



Tax Appeals Stakeholder Group

2nd June 2005

**Paper No. 1 Preferred Option for reform
and variants**

SG04/01

Foreword

Document Control

Document Reference: Tax Appeals Modernisation – SG04/01
Version No.: 1.0
Author: Andrew Digby

Document Approver Tax Appeals Stakeholder Group

Signature _____

Date _____

Document Purpose This paper describes the preferred model for the reformed tribunal, agreed by the Stakeholder Group, in greater detail. It also describes other possible models and describes how well the models meet the requirements for the reformed tax tribunal set by the Stakeholder Group.

Amendment History

Issue	Date	Amended By	Amendment Details
0.1	18/05/05	Andrew Digby	For comment by Project Team
0.2	23/05/05	Andrew Digby	After comments from Project team – version for internal review
0.3	25/05/05	Andrew Digby and Steve Wade	After comments from Paul Stockton and Rhys Chesters-Lewis
1.0	26/05/05	Andrew Digby	Final version for Stakeholder Group

Introduction

1. This paper describes the model for the reformed tribunal that the Stakeholder Group has identified as its preferred option in greater detail. The model has been designed so that it could handle all tax appeal cases. This paper focuses on how the model would deal with the workload currently dealt with by the General Commissioners. The paper gives an estimate of how many judiciary and administrative staff are needed to make the preferred model work. It considers how many additional members of the judiciary would be needed and how this might be met. It describes the administrative structures that would support the work of the judiciary and discusses how and where judiciary and administrative staff would be best deployed.
2. A version of this paper will be presented to Scottish and Northern Irish users of the General Commissioners when the Chairman of the Stakeholder Group and a representative of the DCA Tax Appeal Modernisation Team hold meetings on tax appeals reform in Edinburgh and Belfast. Feedback from this meeting will inform further development of the preferred model.
3. For purposes of comparison, the paper also outlines three other possible models. All four models – the preferred and the three variants - are evaluated against the criteria agreed by the Stakeholder Group at their first meeting. For ease of reference the objective and evaluative criteria are given here:

Consistent and effective structures and processes

- Common standards and consistency of administrative processes and procedures for similar types of case across all tax jurisdictions.
- Consistent and adequate judicial structures including such areas as judicial management, training and appraisal.
- Adequate standards of accommodation and compliance with the Disability Discrimination Act.

Coherent unified jurisdiction of tax appeals and clarity on appeal routes.

- Open and representative appointments
- Recruitment process of all tribunal judiciary and associated tribunal staff via fair and open competition.
- Clarity of roles, responsibilities and employment status of all staff and effective control mechanisms in terms of appraisal, training, disciplinary processes and complaints procedures.
- So far as is expedient in a specialist tribunal, a judiciary that is representative of its customers and society as a whole.

Manifest Tribunal independence

- Tribunal has effective control of cases from receipt through to final disposal and is not reliant upon decision-making departments for information.
- Clear separation between Tribunals and administration of decision-making departments (e.g. production of hearing notices and hearing lists).

Option 1: preferred model

Judiciary

4. We have started from the assumption that we are not building a tax appeal system that will stand alone and wholly apart from other tribunals. Rather, we are building a tribunal that will fit into the structures of the proposed new tribunal service and take advantage of the opportunities that working alongside other tribunals of other jurisdictions will bring. All judicial members within the reformed tax jurisdiction would be assigned to one of the four generic offices of the new tribunal service. This means that all legally-qualified members would be appointed to the office of Tribunal Judge and could be cross-assigned to other jurisdictions depending upon their qualifications and experience. Similarly, legally-qualified members from other jurisdictions could be assigned to hear cases within the tax jurisdiction. Suitably-qualified members would all be appointed on the basis of the skills and experience they would bring to a panel. They would sit only when they added value to the particular case at hand and not as a matter of course.
5. The preferred model will require fewer members of judiciary than there are General Commissioners at present. There are three reasons for this. Firstly, there has been a significant reduction in the caseload of the General Commissioners over the last few years. The number of judiciary needed to deal is correspondingly less. Secondly, the preferred model envisages that judiciary will be deployed flexibly, in one of five panel formats, according to the needs of the cases listed (in contrast to the one panel format they are deployed to at present). Thirdly, the new tribunal will be part of the wider tribunals structure and existing Special Commissioners and VAT and Duties Chairmen will be able to sit on the smaller direct taxation cases. Legally-qualified members from other jurisdictions would be assigned to hear cases where competent to do so. The preferred model will not then need a large scale recruitment exercise for additional legally-qualified members.
6. It is not envisaged that non-legal suitably qualified members will be cross-appointed between jurisdictions in the same way that legally-qualified members will be. It may be possible to meet the need for more suitably-qualified members in part by arranging for existing VAT and Duties members able to take on additional work. Suitably-qualified members are not, however, distributed evenly across the country and the need for recruitment will be greater in some regions than in others.

