



Tax Appeals Stakeholder Group

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**Paper 1: Tax Appeals in the Tribunals
Service**

SG05/01

Foreword

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Document Purpose: This paper describes the final version of the preferred option of the Stakeholder Group for sign off and outlines some of the detailed issues that remain to be finalised, some of which are areas that Phase 2 of the Tax Appeals Modernisation Project will be considering.

Amendment History

Issue	Date	Amended By	Amendment Details
0.1	26/06/05	Steve Wade	Version for comment
0.2	27/06/05	Steve Wade	Amended to reflect discussion at working group meeting
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Tax appeals in the Tribunals Service

Introduction

1. This paper describes at a high level the Stakeholder Group's preferred option for accommodating tax appeals within the structures of the unified Tribunals Service. The paper is comprised of two main sections.
2. Section 1 outlines the final version of the option for reform that has emerged from discussions in previous Stakeholder Group meetings. It describes how the preferred option would work for all tax appeals currently heard by the General and Special Commissioners, the VAT and Duties Tribunal and the Section 703 Tribunal. It is recognised that not all elements have received universal agreement, however, it is hoped that the option reflects the general consensus that the group formed. Comments made at the Scottish and Northern Irish meetings have been considered as this option has been drawn up, as have the initial findings of the working group which was set up to look at the needs of tax cases in more detail.
3. **Required action: group to sign off option, with any comments to be taken into account, as ready to be worked up into a full Business Case and put to the Tax Appeals Modernisation Project Board.**
4. Section 2 outlines the more detailed elements of the option that are not yet settled and that will need to be considered by the project as it goes forward. Many of the detailed issues will need to be addressed as part of the work of Phase 2 of the project, whereas other areas will need to be worked through in the next couple of months in order to inform the development of the Business Case for reform.
5. **Required action: offer views on the detailed areas of work that need to be looked at (including work for Phase 2 of the project); suggest additional areas of work the group thinks particularly require consideration; offer initial thoughts on the direction that thinking on these areas ought to follow.**

Section 1: Preferred Option

Purpose of preferred option

6. Phase 1 of the Tax Appeals Modernisation Project is required to produce a preferred option for accommodating tax appeals within the structures of the unified Tribunals Service and which outlines how the work of the General Commissioners will be handled by the new system. The option will need to be worked up into a robust Business Case, supported by project documentation outlining how Phase 2 (the implementation phase) will be taken forward.
7. The preferred option outlined in this section is for sign off by the Stakeholder Group as their recommended way forward to be put to the Tax Appeals Modernisation Project Board. On sign off, the project team will work up full costs for this option (and the variant options outlined in paper SG04/01) and produce a benefits appraisal of each. This will then be developed into a full Business Case to be submitted for consideration by the Project Board.

General Overview

8. All tax cases from the existing four tax tribunals (the General and Special Commissioners, the VAT and Duties Tribunal and the Section 703 Tribunal) will be heard by a unified tax chamber within the new Tribunals Service. The chamber will be presided over by a President who will have day to day responsibility for the judicial management of the chamber and the judicial members within it.
9. Jurisdiction for all tax cases (whether appeals, applications or other matters) will be transferred to the first tier Tribunal of the new Tribunals Service. There will generally be an onward right of appeal, on a point of law and with permission, to the Upper Tribunal. Where appropriate the President will be able to specify that cases, or classes of case, are to be heard by the Upper Tribunal at the first instance.
10. All administrative work, case processing and clerking at hearings will be carried out by the administration of the Tribunals Service.
11. All cases will be heard by suitably constituted panels that have the knowledge and ability required by the case. There will be a range of judiciary assigned to the tax chamber including legally qualified Tribunal Judges and suitably qualified Tribunal Members who will bring a range of specialist skills and experience to the Tribunal.
12. Panels will be flexibly constituted according to the needs of the case and will be formed of Tribunal Judges and Tribunal Members assigned to the tax jurisdiction being allocated to panels as appropriate. There will be the flexibility for the President to convene panels comprised entirely of suitably qualified members.

