Tax Appeals Stakeholder Group

5 May 2005

Paper No. 2 – Different approaches to deciding cases

SG03/02

Foreword

Document Control

Document Reference: Tax Appeals Modernisation – SG02/0
Version No.: 0.2
Author: Vicky Molloy

Document Approver Tax Appeals Stakeholder Group

Signature ______________________________

Date ______________________________

Document Purpose To foster discussion regarding alternatives to oral hearings as means to resolves disputes.

Amendment History

Issue	Date	Amended By	Amendment Details
0.1	20/04/05	Vicky Molloy	First draft for internal comments
0.2	25/04/05	Vicky Molloy	Incorporating project team / project executive comments

1. The purpose of this paper is to illustrate that a number of organisations within the sphere of administrative justice determine cases without convening the parties to the dispute at an oral hearing. The paper proposes that the traditional view that the best and sometimes only way for disputes to be resolved is via a full oral hearing, needs to be looked at anew within the current context of reform and innovation in the world of dispute resolution.

2. Oral hearings play a prime part in the way that the majority of tribunals deliver justice in the United Kingdom. Historically most tribunals have heard almost all of their caseload by way of an oral hearing between the parties. This seems generally to have become the norm or default procedure when a new tribunal is created although there are exceptions. Much has been written about the value of oral hearings, although there has been little recent consideration of alternatives to full oral hearings, and how the needs of the modern tribunal user might be met in equally fair, impartial and transparent ways.

3. Although Sir Andrew Leggatt in his review of tribunals agreed that there is value in full oral hearings, his report recommended that tribunals should assess the merits of written and oral procedure for the particular case, including whether to ask each of the parties their preference. The report gave as good examples two tribunals -The National Parking Adjudicators and the Social Security Commissioners - who handle very different types of cases, but use written procedures very successfully for most cases and do nearly all their business on paper.

4. With the publication of the Government's White Paper *Transforming Public Services: Complaints, Redress and Tribunals* the emphasis has been placed firmly on resolving disputes proportionately and with the user in mind. The new Tribunals Service has been charged with being innovative in its approach to resolving disputes. The White Paper encourages greater use of proportionate dispute resolution (PDR) processes within administrative justice. Indeed the Council on Tribunals - in advance of its potentially widened remit as the Administrative Justice Council - is about to publish a consultation document intended to test opinion in relation to both oral and written (paper) procedures.

5. As a result of the White Paper we are thinking afresh about how disputes are decided, and that there is more than one way to handle an appeal. We would like to encourage thinking on the use of alternative resolution approaches. There are in the order of 600,000 cases per year across the 'top-ten' tribunals, the majority of which are approached on the presumption that they will be resolved through an oral hearing. There are very few instances where other mechanisms are routinely considered. An exception is the Appeals Service which offers appellants the choice of a paper or oral hearing. In 2003, 30% of applicants chose to have their appeals heard on the papers alone which is around 67,000 appeals per year.

6. Along with the Appeals Service and a small number of tribunals, other organisations deal successfully with disputes without the need for oral hearings in the vast majority of cases. For example, the Financial Ombudsman Service (FOS) gets 500,000 enquiries and 100,000 substantive cases per year - last year they had about 30 hearings.

7. Within those organisations which decide matters largely without oral hearings there are different approaches to the conduct of the case. The FOS for example adopts a highly inquisitorial approach to the resolution of disputes, and is focussed on what really matters to the user: resolving the dispute, with the

outcome dependent on the strength of a party's case rather than how well the case is presented. The Service provides tiers of intervention from initial advice, to mediation or conciliation, to adjudication (including an indication of the likely outcome), to a final decision by the ombudsman. This process for resolving disputes is paper based throughout, and contact between the Service and the parties is usually by telephone, although they can if necessary hold hearings. Hearings are rare (only 0.03% of cases last year involved a hearing).

8. The Appeals Service approach by comparison is less inquisitorial and relies on written rather than oral presentations of the case. It asks the appellant to decide if they wish to attend the tribunal in person for an oral hearing or if they would like the tribunal to reach a decision in their absence. If the appellant elects for the case to be decided in their absence, the tribunal then considers the appeal on the papers. The papers are usually made up of a Schedule of Evidence submitted by the appellant, together with any additional material they may have sent in. The tribunal then makes its decision solely on the papers it has received without further recourse to the parties.

9. We want to examine the feasibility of dealing with some cases or types of case without the use of hearings. If the FOS can deal with some quite complex cases without the need for an oral hearing, we think it should be possible to deal with some tribunal cases in a similar way, particularly where the issues may not be complex or contentious, or an appellant can as easily as not make their case in writing.

10. Possible benefits this will generate are:

For appellants:

- Cases dealt with more quickly
- Cost effective and proportionate justice
- Not having to attend hearing, no associated travel costs, or other inconvenience
- Not having to go through what might be perceived as a daunting and nerve-wracking experience
- Better able to gain access to advice and / or support for preparing cases for paper hearings, many advice organisations are far better able to provide this kind / level of support
- Not having to find scarce assistance in helping to understand what to do at a hearing, or be represented at a hearing
- Not having to engage in a potentially adversarial process leading to the possibility of a better subsequent relationship with, or opinion of, the body with which they have the dispute

For tribunals:

- Lower cost since the extra resources such as venues, clerks, administrative staff, special needs facilities, that oral hearing require will not be necessary
- Faster resolution since hearings require a greater number of resources to be in the same place at the same time
- Less inconvenience caused by adjournments - since additional evidence or information may be required but that would necessitate rescheduling a hearing.

11. Although PDR will develop and evolve as the new organisation grows, there is an opportunity now for the tax jurisdiction to take an early step towards considering different ways that disputes might be resolved, and the hearing of cases on the papers is one such way.

12. Turning to the General Commissioner jurisdiction – Is there a case for providing the appellant with a choice between having their appeal decided at a full oral hearing or on the written evidence? In general most cases where an appellant has simply failed to attend without advising the tribunal, would be decided by the General Commissioners based on the evidence presented at the hearing by the Inland Revenue, and in the absence of any representations from the appellant. We do not have an indication of whether appellants who do not turn up are less successful than those that do, but it may be possible given the nature tax disputes to infer than this may be the case more often than not. Statistics show that in 2004 only around 40%[1] of appellants attended or sent a representative to a General Commissioner hearing, meaning that possibly 60% of the cases in that year may have been decided in the absence of any evidence presented by an appellant or their representative. We do not have an explanation for the low attendance rate, and there may be many reasons for it but, and given the very local nature of the General Commissioners it would not be expected that the main reason for non-attendance would be travel requirements. This would suggest that at least for some appellants an alternative option such as a paper hearing where they can submit their case in writing but are not required to attend might be a preferable and more proportionate means of deciding their case. In fact there were more responses to the DCA (then LCD) consultation paper *Tax Appeals* in 2000 in favour of providing appellants with the option of a paper hearing than were against (although response levels to the consultation overall were low).

13. On the face of these statistics it would seem, that given the low attendance rates papers hearing may be a more cost effective, proportionate, and accessible and possibly even welcome alternative to a full hearing for a large proportion of the population whose cases would fall within the current General Commissioner jurisdiction. Certainly it would appear that consideration of paper hearings as a legitimate alternative is warranted.

[1] This figure is not exact but a high estimate based on the information available.