Role of members

7. The main responsibility of judicial members would be to hear and determine cases. In principle, the judiciary would be mobile and travel to sit anywhere in mainland United Kingdom or Northern Ireland as required. We envisage that for reasons of administrative efficiency the judiciary will sit most regularly in particular local geographical areas. One advantage of using the judicial resources available in the system at present, is that it should be possible to achieve a wide geographical distribution without recruiting additional members of the judiciary in large numbers. However, our assumptions about the existing members of the judiciary, their spare capacity, geographical distribution, and their suitability and inclination to be assigned to a tax jurisdiction need will need to be thoroughly tested.

8. Legally-qualified members would be responsible for chairing panels, for preparing written decisions and for dealing with post-hearing issues. They would sit with sit on panels as wingers where appropriate. Some of the legally-qualified judiciary would be full-time. The full-time judiciary would have primary responsibility for carrying out an initial review of cases, for resolving preliminary issues and interlocutory matters, for issuing directions as required, and for allocating panels for the more complex cases. They would also be responsible for the active management of cases, aiming to reduce the number of cases adjourned or postponed at short notice. They are also likely to play a key role in supporting any alternative dispute resolution processes introduced into the tribunal.
9. The full-time judiciary could be located in a single central office, perhaps somewhere near the geographical centre of mainland United Kingdom. Alternatively, they could be located in two or three different offices. However, this is an issue that will need to be considered in more detail, as will the question of whether dedicated tax members the full-time roles should be appointed to full-time roles, or whether they could be taken by full-time legal members cross-assigned in a number of jurisdictions.
10. Legally qualified members who work part-time would be required to sit a certain number of days a year to ensure that they keep their experience current. How often is a matter for further discussion. The figure we give in paragraph twelve on this paper for the number required below assumes that part-time judiciary would sit a minimum of six days a year. In practice, however, a figure of between fifteen and twenty may be appropriate.
11. There would also be a number of part-time non-legal, suitably-qualified judicial members, appointed because of their qualifications or experience and to bring specialist knowledge and skills to the tribunal. Their main responsibility would be to provide specialist expertise to those cases that need it. Where the President deems it appropriate, some non-legal members would sit as suitably qualified chairs without a legal member being present. Analysis of the current workload suggests that such panels would not need to be the norm. The suitably-qualified members would, like their legally-qualified colleagues, be mobile. It could perhaps be assumed that they would need to travel less than their legal counterparts. They would also be required to sit the same minimum number of times a year.

Training and Appraisal

12. All of the judiciary would receive training on appointment and further training at regular intervals whilst in post. The training would cover judge-craft skills (including diversity and disability awareness) and tax-law. The judge-craft training would enable members of judiciary to conduct hearings with the degree of formality (or informality) appropriate to the cases in hand.

Number of judiciary required

13. We suggest a division of cases between formats of panels in paragraph thirteen. Based on this division, we estimate that six full-time legally-qualified judiciary, one hundred and twenty part-time legally-qualified judiciary and two hundred and twenty part-time suitably-qualified judiciary would be able to clear the current General Commissioners workload, provided the each part-time member of staff sat at least six times a year. Fewer part-time members of the judiciary would be needed if the minimum number of sitting-days a year were to be raised to fifteen.

If members of judiciary are cross-assigned to the tax jurisdiction in the new tribunal, not all two hundred and forty of the judiciary will need to be recruited specifically to the tax jurisdiction. That is, the numbers of judiciary we estimate will be required should not be taken as the number that need to be recruited. Rather, they are indicative of the additional judicial resource required to clear the workload.

Panel composition

14. The structure proposed by the Courts and Tribunals Bill will allow panels of any composition to sit. The preferred option assumes that all cases will be heard by flexibly constituted panels chaired by a legally qualified member sitting with one or more other members as required. Analysis of the current General Commissioner workload suggests that, in practice, four main formats of panel would be appropriate for the tax jurisdiction. A fifth format - up to three suitably-qualified members sitting without a legal chair – would be available at the discretion of the President. Each panel format is described below together with a list of the types of cases that we assume each panel would hear, together with a rough idea of what sort of numbers of each case they would have determined in 2004:

Format one: a panel of one legally-qualified member sitting alone.