Receipt of appeals

13. At least initially, the basic principles around how, and to where, appeals are made will not change.
14. **VAT and Duties cases.** For excise cases the statutory review process will remain in place, at the end of which taxpayers will be able to lodge an appeal

directly with the Tribunal. Other VAT and Duty appeals will also be made direct to the Tribunal and the option of seeking an “informal” review from the revenue authorities prior to an appeal will continue to exist.

15. **Direct taxation cases.** Appeals will be lodged with the revenue authorities as they are now and HM Revenue and Customs (HMRC) and the taxpayer will continue to have the opportunity to try to reach an agreement without further reference to the tribunal. It will be the responsibility of the HMRC to pass the appeal to the Tribunal when it is ready to be heard although both parties will have the right to ask at any time for the Tribunal to list the case to be heard.
16. Over time it may be possible to introduce a time limit for negotiation between taxpayer and HMRC, beyond which the case would have to be passed to the Tribunal. Negotiation beyond the time limit would be possible with the agreement of both parties and the Tribunal.

Registration and initial processing of appeals

17. All tax cases, whether appeals or applications, will be received by the administration of the Tribunals Service and logged onto a database. There will be a process by which cases are sorted initially into categories. The two main issues to be considered when categorising cases will be: firstly what panel will be required to deal with each case; secondly what degree of active case management such cases will require. The categorisation process will aim at automating as much of the panel allocation and listing procedure as possible – especially for the more simple cases. The current caseload for the tax jurisdiction as a whole suggests three, progressively fine, layers of sifting will be required.
18. Sift 1: this will identify those cases which can easily be identified as requiring a particular type of panel, or as needing minimal judicial input, by administrative staff. The main body of cases falling into this category are likely to be drawn from those cases currently heard by the General Commissioners – although some simpler VAT and Duties cases may, over time, also be included into this category. Also the *prima facie* issues dealt with by the Section 703 Tribunal should require little in the way of initial judicial input and should be able to be allocated, by administrative staff, to judicial members to deal with on the papers much as they are now.
19. Sift 2: similarly there will be a body of cases that should be relatively easy to identify, up front, as needing a large amount of judicial input to manage the case to hearing, or which will require a more fine-grained approach to panel allocation. These cases will need to be identified as soon as possible in the process for passing to judicial members to ensure that they receive adequate attention without undue delay. The main body of cases falling into this category are likely to be those cases currently dealt with by the Special Commissioners (including Section 703 appeals) and the more complex, heavy duty VAT and Duty cases.
20. Sift 3: falling between these two broad groups of cases will be a third body that may require more detailed thought as to what degree of case management is required, or whether a “standard panel” is needed. Cases in this category are likely to be those “medium-sized” VAT and Duties cases that cannot be identified in Sift 1 and possibly some of the more complex cases dealt with by the General Commissioners. The hope would be that it would not be necessary for all of these cases automatically to pass before a judicial member. Whether this is possible, either through the use of more senior administrative staff following

detailed guidance or through the use of a registrar-style role, is something that will require further consideration. Initial thoughts are that a registrar taking on this role (or at least supervising senior administrative staff making such decisions) need not necessarily be legally qualified but would need to have fairly detailed knowledge of the types of issues raised by such cases.

21. The Working Group that has been meeting to consider these issues in more detail has suggested that a possible approach may be for all tax cases, on entry to be allocated into two broad categories. One category would include simple cases that will be relatively straightforward both in terms of case management (this may be handled by sending out minimal directions) and in terms of allocation to standard panels (effectively sift 1 above). All remaining cases would form a second category that would receive a set of more detailed standard directions, some of which will require information to be provided by both parties about the issues at stake and the facts of the case. This information will then be used to determine whether the case needs active judicial case management (Sift 2 above) or whether continuing down the standard route will be sufficient (Sift 3). Cases in this latter category would likely require a more “bespoke” panel to be formed for each case but it is still assumed that this function could be carried out by the administration.
22. This area clearly needs to be considered in more detail during Phase 2 of the project but the basic principle of devolving as much of the routine case management work and allocation of panels to administrative staff will remain.

