

# **TAX APPEALS: A LOW INCOME PERSPECTIVE**

**A review of the tax appeal tribunals from the perspective of the user of  
modest means**

**September 2006**

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## EXECUTIVE SUMMARY

It has been said that justice, like the Ritz Hotel, is open to all. Like the Ritz, justice is expensive and therefore in practice more accessible to those with funds than to those without.

The system of tribunals is undergoing reform, and the tax appeal tribunals are shortly to become a part of this process of change. In this Report we consider how suitable the tax appeal tribunals, as presently constituted, are for appellants whose means are modest or low, and how the needs of this group of appellants can best be served by the forthcoming reforms.

The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented taxpayer or tax credit claimant. Our remit is to help people on low incomes to cope with their tax, and campaign for a simpler and more accessible system of tax and tax-related benefits.

As part of that remit, we have participated in the consultations about tribunals reform which followed the Leggatt report<sup>1</sup> and the White Paper issued by the Department for Constitutional Affairs<sup>2</sup>. In a series of written contributions, we have considered specific aspects of the proposals for reforming the tax appeal tribunals from the perspective of a user on a low to modest income, probably without professional representation.

To consolidate that process we have taken the issues raised during the consultation process and tested them against the opinions of a cross-section of tax advisers involved in appeal work. These we obtained by means of an on-line questionnaire sent out to CIOT members, followed by a series of telephone interviews. During the survey we found that to a considerable degree our views were shared by others within the tax profession. Our recommendations are summarised below. Some are intended for the reformed tribunals ('post-reform recommendations'); others can be implemented now, in advance of reform ('interim recommendations').

While this report was in preparation, the Tribunals, Courts and Enforcement Bill was published in draft, and we were pleased to see the extent to which some of its proposals were consonant with our recommendations.

### Post-reform recommendations

1. **Independence and fairness.** So that the appeals process is not only independent of government but seen to be so, the name of the tax appeal tribunals should reflect their independence. Some respondents to the survey favoured The Independent Tax Appeal Tribunal, or similar (3.2.3).
2. The appeal process must be removed from the government departments which make the decisions against which the appeals lie. Appeals should be lodged with the Tribunals Service rather than with the sponsoring department (3.2.4).

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<sup>1</sup> Tribunals for Users – consultation paper about the Report of the Review of Tribunals by Sir Andrew Leggatt, 2001

<sup>2</sup> Transforming public services: complaints, redress and tribunals (Cm 6243) – the Department for Constitutional Affairs, 2004

3. The first tier, to the extent that it inherits the role of the General Commissioners, should retain its existing local base of predominantly (but not exclusively) lay people (3.3.2).
4. The tribunals would appear less forbidding to unrepresented appellants if panel members were more representative in terms of gender, ethnicity, age and social origin (3.3.4).
5. **Judicial review-type jurisdiction.** The tribunals (including the first tier) should have power to review decisions based on discretionary exercise of government powers where there is no statutory right of appeal (3.3.6). This is already provided for to some extent in the draft Tribunals, Courts and Enforcement Bill.
6. **Case management.** The Tribunals Service must provide a good case management service from the moment when the appeal is lodged right through to the hearing (3.4.3(1)).
7. The process should be subject to the overall supervision of a tribunal member, to the extent that the papers in each case would cross the desk of a panel member at least once (3.4.3(1)).
8. **Choice of procedure.** The appellant should be able to opt for a paper hearing (3.4.3(2)).
9. At any stage in the process the appellant should be able to ask for a hearing in person, and the tribunal member responsible for the case should be able to suggest to the appellant a switch from a paper to an oral hearing (3.4.5).
10. **Finality.** The decision of the first tier should be final in most cases, with onward appeal being only on a point of law and with permission (as proposed in the draft Tribunals, Courts and Enforcement Bill). Where permission is granted to HMRC to appeal, that Department's ability to seek costs from the appellant should be restricted to exceptional, defined cases (3.5.3).
11. **Composition.** The first tier should continue to be locally based and to be composed mainly of local people without necessarily a legal, tax or accountancy qualification (3.6.1).
12. However, at least one panel member should always have a relevant technical qualification and experience, who should either chair the panel or be sufficiently senior for their opinion to carry weight with the other members of the panel (3.6.2).
13. **Costs.** No order for costs should be made either way at first tier, and there should be a limited right of onward appeal combined with restrictions on award of costs beyond the first instance (3.7.2, 3).
14. Appellants on low incomes should be offered assistance with travel and other out-of-pocket expenses associated with attending the hearing, as happens with benefits appeals (3.7.4).
15. **Disabled access.** All premises used for hearings should fulfil the access requirements of the Disability Discrimination Acts (3.8). In addition, provision should be made for accommodating appellants with special needs, by

provision of appropriate aids, or assistance with any additional costs of travel incurred by a carer or other helper accompanying the appellant.

16. **Support for advice and representation.** Consideration be given to incorporating in the early preparatory stages of an appeal an opportunity for an unrepresented appellant to receive independent professional advice on the merits of their appeal.

### **Interim recommendations**

1. The Senior President of the tribunals should issue directions reminding tribunal members of the necessity to be even-handed in administering processes and not to be seen to favour one party in such matters as granting adjournments.
2. We recommend that HMRC should be encouraged to review their standard correspondence to present the Commissioners' hearing in a more balanced and less threatening light.
3. At the outset of their appeal, appellants should be sent information about the appellate body and its contact details so that they do not feel constrained to rely on HMRC to progress their appeal. Their attention could also be drawn more towards existing guidance. Such information should come from the appellate body itself, or the Tribunals Service, and not from HMRC.
4. The General Commissioners should be sent the papers of both sides in the appeal as soon as they are available.
5. Guidance to General Commissioners could encourage them to adopt a more inquisitorial approach, following the practice of the Social Security Commissioners.
6. The selection process should start now to encourage applications from people of both genders and of different ages and social and ethnic origins.
7. Pending primary legislation to extend judicial review-type jurisdiction to tribunal level, an independent review body be set up to adjudicate in cases where HMRC fails to follow its own published guidelines, or exercises its discretion unfairly or incorrectly.

### **Acknowledgment**

This project has been made possible by a grant from the Nuffield Foundation, to whom we are greatly indebted.

### **'Revenue' or 'HMRC' – a note on nomenclature**

In April 2005, while we were engaged on this project, the Inland Revenue and Her Majesty's Customs and Excise combined to form Her Majesty's Revenue and Customs. Therefore, when recounting the results of the questionnaire or interviews, we use the terms used by the interviewees. This is usually 'Revenue', 'Inland Revenue' or 'Customs' in the answers to the questionnaire, 'HMRC' in the later interviews. But in our conclusions and recommendations we refer throughout to HMRC. Or, depending on the context, the generic term 'revenue authorities' is sometimes used.

## **1. BACKGROUND AND INTRODUCTION**

**1.1** It has been said that justice, like the Ritz Hotel, is open to all. Like the Ritz, justice is expensive and therefore in practice more accessible to those with funds than to those without.

**1.2** On the threshold of a major reform of the system of tribunals, in this Report we consider the experiences of individual appellants before the tax tribunals whose means are modest or low. If they find themselves in dispute with the revenue authorities, in theory there is nothing to stop them taking their challenge to the highest court in the land. In practice, few ever embark on the first stage.

**1.3** The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented taxpayer or tax credit claimant. Our remit is to help people on low incomes to cope with their tax, and to campaign for a simpler and more accessible system of tax and tax-related benefits.

**1.4** When proposals to reform the tribunal service were first mooted in 2001, we submitted a response to the consultation paper by Sir Andrew Leggatt *Tribunals for Users* from the perspective of the low-income user. Again in September 2004 we responded to the Department for Constitutional Affairs (DCA) White Paper *Transforming Public Services: Complaints, Redress and Tribunals*.

**1.5** Since then we have been closely involved in the consultation process, mainly through membership of the Tax Appeals Stakeholder Group (TASG). This is a committee set up by the DCA to look at how the tax appeals system will fit within the reformed tribunal system. Chaired by the President of the Tax and Finance Tribunals, it comprises representatives from the judiciary, the tax and legal professions, and the tax tribunals themselves. It advises the Project Board whose function is to give advice to ministers.

**1.6** A list of our written contributions to the debate, commenting on specific aspects of the proposals, appears in Appendix 1.

**1.7** This report takes our contribution a stage further. Its basis is a survey we conducted on-line and by telephone with other members of the tax profession. This was followed by a further series of interviews, by telephone and in person, with individuals with particular knowledge of tax appeals on the substance of an early draft report. Through this process, and from our own experiences as tax professionals, we try to assess how suitable the present appeal structures are for taxpayers of modest means. Are there factors which inhibit them from pursuing appeals against decisions of the revenue authorities, and if so what are they? We then draw on our findings to outline how we believe the needs of such potential appellants could best be met in the reformed regime, and make recommendations accordingly.

**1.8** We also discuss what measures might usefully be taken in the short term to improve access to the tribunal system prior to that reform.

**1.9** Among the literature surveying the expectations and experiences of users of a wide range of tribunals, we are aware of none that specifically addresses the needs of those appearing before the tax appeal tribunals. This report aims to fill that gap at least partially. It does not purport to offer a set of statistically valid findings; its

purpose is rather to present the conclusions of a group of people with expertise in the area, tested and informed by discussion with other tax advisers who themselves consider the issues from the perspective of the users they represent.

**1.11** While this report was in preparation, the Tribunals, Courts and Enforcement Bill was published in draft, and we were pleased to see the extent to which some of its proposals were consonant with our recommendations.

**1.12** We are very grateful to the Nuffield Foundation for their generous funding of the project.

## THE SURVEY

**2.1** This section of the report describes the survey carried out among members of the Chartered Institute of Taxation (CIOT) in the spring and autumn of 2005. The CIOT is the principal professional body for tax advisers in the UK and its members are chartered tax advisers, the only professional qualification specifically in the law and practice of taxation.

### Object of the survey

**2.2.1** The object of the survey was to ascertain the views of chartered tax advisers of the present system of tax appeals, and how they thought it could be improved, from the perspective of the individual appellants for whom they acted.

**2.2.2** From these responses, and from our own consideration of the issues raised during the consultative process, we aimed to get a picture of the needs and experiences of users of the system, as seen through the eyes of their advisers. From that we would have a better idea of the barriers that might face unrepresented appellants, and how in the context of the proposed reforms those barriers might best be removed, or at least circumvented.

### Methodology

**2.3** In April 2005, an on-line questionnaire was sent to 8,418 chartered tax advisers seeking their views on the current system of tax appeals. The 90 responses received were grouped and analysed over the summer. A number of the participants offered to help with further research, or to talk to us in more depth than was possible through the medium of a questionnaire. We carried out telephone interviews with 15 of those during October 2005.

### Profile of respondents

**2.4.1** All the respondents, including those whom we later interviewed, had some experience of acting for clients in proceedings before the General Commissioners, the Special Commissioners or the VAT and Duties Tribunal. About half of those had done at least occasional pro bono work in that area.

**2.4.2** Those who responded to the on-line questionnaire were predominantly (nearly 90%) engaged in private practice, specialising mainly in personal tax but also in corporate or VAT matters to the extent that they dealt with small and medium sized businesses. Of those, the bulk were sole practitioners (30%) or employees (42%), while less than 14% were partners in 2-5 partner firms, and a similar proportion in larger firms of 6 partners or more. A small minority were engaged in industry (less than 8%).

**2.4.3** About half the respondents described their encounters with the tax appeal process as 'frequent' or 'occasional'; half as 'rare'. Approximately three-quarters had most experience of the General Commissioners while only 10% or less had more experience of either the Special Commissioners or the VAT and Duties Tribunal. Nevertheless, some of the more outspoken views we heard were directed at the VAT and Duties Tribunal, so we devote a section to it later on in this chapter (see under *interviews*).

