

Tax Appeals Modernisation Project

Stakeholder Group Meeting Minutes

23rd March 2007, Procession House

Reference: SG08/02 V3

Prepared by: Tasfin Ahmed

Present:	Sir Stephen Oliver	(President Finance & Tax Tribunals)
	Malcolm Gammie	(Research Director, Tax Law Review Committee)
	Jan Richardson	(HMRC)
	Nuala Brice	(VAT & Duties Tribunals)
	Judith Edwards	(Council on Tribunals)
	Penny Hamilton	(Chartered Institute of Taxation)
	Jane Smeaton	(Senior President's Office, DCA)
	Ian Menzies-Conacher	(Confederation of British Industry)
	Gary Richards	(Law Society)
	Robin Williamson	(Low Income Tax Reform Group)
	John Avery Jones	(Special Commissioners)
	Gordon Coutts	(Scottish Interests)
	Roger White	(Section 703 Tribunal)
	Henry Russell	(General Commissioners)
	Tony Priest	(Clerks to the General Commissioners)
	Robert Maas	(Institute of Chartered Accountants)
	Simon Hill	(Finance & Tax Tribunals)
	Mike Watson	(Tribunals Service, DCA)
	Tasfin Ahmed	(Tribunals Service, DCA)
Apologies:	Peter Trevett	(Revenue Bar Association)
	Claire Radcliffe	(DCA)
	Jane Moore	(Low Income Tax Reform Group)
	Ron Downhill	(Law Society)

1. Welcome & Introductions

Stephen Oliver (SO) welcomed the attendees to the meeting

2. Review of activities since last meeting (Dec'05)

- 2.1 Mike Watson (MW) summarised the activities since the stakeholder group last met in December 2005. He noted that the Stakeholder Group's preferred option had been worked up into a Business Case by the Project team. This had then been considered and largely approved by the Project Board. However with no prospect of legislation, the Project Board had agreed that work should be put on hold although some interim work between HMRC and DCA was commissioned.

- 2.2 There had been, however, a number of major developments since the SG last met:
- The Tribunals Service was launched in April 2006
 - Work in HMRC on combining direct and indirect tax systems had continued
 - The Tribunals Courts and Enforcement Bill had been introduced in November 2006 and was making rapid progress.
- 2.3 This last development was the most significant for tax reform, finally providing the legislative vehicle that would allow reform to be delivered. The project has therefore been re-launched and the Project Board had met on 1 March.
- 2.4 He noted that the SG had done an enormous amount of good work. However, a number of key questions remained to be settled and he welcomed the opportunity to work with the Stakeholder Group to take them forward.

3. Update on Tribunals, Courts and Enforcement Bill from DCA

- 3.1 MW gave a summary of the current position of the TCE Bill. He explained that it had made excellent progress since its introduction into the HoL. There were two stages to go through in the Commons and a date was now awaited for these. DCA remained reasonably confident however that the Bill would receive Royal Assent in good time before the summer recess.
- 3.2 Members asked whether there had been any significant amendments. MW said that the Bill had remained remarkably unscathed. There had been some debate about the use of the title “judge” for judicial office holders in tribunals and a further debate about the standing of the judiciary that should hear judicial review cases in the Upper Tier. These issues had been satisfactorily resolved.

4. Update on current activities in HMRC

- 4.1 Jan Richardson (JR) circulated a short note and gave an update on the current legislative activities within HMRC. The note explained that the Chancellor has announced that the Government has decided not to proceed with the New Management Act (NMA). The necessary legislative work on tax appeals will therefore be included in a Finance Bill rather than the NMA.
- 4.2 A Project Team is also currently being set up in HMRC to take forward work on tax appeal reforms. This team is not up and running yet but resources have been agreed to allow this team to be created. A new member will also be joining JR’s team to take forward policy related work on tax reforms.
- 4.3 Gary Richards (GR) asked whether a Finance Bill provided for a sufficient degree of consultation.
- 4.4 JR reassured the group that HMRC would be committed to consulting on the changes.
- 4.5 SO asked how the project team would operate and whether they had terms of reference for the work they would be performing. JR explained the Project Head would decide and identify the type of work that would need to be progressed for the team but that the SG would see the terms of reference for the work in due course. MW noted that DCA would be working closely with the HMRC Project Team.
- 4.6 SO noted the final point in the note from HMRC (SG08/03) concerning the removal of the requirement for Commissioners’ permission before daily penalties can be imposed. The Group welcomed this. It would have a major and very positive impact on the design of the new tribunal.

