appoint members of the appropriate expertise to sit on panels of the appropriate format to hear them.
8. The President of the Tribunal would be responsible for deciding the criteria that determined which cases would be passed direct to the second tier. The President would also devise the mechanism by which this selection would be made.

All cases to be dealt with by panels of the right experience and qualifications

9. In the preferred model, there would be four main formats of panel, all of which would be chaired by a legally qualified member. Some panels would be composed of a legally qualified member sitting alone. Others would be composed of a legally qualified chair sitting with one non-legally qualified member. We envisage that most of the cases currently within the General Commissioner jurisdiction would be heard by one of these two types of panels. More rarely, and where a case requires it, a legally qualified member would sit with two suitably qualified members. For some cases, two legally qualified members would sit together (a panel of three legally qualified members could also sit on although very cases of the General Commissioners jurisdiction would merit it.). Very straightforward cases would, of course, have already sifted out at the first stage of the case-management process (as described in paragraph four) and assigned to a single member sitting alone. The person deciding panel format would thus be able to choose between the four formats. They would allocate members with the relevant expertise from the judiciary pool.
10. The model also proposes that, on occasion, it may be appropriate to give cases to a non-legal member sitting alone, for example s93(3) applications. We suggest that this would be at the discretion of the President.

Convenient access to tribunals for all appellants

11. The model proposes that appellants should have to travel only a reasonable distance to have a case heard by a panel of the first tier. 'Reasonable distance' would be set at something like fifty miles or ninety minutes travelling time. Panels will normally sit in any one of the venues currently maintained by the Tribunals Service and by the HMCS. These venues can be found throughout the mainland United Kingdom and are within easy access (twenty miles or so) of approximately eighty per cent of the population of mainland UK. However, the model proposes that the judiciary will be mobile. Appellants who live further away than fifty miles or ninety minutes from one of the venues and appellants with particular mobility issues would be able to ask for the judiciary to travel to them. In such cases, panels would sit in venues convenient for the client and hired specially for the hearing. This option might be particularly useful in the geographical extremities of mainland UK where the travel infrastructure is relatively poor.
12. The model also proposes that appellants will, at an early stage in the appeal process, be offered a paper hearing. It is difficult to say how many appellants would ask for a paper hearing. However, it may be reasonable to assume it will be similar to the number of

appellants who, in the current system, do not attend their hearing in person nor send a representative.

Adequately trained judiciary

13. The model proposes that all the judiciary would benefit from the training in judge-craft skills^y that is delivered to members of other tribunal jurisdictions. The training focuses on key competences such as communication skills, evaluating evidence conduct of a hearing, decision-making and equal treatment. Training would be aimed at enabling to conduct hearings with the degree of formality (or informality) appropriate to the cases at hand.
14. As a matter of course, chairs of a panel would give a written explanatory decision proportionate to the case at hand. Chairs would receive appropriate training.

Efficient administration for delivery for service

15. The model proposes that the administration of the tribunal be arranged so that it facilitates good governance and continual improvement over time.
16. Administrative staff would assume responsibility for two areas of work in the reformed Tribunal. The first of these is the routine, non-judicial work relating to the running of the tribunal. They would have responsibility for ensuring a smooth flow of work through the system. This would involve registering an appeal and monitoring its passage through the system, tracking progress against targets and notifying judiciary of problems. It would also require administrative staff to book hearing venues and to process travel and subsistence claims. The administrative staff would serve as a point of first contact for appellants and field general inquiries about the work of the tribunal. They would also answer questions about the progress of individual cases and tribunal procedure (although not about the merits of individual cases). Administrative staff could be based either in a central location or across the country. Either way, they would work to a set of standards that would ensure consistent administrative action.
17. The second responsibility of the administrative staff would be for the collection of management information. This would include information relating to the work of tribunal itself and feedback from users. Such information would enable the tribunal to be governed successfully. It would also enable managers to continually improve delivery of service.