**2.4.4** In keeping with our interest in the low-income appellant, we asked whether respondents advised less well-off clients pro bono, or for a low fee. While only a small percentage (5%) said they did so *regularly*, those who did so *occasionally* formed a substantial minority (approximately 38%), while those giving such help *rarely* or *never* comprised, respectively, 30% and 27% of responses. That out of a sample of 90 just under half had more than 'rare' exposure to pro bono work showed, we thought, a pleasing level of interest in such work in a profession which at present has no formal structure in the appeals field to encourage it.

### **How representative was the survey?**

**2.5.1** We chose chartered tax advisers, members of the CIOT, as objects of our survey because of their acknowledged expertise in the field of taxation in general and in handling tax appeals in particular. Advisers are in a better position to assess their clients' needs and the extent to which the system satisfies them, while determining what changes or reforms would fill the gaps. Also, while an unrepresented appellant is more likely to be biased for or against the system depending on whether their appeal was won or lost, advisers are more likely to take an impartial stance.

**2.5.2** We believe the 90 who responded represented a good cross section of the 8,418 tax advisers who received the questionnaire. Similar member surveys have elicited between 65 and 384 in the past year, with around 100 responses being regarded as the norm. We did not expect more than a standard number of responses to this survey, given that appearing before the tax appeal tribunals is a relatively specialised activity among tax advisers, mainly because appeals within the tax system are so often settled before they reach the tribunal.

### **The questionnaire**

**2.6** There follows a summary first of the questions in and the responses to the on-line survey. The full results are reproduced in Appendix 2.

### **Background and outline of the questions**

**2.7.1** The questionnaire was designed to ascertain from the respondents their views on three main areas:

1. What practical barriers are there to hinder people from accessing their rights to dispute Revenue decisions and to appeal?
2. What do users want of the tax appeal system?
3. How is the independence and impartiality of the tax tribunals perceived?

#### **1. Practical barriers**

**2.7.2** The Legal Services Commission *Causes of Action: Civil Law and Social Justice* has found that justiciable problems frequently remain unremedied because people 'do not believe anything can be done, or sometimes simply because they are too scared to act'. Is this also the case with potential appellants before the tax appeal tribunals? If so, what reasons might there be? Cost? Stress factors? A prevailing assumption that 'the Revenue must be in the right'? And what changes to the system might help overcome their reluctance?

**2.7.3** As a starting point, we tried to elucidate the extent of people's understanding of the tax appeal process and decisions handed down and the accessibility of advice. Our detailed questions followed this pattern:

#### **2.7.4 Knowledge of the appeals system**

- To what extent are people aware that they have a right to appeal any given decision?
- Are people aware of precise legal grounds for their appeal, or do they tend simply to appeal anything which seems to them unfair?
- Where there is no legal ground for appeal, are people aware of what alternative remedies there may be (e.g. judicial review)?
- Are people aware of how to appeal, and how comfortable are they with the appeal processes and procedures?

#### **2.7.5 Understanding decisions**

- Do people understand the technical basis of the Revenue's decision in their case, and of the right to appeal against it?
- To what extent are appellants able to prepare their own case, and to isolate and articulate issues that are central to their appeal?
- Do appellants understand the decision once handed down? What proportion of General Commissioners give reasons for their decisions?

#### **2.7.6 Access to advice**

- Where people did not have access to good affordable advice, would they have pursued their right to appeal if they had?
- Where people did receive good affordable advice, did it make a difference to their decision to appeal, or not to appeal?
- How easily available or accessible are sources of advice?
- To what extent is the cost of advice a factor?
- To what extent are other costs a factor – e.g. travel to hearing venues, extra childcare, time off work?

#### **2.7.7 Special needs**

- Where appellants are disabled, to what extent do physical barriers to premises prevent them from accessing their appeal rights?
- Where people's first language is not English, what are their experiences of the availability of interpreters?
- What support is available for those with learning disabilities?

### **2. What do users want?**

**2.7.8** Do users' experiences of issues such as the following match their expectations?

- Speed in getting a hearing
- Help with the preliminary stages of an appeal
- Proximity of hearing venue
- Formality/informality of hearing
- Helpfulness of tribunal members and staff
- Fairness of processes

### **3. Independence and impartiality of tribunal**

**2.7.9** We tried in our questioning to test how far the tribunals are perceived as independent of the Revenue, and how impartial the tribunal members appear to be. Where independence or impartiality were thought to be lacking, what measures might help reverse such perceptions?

## Summary of responses

**2.8.1** As will be shown, the responses varied between those who wished to keep the system broadly as it is and those who sought more radical reform, but among those who were in favour of at least some change there was a broad consensus as to the kind of change that was needed.

**2.8.2** What follows is a summary. For full details, see the results of the on-line survey reproduced in Appendix 2.

### *Awareness of appeal rights*

*Q. In your experience, would you say that people are generally aware of their rights to appeal against decisions of the revenue authorities?*

**2.8.3** The great majority of respondents said that people were generally unaware of their rights to appeal against decisions of the revenue authorities. Those who are aware tend to be scared of challenging the Revenue or worried about costs. Exceptions tended to be those in the VAT and corporate fields, or high net worth individuals who were aware in a very general sense that there were some appeal rights.

**2.8.4** Two or three responses suggested that most taxpayers regard an appeal as being to the inspector of taxes; the tax official, not the appeal tribunal, is seen as arbiter. Another indicated a fear that appealing might draw unwelcome attention to the appellant:

‘ . . . generally don't want to appeal because of the fear that they will be singled out in future for "special" treatment.’

According to one respondent:

‘the tendency for some is to accept that the Inland Revenue are correct’.

Another said:

‘sometimes they feel that Customs must have given the right answer and so don't challenge rulings – this of course can store up problems for a later date’.

Such views were echoed in other responses to this and other questions.

### *Awareness of legal basis of appeal*

*Q. Are people generally aware of the legal basis of their appeal, or are they inclined simply to appeal anything which seems to them unfair?*

**2.8.5** Responses to this question indicated that on the whole there was little or no awareness among lay individuals of precise legal grounds for appeal. One respondent who regularly gave pro bono advice said that in his experience the low-income groups would usually assume that the authorities were correct.

**2.8.6** Of the others, if they appealed at all (and many didn't because they found the whole process too complex or expensive), they would tend to want to appeal anything that seemed to them unfair. But generally they relied on advice. One or two answers diverged from the general pattern, and they came from practitioners who advised corporate taxpayers and the larger VAT appellants.

**2.8.7** As for understanding the technical basis of the Revenue's decision against which the right of appeal lay, a good 80% of respondents believed that most people would have no such understanding if it was not explained to them.

#### *Awareness of appeal processes*

*Q. Do people have a grasp of how to appeal, and how comfortable are they with the appeal processes and procedures?*

**2.8.8** Again, the answers revealed a widespread ignorance of the rules for appealing and a lack of appreciation of the importance of getting the paperwork right and adhering to time limits. This affected not only the lay public, particularly the smaller and middle-tier appellant, but also professional advisers, some of whom were themselves uncomfortable about appearing before General Commissioners.

**2.8.9** This general ignorance is not helped by lack of clear guidance as to how to prepare a case or presentation. It also leaves the taxpayer open to bullying tactics by the authorities and vulnerable to an aggressive approach. However, not all appeals are conducted in that way, one respondent finding the Revenue to be 'extremely helpful in explaining the appeal processes and procedures' to unrepresented taxpayers.

**2.8.10** Again, there was a higher level of understanding in the corporate world.

#### *Alternative remedies*

*Q. Where there is no statutory right of appeal, are people aware of what alternative remedies there may be (eg internal complaints procedures, Adjudicator/Ombudsman, judicial review)?*

**2.8.11** Generally it was thought that small to mid-tier taxpayers were not aware of such remedies unless told by their advisers or unless they found out from Revenue literature. The Ombudsman was perhaps the best known; those who knew about judicial review would not contemplate it as being too expensive; and internal complaints procedures were thought long-winded and likely to be biased. Overall, there was thought to be little awareness of such remedies among the general public, and those who knew about them would be unlikely to trust them, or to be put off by the length of time they took to give a resolution.

**2.8.12** A greater level of awareness existed among larger corporate clients and VAT appellants. High net worth individuals were thought to have a vague awareness of such remedies but were not keen to use them.

#### *Ability to prepare a case*

*Q. To what extent are appellants able (with your guidance) to prepare their case, and to isolate and articulate issues that are central to their appeal?*

**2.8.13** The responses to this question were mixed; one-third were confident in their clients' ability to prepare a case with guidance, two-thirds were not and of them most were adamant that it could not be done.

**2.8.14** Although the question did not specifically ask about self-advocacy, some nevertheless expressed views. Among the one-third who thought lay clients could prepare their own case there were some who thought them capable of going on to present it before a tribunal, but most who addressed the point were less sanguine.

**2.8.15** Some said that the ability to prepare a case or not would depend on the personal qualities of the lay client. Most did not have the talent for marshalling their thoughts, or for advocacy, that would secure the best result for them. In any case, the tax system was too technical and complex for anyone but a trained professional to be able to pursue an appeal competently. One VAT practitioner echoed other views expressed by his or her colleagues in direct tax:

'For VAT Tribunal cases it is increasingly important to find case precedents and to refer to the correct parts of the legislation. In our experience it has become much more important to set the case out in a Notice of Appeal as opposed to jotting down the issues on a Trib 1 - as Customs tend to respond in a very formal way. It is costly to get it right.'

**2.8.16** One respondent pointed out that among those who lacked the requisite technical knowledge, there was a tendency to focus on issues that seemed important to the appellant, but were in fact irrelevant to the appeal:

'... they just tend to think they have been treated unfairly and want justice - they do not think through the actual method or what points are relevant and what is not.'

**2.8.17** The following response represented as good a compromise as any between the different views expressed in this part of the survey:

'With professional advice, taxpayers can deal with the issues to a limited level. But professional representation is now advisable for all but the most simple of cases.'

#### *Independence of appeal tribunal*

*Q. Do people generally perceive the appeal commissioners as independent from the Inland Revenue? How does their perception affect their sense of whether they have had a fair hearing?*

**2.8.18** Many responses revealed a widespread belief that the appeal tribunals are a part of the Revenue, a belief which persists unless and until an appellant's professional adviser tells them otherwise – and even then some find that hard to credit. Even if an appellant knows and accepts that the tribunal is independent, the sense that everyone at the hearing – apart from the appellant – seems comfortable with the process lends credence to the idea of a 'cosy relationship' between the department and the tribunal, or an exclusive club to which the appellant is not admitted.

**2.8.19** The idea of the Commissioners as a branch of the Revenue is sometimes unwittingly reinforced by official correspondence. One respondent was particularly critical of letters headed 'Department for Constitutional Affairs' which gave the

impression that the appeals process was government-inspired. Another respondent had received letters from the Revenue erroneously referring to the tribunal as 'the Inland Revenue Commissioners'.

**2.8.20** There are some aspects of tax appeals which are always likely to colour appellants' perception of the process, and will do so whatever reforms are put in place.

'The enquiring IR officer has much more experience, and is therefore better prepared and more able to present a more forceful case than "the man on the street".'

'Losers often don't think they have been fairly treated.'

#### *Experience of the appeal process*

**2.8.21** This was a multiple choice question designed to test six aspects of the process, enquiring whether appellants' experience was in the main *excellent*, *good*, *fair* or *poor*.

1. ***Speed in getting a hearing*** – the majority were reasonably satisfied with this, answering *good* or *fair*, but a significant minority (about 30%) found it to be *poor*.
2. ***Help with the preliminary stages of an appeal*** was given the thumbs-down by most respondents, 42% answering *poor* and 36% *fair*.
3. ***Proximity of hearing venue*** was generally regarded as important for appellants and in the main respondents were satisfied (21% *excellent*, 36% *good*, 38% *fair*).
4. ***Formality/informality of hearing*** drew reasonable levels of satisfaction (42% *good*, 39% *fair*).
5. ***Helpfulness of tribunal members and staff*** scored high with 12% *excellent*, 44% *good* and 39% *fair*.
6. ***Fairness of processes***, despite complaints earlier in the survey about lay clients' perceptions of unfairness, two-thirds of respondents were evenly spread between the *good* and *fair* categories.

