



Tax Appeals Stakeholder Group

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Paper No. 3 The Upper Tier Tribunal and Tax Reform

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Foreword

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Version No.: 1.0
Author: Rhys Chesters-Lewis

Document Approver Tax Appeals Stakeholder Group

Signature _____

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Document Purpose This paper describes how the upper tier of the reformed tribunal will operate.

Amendment History

Issue	Date	Amended By	Amendment Details
0.1	25/4/05	Rhys Chesters-Lewis	First draft for internal comment
0.2	27/4/05	Rhys Chesters-Lewis	Final draft for Stakeholder Group

The Upper Tier Tribunal and Tax Reform

Introduction

1. Sir Andrew Leggatt highlighted the existing problems with second tier appeals from tribunals with oversight variously provided by the Court of Appeal or the High Court¹. This oversight sometimes takes the form of an appeal right provided under the Tribunals & Inquiries Act 1992 or a bespoke piece of primary legislation. Where no appeal right exists the judicial review process can be the only remedy available.
2. Chapter 7 (7.14 – 7.28) of the White Paper *Transforming Public Services: Complaints, Redress and Tribunals* set out the government's proposals for the creation of a dedicated appellate tribunal to address these problems. The underlying principle was that tribunal appeals should be resolved within the tribunal system itself and only progressing to the courts when a matter of the weight and importance of that normally heard by the Court of Appeal was at stake.
3. The proposal therefore was for the creation of a dedicated appellate tribunal to sit alongside the Employment Appeal Tribunal as part of the appellate tier of the new Tribunals Service. The provisional name for the appellate tribunal was *the Administrative Appeals Tribunal* although *the Upper Tier Tribunal* and *the Tribunal Appeals Court* have both been suggested.
4. To create the new tribunal primary legislation will be needed and this will be dependent on the outcome of the election and decisions the new government makes about its priorities for the 1st session of the new Parliament.

Key features of the appellate tribunal

5. Appeals to this tribunal would be on a point of law and by permission from the Lower Tier Tribunal, with three notable exceptions – Asylum & Immigration Appeals, Asylum Support Appeals and Criminal Injuries Compensation Appeals. Onward appeals would be to the Court of Appeal in England & Wales, the Court of Sessions in Scotland or the Court of Appeal in Northern Ireland. Where appeals from any tribunal within the new service currently lie to the High Court they would in future lie to the appellate tribunal.
6. The appellate tribunal would have both a first instance and an appellate jurisdiction resembling the current dual jurisdiction of the High Court. This will be at the instigation of the Jurisdictional President or his delegate. The appellate tribunal will also hear appeals from tribunals administered outside the Tribunals Service such the Valuation Tribunals. The new legislation will also give first tier tribunal the power to review its own decision, allowing them to correct obvious errors or mistakes.
7. It has been suggested that some users are disadvantaged when in wishing to dispute a decision they wish to challenge not just the decision that was made but the way in which it was made. Once a tribunal has made its decision (assuming it is not in the user's favour) the user will need to begin the process again in the Administrative Court. In many cases it would be in the users interests if the tribunal had the ability to adjudicate on both aspects of their dispute. Therefore it is intended that the legislation which establishes the new appellate tribunal will also grant the High Court the power to transfer its inherent judicial review jurisdiction to the appellate tribunal.
8. The boundaries on the transfer of judicial review functions to the appellate tribunal are still under development and we welcome comments. However, our current thinking suggests

¹ The arrangements in Scotland and Northern Ireland can and do differ from those in England and Wales

that this power will be limited to those matters that are related to the expertise of the tribunal. If the substance of the application concerns complaints against how a department exercised its discretion in areas that would not be appealable to the tribunal then it is not envisaged that this type of matter would transfer.

Judiciary

9. A key underlying driver behind the proposals is the recognition that tribunals are clearly part of the justice system and the office holders who sit on tribunals are in fact part of the judiciary. As a result of the Constitutional Reforms this means that in England and Wales they are ultimately answerable to the Lord Chief Justice, with the Senior President of Tribunals to be seen alongside the other Heads of Division.
10. As set out in the White Paper the government intends to change the titles of Tribunal Chairman, Members, Commissioners etc as part of the reform process and replace them with Tribunal Judge, Tribunal Appeal Judge, Tribunal Member and Tribunal Appeal Member. Appointment in future will be to one of these offices not to a particular jurisdiction. In turn this will allow deployment of office holders in a variety of jurisdictions. Clearly there will need to be safeguards to ensure that only those people with the appropriate level of knowledge and expertise do sit in a particular jurisdiction but that level of quality control will primarily be a matter for the judiciary.
11. However, the proposals go wider than merely letting members sit in different jurisdictions. They are based upon the principle that once a member has demonstrated their suitability to hold judicial office they should not need to demonstrate it again and again each time they wish to be considered to sit in another jurisdiction. This concept applies equally to High Court and Circuit Judges. So provision will be made to allow High Court and Circuit Judges to be deployed by the Lord Chief Justice into the appellate tribunal where the jurisdiction merits it. Similar provision is already set out in the Employment Tribunals Act 1996 in respect of the Employment Appeals Tribunal where Judges are deployed to sit for a specified period in between their High Court or Circuit sittings. These deployments could take the form of hearing particular cases (if length permits) or particular sitting days with a view to ensuring appropriate cases were listed in those days.