Panels of one legally-qualified member sitting alone would hear the following kinds of case:

- Personal income tax, including penalty and surcharge cases (930 cases)
- Corporation tax, including penalty and surcharge cases (175 cases)
- National Insurance (132 cases)
- Subcontractors' Certificates (308 cases)
- 'Without notice' (single party) cases, excluding s 93(3) cases (792 cases)
- Other cases which do not fall into any of these categories (407 cases)

Format two: a panel of one legally-qualified member sitting with one suitably qualified member

Panels of one legally-qualified member sitting with one suitably-qualified member would hear the following kinds of case:

- Personal income tax cases (645 cases)
- Corporation tax cases (412 cases)
- Capital Gains Tax (44 cases)
- And other cases which do not fall into any of these categories (407 cases)

Format three: a panel of one legally-qualified member sitting with two suitably-qualified members.

Panels of one legally-qualified member sitting with two suitably-qualified members would hear the following kinds of case:

- Personal income tax cases (90 cases)
- Corporation tax (92 cases)

Format four: a panel of two legally-qualified members

Panels of two legally-qualified members sitting would hear the following kinds of case:

- Personal income tax (25 cases)
- Corporation tax (25 cases)

Format five: the President will appoint a **panel of up to three suitably-qualified members** to sit at his or her discretion. After having considered the current workload, we envisage that panels of this format would not sit as a matter of course.

Processes for daily penalty cases

15. Administrative staff would register, batch up and distribute amongst all members of judiciary the s 93(3) cases. The judiciary will deal with these on the papers as box work. In 2004 there were 12,010 s 93(3) cases which took an average of 4 minutes each to hear. This amounts to 133 days of work.

Paper hearings

16. If the tribunal offered appellants the choice of having their cases on the papers alone, and if this became a regular feature of the reformed Tribunal, papers will be allocated to panels using the criteria we suggest be used to allocate oral hearings.

Administration

17. The model proposes that administrative staff have responsibility for all of the non-judicial tasks. The non-judicial work would include registering cases, handling correspondence with parties, booking venues, arranging for judiciary to sit, distributing bundles, sending out decisions, and making and collating returns. Administrative staff would serve as point of first contact for enquiries, fielding questions about the work of the tribunal in general, tribunal procedure and the progress of individual cases (although they would not advise on the merits of individual cases). They would also be responsible for all of the other non-judicial work relating to the running of the tribunal, its estate and facilities, and for collecting management and statistical information.

18. The administrative staff could also be responsible for some judicial functions if the President deems it appropriate. This might include listing and panel allocation work, possibly allocating applications that fell into readily-identifiable categories of simple cases. It may be possible for a legally-qualified officer to take responsibility for some interlocutory and ancillary work, on the model of the Lands Tribunal Registrar.

19. Based on the figures for the General Commissioners' workload in 2004, we estimate that this model will need around fifty administrative staff. The majority of the staff would be spent dealing with correspondence, case registration, listing and panel allocation. This points in the direction of an administrative back office receiving and processing all the cases at one central location. Given that there is a need for judicial involvement at least some points in this process, it seems likely that at least those members of the judiciary with responsibility for listing would need to be located with the administrative staff. However, there are a number of factors that would influence the eventual decision, amongst them, the extent to

which responsibility for case allocation is delegate to the administrative staff, and the extent to which the IT and logistical infrastructure supports transfer of cases from one location to another.

20. For the Tribunal to function effectively and improve over time, it would be necessary to keep a full record of its activities. This would include information about:

- The judiciary (availability, location, special expertise, training received, cases heard, number of days sat)
- Case management (date application received, significant events, correspondence, withdrawals, postponements, outcome, copy of decision)
- Hearing information (members sitting, how long, number of cases heard)
- Venues (register of available venues)
- Performance of the tribunal itself (time taken to register a case, how many enquiries dealt with, number of complaints received etc)
- This would require an electronic database and our assumption is that one of the existing tribunal databases would, in principle, be suitable for accommodating these cases