Paper cases

23. Legislation will enable cases to be dealt with on the papers if appropriate but this is an issue that will need to be looked at in more detail to understand how well it may or may not work for the tax jurisdiction.
24. However, there are two areas that seem to offer immediate scope for cases to be disposed of on the papers. Firstly, applications by HMRC to impose penalties under Section 93(3) of the Taxes Management Act 1970 and, secondly, applications by HMRC that there are *prima facie* grounds for proceeding against a taxpayer under Section 703 of the Income and Corporation Taxes Act 1988.

Panel Composition

25. The general principle will be that cases will be allocated to flexibly constituted panels of Tribunal Judges and Tribunal Members sitting together as required by the needs of the case. There will be the flexibility for panels consisting entirely of Tribunal Members to be convened if the President deems it appropriate, although initial thinking of the Stakeholder Group suggested that the vast majority of cases would require a legally qualified Tribunal Judge to chair the panel. The Working Group that has looked at cases in more detail believes there is a large proportion of cases, from amongst those currently heard by the General Commissioners, that could be dealt with by non-legal panels of 2 Tribunal Members – broadly corresponding to those cases identified in Sift 1 above.
26. The Stakeholder group will have the opportunity to consider this approach at the next meeting on 4th August.
27. For all cases, panel members will be allocated according to the skills and experience that are required. So, for example, a VAT and Duties appeal and a

Section 703 may both be heard by a Tribunal Judge sitting with two Tribunal Members but in each case the panel will be allocated according to the particular issues that each case raises.

28. In terms of the preferred option this flexibility of panel composition is all that has been settled at this stage but is sufficient for the purposes of Phase 1 of the project.
29. We will need to make some assumptions about the likely requirement in terms of numbers of judiciary and numbers of cases falling into each category in order to estimate the likely workload of the new Tribunal. Section 2 outlines some of the initial assumptions that have been made in this area on the range of panels that may be suitable for the cases dealt with by each current tribunal. These assumptions need to be considered in more detail but do not affect the Group's basic principle of panels being flexibly constituted according to the President's directions.

Decision formats

30. At the very least, all cases will receive a written decision. The format of the decision and the level of detail included may vary depending upon the particular case. More work on this area will need to be taken forward as part of Phase 2 but the Group has flagged up the need for decision formats to be proportionate to the case at hand. So, for example, very simple cases may require only a written confirmation of the decision made and basic reasons. More complex cases, in contrast, may require a much fuller detailed decision akin to those currently provided by the Special Commissioners.

Onward appeals

31. In line with the wider tribunal reform proposals, all tax appeals will have an onward right of appeal, on a point of law and with permission, to the Upper Tribunal. The only exceptions will be those tax cases that currently do not have an onward right of appeal: e.g. confirmation of applications to impose Daily penalties under Section 93(3).
32. It will be possible for certain cases to "skip" the first tier and progress to be heard in the first instance at the Upper Tribunal. Further work will be needed to look at the criteria for selecting such cases and the mechanism by which they are identified. Initial indications are that numbers falling into this category are likely to be relatively small.
33. Further thought will also need to be given to the numbers of likely appeals progressing to the Upper Tribunal, including those appeals being heard there in the first instance. Work will also need to be done to consider the judicial resources required to hear those cases (in terms of numbers of judiciary as well as panel compositions and hearing format). This will also fall into the work for Phase 2.

Section 2: Issues still to be finalised, including work for Phase 2

Operational structure

34. A number of assumptions will need to be made in Phase 1 for the production of the Business Case, around such aspects as the numbers of administrative staff required and the basic functions of the administration and how it operates. However, the work to design the structure that will support the administrative workload of the new system, will form the bulk of the work for Phase 2 of the project. A number of areas will need to be considered such as:

- overall administrative framework of the service;
- location of processing centres / regional offices;
- required business processes;
- IT requirements;
- estate requirements (hearing centres as well as to house administration and judiciary);
- case processing system / interaction between administration and judiciary.

Rules / standard directions

35. Consideration as to what detailed rules the new jurisdiction will require are clearly Phase 2 work but some initial consideration of some of the issues may be useful, especially as regards, for example, standard directions. In particular, it will be useful to have thought about what information parties will be required to provide to the Tribunal at the initial stage and which will be used by the administrative staff to allocate cases to a particular case-handling route.

Paper cases

36. Further thought will need to be given to the possible use of paper hearings and whether or not tax users would benefit from being given the choice of opting for a paper hearing as happens on some other jurisdictions. This is an area that falls under the work to be completed in Phase 2.