#### *Costs of advice and representation*

*Q. How important a factor are costs in deciding whether to appeal?*

**2.8.22** In the words of one respondent, the issue of costs is

'considerable for those appellants on limited means; i.e. the majority of taxpayers.'

**2.8.23** In comparison with the resources available to the Revenue side, and the perception that the Revenue deliberately use this imbalance to their advantage, taxpayers are often put off appealing even meritorious cases because they simply cannot afford the cost unless the adviser can afford to represent them pro bono or for a low fee.

'People feel the Revenue have unlimited resources. Revenue often use the threat of appealing a loss to a higher court with the resultant costs implication if the client loses in the higher court as a way to get a result.'

'There have been a number of cases where clients have decided to accept the Revenue's decisions rather than appeal because of cost and the fact that they simply want to get on with their lives having been investigated for months/years ie the Revenue wear them down!'

**2.8.24** It seems to make little difference whether the costs are those of advice or of representation. Some may pay for advice but not for representation; or having taken the advice they may decide that the odds are too much stacked against them. Generally the two go hand in hand. If a lay person cannot afford representation, but feels strongly enough to proceed nonetheless, their only option may be to represent themselves.

'Many people will represent themselves (which can be detrimental to their case) because of the cost of getting representation.'

**2.8.25** Apart from the costs of appealing, other expenses – in particular travel and time off work – can be significant factors, but answers to the question 'how significant' varied between those who cited it as the single most important factor and those who did not see it as a problem at all.

#### *Special needs*

**2.8.26** Few of our respondents had any experience of acting for appellants with special needs – disabled people, those who needed an interpreter, or people with learning disabilities – and such comments as there were tended to focus on disabled access. On the whole, buildings housing General Commissioners' hearings were thought to have good disabled access, but some concern was expressed about meetings being held in hotels and pubs which did not comply with those requirements.

#### *Other sources of advice apart from the tax profession*

**2.8.27** In general, it was felt that apart from chartered tax advisers, there were few advisers with the requisite expertise to advise competently on tax appeals. Overwhelmingly, Citizens Advice Bureaux were not considered to be viable alternatives, lacking in experience in tax matters. TaxAid was highly thought of, and at least one respondent felt that it, or something like it, should be made available nationwide.

### **Report of telephone interviews**

**2.9.1** Of the twenty-one CIOT members who had earlier expressed a willingness to be interviewed, it proved possible to interview fifteen during October 2005. All the interviewees were practising accountants or solicitors in England or Scotland. Two were General Commissioners at the time of interview and one used to be a General Commissioner until a year earlier.

**2.9.2** Most of the interviewees had detailed experience of General Commissioners' hearings and, to a lesser extent, Special Commissioners' hearings. Only three were actively involved in VAT Tribunals. It follows that the main findings from the interviews relate to the General Commissioners, although some comments on VAT Tribunals are included. All those interviewed thought that there was no need to reform the service provided by the Special Commissioners, although one person said that the financial costs of the Specials had to be reduced.

### *The first tier of appeal*

**2.9.3** The majority view was that the system of General Commissioners' hearings, as a first tier of appeal, was working effectively and delivering what it was supposed to. Positive comments included:

'doing a good job at a cheap price', 'basically effective' and 'quite happy with it'.

However, two interviewees were extremely critical of the system, saying that:

'it was simply not working' and 'should be abolished'.

**2.9.4** Within this difference of opinion, most people had concerns about specific areas of the process and numerous suggestions for improvement. However, it was interesting to note that many of the interviewees did not seem to realise that movement towards reform of tribunals was already taking place.

### *Concerns put forward*

**2.9.5** The concerns put forward can be divided broadly into two categories, namely those relating to the system itself and those relating to the way in which HMRC use the system. There was a perception that the Commissioners were not independent of HMRC, and this was reinforced by the way in which Inspectors seem to use the appeal system for their own purposes rather than to achieve a fair result.

### *Perceived pro-Revenue bias*

**2.9.6** Nearly all those interviewed said that their clients believed that the appeal system was skewed in favour of the Inland Revenue (HMRC). One contributor said that the General Commissioners:

'all too often sided with the Revenue'.

Another said that:

'the VAT Tribunal applied deadlines for delivery of information quite strictly for the appellant, but seemed to bend over backwards to accommodate delays by the VAT man'.

**2.9.7** Without exception, the respondents wanted the name of the Commissioners to be changed to remove any reference to Inland Revenue or HMRC. The most common suggestion was that they should be:

'renamed The Independent Tax Appeals Tribunal'.

There was, somewhat surprisingly, no majority view in favour of creating a totally new appeal body. Most contributors thought that a change in name would go a long way towards overcoming the perception of Revenue bias.

### *Revenue's practice in listing appeals for hearing*

**2.9.8** Some of the interviewees thought that HMRC inspectors chose to list appeals for hearing in order to intimidate appellants into settling appeals prematurely. One said that HMRC:

‘use the fear of incurring costs as a weapon, in the knowledge that any appellants could not afford to contest a prolonged appeal’.

Another said that most letters from an Inspector seem to imply that going to the Commissioners is a threat not an opportunity so far as the taxpayer is concerned, and are usually couched in terms of ‘I will list’ rather than ‘we can ask the Commissioners to review’.

The interviewees thought that this practice must be stopped, no matter what other reforms were made.

#### *Onward appeal*

**2.9.9** Several contributors made the point that the decision of the General Commissioners should be final, except in extraordinary circumstances. One believed that:

‘many appellants would pursue their appeals more effectively if it was clear that HMRC could not simply choose to take the appeal further, if they did not like the outcome of the GC hearing’.

Also, it was suggested:

‘The Commissioners should always give their decisions in writing, and their reasons for making them’.

#### *Composition*

**2.9.10** There was no dominant view as regards the make-up of the General Commissioners in person. Several respondents said that the Commissioners should be drawn from a wide range of society, but others favoured the Commissioners being restricted to:

‘professional people with a firm understanding of taxation matters’.

Two contributors said that:

‘the Chairman should always be a technically trained person’.

Others thought that it would be sufficient for only one panel member to be technically trained, but it need not be the Chairman.

**2.9.11** One interviewee thought that more Commissioners were needed but another said:

‘There is a glut of them at present due to the reduced numbers of appeals arising, now that “delay cases” are less frequent’.

On balance, the respondents thought that more technical training should be given to the Commissioners to help them cope with the increased number of ‘contentious appeals’ that were beginning to appear.

## Access

**2.9.12** One contributor was in favour of concentrating General Commissioners' Divisions in larger towns and cities:

'in order to pool expertise and reduce administration costs'.

Others thought this would diminish an appellant's access to an appeal and incur extra costs of attendance. One said that:

'this would be detrimental particularly to the lower paid appellant'.

**2.9.13** There was general agreement that General Commissioners' hearings should take place in less formal surroundings than at present. Many are still held in magistrates' courts, which was considered to be:

'an intimidating factor for appellants, particularly the unrepresented'.

## Costs

**2.9.14** A suggestion that the Tribunals should have the power to award costs in a hearing provoked a range of responses. However most contributors were not in favour of the proposal. There was a consensus that if the Tribunals could award costs or damages to an appellant who wins his case, then they should also be able to award costs to HMRC if it won. It was said that:

'this exposure to the risk of having to pay HMRC costs would be a major deterrent to most appellants, and not only those on lower incomes'.

At the same time, more than one interviewee felt that:

'an award of costs against HMRC might help to reduce oppressive behaviour and incompetence on the part of the Inspector'.

## *Government funding of taxation professionals to act pro bono*

**2.9.15** As regards the possibility of the Government helping low-income appellants to pursue appeals by giving payments directly to tax advisers, there was very little enthusiasm for using public funds in this way. Most contributors thought that any attempt to either pay accountants to act on behalf of the lower paid, or to incentivise them to do more pro bono work would not be worthwhile.

**2.9.16** Some believed that the system would be very costly to operate, not least in administrative terms. Others thought:

'It would spiral out of control, just like legal aid'.

One accountant suggested that certain members of his profession would take advantage of the system to obtain government funds, perhaps even encouraging the making of appeals solely for that purpose.

## *Government funding of appellants' costs*

**2.9.17** Most of the contributors agreed that it was unfair that ordinary taxpayers might have to give up meritorious appeals on the grounds of cost. However, they

were not generally in favour of Government giving money directly to lower paid appellants to help with their costs of appeal. Nevertheless, two people thought that the idea had merit. One believed that qualifying for such a payment:

‘should apply only in cases of genuine financial need and it would have to be means tested and closely monitored’.

He added that:

‘there would also have to be a process in place in order to prevent frivolous cases being brought at public expense’.

**2.9.18** The other person in favour of this funding, who happened to be a former Inspector of Taxes, suggested that:

‘the payment of means tested allowances could be overseen by an independent agency, similar to the Legal Services Agency that handles Legal Aid’.

**2.9.19** Finally, there was a suggestion that the Government might subsidise the costs of an appeal where:

‘the interests of justice demanded it’.

#### *Government funding for voluntary organisations*

**2.9.20** Several interviewees thought that it would be a good idea for Government to target specifically towards voluntary organisations, such as Citizens Advice Bureaux (CAB), TaxAid or the Low Incomes Tax Reform Group (LITRG). One respondent said:

‘This would enable them to better assist those appellants who were genuinely unable to meet costs of representation’.

#### *Can unrepresented taxpayers handle their own appeals?*

**2.9.21** Most of the interviewees believed that it was unrealistic for ordinary taxpayers to handle their own appeals adequately. They gave several reasons for this, including:

- many taxpayers found the proceedings intimidating, not least because of the formal setting of most hearings;
- not all Chairmen were sympathetic;
- the technical nature of appeals tended to confuse many participants;
- most appellants would not know what were the salient points to bring out, thereby wasting time and costs.

#### *Some ideas for the better preparation of appeals*

**2.9.22** The interviewees made numerous suggestions on this topic, including:

- clear guidance on the appeal processes and the hearing should be enclosed with the notification of hearing;
- this guidance should be independent guidance, ie not provided by HMRC;
- there should be an independent office to review cases before they go to a hearing, as it was unsatisfactory that Commissioners had to assimilate a quantity of papers on the day of hearing;
- an independent review might offer the opportunity to settle appeals by agreement at that stage.

### *Value Added Tax*

**2.9.23** As mentioned above, several interviewees made suggestions in relation to VAT Tribunals and HMRC's use of them. The most common complaint was the high financial costs involved in bringing appeals to the Tribunal. It was said that this was due to:

'HMRC's deliberate practice of always using barristers to represent them. In turn the appellant had to do the same'.

**2.9.24** Another complaint was that, even if an appellant won his case at the tribunal and was entitled to claim costs, he usually managed to recover no more than 80% of his outlay. It was claimed that this was due to prevarication on the part of HMRC, leading to many appellants settling for recovery of less than they had incurred. One respondent said that the position is worse in Scotland, because Tribunal costs are capped at a certain level and are not related to the actual costs incurred. The agent making this point said:

'The Scottish system should be the same as in England and Wales'.

**2.9.25** The third complaint about VAT appeals was linked to the way in which HMRC did not seem to respect the basic rules in regard to the delivery of information and documents to the Tribunal. It was felt that HMRC often ignored the deadlines or simply requested adjournments or withdrew appeals, often at the last minute; thus causing:

'much unnecessary work for appellants and Tribunal staff alike'.

**2.9.26** It was said that Tribunal staff tolerated the behaviour of HMRC but appellants were not treated as leniently. One agent said:

'There must be a review of the way in which HMRC operate in this regard'.