Option evaluation

Consistent and effective structures and processes

21. The model offers a central administrative team that would be able to deal far more effectively, consistently and efficiently with the administration of cases than the current fragmented system. The move towards flexibly constituted, professional panels chaired by legally-qualified members would provide an opportunity for the organic unification over time of the tax jurisdiction and would pre-empt the future needs of the unified HM Revenue & Customs. It would mean that all cases would be allocated to the panel best suited to hear them and particular members of the judiciary with the best expertise to deal with them.
22. The administrative staff would receive, register and track each case as it made its way through the system. The tribunal would, therefore, be able to process and dispose of cases in a way that ensured that they were dealt with in a manner that was timely, effective and consistent across geographical regions and over time. Tracking would enable inconsistencies to be quickly identified. The central administration service would operate an enquiry service that would offer guidance to would-be appellants about how to make an appeal and would be able to respond effectively to appellants' questions about the progress of their cases.
23. Appointments would be made to one of the four generic offices created by the Courts and Tribunals Bill and to uniform terms and conditions. Legal members would be eligible to apply to be assigned to other jurisdictions and the tax chamber could take advantage of spare judicial capacity within other jurisdictions by assigning other appropriately qualified legal members to hear tax cases. This would have the added benefit of providing a wider geographical spread than may be possible by appointing only tax-specific members to hear cases.
24. All judicial members would all benefit from effective management and regular appraisal and would receive training on recruitment and on an ongoing basis whilst in post which would enable them to fulfil their duties effectively and responsibly.

25. With members of the judiciary actively managing cases, we expect standards of service to improve. As the new tribunal would spend more time on active case management, cases would be withdrawn, postponed and adjourned at the last minute frequently than happens now with the General Commissioners. The new tribunal would hold hearings more frequently than the General Commissioners do now. This would enable cases that had been postponed or adjourned to be heard with less delay.
26. The tribunal would make regular use DCA estate with rooms suitable for hearings. Where an appellant had particular mobility needs and could not attend a DCA venue, the administrative staff would find and book an appropriate venue. All venues would be DDA compliant.

Open and representative appointment processes

27. Existing professional judiciary would be mapped across to the new generic offices and any additional judicial members required would be appointed via a transparently fair and open competition based on merit that would engender confidence amongst customers of the competence and professionalism of the judiciary. Open recruitment would, as far as it is expedient in a specialist tribunal enable the makeup of the judiciary to be better representative, over time, of the customers and society it serves. New terms and conditions would clarify the employment status of all of the staff of the tribunal, whether members of the judiciary or administrative staff.
28. There would be a clear distinction between the tribunal's administrative staff and the judiciary, with responsibilities being divided between them in an efficient and economical manner. Administrative staff would take responsibility for administrative work, leaving members of the judiciary to concentrate on the work that requires their professional expertise. All staff would benefit from effective management and appraisal, training and disciplinary processes which met current best practice.

Manifest Tribunal independence

29. The Tribunal would receive appeals either from HM Revenue & Customs, or, where appropriate, by the appellant. The Tribunal would then list the cases to be heard and send out notices of hearing rather than using the existing HM Revenue & Customs IT systems. Once cases were registered, the tribunal's own staff would manage cases through to disposal using its own IT systems. And it would be the Tribunal – rather than the decision-making department – which would manage the progress of a case and decide when and where cases would be heard. The Tribunal's identity as an independent decision-making body would assure customers that their affairs were being dealt with justly.

Comparative models

30. For the purposes of comparison, and to give some context to the preferred model, the paper describes three variant models and appraises their relative merits.

Option 2: all cases heard by a single legal chair sitting alone

31. This model differs from the preferred model in proposing that the workload of the General Commissioners be dealt with by only one format of panel, namely, a panel of one legally-qualified member sitting alone. The judiciary would be composed exclusively of legally-qualified members who also possessed relevant business or commercial experience within the tax field. As in the preferred model, all judicial members would be fully mobile and receive initial and continuing training.

32. We estimate that this model would require four full-time members of the judiciary and approximately forty-five part-time judiciary members, sitting once every two months, to clear the current General Commissioner workload. As with the preferred model, we would seek to utilise existing spare judicial capacity across the tribunal service where possible.

Option evaluation

33. The model offers the same consistent and coherent processes across the whole tax system that the preferred model does. It would also be similarly independent. Appointments would be open, fair and on merit as in the preferred model.

- However, whether the pool of judiciary would be large enough to provide all of the specialist expertise the tribunal requires, at the points at which it is required, is open to question. As all the members of judiciary would have to be legally qualified, specialist non-legal expertise could only come from doubly qualified members. For a case that could benefit from the input of an accountant, for example, one would have to find a member of judiciary with both legal and accountancy expertise. This presents a problem. At the very least, it is likely that non-legal expertise will be spread thinly across a wide geographical area. But it is probable that The Tribunal will not be able to recruit and retain doubly qualified staff in sufficient numbers.