5. Tribunals Service Delivery Model

- 5.1 MW circulated some slides that set out the key components of the Tribunals Service's new Delivery Model plans for which had recently been approved by DCA's ministers. He explained the Delivery Model was a five to ten year initiative aimed at bringing together the many different systems, currently operating throughout the Tribunals Service, to improve the delivery of customer services.
- 5.2 The first component of the Delivery Model will be to work towards developing a network of multi-jurisdictional hearing centres that will provide hearing facilities for all tribunal users. He expected there would be around 40 to 50 of these centres sited in most major urban conurbations. Beyond this the Tribunals Service could make use of the HM Courts Service buildings where these were appropriate (family or civil courts for example) and also take advantage of technology such as video conferencing for more remote locations.
- 5.3 The second component of the Delivery Model was the provision of "Area Support Centres" (ASC's), which would house the majority of the administrative who are responsible for case processing. It is expected there will be six ASC's across the country holding approximately 200-300 staff in each. He noted that it was not proposed to locate an ASC in London or the South East, in line with the Government's general policy of moving posts from the SE. The management of the Tribunals Service is also being changed to a more regional structure.
- 5.4 MW explained that the Delivery Model set out the strategic direction for all jurisdictions administered by the Tribunals Service. However further work still needs to be done to determine how the tax jurisdiction (and, indeed, a number of others) will fit into the ASC system. He noted particularly the model will need to provide for a high level of judicial and administrative interaction especially for the more complex cases in the tax appeals jurisdiction. He noted that hearings would mainly be held in the hearing centre network within the Tribunals Service.
- 5.5 Robert Maas (RM) hoped that it would not be necessary to travel to lodge an appeal. MW said this would not represent an improvement in service and noted that IT solutions are currently being investigated involving scanning papers and sending documents electronically are being pursued by the Tribunals Service.
- 5.6 PH asked whether the Delivery Model was about raising services or cutting costs. She was concerned about the quality and quantity of staff that will run these centres, as the functions will no longer be restricted to solely tax appeals. She felt tax appeals require a certain amount of specific knowledge to be able manage the system successfully. MW said that the staff would be working on a mixture of specialist and generalist functions. The emphasis will always be on improving efficiency of service rather than just cost reductions.
- 5.7 GR stated that care had to be taken to ensure travelling and other related costs were not shifted to users by moving away from the current large number of local hearing centres to just the 40 or 50 centres that are being planned. HR re-enforced this point, noting it might take a user 3 to 4 hours to get to and from a hearing centre. MW explained that cost benefit analyses for the taxpayer needs to consider judicial time as well as users time, and this system needs to provide for the most efficient use of both. MW also noted that a number of the current hearing centres are badly managed and in very poor condition. The new system would be better managed and ensure hearing centres are fit for purpose, providing a better service overall for customers.
- 5.8 John Avery Jones (JAJ) felt that the judiciary in the tax appeals tribunal should have offices in London, as a large number of Special Commissioners hearings are already located within the London region.

6. Plan for future work

Start of Jurisdiction - Receipt of appeals

- 6.1 SO took the view that this was one of the most important issues to be resolved. He asked the stakeholder group for their views on resolving this issue.
- 6.2 Members expressed a variety of views on this issue. Nuala Brice (NB) stated that there is currently a fixed review period, which does not apply to all VAT & Duties cases. However she felt the fixed review period has many advantages. GR agreed that a review prior to the appeal would be useful.
- 6.3 Judith Edwards (JE) stated that the new system should encourage the resolution of disputes at the lowest possible level. Cases should not go straight to the appeals process unless the user wished them to. We should take the opportunity to ensure some form of early neutral evaluation or mediation operates within the system as much as possible.
- 6.4 RM stated he did not see an issue with a system that imposes an intermediate step, however his concern is that all too often this step or review might happen in the same tax office as the appeal.
- 6.5 JAJ stated the major problem with cases coming directly to the tribunal is that this would mean in the order of half a million appeals may occur every year, most of which would never reach a hearing as the settlement rate is so high. It would be in no one's interests for such cases to come to the tribunal unless and until either party wished them to. PH agreed that a balance had to be struck between cases being reviewed and those going straight to a tribunal. HR took the view that a case should have a trigger that after a certain period of time it goes straight to tribunal. RW stated that either party should have the right to activate an appeal at any stage of the process.
- 6.6 JR stated a pilot had been conducted by HMRC to evaluate the best length of time to hold a review prior to a tribunal. However, the limiting factor was the cost and other implications of implementing a computer system that would allow appeals to be tracked.
- 6.7 Summarising SO noted that there were wide ranges of views put forward by the Stakeholder Group. He suggested this was a matter for HMRC to produce proposals in the first instance but that a working party should be created, with representation from members of the Stakeholder Group (JAJ, RM, PH,SH,TA & MW) to work in conjunction with the HMRC (Helen Latham, Eileen Rafferty & Robin Tough) to take this area of work forward.
- 6.8 It was agreed JAJ will lead the representation from the SG on the working party.

Action 1: HMRC and DCA to discuss start of jurisdiction for the tax appeals system with JAJ. A report to be provided back to the SG.

