



Tax Appeals Stakeholder Group

6th October 2005

Paper No. 2 Paper hearings

SG06/02

Foreword

Document Control

Document Reference: Tax Appeals Modernisation – SG06/02
Version No.: 1.0
Author: Andrew Digby

Document Approver Tax Appeals Stakeholder Group

Signature _____

Date _____

Document Purpose This paper discusses what use the reformed tax tribunal could make of paper hearings. It describes how paper hearings work at comparable tribunals, describes some of the advantages of paper hearings and some of the issues they raise.

Amendment History

Issue	Date	Amended By	Amendment Details
0.1	27/09/2005	Andrew Digby	For internal review
1.0	27/9/2005	Andrew Digby	Version for Stakeholder Group

Introduction and previous Stakeholder Group work on paper hearings

1. The Stakeholder Group considered paper hearings at their second meeting. The paper the Group discussed, 'Different Approaches to Deciding Cases', noted the references to paper hearings in the Leggatt Report and the *Tribunals for Users* White Paper and enumerated some of the advantages of deciding cases which fall into the General Commissioner jurisdiction decided on the papers alone.
2. This second paper explores hearings on the papers (or 'paper hearings') in greater detail. It describes the arrangements for paper hearings at three first-tier tribunals, suggests what use a tax tribunal could make of them, and sets out some of the advantages of doing so. It also describes some of the issues around paper hearings that a tax tribunal would have to address.

Paper hearings at other tribunals

3. There are three other tribunals whose caseload and range of cases are broadly comparable to that of the General Commissioners and that currently offer hearings on the papers alone. These are Parking Adjudicators, the Lands Tribunal and the Appeals Service.

Parking Adjudicators

4. All appeals to the Parking Adjudicators Tribunal are dealt with by post unless the appellant specifically indicates that they want a personal hearing on the 'Notice to Appeal' form. An adjudicator decides the appeal using the evidence the appellant and decision-making body have submitted. The Tribunal inform the parties of the decision by post.

Lands Tribunal

5. The Lands Tribunal process appeals according to one of four procedures. The first three – the Simplified, Standard, and Special procedures - lead to oral hearings; the fourth - the 'Written Representation' procedure – leads to a hearing on the papers. Land Tribunal rules allow either of the parties to a case due to be decided at an oral hearing to apply for the appeal to be determined by the Written Representation procedure, at any time prior to the hearing. That is, to switch from the Simplified, Standard or Special procedure to the Written Representation procedure.
6. The Written Representation procedure can only be used if both parties agree to it being used. If both parties agree the Tribunal reviews the application to ensure that it is suitable for a paper hearing. If the Tribunal decides that it is suitable, then it will direct a timetable for filing and service of the written representations. The Appellant normally has 28 days to file his representation; the respondent 28 days to respond to service of the appellant's representation; and the appellant 14 days to file a reply. When the case has been decided, the tribunal sends a written copy of the decision to the parties.

Appeals Service

7. Appeals are made to the decision-making department in the first instance. The department informs the Appeals Service that an appeal has been made and prepares a bundle. The Appeals Service registers the appeal and asks the appellant to complete and return an 'Enquiry Form' which captures the appellant's basic personal details and details of the appeal. The Enquiry Form requires appellants to indicate whether they want a paper or oral hearing – and the form is considered to be not duly made unless appellants have done so.
8. The Appeals Service will arrange an oral hearing only if the appellant asks for one; or decision-making department ask for one; or, having reviewed the bundle submitted by the department, the tribunal decide an oral hearing is more appropriate. At any time prior to the case being decided, the appellant has the right to ask for a switch from a paper to oral hearing or from an oral to paper.

How could the tax tribunal offer paper hearings?

9. The tax tribunal could offer paper hearings on the same 'across-the-board' basis that the Appeals Service or Lands Tribunal does. This would have the advantage of giving the appellants a clear and straightforward choice and the tribunal a single process that would be relatively easy to manage.
10. If the tribunal offered an across-the-board choice, the question arises of how the choice is offered. Three possible alternatives are:
 - an oral hearing unless the appellant specifically requested a paper hearing
 - a paper hearing unless the appellant specifically requested an oral hearing
 - no default route - the appellant would be required to make a positive choice between a paper and oral hearing
11. A wide range of cases fall into the General Commissioner jurisdiction however. Whilst many turn on a few easily identifiable facts, others involve large and complex bodies of evidence which require considerable sifting and analysis. Whilst paper hearings may be appropriate for the former, they may not be for the latter. For this reason it may be practical for the tribunal to offer different types of choice for different types or categories of case. One way the tribunal could do so would be to offer paper hearings as the default route for 'basic directions' cases, as defined by the TAM Stakeholder Case-Management Working Group, and oral hearings as the default route for 'standard directions' cases.
 - s93(3) applications
12. The DCA, National Association of General Commissioners and the HM Revenue & Customs have agreed in principle that a trial of paper hearings at the moment should be carried out. HM Revenue & Customs have published a draft standard application form that captures all the facts a presenting officer would normally bring to a tribunal.
 - Other 'without notice' applications
13. Some other without notice applications may require little in the way of facts to be decided and so may be suitable candidates for paper hearings. Whether or not

paper hearings should be set as a default for whole categories of without notice cases is likely to be a matter for negotiation between the tribunal and HMRC.

What safeguards on the paper hearings process should there be?