Option 3: replicate existing General Commissioners set-up within the new Tribunals Service structures

34. This model proposes that the General Commissioners be brought within the new Tribunal structure, set out in the forthcoming Courts and Tribunals Bill, but with a minimum amount of change. A number of General Commissioners would be re-appointed as members of the judiciary ('Tribunal Members') of a first tier tax tribunal within the new, overarching Tribunal Services structure. They would work to regularised terms and conditions of employment. As there are currently more Commissioners than needed to clear with the workload, it is likely that not all Commissioners would be re-appointed. All members of the new judiciary would receive training on recruitment.

35. Tribunal Members would receive legal support in one of two ways. The Tribunals Service could appoint a number of legally-qualified officers to take on both the administrative and legal duties that Clerks to General Commissioners have at the

moment (it may be these posts would be filled by advertising and recruiting from amongst existing Clerks). However, a more viable way forward may be to establish a central administrative unit which could assume responsibility for the administrative work currently undertaken by the Clerks. The legal work would be left to legally-qualified officers, who would travel to hearings as necessary but only to provide legal advice (and not administrative support). As with the first kind of legally-qualified officers it may be possible to recruit to these positions from amongst the existing Clerks.

36. The new first tier tribunal could continue to sit for hearings in venues similar to those they use at present. However, a central administrative unit would be better able to take advantage of suitable venues in the wider DCA tribunals estate.

Option evaluation

37. The members of the judiciary would work to regularised terms and conditions of employment. Appointments would be open, fair and on merit and the number of judiciary recruited would be such that each of them would sit often enough to keep their experience current. Members of the judiciary would also receive standard training on recruitment. To this extent, there would be consistent structures and processes. However, this system of dealing with cases would be radically different to the system dealing with VAT and Duties cases and it is difficult to see how further moves towards unification would be possible. This option would seem not be able to meet the future needs of the unified HM Revenue and Customs with the degree of flexibility that the preferred option would. It is likely that VAT and Duty appeals would continue to be dealt with in a way that differed significantly from that of dealing with direct taxation appeals.
38. If a central administrative unit were to be set up, it would go some way to establishing standard processing of cases. The unit could make use of DCA estate of a high and uniform standard, all of which would be DDA-compliant. Administrative staff could also offer some kind of public enquiry service.
39. However, with no full-time members of the judiciary involved in case allocation, it would not be possible to assign cases to particular formats of panel, nor to match cases against members of the judiciary with particular expertise. Nor would it be possible to actively manage cases through the system. There would be no guarantee, therefore, that all cases would be determined by panels with the necessary expertise. It is also likely that a higher number of cases would suffer from postponement, adjournment and delay because of local and particular circumstances.
40. If a central administrative unit were not established, the new tribunal would depend on HM Revenue and Customs to list cases in the way that the General Commissioners depend on them at the moment. This would make it difficult for the Tribunal to demonstrate its independence to its customers. With no dedicated administrative support, the legal officers that were appointed would continue to spend time on routine administrative tasks - a relatively expensive and inefficient way to get the work done. Relying on a legally-qualified officer would, in any case, transgress the principle set by the Stakeholder Group that all legal advice should come from within the panel.

Option 4: General Commissioners continue to function outside of the new structures

41. This model proposes that the General Commissioners stay outside of the new Tribunal structure, set out in the forthcoming Courts and Tribunals Bill. Appellants would have their cases heard more or less in the way that they are heard at present, although it is likely that there would be changes to the right of onward appeal and right of election. The Tribunals Service would offer basic administrative support that the Commissioners receive at the moment. Clerks would continue to carry out all of the day-to-day case-related administrative functions and members of the judiciary would be continue to be trained as they are now.
42. Panels could continue to use the venues they do at present although it may be possible for them to make use of DCA estate.

Option evaluation

43. The model offers few of the advantages of the preferred model and reproduces many of the drawbacks of the General Commissioners as they work at present. In particular, if the number of Commissioners remained as it is at present, the current mismatch between the work and staff available to do it would also continue. It would be very difficult to ensure that each Commissioner sat often enough to keep their experience current.
44. However, with minimal change there would be minimal disruption and the business would continue to function much as it does now. This is not to say that some reforms could not be achieved. Indeed, it may be possible to address some of the problems of the current system without radical structural overhaul. The Judicial Appointments Commission could, for example, take a more formal role in the appointment of Commissioners. Working with the Advisory Committees on appointments would bring regularity and transparency to the process. It may also be possible to address the issue of rights of onward appeal. Appellants could, for example, be offered a right of appeal from the General Commissioners to the appellate tier of the new Central Tribunal.