Registration and classification of appeals - case categorisation

- 6.9 The Group agreed further work would need to be done on this. It was agreed that if the question of start of jurisdiction settled that most appeals would come via HMRC, this would help the process of categorisation. It was also agreed that this was a major issue for the TS Delivery Model question flagged earlier. The issue was remitted for review at a future meeting.

Paper cases

- 6.10 SO stated there maybe more scope for paper appeals in the Upper Tribunal and First Tier Tribunal.
- 6.11 HR & RM stated that the advantage of paper cases is that it can allow appellants to apply without having to attend hearings.
- 6.12 Malcolm Gammie (MG) stated that small VAT matters are currently almost paper appeals, as appellants sometimes do not turn up to the hearings.
- 6.13 SO stated that the Rules would specify which cases could be heard on the papers.

Panel composition & allocation

- 6.14 SO said he felt that for every case it is important that someone is involved who:

- Understands the legal issues raised of the case
- can identify the approximate length of time a case may take
- generally advise on how the case may be progressed

The key issue is whether a legal chairman is needed in every case.

- 6.15 JR stated that HMRC believe it is critically important that the new tribunal does not become overly legalistic and that members who have knowledge of business are involved. This is a feature of the present system that is valued and should not be lost. RM agreed saying when businessmen are part of the panel they bring a better understanding of the business perspective to the tribunal's decision.
- 6.16 SO said that he very much hoped that some of the present Clerks to the General Commissioners will apply to be legal members of the new tribunal system.
- 6.17 The Group agreed the key question was understanding the numbers and types of cases that the new tribunal would have to deal with. SO noted that JAJ had produced a useful paper, which it may be helpful to circulate more widely. HR agreed that a knowledge of workloads was crucial.

Action 2: Project Team to commission further work on numbers and types of cases that the new tribunal will hear

Onward appeals

- 6.18 SO stated that questions about appeals to the Upper Tribunal are still being considered – this would have a bearing on the new tax jurisdiction. He noted that it was proposed that there would be some cases, which will start at the Upper Tribunal. Decisions are still required on exactly how these will be identified whether either of the parties might elect to have their cases dealt with in this way.

Rules/directions

- 6.19 The Group discussed to what extent the Tribunals Procedures Committee (TPC) would develop generic rules. MW took the view that a new set of rules would be needed for the tax tribunal and that these would be drafted by DCA Lawyers as the TPC would not be up and running in time to do so.
- 6.20 SO stated the stakeholder group needs to be able to contribute effectively in the formulation of the rules. He asked for a sub group to be set up from the stakeholder group. SO asked NB to take the lead for this working group.

6.21 NB stated that Council on Tribunals already have templates of model rules, which could be utilised. HMRC would need to be heavily involved in the Rules formulation process. Members of the stakeholder group that were nominated to be part of this working party are Ron Downhill, Jane Moore, Gordon Coutts, Tony Priest and Henry Russell.

Action 3: NB to lead a sub group to work on the formulation of a specification for the new Rules. Members to include Tasfin Ahmed, Mike Watson, Eileen Rafferty (HMRC), Ron Downhill, Janet Cowdrey, John Pearson, Jane Moore, Gordon Coutts, Tony Priest and Henry Russell

Costs

6.22 HMRC and DCA have been considering the issue of costs. In due course there will be a paper which can be shared with the Stakeholder Group.

Action 4: MW to share a costs paper with the Stakeholder Group.

Tax Credits

6.23 JR explained that a ministerial undertaking had been given that tax credit appeals will be heard by the new tax tribunal. At present, however, the Project Board has agreed it will be more practical to deal with them in a later phase of the project, possibly after the new tax tribunal has been implemented.

Transitional Arrangements

6.24 MW noted that the other key question to be resolved is how transitional arrangements will work – that is how the old system will come to an end and what happens to cases that are part heard. Further work needs to be done on this. He agreed to come back to the Group in due course with some proposals.

7. Summary and conclusions

7.1 It was agreed that start of jurisdiction, panel composition and rules were likely to require the greatest input from the Group. The Group agreed that they should meet about every six weeks. Meetings of the sub group on rules and the working party on start of jurisdiction would be held prior to the next meeting of the SG.

Summary of Action Points

AP No.	Action Point	Owner
1	HMRC and DCA to discuss start of jurisdiction for the tax appeals system with JAJ. A report to be provided back to the SG.	John Avery Jones
2	Project Team to commission further work on numbers and types of cases that the new tribunal will hear	Mike Watson / Tasfin Ahmed
3	NB to lead a sub group to work on the formulation of a specification for the new Rules. Members to include Ron Downhill, Jane Moore, Tony Priest and Henry Russell	Dr Nuala Brice
4	MW to share a paper on costs with the Stakeholder Group	Mike Watson