## CONCLUSION AND RECOMMENDATIONS

**3.1.1** As one survey respondent observed, those with limited means to pursue their appeal probably form the majority of appellants. It follows that any proposals for reforming the tax appeal tribunals should be formulated with the interests of that type of appellant principally in mind.

**3.1.2** The practical needs of such appellants seem to be:

- simple and direct access to the appeal process;
- clear guidance;
- good, local case management facilities;
- simple, inexpensive and final determination of the issues;
- the correct answer reached at the first stage in the majority of cases;
- absence of exposure to an adverse costs order.

**3.1.3** The barriers in the present system seem to be:

- the perception that the tax appeal tribunals are part of the Revenue,
- the complexity of the appeal process, and unfamiliarity of most appellants with the technicalities of the tax system;
- the paucity of clear guidance on how to prepare and conduct a case and absence of any case management facilities, local or otherwise;
- the risk that the Revenue may appeal;
- the risk of a wrong answer at the first stage, heightened by the fact that the General Commissioners lack professional tax qualifications;
- the risk that if the Revenue does appeal the taxpayer may face an adverse costs order from the High Court upwards.

**3.1.4** Accordingly, a fair and accessible system of justice must in our view fulfil the following criteria:

- independence;
- a fair process;
- good guidance and case management;
- finality at first instance wherever possible;
- balance in composition of the first tier;
- protection against an adverse costs order in all but exceptional cases;
- access to affordable or free advice or representation where the means of the appellant and the interests of justice so demand.

**3.1.5** We take each of these points in turn.

### **Independence**

**3.2.1** Responses to the survey show that most members of the public tend to assume the General Commissioners are part of the Revenue, unless and until told by their professional advisers, or the General Commissioners themselves, that they really are independent of government. It is vital that the judicial process should not be tainted by any suggestion that it is biased towards either side.

**3.2.2** To remove this impression, two things are necessary.

**3.2.3 First, as part of the reforms, the name of the tax tribunals must be carefully chosen to reflect the independence of the judicial process. Some interviewees suggested The Independent Tax Appeal Tribunal or something similar.**

**3.2.4 Secondly, the appeal process must be removed from the Government Department making the decisions appealed against.** The route of lodging appeals with the Department should no longer be used; instead application should be made to the Tribunals Service directly by either party. This should help to remove from the appellant's mind the thought that it is the inspector, not the General Commissioners, who is the arbiter in the matter of tax appeals. The sooner this reform is put in place, the sooner the impression of lack of independence can be dispelled.

**3.2.5** To deal with the complaint that 'all too often [the General Commissioners] sided with the Revenue' is not necessarily a matter that should wait for reform. If some tribunals are prepared to acquiesce in delay or disregard of due process by one side, but not the other, action should be taken now under existing powers.

### **A fair process**

**3.3.1** It is notable that most respondents to the questionnaire regarded the fairness of the appeals process as 'good' or 'fair', and helpfulness of tribunal members and staff also scored high. Most interviewees found that the General Commissioners' tribunal, as a first tier of appeal, was working well in their areas; though some found a lack of consistency between different panels.

**3.3.2** In any reform it will be vital to retain those features of the General Commissioners which at present enjoy the support of the users. Their accessibility, 'common sense' approach, local base and knowledge of problems faced by small businesses and individuals were all welcomed by respondents to the survey. **We recommend that the first tier should retain the General Commissioners' existing local base of predominantly (but not exclusively) lay people.**

**3.3.3** Criticisms focused on the perception that the General Commissioners were part of the Revenue (we deal with the matter of independence above) and the lack of technical expertise on the panels (which we discuss below).

**3.3.4** There were also suggestions that those appearing before the Commissioners often felt intimidated by the whole process. To the extent that they are intimidated by the complexity of the law and the appeal processes, there is little that the individual panels of Commissioners can do about that; but the experience could be less forbidding if **panel members were more representative in terms of gender, ethnicity, age and social origin, and we so recommend.**

**3.3.5** We turn now to an increasingly important area of jurisdiction where most appellants are ill-served by the current system.

### *Judicial review function*

**3.3.5** In a legislative environment which relies increasingly on the exercise of discretion by government officials, it is essential that the facility to review such exercise is more easily available to the ordinary appellant than hitherto. The main areas of the tax system where judicial review is appropriate are cases where HMRC fails to implement its own stated and published policies. There have been some notorious cases involving the Tax Credit Office; but any failure to apply an extra-statutory concession, statement of practice or other policy or procedure fairly is susceptible of judicial review.

**3.3.6** At present the only judicial body which can exercise any judicial review jurisdiction is the High Court, which is well beyond the reach of most of the population. Bringing this jurisdiction down to the level at which it is accessible to appellants on limited means (the majority) is essential if effective checks are to be placed on the exercise of departmental discretion. **In short, we recommend that the tribunals (including the first tier) must have power to review decisions based on discretionary exercise of government powers where there is no statutory right of appeal.** We welcome the fact that the draft Tribunals, Courts and Enforcement Bill has recognised this principle to an extent.

**3.3.7** To give that power to tribunals will require primary legislation; but in view of the rapid growth in areas of administrative discretion across government, some form of independent review is urgently needed. **Accordingly, we recommend that, pending primary legislation to implement our recommendation in 3.3.6 above, an independent review body be set up to adjudicate in cases where HMRC fails to follow its own published guidelines, or exercises its discretion unfairly or incorrectly.** It is understood that the Government is in discussion with the Adjudicator with a view to setting up within her office a 'fast track' review procedure for unresolved disputes about the recovery of tax credit overpayments arising from official error. This may provide a suitable framework for the kind of review body we have in mind. Alternatively, an institution like the Internal Review Service (IRS) for the Social Fund might be an appropriate model, with its speed and accessibility to complainants (most cases are dealt with by telephone discussion between the Inspector and the complainant).

### **Guidance and case management.**

**3.4.1** A constant theme of both questionnaire and interviews was the difficulty that lay clients would experience if they had to prepare and conduct their own case without professional guidance. Two kinds of knowledge are required to pursue a successful appeal: knowledge of the tax issues, and knowledge of the procedures. Some would be able to prepare a case with professional guidance, few would be able to represent themselves. Too few lay appellants have the necessary flair at marshalling arguments and expressing their thoughts lucidly in public for self-advocacy to be practicable in the vast majority of cases. Even the eloquent and confident would be stumped by their unfamiliarity with the technical intricacies of a system better known to their opponent. And even tax professionals are not universally familiar with the system of appeals, or comfortable presenting a case. Knowledge of the tax system does not necessarily entail familiarity with the appeal procedures.

**3.4.2** So what course is open to appellants whose own funds do not stretch to professional representation? At present, if they proceed with their appeal at all, they must rely on the good nature of the chairman to guide them through the process.

Indeed many General Commissioners are willing to do that. Even so, the appellant is at a disadvantage if the presenting Revenue officer happens to know more about the system than the helpful chairman.

### **3.4.3** There are two remedies, **both of which we recommend**.

1. **First, a good case management service.** At present, appellants – unless they happen to be professionally represented – receive no instruction about how to prepare a case. In addition, the first time the General Commissioners themselves see the papers is generally on the day of the hearing.

A case management stage will enable the appellant to prepare their case, with help in identifying the kind of appeal (whether about penalties, computation of business profits, refusal to allow exemption, etc), help in formulating the grounds of appeal, help in understanding the preparatory work required of them, and help in obtaining from HMRC information which might be relevant to the appeal.

**We recommend also that the whole process should be subject to the overall supervision of a tribunal member, to the extent that the papers in each case would cross the desk of a panel member at least once.** Such a process could provide an opportunity for resolving the issues and determining the appeal with the consent of the parties before it gets as far as a hearing. Even where the appeal does proceed to a hearing, the case management stage will have been useful in providing directions for the conduct of the appeal.

2. **Secondly, the facility for the appellant to opt for a paper hearing.** Preliminary paperwork would go hand in hand with the case management process; and where an appellant was uncomfortable with presenting a case orally in public, or daunted by the likely presence of the Revenue officer with whom they were in dispute, or even prevented by work commitments or the cost of travel from attending a hearing, it would be open to them to opt for a paper-only hearing. This would also enable an adviser to assist the appellant at a lower cost than if representation were required.

**3.4.4** Ideally, the requirement that the process should be subject to the overall supervision of the Tribunal judiciary should also be extended to cases which are settled with HMRC under section 54 of the Taxes Management Act 1970, while allowing for the immense volume of such cases. The section 54 procedure is a very useful one in tax appeals, but an unrepresented appellant may risk being pressured by HMRC into accepting a settlement which might not be in their best interests. Some independent oversight would minimise that risk. But we are aware of the work currently being done on the whole area of appeals management.

**3.4.5** Finally, on paper hearings, we understand that in the social security appeals system the success rate for appellants who submit paper appeals is considerably lower than for those who present themselves at a hearing. This tendency can however be checked by calling for expert representation where the papers reveal matters of law. The availability of free representation within the tax appeals structure is less certain, and will depend partly upon the outcome of our recommendations at 3.9 below. But while paper hearings are clearly sometimes advantageous (indeed necessary in some social security appeals where the appellant is disabled and unable to attend a hearing), the trend towards a less favourable outcome for the appellant has to be borne in mind. **We recommend that at any stage in the**

process the tribunal member responsible for the case can suggest to the appellant a switch from a paper to an oral hearing, and that the appellant should be able to ask for one.

### **Finality and certainty at first tier**

**3.5.1** To many respondents, the risk that the Revenue might appeal, and the cost implications of that, proved a disincentive to most would-be appellants even to start on the appeal process. If certainty and finality can be achieved at the first tier, that disincentive will be removed.

**3.5.2** For that to happen, onward appeal rights need to be restricted, and any restriction must in fairness affect both parties equally. A sensible way forward, and one which is proposed in the draft Tribunals, Courts and Enforcement Bill, might be for appeals from the first tier to be on a point of law only (as now), and with permission. Some provision as to costs could be made as a condition of granting permission; for example, the Revenue might be permitted to appeal but only if they undertook not to seek an order for costs against the appellant except in exceptional, defined cases. This would be wholly appropriate where the purpose of the onward appeal was to establish a point of general interest; in no case should an individual appellant, whether of modest means or not, be expected to bear the sole cost of clarifying a matter of public policy.

**3.5.3 In short, we recommend that the decision of the first tier should be final in most cases. Further, we welcome the proposal in the draft Tribunals, Courts and Enforcement Bill that onward appeal should be available only on a point of law and with permission. Where permission is granted to HMRC to appeal, that Department's ability to seek costs from the appellant should be restricted to exceptional, defined cases.**

**3.5.4** Imposing such restrictions on onward appeals would have to be balanced by changes in the composition of the first tier to ensure that more correct decisions were reached first time. We say more about this below.

### **Composition of first tier**

**3.6.1** As mentioned above, we think it important that those features of the present system of General Commissioners that are widely welcomed are not jettisoned in the zeal to reform. **The first tier should continue to be locally based and to be composed mainly of local people without necessarily a legal, tax or accountancy qualification.**

**3.6.2** But **we recommend that at least one panel member should always have a relevant technical – ie tax legal or accountancy – qualification and experience.** The purpose of this is twofold. First, it will reduce the extent to which General Commissioners are seen to rely on the presenting Revenue officer for their understanding of tax matters, thereby making first instance decisions more independent. Secondly, it will facilitate a regime where the correct decision was reached at first instance, thereby enabling finality to be achieved at that stage in most cases. **The 'expert' member should either chair the panel, or at least be sufficiently senior for their opinion to carry weight with the other members of the panel.**

## Costs

**3.7.1** At present, an appellant who wins before the General Commissioners cannot be made to pay the costs of the other side, unless HMRC appeals successfully against the General Commissioners' decision.

