

TAX APPEAL STAKEHOLDER MEETING

2 JUNE 2005

Attendees	Representing
Stephen Oliver	Chairman
Henry Russell	National Association of General Commissioners
Andrew Jackson	HM Revenue & Customs
Robert Maas	Institute of Chartered Accountants of England and Wales
William Norris	Low Incomes Tax Reform Group
Ian Menzies-Conacher	Confederation of British Industry
Dick Lester	Tribunal Groups Operations, Department for Constitutional Affairs
Ron Downhill	Law Society
Nuala Brice	VAT & Duties Tribunal/Judicial Training
Malcolm Gammie	Tax Law Review Committee
Michael O'Callaghan	HM Revenue & Customs
Jane Smeaton	Head of Senior President's Office
Steve Wade	Department for Constitutional Affairs
Andrew Digby	Department for Constitutional Affairs

1. Introduction

Apologies were received from John Avery Jones, Penny Hamilton, Simon Hill, Roger White, Gordon Coutts, Jane Moore, and Eileen Patching. Dick Lester attended in place of Simon Hill, William Norris in place of Jane Moore, and Michael O'Callaghan in place of Peter McCluskie.

Stephen Oliver announced that dates had been settled for the meetings to be held with users in Scotland and Northern Ireland at the end of June and that they would receive a discussion paper outlining the emerging option for reform prior to the meetings.

2. Minutes of the last meeting

Ian Menzies-Conacher asked for a note to be added under sub-heading five of point five, 'Options for the Reformed First Tier Tribunal', relating to the HM Revenue and Customs review of powers and the need for liaison with the Department. By way of context Michael O'Callaghan (MO) explained that the review would be considering appeal rights as part of the overall review of powers and safeguards. However, at the review is at an early stage and detailed consideration of appeals issues was not likely to take place immediately. The deadline for comments for the consultation paper on the review of powers was 13th June.

Penny Hamilton asked a note to be added to point four, 'Composition of the Appellate Tier' on the statement Peter Brooke gave to the House of Commons in 1986 clarifying the policy of the then HM Customs & Excise on seeking costs.

Minutes to be amended accordingly

3. Update on the current position of the Project.

Steve Wade (SW) acknowledged that there had been no mention of the Courts and Tribunals Bill in the Queen's speech but suggested that this did not mean that the bill would not come before Parliament in this session. The Tax Appeals Modernisation Project is waiting to see what the final shape of the parliamentary timetable looks like and hopes to have a clearer idea of when legislation might be introduced towards the end of the Summer. In the meantime work continues to plan for reform according to the current timetables. If the Bill were to be delayed, it might prove possible to look for alternative legislative opportunities. If there was no prospect of early introduction of legislation, the Project Team would step up work on contingency plans. Previously the Project had said that implementing reform was unlikely prior to April 2007. So far nothing had happened to suggest that this assumption needed to change.

Henry Russell (HR) pointed out that there was a risk that those involved within the existing system might become de-motivated if reform were delayed for too long. Stephen Oliver (SO) agreed and stressed the need for the Stakeholder Group to continue its work so that an option for reform was ready for implementation as soon as the opportunity allowed. In the meantime particular thought needed to be given to ensuring that the existing system continued to operate effectively across all geographical areas. SW agreed and suggested this was an area that the project was keeping a close watch on.

4. Update on current workload of General Commissioners (SG04/02)

SW presented this paper as primarily for information. The paper showed the trend in the General Commissioners' workload between 2001 and 2005 (the figures for 2005 had been extrapolated for returns for the first four months of that year). The statistics showed:

- A significant decline in cases withdrawn, postponed and adjourned over the last five years
- A relatively constant level of determinations made by the General Commissioners (other than daily penalty applications) over the last five years, averaging 7,500 cases per year
- A large percentage of the overall caseload of the General Commissioners was now daily penalty applications

There were roughly 2,500 Commissioners. If the work were evenly divided between them, each Commissioner would hear just three cases each year or 9 cases if they sat in panels of 3 for every case.

Of the cases listed to be heard that did not result in a decision on the day, it has been consistently the case for the last three years that about a third of cases were withdrawn, a third were postponed and a third were adjourned part heard.