Appointments

37. All tribunal appointments will be via the Judicial Appointments Commission (JAC) that will become operational from April 2006. The total numbers of judiciary needed to handle the projected workload of the tax jurisdiction will need to be worked out prior to Phase 2 as will the numbers of additional judicial members that will need to be recruited. This will be needed both to inform the development of the Business Case as well as longer term planning of the work of the JAC. The project team will be taking this work forward over the next month.

38. Although the total numbers of judiciary required will need to be known quickly, the qualifications for tax Tribunal Members will not be needed for the first phase of the project and will form part of the work of Phase 2.

Case categorisation

39. The assumption is that the sifting process described in Section 1 above is one to which the tax jurisdiction would move gradually over time, as the reformed system beds down. In the early days of the new jurisdiction the assumption is

that the existing VAT and Duties cases and the cases currently dealt with by the Special Commissioners are likely to continue to be dealt with much as they are now.

40. This means that in the early stages of reform these cases will be separated out once they have been registered and dealt with under their existing processes. Those cases currently heard by the General Commissioners will be dealt with under the system outlined above from day one and, it is assumed, many cases would be suitable for immediate listing before an appropriate panel.
41. The exact method by which cases are categorised and allocated to a particular case handling process will be determined in Phase 2.

Panel allocation

42. It will be for the President to decide on the panel compositions for different types of case but some broad assumptions will need to be made in order to plan for the workload that the new system will need to accommodate. These assumptions are included here, rather than in the previous section, as they are still in the process of being developed. They are not an integral part of the preferred option, which merely expresses the requirement that all cases will be heard by suitably qualified panels, usually chaired by a Tribunal Judge.
43. Phase 2 will need to refine these assumptions but initial indications suggest that the following types of panels are likely to be those that are constituted on a regular basis:
44. Current Special Commissioner cases: most of these will generally be allocated to panels consisting of one or more Tribunal Judges, of similar experience to the existing Special Commissioners. Exceptionally, some may be dealt with by a panel of three Tribunal Judges, with perhaps a handful that would benefit from having a Tribunal Judge sitting with a Tribunal Member.
45. Current VAT and Duties Tribunal cases: these will generally be allocated to panels consisting of either a Tribunal Judge sitting alone, or a Tribunal Judge sitting with a Tribunal Member much like the existing system. A smaller number of cases may require a Tribunal Judge to sit with two Tribunal Members and some very small number of cases may benefit from two Tribunal Judges sitting together.
46. Current 703 Tribunal cases: *prima facie* issues will likely be dealt with by panels consisting of a Tribunal Judge and two Tribunal Members who have specialist knowledge of the issues raised by Section 703. Substantive appeals will be heard by similarly constituted panels but procedures will be put in place to ensure that panels that heard a *prima facie* application will not hear any substantive appeal relating to that application.
47. Current General Commissioner cases: these cases remain the most difficult to make assumptions over. Original thinking within the Stakeholder Group was that most of these cases are likely to be dealt with either by a Tribunal Judge sitting with one or more Tribunal Members, or a Tribunal Judge sitting alone. More recent thinking within the Working Group suggests that a large proportion of simpler cases could be dealt with by panels of 2 non-legal members. The more complex, or less predictable appeals, would likely require a more fine-grained approach and are more likely to require a Tribunal Judge to chair sitting with one

or two Tribunal Members. The current proposals are flexible enough to offer both approaches to panel composition and the precise composition of panels will be a matter for the President. Some early assumptions will be required as to how panels are likely to be convened in practice as this will affect the numbers of judiciary required, which will be needed to inform planning assumptions in this area.

Decision formats

48. As outlined in Section 1 this is an area that the Stakeholder Group has already begun to discuss, although not in depth. Some broad assumptions around the time taken to produce decisions will need to be made to ensure that the Business Case adequately captures the judicial time requirements. Stakeholder Group input on this issue is therefore likely to be needed at an earlier stage than Phase 2. The main issues to be considered will be what types of decision are required and whether, for example, there will need to be a process whereby parties may request a full written decision as a prelude to taking a case to the Upper Tribunal.