**3.7.2** Since exposure to an adverse costs order is seen as a major deterrent to appellants with limited means, it is desirable that there should be **a costs-free environment at first instance, and a limited right of onward appeal combined with restrictions over awards of costs beyond the first instance.** This means that if HMRC wins at first instance, the appellant cannot be required to pay its costs; but equally the appellant is precluded from recovering any costs from HMRC in the event of its victory.

**3.7.3** If HMRC, having been given leave to do so, successfully challenges the decision of the first tier tribunal, it should only recover costs in rare cases if the conduct of the appellant merits it (eg if the appellant has behaved in a 'frivolous or vexatious' manner). **Similarly, the tribunal, at least at second tier, should retain their present right to make orders for costs against HMRC if it pursues an appeal 'wholly unreasonably'** (see *Robertson v IRC* (2002) SpC 309).

**3.7.4** Appellants on low incomes should be offered assistance with travel and other out-of-pocket expenses associated with attending the hearing, as happens with benefits appeals.

## Disabled access

**3.8** All premises used for hearings should fulfil the access requirements of the Disability Discrimination Acts. In addition, provision should be made for accommodating appellants with special needs, by provision of appropriate aids, or assistance with any additional costs of travel incurred by a carer or other helper accompanying the appellant.

## Support for advice and representation

**3.9.1** Most lay people, of whatever means, require professional assistance to present complex cases (and tax cases invariably are complex); furthermore, good presentation in the early stages will save costs further up the line.

**3.9.2** Without some form of assistance, the unrepresented appellant is faced with unfamiliar surroundings, forced to deal with a complex and technical system in which their opponent is well versed, often hampered by their own lack of skill in presenting a case. At stake may be forfeiture of a sum of money (by way of a penalty) they can ill afford, the survival of their business or livelihood, or entitlement to a tax credit they can barely manage without.

**3.9.3** The need for representation may be reduced if the case management process enables a proportion of cases to be settled so that they do not proceed to a hearing. Funding for advice on preparation will save money at the hearing stage.

**3.9.4** But what form of assistance should there be, and who will provide it? If, as responses to our survey appear to suggest, the usual voluntary sector bodies to whom one would turn for advice – such as Citizens Advice Bureaux – are not technically competent enough in tax matters, the role must be filled by tax professionals acting pro bono. Responses to the survey show that a good proportion

of tax professionals do such work at least occasionally, and that proportion is likely to increase if a formal structure is provided within which they can operate. While we would not recommend the use of public funds to pay fees to tax professionals for carrying out such work, a modest outlay would provide the necessary scheme, premises, equipment and administrative support to enable those who wished to participate.

**3.9.5** Indeed, the pre-hearing stages outlined at 3.4 above – or the early stages of a paper-based procedure – would provide a suitable framework in which an independent adviser could play a role. The involvement of a professional adviser at the opening stages of a case management process, or even as part of the section 54 settlement procedure, would have the following advantages:

- it would give the appellant access to similar expertise to the inspector in both tax and the appeal processes;
- it would provide an early opportunity to resolve issues which might be creating deadlock between the parties;
- it might even facilitate a resolution of the dispute before any of the major costs and expenses involved in a full-blown appeal had been incurred;
- it would reassure any tribunal member supervising the case that the appellant's interests were being taken care of.

**3.9.6 We recommend that consideration be given to incorporating in the early preparatory stages of an appeal an opportunity for an unrepresented appellant to receive independent professional advice on the merits of their appeal.** If a panel of local professionals were prepared to volunteer their time and skills in each area, and the local tribunal service were able to support their efforts by arranging interview premises and providing administrative or secretarial help, a modest outlay could secure what would amount to an effective early dispute resolution service before costs had a chance to mount up.

### **Measures that can be taken in the interim**

**3.10** The survey has shown that certain measures can usefully be taken now, under existing powers, to improve the functioning of the tax tribunals.

1. The survey revealed a tendency of tax and VAT tribunals to allow the Revenue more flexibility over deadlines and other rules than is normally given to the appellant. **We recommend that the Senior President of the tribunals issue directions reminding tribunal members of the necessity to be even-handed in administering processes and not to be seen to favour one party** in such matters as the granting of adjournments (see 3.2.5).
2. Some interviewees complained that HMRC in some of their correspondence seemed to portray appearing before the General Commissioners as a threat to intimidate appellants into settling appeals prematurely (para 2.9.8). Those interviewees felt that this practice should be stopped, no matter what other reforms were put in place. **We recommend that HMRC should be encouraged to review their standard correspondence to present the Commissioners' hearing in a more balanced and less threatening light.**
3. To improve the perception of the tax tribunals as independent of Government, appeals should start being lodged with the Tribunals Service rather than the Revenue as soon as practicable. **Until that can be done, we recommend**

**that at the outset of their appeal, appellants should be sent information about the appellate body and its contact details so that they do not feel constrained to rely on HMRC to progress their appeal. Their attention could also be drawn more towards existing guidance. Such information should come from the appellate body itself and not from HMRC.** It should be made clear that even though the appeal is sent to HMRC in the first instance, the ultimate decision rests not with the inspector of taxes but with the appellate body, and the appellant should not hesitate to contact that body if they are unable to resolve matters with HMRC. It need not be left to HMRC to make initial contact with the Commissioners.

4. The advantages of some form of case management prior to the hearing are set out at 3.4 above. In particular, a basic agreed statement of facts and some evidence from both sides in advance of the hearing is desirable. Until that can be implemented, there are clearly benefits in the Commissioners having sight of the papers before the day of the hearing itself, and **we recommend that the Commissioners be sent the papers of both sides in the appeal as soon as they are available.** That will at least give the Commissioners the opportunity to decide on which issues they wish to pursue at a full hearing, and which they feel could usefully be dealt with in advance of a full hearing, whether by way of directions to the parties or a preliminary hearing.
5. An early sight of the papers would also give the Commissioners an opportunity to identify any gaps in the appellant's presentation of the facts or the issues and to question the appellant on them in advance of a full hearing. **Guidance to Commissioners in the interim could encourage them to adopt a more inquisitorial approach in such cases, following the practice of the Social Security Commissioners.**
6. We are aware that there is an embargo on recruitment and that not all General Commissioners will be appointed to the new tribunal. That aside, to encourage diversity, and to enable panels of General Commissioners to seem less remote from many unrepresented appellants, **the selection process should start now to encourage applications from people of both genders and of different ages and social and ethnic origins.**
7. As we recommend in 3.3.6 above, pending primary legislation to extend judicial review-type jurisdiction to tribunal level, **an independent review body be set up to adjudicate in cases where HMRC fails to follow its own published guidelines, or exercises its discretion unfairly or incorrectly.**

## APPENDIX 1

**Bibliography of LITRG responses to the consultation on reform of the tax appeal tribunals (available at <http://www.litrg.org.uk/reports/submissions.cfm?id=79> )**

- **Costs and expenses in first tier tax tribunals** (10-11-2005)
- **The use and value of oral hearings in the administrative justice system - LITRG response** (05-10-2005)
- **Transforming public services : complaints, redress & tribunals** (22-09-2004)
- **LITRG response to the DCA Consultation Paper on Statutory Appeals & Statutory Review** (02-06-2004)
- **Tribunals for users** (15-01-2004) - **Report of the Review of Tribunals**  
LITRG's response to the consultation paper about the Report of the Review of Tribunals by Sir Andrew Leggatt

## APPENDIX 2

### The results of the CIOT members' on-line survey

1) Which area of advice do you specialise in?

	Percentage	Responses
Personal	50.0	47
Corporate	28.7	27
VAT	12.8	12
Other	8.5	8

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2) Are you in:

	Percentage	Responses
Practice	89.2	58
Industry	7.7	5
Government	0.0	0
Voluntary Sector	1.5	1
Other	1.5	1
<b>Total responses:</b>		<b>65</b>

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3) Are you in practice?

	Percentage	Responses
As a sole practitioner	30.5	18
As a partner in a 2-5 partner firm	13.6	8
As a partner in a 6 or more partner firm	13.6	8
As an employee	42.4	25
<b>Total responses:</b>		<b>59</b>

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4) How would you describe your contact with the tax appeal process?

	Percentage	Responses
Frequent	28.1	18

Occasional	23.4	15
Rare	48.4	31
<b>Total responses:</b>		<b>64</b>

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5) Of which appellate body do you have most experience?

	Percentage	Responses
General Commissioners	75.8	47
Special Commissioners	8.1	5
VAT Tribunals	16.1	10

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6) If you have experience of both General and Special Commissioners, what considerations influence your choice of appellate body in individual cases?

(all results shown)

- Complexity of evidence, presence of legal issues
- Where the chance of winning is best !
- Technical considerations, costs and representation
- The degree of complexity and the size of the case
- I will not take a case to the Special Commissioners without legal representation
- Cost of going to the Special Commissioners puts people off to an extent but most of the cases I deal with are more factual than technical and so the GC is probably a more suitable forum
- If it is a technical matter I now take my appeal to the Specials - or at least start the ball rolling in that direction. Where agreement is not reached beforehand cost constraints, or rather the threat of unlimited costs and further appeals from the Revenue, often dictates that my client concedes before getting to the Commissioners.
- The appropriateness of the case relevant to the tribunal
- Revenue wanted Specials
- Generals are comparatively less technical and can take a more reasonable approach
- Tends to be cost puts people off the Special Commissioners
- Degree of legal issues/complexity
- Whether a point of law or fact is involved.
- Technicality of the issues arising
- Cost
- GC are normally selected if you want a decision that is directly related to local knowledge such as the value of a local property or the performance of a local business. I find that the GC, in my experience, tend to favour the IR whereas I have always come away from the SC with the feeling that you have had a fair hearing.

7) Do you advise less well-off clients pro bono, or for a low fee?

	Percentage	Responses
Regularly	5.0	3
Occasionally	38.3	23
Rarely	30.0	18
Never	26.7	16
	<b>Total responses:</b>	<b>60</b>

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8) In your experience, would you say that people are generally aware of their rights to appeal against decisions of the revenue authorities?

9) Are people generally aware of the legal basis of their appeal, or are they inclined simply to appeal anything which seems to them unfair?

(all results shown)

- **No - people seem to fall into two camps - those who accept what the Revenue say and those that reject what they perceive to be unfair.**
- **Little or no legal awareness. People do not understand the archaic language and procedures.**
- **Unfairness**
- **Amongst the larger taxpayers it is understood that there are only certain grounds for VAT appeals.**
- **They take our advice**
- **It is rare for a taxpayer to raise the question of appealing**
- **Many will try to pursue anything which they perceive to be unfair, irrespective if there is a right of appeal available**
- **They base their appeal on their perceptions of fairness and generally do not understand tax law**
- **appeal against unfair decisions**
- **Unaware**
- **Not inclined to appeal generally**
- **most people are unaware of the distinction between maladministration and technical issues**
- **No - most taxpayers do not refer to the legislation. Many might just have a gut reaction that the decision is incorrect - some have access to Public Notices.**
- **They have no legal understanding**
- **They are not generally aware of the legal basis of an appeal. They have a gut feeling that they are being unfairly or wrongly treated.**
- **The law can be complex. I would say that many are not aware of the legal technicalities involved.**
- **In my view appellants are not generally aware of the legal basis of their appeal**
- **If represented they will be made aware of the legal basis of their appeal**
- **Some people do go to the Commissioners because they believe that the system is intrinsically unfair, but most are genuinely frustrated by the Revenue (ie feel that their case is not being adequately heard) or believe that they have a genuine technical argument**
- **not aware and yes appeal if seems unfair**
- **It is common for people to ask "can't we appeal against this?", but very rarely to they know the legal basis or their actual rights of appeal.**

- Appeal in principle where disagree with IR view, but once costs position is explained usually accept the tax charge rather than ongoing fees, and risk of an award of costs or further appeal to the courts.
- from the tribunal reports it seems that they are generally more inclined to appeal decisions they consider to be unfair. larger clients are more interested in the amount of money at stake though rather than the legal correctness of their arguments
- Most likely the former
- Most will have taken advice before it gets to the appeal stage, so wouldn't simply appeal anything.
- I have experienced both. Non financial clients base their opinions on what is fair.
- Taxpayers rarely appeal as they are unaware of their rights of appeal and are nervous of the process and potential costs, aggravation
- Unsure
- unaware of legal basis
- The latter - it's seems unfair.
- Aware of basis
- unfair
- Generally take the advice of advisers.
- Tend to think that an appeal is possible if something strikes them as unfair or unreasonable, or they only failed a small bit of the statutory test.
- some appeal some will not because of cost and prefer to negotiate
- not aware
- not aware
- Appeal only on advice but find it hard to accept that was is "unfair" sometimes cannot be appealed
- The latter
- Generally aware of legal issues. They don't just appeal for the sake of it due to time and cost constraints.
- not aware of legal basis of the appeal as they take our advice on what is appropriate to appeal
- HNWIs very rarely appeal unless there is a strong legal basis.
- GENERALLY NOT AWARE
- Not aware
- The latter
- Any decision to proceed to litigation by a corporate taxpayer is made after very careful consideration of all of the risks and costs of litigation and, in my experience, frivolous cases never get taken
- Unless prompted, clients generally ASSUME that the appeals process is too complex or expensive.
- Not aware -my experience with the low income groups suggest that they think the IR will always be correct
- Agreed appeals by individuals are based on the individuals view of fairness and not on any legal basis.

