



## **Tax Appeals Stakeholder Group**

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**Paper No. 3 Standard directions at the  
first-tier tax tribunal**

**SG07/03**

# Foreword

## Document Control

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Document Purpose This paper sets out the options for standard directions at the first-tier tax tribunal

## Amendment History

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0.1	23/11/2005	Andrew Digby	For internal review
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## **The work of the Stakeholder Case-Management Working Group**

1. The Stakeholder Case-Management Working Group briefly considered directions when discussing what kind of case management procedures would be appropriate for the first tier tribunal.
2. The Group noted that the cases that will fall into the jurisdiction of the first tier tribunal vary widely in complexity. At one end of the spectrum are cases that panels will decide on the basis of a few straightforward facts. At the other, are cases that will require a panel to sift and analyse a great deal of evidence and cases that raise legal points. The Group concluded that all cases to come to the tribunal would require directions of some kind: the more basic cases, minimal directions; and more substantial directions for cases of greater complexity.
3. The Group also concluded that the new tribunal should review appeals on receipt and assign them to different case-management tracks according to their complexity. Each track would offer a level of case-management proportionate to the needs of the cases subject to it.
4. It was the view of the Group that each case management track should be governed by standard directions. The standard directions would encourage parties to prepare properly for their hearing by asking them to identify the issues at stake and to exchange evidence where appropriate. This paper sets out the options for what each set of directions should comprise.

## **Standard directions at tax tribunals at present**

5. The GCITs currently do not issue standard directions. The SCITs have a general power to give directions, including those given prior to the hearing of any proceedings and have, since May 2005, issued standard directions (a copy of the directions is reproduced as annex A).
6. Appeals at the VAT and Duties Tribunal are subject to a comprehensive set of regulations. The tribunal makes use of pre-trial reviews where directions are issued on a case-by-case basis as necessary. For these reasons, the tribunal does not issue standard directions.

## **What kind of standard directions would be appropriate for the most basic cases?**

7. Examples of cases that turn on a few straightforward facts are reasonable excuse cases and most construction industry scheme certificate appeals.
8. Some of the appellants bringing such cases will not be familiar with bringing an appeal to a tribunal. Previous consultations have consistently indicated that appellants to these kinds of case prefer proceedings that are not overly formal or legalistic. It is important then that the standard directions for the most basic cases are relatively simple and straightforward.
9. One model for set of basic directions could come from the recommendations to appellants preparing for a hearing issued by the DCA and published in the booklet, "Tax Appeals – a guide to appealing against decisions of the Inland Revenue on tax and other matters". This recommends that the appellant:
  - confirm where he/she wants appeal heard
  - confirm he/she can attend the appeal on the date suggested
  - identify any representative
  - identify any special needs
  - confirm if he/she wants a private hearing
  - identify issue to be determined
  - agree a draft statement of facts with HMRC, if possible
  - bring to the hearing relevant papers, marking passages of importance

10. Using these recommendations as the starting point for a set of basic directions would have the advantage of providing a set of standard directions that are relatively straightforward. The directions would thus be proportionate to the kinds of cases to which they would apply. Their similarity to the Guide's recommendations would ensure a degree of continuity of practice between the GCITs and the modernised first tier tribunal.

#### **What kind of standard directions would be appropriate for the more complex cases?**

11. Other cases that come within the GCIT jurisdiction at present, such as many of the appeals against assessments and determinations, may require the judiciary to analyse large bodies of evidence. For these kinds of cases, it may help for the evidence to be collected together in a structured way and distributed amongst the parties and to the judiciary in advance of the hearing.
12. For this reason, the tribunal may wish to have a second set of standard directions, perhaps based on the basic directions, but with the addition of directions relating to the preparation of bundles and their timely exchange.

#### **What kind of directions would be appropriate for most complex cases?**

13. Cases that currently are heard at first instance by the SCITs will fall into the jurisdiction of the first tier tribunal. Most of these cases are likely to involve the assessment of difficult legal issues or complex bodies of evidence, sometimes drawn from more than area of professional expertise.
14. The standard directions currently in operation at the SCITs were drawn up to handle this kind of case. The SCITs introduced these directions in May this year and will undertake a review of their use shortly. It is likely that the review will recommend minor changes but otherwise confirm that they work well.
15. Retaining this set of standard directions, as 'special track directions', for the most complex cases to come to first tier tribunal would have the advantage of providing directions comprehensive enough to deal adequately with almost all of the most complex cases. The directions would also be detailed enough to provide a structure to the case management process. Retaining them would also have the advantage of ensuring a degree of continuity of practice between the SCITs and the modernised tax tribunal.

