Justice Committee

Tribunals (Scotland) Bill

Written submission from the Scottish Valuation Appeal Committees Forum

Introduction

Valuation Appeal Committees are composed of the members of 13 separate Valuation Appeal Panels each having jurisdiction in one or more local authority areas. The SVAC Forum is a voluntary umbrella group allowing the Panels to work together on matters such as member training and collective representation to the Scottish Government on relevant policy issues. The Policy Committee, composed of 4 (lay) Panel Chairmen and 3 (solicitor) Panel Secretaries, focuses and presents the collective representations of the sector.

We note the intention of the Tribunals (Scotland) Bill to introduce a framework providing for increased consistency and transparency in relation to the justice delivered by Tribunals. For our own sector, we welcome that intention but have reservations as to whether the framework proposed will necessarily achieve these objectives. The model is geared to the situation where a unified national Tribunal already exists, particularly where it is composed of paid professional members and where it has national jurisdiction. To translate Valuation Appeal Committees into such a regime it would first be necessary for the Scottish Government to undertake a comprehensive review of our constitution, functions and procedures (as prescribed by statute) to ensure that the resultant body would be viable and efficient. We highlight below some of the issues that need to be addressed; some will be relevant to other Tribunals while most are particular to our sector.

(N.B. In considering what follows, it is important to note that it is the functions of Valuation Appeal Committees that are listed for transfer to the First Tier Tribunal but they are composed of members appointed to Valuation Appeal Panels which have no other function.)

Appointment Criteria and Procedure

We note the intention, explained at paragraph 14 of the Financial Memorandum to introduce, in effect, a retirement age of 70 for all Tribunal members. This surprises us as a similar age limit previously applying to appointments to Valuation Appeal Panels was revoked in 2007 since it was perceived to be inconsistent with European Law. (Council Directive 2000/78/EC).

If such an age limit is applied then it would have serious implications at the time when the functions of Valuation Appeal Committees are transferred to the First Tier Tribunal. Since membership of Valuation Appeal Panels is unpaid, has a variable time commitment and requires some understanding of the local economy it is not surprising that a large proportion of members are appointed or become active only after their retirement from business or employment. Our core function dealing with rating valuation follows the cycle of rating revaluations which occur every 5 years (currently extended to 7 years by the Scottish Government). It is highly desirable
that, at least at the start of each cycle, there are members with experience gained in
the previous cycle. At present, many of these people are approaching or over the
age of 70.

In total, throughout Scotland, there are currently approximately 250 members of
Valuation Appeal Panels. Of these an estimated 33% are already over the age of 70
and a further 27% will reach that age by 1 April 2017 (the date of the next
revaluation). Only 40% will be under the age of 70 and have experience of the
revaluation cycle that concludes this year. It follows that if this function of Valuation
Appeal Committees is transferred to the First Tier Tribunal before 1 April 2017 there
will be a serious shortage of experienced members during the 2017-20 appeal cycle.
The problem is most acute in some of the areas with the highest caseloads to
consider. Indeed, in some of these and other areas there would no longer be
sufficient members to form a quorate Committee. If the membership numbers are to
be maintained then it would be necessary, at or shortly after the date of transfer, to
appoint about 150 new members spread across the country. An anticipated 20-25
appointments a year would be required on an ongoing basis thereafter.

Appointments to Valuation Appeal Panels are currently made by Sheriffs Principal
but, from the date of transfer, would fall to be made by the Judicial Appointments
Board for Scotland. We suggest that this surge in their responsibility would have
resource implications for the Judicial Appointments Board which have not hitherto
been acknowledged.

We also note that with progressive rises in the State Pension age and the normal
retirement age of many occupational schemes, actual retirement ages are likely to
rise in the years ahead. There will also be reducing numbers of people approaching
these ages (the “baby boom” generation having passed). So, when coupled with an
age limit for continuing as a tribunal member, there is likely to be a marked reduction
in the pool of capable people who are in a position to consider undertaking unpaid
tribunal work.

It also seems illogical that people should be considered capable of remaining in
normal employment longer than previously but should not also be considered
capable of performing judicial or tribunal duties longer, when they are as little as 3
years older than the future pension age of 67.

If recruitment cannot be achieved when required - and in many areas this already
proves difficult - the obvious consequence is an increase in the workload of other
members (who are all unpaid). This leads us to the conclusion that there would be a
real risk that many of the present members eligible to transfer to the First Tier
Tribunals might choose not to do so, because of the unbearable increase in time
commitments, and the present model for service in this sector would become non-
viable.

We note the requirement (Schedule 7, paragraph 13(6)) that a member of the First
Tier Tribunal, on appointment or transfer in, will be required to subscribe to Oaths in
the presence of the President of Tribunals or a Chamber President. We observe that
this will be an onerous and expensive requirement for any geographically dispersed
Tribunal such as in our sector. We also do not see what this requirement, in reality, will achieve.

**Present Constitution**

Members of Valuation Appeal Panels must reside or be in business or employment in the Panel area (Local Government etc. (Scotland) Act 1994, section 29(4)). Committees drawn from the Panel may only sit in their own area. All members are appointed as lay persons and are unpaid. Panel Secretaries are mostly solicitors in practice in the area concerned.

This local structure is a key feature of the present system and has been endorsed by judicial comment in recent years. Sitting in the Lands Valuation Appeal Court in the case of Assessor for Lothian vs. H&M Hennes and Mauritiz UK Ltd and others (2010 CSIH60), Lord Clarke said “It must never be forgotten that appeals to this court are appeals from committees who have been specially chosen for their expertise and knowledge of local circumstances.”