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10) Where there is no statutory right of appeal, are people aware of what alternative remedies there may be (e.g. internal complaints process, Adjudicator/Ombudsman, judicial review)?

(all results shown)

- Not initially but the Revenue does itself draw attention to some of these in the literature it sends out during an enquiry.

- No - it is difficult to get information on these matters
- The choices are not obvious and the distinction and existence between remedies is only really understood by the well informed
- Again, amongst the larger taxpayers the alternative remedy to a VAT appeal is understood.
- Yes, if we advise them.
- No
- Normally only when I tell them
- They are aware that such a procedure must exist, without knowledge of how it works
- no
- No
- No
- generally, no
- No
- They'd have no idea
- Generally they are unaware. Those taxpayers that become aware of an alternative are bemused with the complexity of the procedures particularly from the procedure of going through the Inland Revenue processes. Even the Adjudicator process is very time consuming. It is not unusual for time taken from the start of making an a complaint through the internal process to the Adjudicator's decision to take more than a year. The judicial review in too expensive for blood of usual taxpayer.
- For small and mid-tier taxpayers, no.
- In my view no - unless the documentation that is issued by the Revenue makes reference to the alternative remedies
- In the main, no
- Yes although most people I have dealings with are fairly cynical about such bodies ie that they will inevitably be biased towards the Revenue
- no
- no
- Very few people are aware of this.
- Some clients can seek further recourse, but not prepared to pay the fee.
- generally not
- No
- Rarely
- Not usually.
- Not really
- Possibly
- no
- No
- Some are but not many
- no
- people have little knowledge in this area. They believe there be some method but do not know what.
- Mostly thy are aware that one can appeal against departmental decisions.
- Ombudsman fairly well known now. Judicial review probably little known especially for SMEs
- not specifically - may ask our advice as to procedure
- not frequently
- Internal complaints yes but not much more
- Not unless we point out to them
- HNWIs are aware of these in the broadest terms, but rarely use them.
- I DOUBT IT

- No
- Not very often
- The alternative remedies are not trusted nor are they regarded as effective. Judicial review is too long-winded and expensive, and internal complaints processes are considered to be biased.
- Varies
- Again, very limited indeed
- I am not sure if the average person is aware of alternative remedies. Some clients would be but these are very rare in my experience.

11) Do people have a grasp of how to appeal, and how comfortable are they with the appeal processes and procedures?

(all results shown)

- No, not without guidance.
- No
- As a Barrister people com to us because they are not
- Yes, in VAT.
- We advise them. Otherwise they would not do it
- Even most accountants are not comfortable with them
- Most have a grasp of how to appeal. They often find the process long winded and stressful
- Most are not aware and have no inclination to follow the procedures without professional help. Only the more legally sophisticated (possibly litigious) taxpayer will take on the procedures personally
- they generally don't understand the appeal process and seem reluctant to enter into it
- No, if agent appeals they find the process difficult
- No
- Most taxpayers have no idea of the appeal procedures
- No. People are not aware of the importance of getting the paperwork right and adhering to the time limits.
- It generally is an appalling process and they'd have no idea of what to do. It would be viewed as court trial to them.
- They are very unsure as to how to appeal and the Inland Revenue guidance is unclear to many taxpayers. The unrepresented taxpayer is given little guidance as to how to prepare a case or presentation.
- Small and mid-tier taxpayers are not comfortable with the processes
- No - not in my view, they don't have a grasp; nor are they comfortable with the procedures. I say this in the knowledge of having sat as a General Commissioner for many years
- If represented they are generally comfortable with the process
- Most people have little understanding of how the appeal process will work (including accountants in my view) and will be extremely nervous about attending a Commissioners meeting
- no
- in general people have no idea of the appeal process.
- Clients prefer to leave this to their Agent, as they don't understand the process.
- Clients need to be well briefed before appearing before the Commissioners - that in itself takes time and money.
- yes
- No

- Not really aware nor comfortable until they are told.
- No they do not, they generally leave it to us.
- Very unclear and the Inland Revenue particularly often bully taxpayers and frighten taxpayer with their aggressive approach
- Unsure
- no
- Broadly of right to appeal but concerned about costs of doing so - both on terms of time and money.
- Not comfortable with process - they want professional assistance
- no
- Not really, rely on us to advise them.
- Procedure seems daunting to most
- No
- no - very poor
- no
- Know how to complain rather than appeal
- Not very comfortable
- No they expect us to deal with this
- HNWIs know to contact their lawyer/accountant if they want to appeal. But they find the appeal process cumbersome, costly and therefore rarely used.
- REVENUE LEAFLETS AND GUIDANCE ARE USEFUL IN THIS RESPECT SO, YES
- No
- No
- In the corporate world, there is sufficient understanding
- Not until briefed. Generally rather uncomfortable
- Not really - I have to say that my experience with unrepresented taxpayers is that the IR have been extremely helpful in explaining the appeal process and procedures
- No the average person would not know how to appeal without guidance

12) To what extent are appellants able (with your guidance) to prepare their case, and to isolate and articulate issues that are central to their appeal?

(all results shown)

- Appellants tend to pass over responsibility for this and it is then up to us to question them to obtain information needed.
- Not at all
- I do not recommend advocacy by lay clients
- N/A
- We do all the work basically.
- That seems to be my job
- Rarely, I normally take on all necessary work as the appellant's agent
- Most taxpayers expect us to prepare the case
- With professional help, this can be done but I don not believe that the man on the Clapham omnibus could do it alone.
- Agent is essential, few clients can prepare or present own case, or understand need to prove case.

- Few able to do this
- Hopefully, with my assistance, I can guide clients, including, where necessary, briefing counsel
- For VAT Tribunal cases it is increasingly important to find case precedents and to refer to the correct parts of the legislation. In our experience it has become much more important to set the case out in a Notice of Appeal as opposed to jotting down the issues on a Trib 1 - as Customs tend to respond in a very formal way. It is costly to get it right.
- They would not be able to prepare their own case.
- Appellants with MY guidance are in a very good position to prepare their case. However, they are unlikely to be very articulate as they have often had little or no experience in talking publicly to strangers.
- With professional advice, taxpayers can deal with the issues to a limited level. But professional representation is now advisable for all but the most simple of cases.
- Quite well with guidance
- With professional guidance appellants can present a good case
- With difficulty - I find that I spend a lot of time just helping appellants to prepare a coherent case - particularly when there is a technical issue (rather than a factual issue) at point. Most appellants want to be able to go in and plead with the Commissioners!
- poorly
- in the main they are guided by advisors and have problems seeing the real issues under enquiry
- Clients on their own - very difficult. Even with our help, it can be difficult to prepare sufficiently.
- Very variable - some clients excellent but that is rare - there are others that I would not suggest be asked to present their case.
- OK
- very well - I can guide them because of my particular experience - I was a General Commissioner for a number of years.
- Never been in the position of having a client do it himself. [Although I have suggested that it would be eminently possible.
- Depends on their background. People in the finance industry are more likely to know.
- The Inland Revenue in the last three years have been making this process increasing difficult.
- With assistance
- Very able
- As a practitioner I find this difficult - I would prefer a written rather than verbal procedure
- The big case I was involved in with the Specials was mainly prepared by the client
- limited
- Not very well, they just tend to think they have been treated unfairly and want justice - they do not think through the actual method or what points are relevant and what is not.
- It is difficult to articulate a legal case given the level of complexity of the tax system
- Most require specialist guidance if they are to succeed - just look at the cases involving self representation
- with my guidance good! without poor!
- not very well
- Tend to do it for them.
- We usually prepare the case after getting relevant info from client
- Rarely.
- QUITE WELL
- Only with guidance
- They need us to do it
- Again, in the corporate world, there is enough understanding
- Hardly at all by themselves. Rely on us to isolate the issues and prepare the case.
- To a limited extent -they have a problem in understanding what is acceptable evidence

- Fairly well.

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13) Do people generally perceive the appeal commissioners as independent to the Inland Revenue? How does their perception affect their sense of whether they have had a fair hearing?

(all results shown)

- Not really.

- Independence is generally accepted

- Very difficult to judge. Losers often don't think they have been fairly treated. Less sophisticated clients have more difficulty in viewing the appeal commissioners as independent

- N/A

- Yes, after explanation. Otherwise there is normal cynicism.

- I think they see them as independent (up to a point) : generally I think they feel that they've had a fair hearing (but that's sinners !)

- Taxpayers believe the Commissioners to be independent, but the process is still daunting

- At the hearing everyone is familiar with the process apart from the tax payer. this leads to the feeling that it is a cosy club to which the taxpayer is not invited.

- NO, in practice most are very independent.

- No, assumption that a higher level of the IR

- No. there is still too much of a perception of a cosy relationship between the General Commissioners and Revenue staff.

- In relation to Customs & Excise, the perception is that neither the internal review procedure nor the tribunal procedure is independent. There appears to have been an increase in the number of cases being referred to higher courts than the Tribunal and many professionals see the Tribunal as a step in an appeal instead of the end result. Many tax payers decide to pay the tax rather than to incur the seemingly limitless costs of appeal. Even if they are successful they are likely to receive more than 70% of their actual costs back from Customs. Customs also seem to have the attitude that they have deeper pockets than the tax payer and take all sorts of cases to a tribunal which should not go that far. There seems to be a stage in the process missing - what is needed is a common sense review (by the sols office?) before a case goes all the way.

- The misconception is that the Commissioners ARE the Inland Revenue, regardless of whether its explained to them or not.

- At first, appellants believe that the commissioners are part of the Inland Revenue. However, before the commissioners they are always told that the commissioners are independent. It is difficult for many of them to believe that this is the position.

- No comment, other than my experience is that the legal technicalities sometimes get in the way of fair justice - a state of affairs regrettably exploited by Customs & Excise

- Yes. I believe they feel less tense during the course of the proceedings

- It is mixed - and my experience is that the Commissioners are mixed too. I have had a couple of occasions where odd unfortunate comments made by the Commissioners have led the client to believe he has been unfairly treated. I think that the Commissioners sometimes forget that they are not dealing with people who are comfortable with the overall process

- no

- perhaps seen as independent, but as enquiring IR officer has much more experience, and therefore better prepared and more able to present a more forceful case than "the man on the street".

- Difficult to say; some consider the Commissioners to be a division of the Revenue, others that they are independent. As our local Commissioners hearings are held in the local court buildings, many consider the Commissioners to be a judicial body.