Nuala Brice (NB) asked about statistics on how many decisions were decided per day. HR said that in his experience many cases were decided in about 15 to 30 minutes but that it could take a day or two to decide particularly complex decisions. SW agreed and said that he thought the overall average was about an hour per case but would confirm to the group after the meeting.

SW to distribute statistics on length of time taken to decide cases.

[Post meeting note: for both 2003 and 2004 there were around 2,500 meetings held, each meeting lasting on average 1 hour 45 minutes and with each substantive case (excluding penalty applications) taking an hour to decide.]

5. Discussion of the preferred option for reform and variants (SG04/01)

SW introduced this paper which provided further detail on the shape of the emerging preferred model for reform. Some features of the model the paper described had already been agreed by the Group. Other features the paper proposed - such as how the system would be administered and precisely what cases would be allocated to which format of panel – would need further discussion.

The paper described a model that would be suitable for work right across the tax jurisdiction although the figures it quoted referred to only the workload of the General Commissioners.

Panel Composition and Case Allocation

Ron Downhill (RD) asked about the criteria by which cases had been matched to panel formats in paragraph fourteen. SW explained that the high level case categories and total numbers within each category had been taken from the hearing returns forms currently used by Clerks. The Project Team had divided this caseload into a variety of panel formats from those suggested by the group. In making this division the team had taken into account the views expressed in the questionnaires previously filled in by group members as well as what information the Team had picked up from attending hearings as observers. SW stressed that this breakdown was very much a “straw man” that demonstrated how the work might pan out. The Project Team welcomed feedback on this breakdown and suggestions about how it might be improved. Part of the work going forward would need to get a much clearer idea about how the allocation of cases to panels would actually work in practice. This issue would be returned to under agenda item 6 “Next Steps”.

Evaluation Criteria

SO queried whether ‘open and representative appointments’ was the best way of expressing that criterion. It would be impossible to appoint a judiciary that was completely representative. What the reformed system would need was a judiciary able to hear a wide variety of types of cases no matter where they sat in the UK. He suggested that a better formulation might be ‘a body of judiciary appropriate to the workload’.

Numbers of judiciary and administration staff

SO asked about how the estimates of numbers of judiciary and administration staff needed to run the model had been derived.

SW explained as a preliminary issue that the numbers had taken into account the need potentially to manage up to 10,000 substantive cases per annum, although in practice the numbers were likely to be closer to 7,500. Previous estimates had used only the figures for 2004, which were as low as 6,000.

The number of judiciary the new tribunal would need had been calculated to maximise the number of part-time judiciary available across the whole country whilst ensuring that each could sit at least six days a year to keep their experience current. NB said six days a year were too low to achieve a return on the investment put into

training and appraisal. The minimum had to be at least twenty days a year. SW said that the figure of six days was an initial example designed to give a wide geographical spread of judiciary while providing some degree of currency of expertise. He agreed that twenty days a year was much more in line with comparative tribunals. It was worth while noting however, that if the part-time members of the judiciary were to sit as frequently as twenty days a year, the tribunal would need only thirty-five of them to clear the current workload. This would inevitably have an impact on the frequency and degree of locality of hearings that could be offered.

HR noted that many more appeals were registered with HM Revenue & Customs than went to appeal. Many were registered solely to comply with statutory time limits and a large number never get anywhere near the tribunal. If the new system were to assume responsibility for handling the registration of all appeals it would need substantially more staff than proposed by the preferred model. SW said that at present the option only considered how to deal with those cases that reached the General Commissioners. It did not propose at this point to receive all appeals currently made direct to the HMRC. MO pointed out that HM Revenue & Customs were currently undertaking a survey on the processing of appeals and how they were handled from registration to listing. It was agreed that the question of lodgement of appeal and the process by which cases reached the tribunal were areas that would need to be considered in more detail and that the issue cut across a number of jurisdictions.

S 93(3) cases

Robert Maas asked how paper hearings for s93(3) cases would work. SW suggested that it could work by having a pro-forma application that, if correctly completed, would give panels all the information they needed to come to a decision. HR noted that the DCA, HMRC and the National Association of General Commissioners were already planning for a pilot study into the use of paper hearings for s 93(3) hearings.