#### **How would the three sets of standard directions operate together?**

16. On receipt at the tribunal, a case would be reviewed and assigned to either the basic or non-basic case management track. Tribunal staff would send out the appropriate set of directions, perhaps with the letter acknowledging receipt of the appeal.
17. It may become apparent during the case management process that a case would be better dealt with if it switched case-management tracks or between sets of directions; or that there was a need for special directions. The tribunal would need to allow a case to move between tracks and directions regimes to meet this need.
18. One method of doing so would be to allow parties to apply for more basic or more complex directions. Parties to a case initially subject to basic directions would be able to ask for standard directions or – and probably more rarely – special track directions. (In practice it would probably be a case of HMRC asking for standard directions to apply where they became aware that a particular case raised issues that merited the change). Parties to a case initially subject to basic directions would be able to ask for either standard directions or special track directions. For cases that needed directions over and above those in the special

track directions, parties could ask that special directions should apply. Where parties couldn't agree, they would be free to ask for a directions hearing.

19. Allowing parties to ask to switch to another set of directions would introduce an element of self-governance into the system that would render it easier to manage. It would offer a degree of flexibility similar to that of the system in operation at the SCITs at present and so ensure a degree of continuity of practice.

**How could the tribunal ensure that parties complied with standard directions?**

20. In order for the tribunal to enforce directions, it will require the power to impose penalties for failure to comply with them. The SCITs have the powers to impose penalties for failure to comply with directions and the GCITs the power to impose penalties on parties who fail to comply with a notice to produce evidence. These powers would have to be harmonised in order to run right across the first tier tribunal.
21. The experience of the Lands Tribunal suggests that appellants are more likely to comply with directions if they understand what is involved in doing so. An enquiry service which offers basic advice on how to prepare for a hearing may help in this respect. The Lands Tribunal also found that publishing a guide to the process of making an appeal and making it widely available also helped appellants. Enquiries to the Lands Tribunal relating to procedure fell by almost 50% in the two weeks after the Tribunal published guides on their intranet site.

## **Annex A –Special Commissioners Special Directions and Practice Statement**

### **Preliminary Directions (applicable automatically in all cases)**

1. So far as the information is not contained on Form 209 (or equivalent), the Party listing the appeal to provide to the Clerk to Special Commissioners (“the Clerk”) and the other Party to the appeal not later than 42 days after listing the appeal a statement detailing:
  - i. what that party perceives to be the issue for determination in the case
  - ii. whether or not witnesses are likely
  - iii. the anticipated duration of the hearing
  - iv. whether a hearing in private is requested.
2. Within 21 days after the statement in Direction No.1 above the other Party to state to the Clerk and to the first Party whether the issue for determination set out in the statement in response to Direction No.1 above is agreed and, if not, to set out the areas of disagreement. Within the same time limit the other Party to provide to the Clerk and the first Party a statement detailing points ii to iv in Direction No.1 above.
3. Not later than 42 days after the statement in Direction No.2 above each Party shall inform the Clerk whether:
  - (a) both parties agree other directions in place of the Standard Directions in the Appendix, in which case the Special Commissioners will issue the agreed directions with such modifications as they consider appropriate (provided that if either party shall object to such modifications that party may within 14 days of receipt of the Directions require a preliminary hearing to determine whether the modifications should be made); or
  - (b) they require the Clerk to arrange a preliminary hearing for the purpose of determining the directions applicable to the appeal and stating the directions it proposes should be issued; or
  - (c) both parties agree that the Special Commissioners should issue a direction that the Standard Directions in the Appendix shall apply.