- No. Assume in the pay of IR and therefore biased.

- no

- No. Once they are advised & their independent role explained the client accepts the procedure.
- I've not lost many (in the VAT Tribunal) but not had any complaints that the Tribunal was not independent.
- They often believe the Commissioners are in favour of the Inland Revenue. More often than not the client does not attend the hearing. They think its fair if they win, unfair if they lose.
- Not really and therefore most people try to avoid taking issues to the commissioners or tribunal unless it is a big point of principle. Commissioners is a last resort and there is concern in practice that Tribunal and Commissioners are often bias against a taxpayer
- Yes
- no; it takes a considerable amount of time to reassure them
- No - they see them as linked; they feeling hearing process is stacked against taxpayer, often because the law is bad and not fair.
- No - they feel they are pro Revenue
- no
- Most believe it is load towards the Revenue.
- Ask them. I have no feedback.
- It is an education process
- The commissioners try very hard to explain that they are independent but I suspect the perception remains that we are not.
- no
- No they see them as part of the process. If they win they think they've had a fair hearing!
- Mixed perception. felt to be more unfair if not perceived as independent
- Yes
- YES
- No, until I enlighten them
- Yes
- There is trust in the Special Comms, slight scepticism in the General Comms and downright distrust and an expectation of Customs bias in the VAT Tribunals
- After the hearing, yes. Before hand, not certain.
- I'm afraid they don't see the GC as being independent of the IR - I've seen correspondence where the IR have described the GC as the Inland Revenue Commissioners!
- In my opinion people would not generally perceive commissioners as independent to the Inland Revenue

14) What has been your/your clients' experience of the appeal process with regard to:

	1 Excellent	2 Good	3 Fair	4 Poor	Responses	Average Score
Speed in getting a hearing	0 (0.00%)	<b>15</b> (35.71%)	14 (33.33%)	13 (30.95%)	42	2.95 / 4 (73.75%)
Help with the preliminary stages of an appeal	1 (2.44%)	8 (19.51%)	15 (36.59%)	<b>17</b> (41.46%)	41	3.17 / 4 (79.25%)
Proximity of hearing venue	9 (21.43%)	15 (35.71%)	<b>16</b> (38.10%)	2 (4.76%)	42	2.26 / 4 (56.50%)
Formality/Informality of hearing	3 (7.32%)	<b>17</b> (41.46%)	16 (39.02%)	5 (12.20%)	41	2.56 / 4 (64.00%)

Helpfulness of tribunal members and staff	5 (12.20%)	<b>18</b> <b>(43.90%)</b>	16 (39.02%)	2 (4.88%)	41	2.37 / 4 (59.25%)
Fairness of processes	6 (14.29%)	<b>15</b> <b>(35.71%)</b>	<b>15</b> <b>(35.71%)</b>	6 (14.29%)	42	2.50 / 4 (62.50%)
						<b>2.64 / 4</b> <b>(66.00%)</b>

15) Please add additional comments to question 14 here

(all results shown)

- The above appears to exclude the VAT Tribunals, a subject which we have much to comment upon.
- This varies a lot between bodies of Commissioners, depending on the attitude of the clerk, for instance
- The fact that Customs' solicitors often do not look at cases in depth until shortly before a hearing is very unfair. Customs sometimes concede on the day of the hearing, and this could have taken place months before. Their delays add to appellants' stress and shows that Customs do not take their concerns seriously.
- The process of appealing is made very difficult by the Inland Revenue, they request more information, sometimes not available to the taxpayer, often duplicating requests, on the pretext of preparing the case. This is the major barrier - cost. More appeals would be heard if the process was less like a court. eg a paper review by an independent commissioner or a preliminary hearing to determine what evidence the Commissioners need. At present the Revenue manage the process and put barriers in the way of the appellant.
- Appeal hearings are supposed to be quasi-judicial but the chairman and the clerk in my experience do nothing to support this when the Revenue choose to overlook normal court procedures.
- I do not have experience of VAT tribunals
- To date I have not recommended any clients use the appeals system. In most cases the risks if the case is lost outweigh the possible gains.
- On a current case which has just been listed, we have submitted available dates 3 times over the period of a year. The Tribunal booked a PTR for a date we could not make and when we called to query they said that the "unavailable" dates we had submitted were for a full hearing and not a PTR - hence the fact it was listed.

There appears to be a very high turnover of staff at the Tribunal Centre and there is a lack of continuity which seems to add to delays and problems. In addition, I have recently experienced difficulties with people who do not speak English and who clearly do not understand the process. The Tribunal used to be helpful and now it seems to act more like a call centre.

- is it not guilty until you prove you're "innocent"?
- Many commissioners are former or current serving magistrates and they often have little sympathy for the taxpayer who is unarticulate or does not present a concise case. The impression that they give is to err on the side of the Inland Revenue. The preliminary correspondence give the impression that it is government inspired. Current documentation headed "DCA" Department of Constitutional Affairs is very off putting to the average taxpayer. Proximity of the hearing venue is very important.
- There is a perception that the Tribunal system does bend over backwards to help Customs by extending deadlines and allowing delays and poor preparation by them.

This survey can also only deal with those cases that do get to Tribunal. It does not deal with the vast number of cases that are never appealed because Customs refuse to give an appealable decision or apply for the case to be struck-out on jurisdictional issues, or simply because the taxpayer is bullied out of appealing by threats of Customs seeking costs if they win. Smaller taxpayers in particular suffer because of this.

As a final comment, although this survey was appearing to ask about experiences of the VAT Tribunals and Customs & Excise, the questions do seem geared towards the Inland Revenue and the Special & General Commissioners. If experiences of the VAT appeals process and Customs & Excise are wanted part of this survey, I would be pleased to add my views.

- It is my experience that there is very little help given by any of the officials involved in appeal hearings and if you cannot access help personally then you are left to fend for yourselves.
  - One current case waiting for a date before Specials - but client will probably withdraw appeal beforehand. No guidance yet from IR as to when it may be held or information for client on procedures.
  - Worth a complaint about the time it takes to get a Hearing - especially if you want it somewhere other than London.
  - The speed of the hearing depends on the Inland Revenue and whether they wish to list it or not, in applications that are addressed to them. The client is rarely if ever asked where they would like the hearing, or if the proposed time is convenient.
- I know of some cases where the Inspector has behaved atrociously at the Commissioners and I have some quite strong views on this. Please email if you require information.
- The process is only for the experienced as getting the information to deal with an appeal properly is often difficult
  - very little experience of going to appeal but people find the whole process off putting and they are disinclined to pursue their case
  - Have not taken any recent cases (self-assessment) to hearing as most clients want to settle previous to a hearing for various reason, e.g. cost, not a fair hearing, IR will keep going if they lose and above Generals it is too expensive for tax at stake etc.
  - Attendance as adviser is rare but in two contentious case both settled beforehand I found the Revenue's approach fair balanced and helpful, notwithstanding we disagreed!
  - Many recent appeals have been sub contractors who in general do not view the commissioner's as being "in touch" with them.
  - Very limited experience of the answers to question 14 - apart from speed of getting a hearing. Sample is unrepresentative (only one or two cases)
  - Generally, the Inland Revenue are obstructive with a contested appeal and will refuse to agree a statement of facts or the issue for decision.

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16) In your experience do most people understand

	1 Yes	2 No	Responses	Average Score
The technical basis of the Revenue's decision in their case	9 (20.93%)	34 (79.07%)	43	1.79 / 2 (89.50%)
The right to appeal against it	24 (55.81%)	19 (44.19%)	43	1.44 / 2 (72.00%)
				1.62 / 2 (81.00%)

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17) Do appellants understand the decision once handed down? In your experience how often do General Commissioners give reasons for their decisions in writing?

(all results shown)

- No. Only on request.
- This is entirely dependent on the sophistication of the client
- N/A

- Not had it in writing, ever.
- Rarely. I have not known Commissioners to give reasons in writing unless they are asked for a stated case
- Most decisions have been evidenced in writing
- When needed
- N/A
- No  
very rarely
- Yes - for VAT Tribunals
- Every time
- Taxpayers often do not understand whether they have won or lost. It is not often for the Commissioners to give their decisions in writing.
- No comment
- Usually the principal; is understood but not necessarily the detail. Not often
- In my experience the GC will only give decisions in writing if a stated case is requested and then only if the appellant can give a technical reason why they are appealing. This is hugely problematic and I think that all decisions should be backed up in writing. This enables the appellant to reflect on the decision and discuss it with the advisor
- not enough experience to answer.
- Depends on the efficiency of individual clerks for their ward.
- decisions are rarely given in sufficient detail to adequately appeal
- No. They rarely give/confirm their decisions in writing
- No experience of General Commissioners. [Why has this and the last question veered off to the revenue?!]
- They understand the decision. Reasons are rarely given in writing. I have never seen one. (Generals)
- No
- Yes
- GC rarely do so and the taxpayers feel aggrieved
- Yes, normally explained
- Yes.
- I believe that this is relatively rare.
- Not understand, Only give reasons when asked
- Usually give reasons.
- Yes with assistance from ourselves
- n/a - don't know
- YES
- Yes, with my help.
- Yes.  
Mostly
- Yes, previously written reasons were not given. Not taken a case since the guidance was changed and now written reasons should be given.
- Not all the time - In 30 years, I have seen 1 case where the GC gave written reasons for their decisions and they were very poor and skirted around the main points.
- Yes

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18) In addition to advising on appeals do you offer representation at tribunals

	Percentage	Responses
Yes	60.5%	26
No	39.5%	17
<b>Total responses:</b>		<b>43</b>

19) Does having access to good affordable advice affect people's decision whether or not to appeal?

	Percentage	Responses
Yes	86.0%	37
No	14.0%	6
<b>Total responses:</b>		<b>43</b>

20) To what extent is the cost of advice a factor?

(all results shown)

- **Very large. People feel the Revenue have unlimited resources. Revenue often use the threat of appealing a loss to a higher court with the resultant costs implication if the client loses in the higher court as a way to get a result.**
- **This is probably the single most important factor in low value cases. Unrepresented appellants have the most difficulty and the cost makes appeals unviable for small amounts. The irrecoverability of costs for successful appellants is also an important deciding factor in low value cases.**
- **Significant.**
- **Major cost, especially at VAT Tribunal in Scotland where costs are not fully recovered even if we win. Please call or email me for more commentary.**
- **Considerably - it may easily exceed the tax at stake**
- **Often more an issue to advisors than potential appellants. Clients will often want to pursue anything which they perceive to be unfair, when in reality it is simply not cost effective to do so.**
- **Very important. there have been a number of cases where clients have decided to accept the Revenue's decisions rather than appeal because of cost and the fact that they simply want to get on with their lives having been investigated for months/years i.e the Revenue wear them down!**
- **Major factor in proceeding**
- **Paramount**
- **very much so. It is sometimes alleviated by fee insurance in investigation cases.**
- **To a very considerable extent.**
- **AS mentioned before - some people believe it is easier and cheaper to pay the tax than to appeal. We do have some clients who will take a case on principal but we also have many who simply cannot afford to go through the appeals process.**
- **Costs would mean that cases are no defended at all, regardless of the strength of the case.**
- **Very important.**
- **An enormous factor**
- **Considerable for those appellants on limited means ; i.e. the majority of taxpayers**
- **Very important**
- **not enough experience to answer.**

- Can be very relevant; to a lot of our Clients, a relatively small amount of tax is worth appealing against, but the costs of doing so can be prohibitive.
- Major factor - need to weigh up costs of arguing principles against extent of liability at stake - IR have no such considerations and until Inspectors introduce time sheets and have to account for value of that time, the whole process will be heavily weighted against the taxpayer.
- comparison to potential benefits in deciding whether or not to appeal
- It depends on the size of the tax in dispute
- A significant factor
- Whether the cost outweighs the tax at risk, or for those wealthy few the principle of the matter is important.
- A large factor
- Big factor
- Very much so
- I have to advise clients that the cost of an appeal may be high so it's better to agree beforehand. However often the threat of an appeal is enough to encourage the Inspector to settle on a compromise (or gives in if the numbers are low) basis. This is really win-win for clients - lower costs and reasonable outcome.
- Cost is always a factor
- significant
- A great factor - balance of tax due v's costs if IR take to or above Specials.
- Cost is a significant factor. Many arguments concern a relatively small amount. The Revenue are more and more adopting an intransigent attitude and challenging the taxpayer to appeal.
- Major factor
- very big. Generally appeals are avoided as much as possible and the high costs associated with attendance would be a factor in settling issues - as well the Revenue know.
- major in most cases
- It's a balance between cost of representation and cost of accepting Customs decision.
- Most significant factor
- We often advise clients not to proceed to the commissioners as the costs would outweigh the tax at stake especially if tax counsel is involved. Therefore cost is a big factor
- Very large. For HNWIs the issues are usually somewhat technical, so appeal is not worthwhile unless the sums are sufficiently large.
- QUITE A LARGE ONE
- It is always a factor, more so when the tax involved is not great.
- Immense
- A very large factor - we would never proceed on any case at any level unless there was at least £0.5m at stake due to the risk of ongoing litigation costs which can easily equal that amount
- Of course, but we only take a case if a reasonable result cannot be achieved by negotiation.
- A pretty major factor - i.e. what's the point we might as well pay the tax as the IR will win
- Cases are only taken if the cost warrants it. I have taken a case for free in the past on a certain issue.