Administrative functions

A number of group members (including some of those unable to attend who sent in written comments) pointed out that the model concentrated too much on the General Commissioners. SW agreed that the emphasis had been on demonstrating how the workload of the General Commissioners could fit into the proposed option but that the model had been designed to be sufficiently flexible for all cases. When the option is revisited it will be made clearer how the workload of the Special Commissioners and the VAT and Duties Tribunal will be accommodated.

Dick Lester (DL) and NB raised concerns about the idea of a single back office for administrative functions. DL said that a single back office might not be suitable for the kind of work generated by tax appeal work. NB noted that the VAT & Duties Tribunal's administrative service was co-located with the judiciary in London, Manchester and Glasgow. This system worked well for the VAT and Duties' caseload and might be able to be scaled up to deal with General Commissioner cases in addition to its current work.

SW said that the options suggested in the paper were not to be taken as definitive and explained that no decision had been made about how the tribunal would handle administrative functions. He agreed the issue needed to be explored in more depth and suggested that this work seemed to fall into the detailed work forming phase 2 of the project. Similarly, thought would need to be given to the numbers of judiciary and

administrative staff the reformed tribunal would need. SW pointed out that it might prove possible to cross-appoint judiciary from other tribunal jurisdictions or build upon existing spare administrative capacity. The numbers the paper gave were for judiciary and administrative staff needed to clear the workload, not for how many needed to be recruited.

SW said that an outline of the preferred option would eventually be presented in a paper to the group to sign off and this would take on board the comments received at this meeting, together with those from the meetings with users in Edinburgh and Belfast. The paper would make explicit which features of the option were firm and required sign-off and which were areas that needed to be worked through in more detail as part of phase 2.

Deleted:

Needs of low income appellants

William Norris noted that low income appellants would wish to have their appeals heard by a panel which contained as least as much tax law expertise as was possessed by the representatives of HM Revenue & Customs who were at a hearing. Low income appellants would also prefer to have the right to specify that the first appeal would be final. This would allow them not to avoid steeply rising costs on an 'escalator of appeals'.

SO said that the first point amounted to appellants being assured that their case would be heard by a panel with appropriate expertise which was relevant to all cases. This was one of the guiding principles that the Group had agreed should determine the working of the new structure. RD noted that there had to be a right of appeal so that parties could appeal against a perverse decision.

Project Team to ensure next version of the model is clear about which features the Stakeholder Group has signed up to, and which are options to be explored in greater depth during the planning of implementation. Project Team to ensure next version of the model takes account of work and structures of Special Commissioners and VAT & Duties Tribunal.

6. Next steps

SW would present a paper describing a refined version of the preferred model which incorporated the feedback from this meeting and feedback gathered from the users of the General Commissioners in Scotland and Northern Ireland. This would make more explicit the way the model would deal with the VAT and Duties and Special Commissioners workload, which features of the option are "final" and can be signed off and which features require more detailed work under phase 2 to understand how they might operate in practice.

The Stakeholder Group agreed to set up a Sub-group to consider, in the first instance, case-management, case allocation, and the criteria for selecting cases to go straight to the second tier, with their recommendations being incorporated into the final version of preferred model. It was agreed that there would be no meeting in July as it was so close to the meetings in Scotland and Northern Ireland but that the group would meet again in August.

SW to circulate Stakeholder Group with proposals for the Sub-Group

Date of next meeting:

4th August, 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)
Peter McCluskie (HM Revenue & Customs)
John Avery Jones (Special Commissioners on Income Tax)
Penny Hamilton (Chartered Institute of Taxation)
Roger White (s703 Tribunal)
Gordon Coutts (Scottish interests)
Jane Moore (Low Incomes Tax Reform Group)
Eileen Patching (HM Revenue & Customs)
Judith Edwards (Council on Tribunals)
Peter Trevett (Revenue Bar Association)
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)
John Andrews (Low Incomes Tax Reform Group)
Mervyn Woods (Confederation of British Industry)