14. Some appellants will not be familiar with the tax appeals system and may opt for a paper hearing when an oral hearing would be more appropriate or helpful to them. It may also happen that a panel comes to the view that a case they are dealing with on the papers is more appropriate for an oral hearing. If the tribunal offers paper hearings, it will also need to put processes in place to deal with these eventualities.
15. These issues are familiar to both the Lands Tribunal and the Appeals Service; both tribunals have measures in place to guarantee that a case is heard in an appropriate manner. An appellant at the Appeals Service can switch from a paper to an oral hearing at any time before the hearing itself. The same is true of an appellant at the Lands Tribunal. The latter also allows the decision-making body to ask for a change from paper to oral hearing.
16. Both Lands Tribunal and Appeals Service review all applications for paper hearings as part of the case-management process. Both will direct a case to be decided at an oral hearing if this would be more appropriate. Panels at the Appeals Service are able to adjourn a paper hearing to an oral hearing if circumstances warrant it. Two grounds are cited frequently for such adjournments: firstly, there is not enough evidence in the papers to make a decision; secondly, the evidence the panel do have needs clarification.

What are the advantages of paper hearings for the tax tribunal?

- The needs of appellants
17. Not all tax appellants wish to attend hearings in person and some may prefer to have their cases heard on the papers alone. There may be several reasons why an appellant may not wish to attend in person.
 - Being more comfortable presenting their case in a written form than orally
 - Not being able to spend time away from work
 - Not being able to arrange childcare
 - Not wishing to travel to a hearing

A paper hearing may offer a convenient alternative means of accessing justice for such appellants.

18. How many appellants would prefer paper hearings has not yet been established. However, GCIT hearing statistics seem to indicate that as few as 40% of hearings are attended neither by the appellant or a representative. 30% of appeals at the Appeals Service are decided at paper hearings.

- Increased opportunities for representation
19. Paper hearings would also allow voluntary agencies, such as Citizens Advice Bureaux, Taxaid, and the Low Incomes Tax Reform Group, to prepare a written

representation for otherwise un-represented appellants when they would not be able to send a representative to speak at an oral hearing.

- Tribunal efficiency
20. Almost all GCIT cases are currently listed to be heard near to the appellant's residence or place of business (or, in the case of corporate taxpayers, the appellant's head office). This leads to an imbalance of work across the divisions in the United Kingdom.
 21. Current practice at the Appeals Service is to allocate paper hearings to panels which have the capacity to decide them most quickly, no matter where they are situated geographically. This enables a manageable flow of work through the tribunal, allows members of the judiciary to sit regularly, and helps appellants to get an early decision. The tax tribunal could adopt a similar process.
 22. Paper cases could also assigned to panels as 'in-fill' work for panels to clear when oral cases are adjourned, postponed at short notice or decided ahead of schedule, thereby allowing panels to make most effective use of their time.

What are the main issues relating to paper hearings that the tax tribunal would need to address?

- The need for 'justice to be seen to be done'
23. Some appellants may wish to assure themselves that the panel deciding their case is doing so fairly. Attending an oral hearing offers them a convenient means of doing so. Paper hearings are, by contrast, not open to inspection and some appellants may feel aggrieved at not seeing how a panel has come to its decision.
 24. The tribunal may however be able to meet this concern in part by being open about the processes it uses for paper hearings and by sending the appellant a written decision that gave a brief explanation (reasoning) about how the panel came to its decision.
- The risk of missing relevant evidence at paper hearings
25. Statistics from the Appeals Service suggest that a twice as many cases succeed at oral hearings than do at paper hearings. One often-cited reason is that panels at oral hearings have the opportunity to elicit the evidence that some appellants are not able to give in writing. On this view, paper hearings tip the balance away from the appellant in favour of the decision-making department. (However, there may be other reasons why appeals are less successful at paper hearings. It is very likely, for example, that appellants with good cases are more willing to take the time to attend an oral hearing.)
 26. The tribunal could meet concerns about eliciting all the relevant evidence by offering appropriate support to the appellant. A guide to preparing a written representation, an enquiry service fielding general enquiries on the appeals process (although not the merits of particular cases) and explaining how to secure representation would go some way to helping the appellant prepare a successful written representation.

27. A review of applications for paper hearings as part of the case-management process would offer a further safeguard as would allowing a panel to adjourn to a paper hearing. (The case-management review, which could be undertaken by a registrar or some other member of the administrative service, might also pave the way for early neutral evaluation and other forms of alternative dispute resolution, if the tribunal wished to develop this kind of service.)
- The increased burden of work caused by paper hearings
28. Amongst the papers a panel may want to see at a paper hearing, would be:
- the HMRC decision being appealed
 - a summary of relevant facts
 - the reason for the decision
 - extracts from the relevant law
 - a copy of the appellants appeal form
 - copies of any documents that the appellant has sent to support the appeal
29. Preparing a bundle of this size may occasion be extra work for the appellant and HMRC. For this reason, paper hearings may prove unpopular in practice.
30. The work of registering, processing and distributing a bundle would be mean more work for the administrative staff of the tribunal. The tribunal would have to budget for them to spend some of their time dealing with missed deadlines or incomplete bundles.
31. The tribunal may also have to budget to spend more time on paper hearings in the case management process. In some circumstances, appeals to be heard on the papers alone may, for example, require a member of tribunal staff to keep in touch with the parties through the appeal process to ensure that issues were properly explored and fairly presented. And it may be possible for the tribunal to manage a paper hearings process successfully only if it takes a firm line on matters such as applications not duly made or made out of time.

Conclusion

32. There are significant issues relating to paper hearings that the tax tribunal would have to address - one of these would almost certainly be ensuring that there were appropriate checks and safeguards on their use. However, the tribunal may find it advantageous to offer paper hearings and some tax appellants may find they offer a convenient and economical means of access to justice.