The 42 day time limit may be extended by agreement of the Parties or by the Tribunal on the application of either Party. In default of the Parties informing the Clerk before the expiration of the time limit which alternative is to apply No.3(c) shall apply and the Special Commissioners will issue such a direction accordingly. If they have not already done so, at the same time as complying with this Direction the Parties shall give to the Clerk dates to avoid for the hearing.

### **Appendix (the Standard Directions)**

1. The Appellant shall provide to the Respondent within 21 days after the issue of the directions:
  - copies of all documents on which the Appellant intends to rely in connection with the appeal (or a list of documents so far as already provided)
  - draft statement of agreed facts
  - identity of any proposed witnesses of fact and an outline of the evidence of such witnesses.
2. The Respondent shall provide to the Appellant within 21 days of the Appellant complying with Direction No.1 above:

- copies of additional documents on which the Respondent intends to rely in connection with the appeal (or a list of documents so far as already provided)
  - comments on draft statement of agreed facts
  - identity of any proposed witnesses of fact and an outline of the evidence of such witnesses.
3. Within 21 days of the Respondent complying with Direction No.2 above the Appellant shall produce and endeavour to agree a statement of facts not in dispute and shall endeavour to agree an indexed and paginated bundle of documents and serve the same on the Clerk. In default of agreement of a document bundle each party shall serve upon the other Party and the Clerk an indexed and paginated bundle of those documents upon which they would wish to rely from the documents that have already been sent or listed under Directions 1 and 2. If the parties intend to provide a CD containing the documents the Clerk should be informed in advance.
  4. Within 21 days of the Parties complying with Direction No.3 above the Appellant shall serve on the Respondent and on the Clerk any witness statements of fact with exhibits cross-referenced to the bundle(s) of documents prepared under Direction 3. Such witness statements shall stand as evidence in chief of the witnesses subject to such further questions as the Tribunal shall allow.
  5. Within 21 days of the Appellant complying with Direction No.4 above the Respondent shall serve on the Appellant and on the Clerk any witness statements of fact with exhibits cross-referenced to the bundle(s) of documents prepared under Direction 3. Such witness statements shall stand as evidence in chief of the witnesses subject to such further questions as the Tribunal shall allow.
  6. Within 21 days of the Respondent complying with Direction No.5 above the Appellant shall serve on the Respondent and on the Clerk any further witness statements of fact with exhibits cross-referenced to the bundle(s) of documents prepared under Direction 3. Such witness statements shall stand as evidence in chief of the witnesses subject to such further questions as the Tribunal shall allow.
  7. Following the service of all witness statements both Parties shall confirm to the Clerk or update their estimate of the length of hearing.
  8. No further documentary or witness evidence shall be admitted unless the parties agree or the Tribunal directs.
  9. The Appellant shall serve a skeleton argument and either a joint bundle of authorities or copies of authorities on the Respondent and on the Clerk not later than 21 days before the hearing.
  10. The Respondent shall serve a skeleton argument and (if there is no joint bundle of authorities) copies of authorities on the Appellant and on the Clerk not later than 14 days before the hearing.
  11. The Appellant shall serve a skeleton argument in reply (if so advised) on the Respondent and on the Clerk not later than 7 days before the hearing.
  12. Liberty for either party to apply for further directions.

## **Special Commissioners Practice Statement**

### **Standard Directions**

Currently some form of Directions are issued in all appeals. In many cases a preliminary hearing is called and the parties arrive with agreed Directions which means that the hearing was unnecessary and has prevented another case being listed at that time. The Special Commissioners propose to move to more standardised Directions and have issued the Preliminary Directions set out below which apply in all cases, an Appendix to which contains Standard Directions that apply only in so far as the parties do not agree other Directions or request a preliminary hearing in accordance with Regulation 9 of the Special Commissioners (Jurisdiction and Procedure) Regulations 1994 within six weeks of the case being listed, which can be extended by agreement or by the tribunal.

The parties are free to negotiate their own Directions to suit the case and then present an agreed draft to the Clerk to the Special Commissioners who will normally issue them as Directions under Regulation 4. The Special Commissioners will, however, retain discretion to make modifications to agreed Directions in order to ensure that the case is properly prepared for hearing. They expect to use such power sparingly, and the party objecting to any modifications to the agreed directions can require a preliminary hearing to determine whether the modifications should be made. The Special Commissioners will adjudicate on applications for hearings in private even where these are agreed (see below). Agreed Directions should in all cases provide that all documents (but not drafts in process of agreement) should also be served on the Special Commissioners at the same time as on the other party.