Features not included in the preferred model

18. The Stakeholder Group opined at the last meeting that it should be possible to 'ring fence' cases that did not need legal input, that is, be heard by a 'non-legal panel'. We have not included a non-legal panel as one of the four main panel formats in the preferred option (subject to the exception noted in paragraph ten) for the following reasons:
 - the perceived informality of a non-legal tribunal ie proportionate to the appellant and matter at appeal will be addressed through judicial training in judge-craft skills
 - a key principle, already agreed by the Stakeholder Group, was that legal advice must come from within the panel itself. Non-legal panels would therefore have to recognise legal issues and know when to adjourn
 - current analysis of cases load suggests that (Section 93(3) applications aside) the numbers of cases that could be heard by non-legal panels and their likely wide geographical would result in such panels meeting infrequently. This could result a long wait whilst a sufficient list accumulated and in insufficient opportunity for non-legal chairs to sit.
 - Legally qualified chairs would be better placed to write explanatory decisions and deal with 'post-hearing' legal issues.

Benefits of the preferred model

The preferred model has several features to recommend it.

Principles

19. The preferred model respects the principles that the Stakeholder Group has said should guide the workings of the first tier. There will be a pool of judiciary with a wide range of relevant qualifications and experience, all of whom will be trained. Progressive and proportionate case management and allocation will allow cases to be heard by panels of the right format and by members with the right qualifications and experience. Appellants will have access justice with reasonable convenience. Efficient administration will support the work of the judiciary and enable the first tier to deliver a high standard of customer service. The likelihood is that it will deliver the kind of service that the Group wants and to the standards the Group has recommended.

Efficient

20. A pool of judiciary sized to the work in hand will allow training funds to be used without waste. Members of this pool will be able to make the most of the training they receive by sitting regularly.

21. A system of case management and case allocation will ensure that cases are heard by panels composed of members best suited to hear them. Offering appellants either oral or paper hearings will allow resources to be concentrated on exactly those means of delivery that the appellant asked for and which are appropriate to their needs. Paper hearings will allow work to be distributed in a way that makes a balanced but good use of the time of the judiciary, for example, to fill in where lists fail.

22. A developed administrative service will take responsibility for routine administrative work thus allowing the judiciary to concentrate on judicial work. Administrative staff will collect full management information statistics and feedback from users that will enable managers to implement a programme of continual improvement.

Affordable

23. The preferred model represents best value for money amongst the models that could operate within the current budget.

24. Implementation has to be achieved whilst the system is operating and within the current operating budget. The preferred model will be able to cope with all the workload from the General Commissioners jurisdiction within the current budget. As a relatively inexpensive option, the model leaves open the possibility that it can be developed further over time.

Scaleable

25. The current system deals with about thirty thousand appeals, about five thousand of which are substantive cases. The preferred model will offer a flexible infrastructure that can respond to changes of workload in a way that is more cost proportionate than other possible models.

Key advantages of the preferred model over the current General Commissioners system

26. The preferred model offers several advantages over the current system.

- All appellants have convenient access to proportionate justice
- Improved administration and case management result in fewer adjournments and postponements.

- Improved communications with appellants and opportunity for paper hearings allows more accurate listing eg appellants in person are identified at an early stage and can be allocated to a more specific time-slot than ‘sometime this day’
- Paper hearings allow better use of judicial time
- Consistency of administration throughout UK
- Panel expertise matched to the needs of the case in all circumstances
- Full administrative support enables judiciary to concentrate on judicial work. This in turn enables quicker delivery of justice
- Judiciary give written explanation of their decisions
- Oral hearings at venues suitable for the purpose where appellants and representatives will have access to the facilities enjoyed by users of the users of other tribunals
- Collection of statistical information and feedback allows the system to develop over time to monitor and match increasingly the needs of its users

ⁱ a member with a legal qualification and five years post qualification experience. We would expect there to be a range of experience amongst legally qualified members. At one end of the spectrum would be members with general legal experience; at the other, those with considerable expertise in tax law

ⁱⁱ a member who is not legally qualified but is qualified to sit by virtue of a relevant qualification or by current and relevant experience

ⁱⁱⁱ non-judicial staff responsible for work to support delivery of service

^{iv} member of staff with a legal qualification employed as a member of the administrative staff in a para-professional capacity

^v key competences relevant to sitting on a tribunal panel. They include communications skills, evaluating evidence, conduct of a hearing, decision-making and equal treatment. The competences express themselves as skills in the following: previewing, preparing and conducting a hearing; listening and questioning techniques; evaluating evidence and assessing credibility; note-taking and decision-writing; understanding equal treatment in practice