More recently, in his keynote address to the SVAC Forum Training Conference in April 2013, Lord Doherty said “Valuation Appeal Committees have been with us now for a very long time. That they have survived for such a long period in essentially the same form is, I think, testament to the fact that they serve the function they are intended to, and that on the whole they operate very effectively.”

From the information currently available it is difficult to see how this essentially local structure can be translated into the unified national structure proposed in the Bill. We submit, however, that great care should be taken not to let the perceived benefits of the present regime disappear.

**Rating Valuation Appeals**

One of our most significant functions relates to hearing rating valuation appeals. Appeals are initially lodged with the assessor against whose valuation the appeal is lodged. Some see this as biased and would prefer appeals to be lodged elsewhere. We submit, however, that the present regime is pragmatic since the only opportunity a ratepayer or their agent has to seek a review of a valuation is to lodge an appeal against it. That is why over 99% of appeals can be settled without being heard by a Committee; less than 1% have to be heard. Committees have no involvement in the 99%. There would be significant public cost in setting up a parallel system to process so many appeals that do not involve Committees when assessors need to keep track of them anyway in order to respond to them.

There is a key feature of the rating jurisdiction that would need to be reviewed before our functions can be transferred to the First Tier Tribunal. Either party to an appeal, or both together, can request that an appeal be transferred to the Lands Tribunal for Scotland if it appears to satisfy statutory criteria as to complexity which are set out at Regulation 5(1) of the Valuation Appeal Committee (Procedure in Appeals under the Valuation Acts)(Scotland) Regulations 1995. The procedure is clear so long as Committees and the Tribunal are separate bodies. It is not at present clear how these provisions can be adapted to the situation where the functions of both bodies
might be subsumed into the same Housing, Land and Property Chamber of the First Tier Tribunal. In that event the new tribunal would in effect be referring a case to itself. That suggests there would be a considerable attraction in having the Lands Tribunal for Scotland’s functions transferred to the Upper Tribunal as suggested at paragraph 46 of the Policy memorandum.

We perceive, however, that that could present difficulties for onward appeals in this jurisdiction since, at present, both Valuation Appeal Committees and the Lands Tribunal for Scotland hear appeals at first instance and appeals against the decisions of either tribunal are referred to the Lands Valuation Appeal Court, the decisions of which form a coherent body of law for all to follow. It is not clear how this coherence could be maintained in the future if some appeals are heard at first instance by the first tier (ex-VAC) with onward appeal to the Upper Tribunal (which might be constituted as a successor to LVAC or might be the successor to LTS) and other appeals are heard at first instance by the Upper Tribunal (ex-LTS). We therefore strongly recommend that the whole operation of the rating valuation appeal functions of all these bodies, and their interaction should be subjected to independent expert review before the rating valuation functions of Valuation Appeal Committees are transferred into the First Tier Tribunal. We suggest this review ought to involve each of the Lands Valuation Appeal Court, the Lands Tribunal for Scotland and the Scottish Valuation Appeal Committees Forum, as currently constituted.

**Council Tax Banding Appeals**

This is our second significant jurisdiction. Council Taxpayers have the opportunity to lodge, with the assessor, proposals for a change to the Valuation List. This provides an opportunity for these cases to be resolved by negotiation without maturing to become appeals. If they are not resolved in 6 months they automatically become appeals to the Valuation Appeal Committee. About 80% of these cases are settled and 20% heard by Committees.

**Council Tax Non-List (Finance) Appeals**

The third jurisdiction of Valuation Appeal Committees relates to appeals against the levying functions carried out by local authority finance departments. For these, there is an internal review procedure prescribed in the Local Government Finance Act 1992. If the Taxpayer is not satisfied after that, they may appeal the Council’s decision to the Valuation Appeal Committee by lodging an appeal with the Council, in the first instance, which must remit it to the Committee Secretary.

In summary, therefore, this sector has three separate jurisdictions with separate routes of appeal. They also have separate statutory procedures and different routes of onward appeal to the higher Courts, though these matters are not discussed here. There is no reason to suppose that an arrangement which will work for one jurisdiction will be suitable for the others.
Timing

We note that clause 27(2) would allow only some of a Tribunal’s functions to be transferred to the new structure at any one time. We believe this would allow separate consideration to be given, possibly at different times, to the rating and council tax functions currently exercised by Valuation Appeal Committees. We believe this could be beneficial for the reasons explained below.

As regards the rating jurisdiction, it would be operationally disruptive for all parties - not least appellants and assessors appearing in cases - for this function to be transferred during the period of 3 years 9 months following a revaluation which is allowed for the disposal of revaluation appeals. It would be operationally smoothest for any transfer to be following the conclusion of one cycle and before the next. Indeed the optimum date is probably the date of revaluation itself. We pointed out at the start of this evidence the risks of having a transfer by or on 1 April 2017. The next opportunity thereafter would be 1 April 2022.

As regards both Council Tax jurisdictions, we submit that any transfer should await a firm decision on the future of the Council Tax. If it is abolished then these jurisdictions could be wound up without being transferred. If, on the other hand, the Council Tax were retained and updated by having a revaluation it would be logical to transfer the function to the new regime before the revaluation takes place or, optimally, on the date of revaluation.

Conclusion

We hope the discussion above makes clear that Valuation Appeal Committees, which were structured locally as a deliberate policy intention, are different from most of the Bill’s Listed Tribunals, which have uniform national structures. Detailed consideration of these differences and of the activity in each of our 3 different jurisdictions will be required before our functions can be successfully transferred to the new First Tier Tribunal.

Scottish Valuation Appeal Committees Forum
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