Where agreement cannot be reached on the form of Directions one or both of the parties can request the Clerk to the Special Commissioners to call a preliminary hearing at which a Special Commissioner will hear representations from both parties and decide the form of the Directions to be issued. It is hoped that genuine attempts will be made to agree Directions before requesting a preliminary hearing in order to reduce the number of cases where agreement is reached immediately before the preliminary hearing.

Steps can be taken to arrange a hearing date either as part of the process of making Directions so that Directions can count back from the hearing date, or the Directions can request the fixing of a hearing not earlier than a stated date as soon as possible after Directions are issued. Postponement of an agreed hearing date inconveniences the parties, the tribunal and the parties to other cases wishing to have a hearing. Normally parties will be expected to comply with Directions and the Special Commissioners will expect to use their power under Regulation 24(1) to impose a penalty for non-compliance. It is accepted that compliance is not always possible and sometimes more time is required than had been expected for a step to be taken. Normally this will result in the timetable being reissued so that the party in default has less time to take future steps but leaving the other party in the same position. Only as a last resort will a hearing date be postponed where the Special Commissioners consider that this is necessary for a fair hearing.

These Standard Directions will apply for a trial period and their effect will be reviewed at the end of the 2005.

### **Witness statements**

A witness statement is a written statement signed by a person who contains the evidence which that person would give orally. Where a witness statement has been served, the party who wishes to rely on the evidence of the witness must call the witness to give oral evidence unless the tribunal directs otherwise. A witness statement should contain the full names, address and occupation of the witness; it should be in the witness's own words, expressed in the first person;

and should be divided into numbered paragraphs. It must conclude with the words "I believe that the facts stated in this witness statement are true" and be signed and dated by the witness. If either party intends to call expert evidence, attention is drawn to Regulation 12 (except in Scotland).

#### Applications for sittings in private

One of the matters covered by the Preliminary Directions, which apply in all cases, is an application for a hearing in private. Under Regulation 15(2) of the Special Commissioners (Jurisdiction and Procedure) Regulations 1994 as amended by the General Commissioners and Special Commissioners (Jurisdiction and Procedure) (Amendment) Regulations 2002 (SI 2002 No.2976), applying to proceedings commenced on or after 31 December 2002:

"A Tribunal may direct that all or part of a hearing shall be in private—

- (a) upon the application of all the parties by notice to the Clerk;
- (b) upon the application of any party by notice to the clerk;
- (c) of its own motion,

if in each case, a Tribunal is satisfied that a hearing in private is necessary—

- (i) in the interests of morals, public order, national security, juveniles or for the protection of the private life of the party; or
- (ii) it considers that publicity would prejudice the interests of justice."

The rules also provide that in cases (2)(b) and (2)(c) the Tribunal shall give the other party or parties to the proceedings the opportunity to make representations, and also that before giving a direction that the entire hearing be in private the Tribunal shall consider whether only part of the hearing should be heard in private.

The Special Commissioners will expect to adjudicate on this question even it is included in agreed Directions. Any such application should be made to the Clerk to the Special Commissioners stating the full reasons for the request.

#### Human rights points

Attention is drawn to the following Practice Direction issued in October 2000.

"If it is necessary for a party to give evidence at a hearing of an authority referred to in section 2 of the Human Rights Act 1998

- (1) the authority to be cited should be an authoritative and complete report; and
- (2) the party must give to the court and any other party a list of the authorities he intends to cite and copies of the reports not less than three days before the hearing. (Section 2(1) of the Human Rights Act 1998 requires the court to take into account the authorities listed there).

Copies of the complete original texts issued by the European Court and Commission either paper based or from the Court's judgment database (HUDOC), which is available on the Internet, may be used."

#### Scotland

Pending further discussions these Directions apply to England and Wales appeals only.

Proceeds of Crime Act 2002 appeals

These Directions do not apply to appeals against assessments made by the Assets Recovery Agency.

S J L OLIVER QC  
Presiding Special Commissioner  
3 May 2005