21) Does the availability of representation at the hearing affect people's decision whether to go ahead with an appeal?

(all results shown)

- No.
- Yes

- No
- Yes
- I don't know about unrepresented taxpayers
- Tend to feel more comfortable with a legal presence arguing their case
- Clearly tax payers are unlikely to proceed if representation is not available. the professions have some blame here as there is a tendency not to wish to appeal at commissioners within the accountancy profession.
- Yes, without advice most unaware of rights
- Possibly
- yes
- The VAT Tribunal is still very formal - and there is a sort of club operating amongst the barriers. One of our clients recently represented himself and was shocked and upset by the formality of the hearing and the fact that he did not understand unwritten rules. I have been to hearings where our barrister has struck a deal with the other side's Counsel in advance of a hearing - the man on the clapham omnibus cannot do this. I think that you need a specialist to represent you at a Tribunal hearing and we would never do it ourselves - we always propose experienced Counsel as this improves the chances of a successful outcome.
- Probably. Often their own professional adviser has little or no experience before the commissioners and has little or no experience in presenting a case.
- Yes
- Yes
- No
- if they feel strongly enough they will represent themselves
- Yes
- Yes
- no
- yes, definitely
- Yes - intimidated by the thought of going it alone.
- Yes, appellants are unlikely to go ahead without representation as they think the Commissioners are not independent.
- Yes
- Yes
- yes
- Don't know.
- Yes
- more likely to appeal if have representation
- To a small extent depending on amount at stake.
- Yes
- For many it would do so
- yes
- Yes - most would be wary to go it alone
- Sometimes
- Yes see above re tax counsel
- No
- YES
- Yes, I cannot imagine most people would do it themselves.
- Yes
- We would always be represented
- No

- Yes, if they have confidence in your ability
- no

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22) How important a factor are the costs of representation as distinct from the costs of advice?

(all results shown)

- Overall costs force most people to agree to get a matter concluded although most people feel the agreed position is not fair.
- It is unrealistic to really separate the two. The cost of dealing with an enquiry, whether it is advice or representation is all part of the process. The only time the two are separated is when the client feels it is no longer possible or worthwhile to press their case. This happens at the appeal stage but also at any stage in the process.
- Significant.
- As at Q20, very important.
- Not distinct with me, so I don't know
- I don't quote for the two separately, so my clients get one fee for pursuing the appeal, which includes the cost of counsel
- Again crucial
- High
- Also extremely important
- Extremely important. We need a system similar to that of the VAT Tribunal where costs can be awarded.
- Very important
- Both are important factors - we believe that the minimum cost of a Tribunal hearing is in the region of £25k - which means its a rich man's sport.
- Very important.
- Very significant
- Not as important but still a significant factor to be taken into account
- Very important - many people will represent themselves (which can be detrimental to their case) because of the cost of getting representation
- very important with reference to the tax at stake
- They tend to go hand in hand.
- Huge.
- not
- Not as important
- Significant - the cost of advice pales into insignificance.
- I don't know. I think probably that for lower income people it would be important.
- Very
- Major
- very important
- Don't know
- Very important
- significant

- Very important. Most clients don't mind paying for good advice but grudge additional cost to be represented.
  - Significant
  - Both are major factors
  - costs of representation are high. preparation, travel, attendance - the most simple case is going to cost several hundreds.
  - total cost is what matters
  - Not sure clients see the difference
  - Highly significant
  - Both equally important
  - Not particularly - all wrapped up in one.
  - OVERALL COST MAIN FACTOR
  - For making an appeal, they must be fundamental, the advice may be, and often is, do not appeal anyway. No
  - Equal
  - As above
  - By that stage, they have to swallow the cost because conceding is too unpalatable.
  - Not important
- 

23) Are you aware of other sources of advice about tax appeals in your area, apart from the tax profession (e.g. Citizens Advice Bureau)? If so, then what is your assessment of these alternative sources of advice?

(all results shown)

- No
- Not for VAT.
- No
- If there are any, they are useless. CABs would not have the first idea
- Aware of them, but would not expect CAB to be particularly experienced. Tend to use in house experience
- No experience of these
- No
- no
- I am aware of TaxAid, which gives a good pro bono service.
- We are aware that other entities such as the Chamber offer advice - often at a very high level. We still believe that chances of success are higher if you involve a specialist - but I would say that wouldn't !!
- I have no experience of these sources, although i know they would exist.
- Usually, CAB are next to useless there is often no one who can properly advise.
- No experience of these
- No
- No
- not enough experience to answer.
- As with most things you get what you pay for. Free advice from say CAB may not be the best. There is a great need for Tax Aid to be rolled out across the country, but who is going to fund it?

- yes, but they serve a different need for those who cannot afford an tax adviser
- Wouldn't recommend anyone other than a tax professional.
- I am aware of Citizens Advice but not others. I am aware that poor advice has been given from non-experts and therefore would not recommend it.
- No
- No
- yes. tax aid is an example...they are very good
- No
- 1 tax counsel in the Birmingham Area probably not sufficient
- often they do not have detailed knowledge
- Only contact with CAB was poor and basically told to go and see a lawyer!!!
- we are aware but would not normally make use of them. If a real injustice/need we would probably bear part or all of the costs
- CAB can offer good advice. Have helped them on occasions
- Never used them. Perception that you require a suitably qualified practitioner to represent adequately
- Yes - can be helpful in cases where low finances available
- no.
- USEFUL AT A VERY BASE LEVEL
- I am unable to comment as I have no direct experience of them.
- No experience
- Not relevant to us
- No
- Yes - it tends to be a bit of a joke
- CAB does a good job but they are not very experienced on tax matters.

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24) To what extent are other costs a factor for appellants or potential appellants - e.g. travel to hearing venues, extra childcare, time off work?

(all results shown)

- The single biggest issue in deciding whether to appeal or not.
- Limited
- Not significant for our clients
- Not significant in cases I have seen
- Sometimes significant, especially if the business is involved in other issues, for example take overs, mergers etc
- No direct experience but I would expect them to be important
- Not normally the major factor in the decision to appeal
- important enough to deter most appellants
- Not known
- Not a factor for our clients - although opportunity costs may be high for some ie having to take 3 days away from the business is not a possibility for some sole props
- No issues, dealing with the matter is paramount.

- For appellants the matters you have highlighted will be important. Another factor is the appellant is unaware as to when the hearing will commence or how long the hearing will take.
- In some situations, it must be a relevant factor.
- I don't know but I would expect all these issues to impact on the decision to go to appeal
- Not significant
- not enough experience to answer.
- Time off work can be a problem; no experience of other costs being a factor.
- All need to be taken into account and weighed up against the tax at stake, the professional cost, and the risk of IR taking further.
- don't know
- less relevant
- Not significant
- Time off work is extremely important, especially to one man businesses. others may or may not be an issue
- Depending on client this would affect the decision as to whether to appeal to tribunal or commissioners
- Not a major factor
- not very relevant
- Have not been an issue
- time can be very relevant
- Little consideration - not a factor.
- No comment
- small extent
- for some this will be an issue
- It is travel, and time which cause most problems
- Some but not crucial
- Time off
- not generally cited as reason for not appealing
- Rarely
- I DO NOT CONSIDER IT HAS BEEN AN ISSUE
- Not really a problem.
- Not an issue
- Not a factor
- Little
- They are a factor but not a major factor
- No experience of this

25) Where appellants are disabled, to what extent do physical barriers to premises prevent them from accessing their appeal rights?

(all results shown)

- No experience
- N/A

- No experience
- Don't know
- Have only had one disabled appellant, and he had no problems at all.
- Again no experience but from memory the premises used were not modified to permit disabled access
- No experience
- not known
- It depends on whether the venue for the appeal is 'disabled friendly'. I write this as a disabled practitioner.
- No idea
- This is not usually a problem.
- No comment
- Surely all public buildings have to provide reasonable access for those who are disabled ?
- I have no experience of this
- not enough experience to answer.
- Locally, access is good.
- I suspect that access could be a factor, but no direct experience.
- don't know
- should not normally be a problem
- No experience of this
- No idea.
- Don't know this one
- They don't
- no
- No knowledge of this as issue
- Not a factor
- N/A
- No comment
- I would like to think never. certainly where I sit there is good access, but some years ago when I attended hearings on the South Coast some hearings were in hotels or pubs and access would have been a very real problem for the disabled.
- none experienced
- Haven't considered it
- no experience in this area
- Don't know.
- I DO NOT CONSIDER IT HAS BEEN AN ISSUE
- I have not come across this.
- Not an issue
- No comment
- Not at all. Never applied but I would expect the tribunal to convene in an accessible location if that was necessary.
- None
- No experience of this

26) In your experience how easy is it to find interpreters for those whose first

language is not English?

(all results shown)

- No experience
  - N/A
  - No experience
  - Don't know
  - No experience
  - No experience
  - No experience
  - not known
  - not known
  - No idea
  - The appellant usually brings his/her own friend who will act the interpreter. It is not a big issue.
  - They are available
  - Not easy
  - I have no experience of this
  - not enough experience to answer.
  - Again no direct experience, but I can imagine situations where it is relevant, particularly as our ethnic minorities seem to be a widening band.
  - don't know
  - relatively easy
  - No experience of this
  - Difficult
  - No experience of this
  - N/A
  - no experience
  - No knowledge of this as issue
  - N/A
  - No comment
  - no experience.
  - no experience
  - No experience
  - no experience in this area
  - Never tried.
  - NO EXPERIENCE
  - I have never needed to do so.
  - No experience
  - No experience
  - Don't know.
  - Relatively straightforward
  - No experience of this
-

27) What support is available for people with learning disabilities?

(all results shown)

- No experience
  - N/A
  - No experience
  - Don't know
  - No experience
  - No experience
  - No knowledge
  - not known - have never had a client with learning difficulties with any contentious issues
  - Not known
  - No idea
  - None as far as is known.
  - No comment
  - None as far as I am aware
  - I have no experience of this
  - not enough experience to answer.
  - Precious little.
  - don't know
  - their adviser should be able to assist and explain matters to them
  - No experience of this
  - No idea
  - No experience of this
  - Don't know
  - don't know
  - No knowledge of this as issue
  - N/A
  - No comment
  - I do not know
  - no experience
  - No experience
  - no experience in this area
  - Don't know.
  - NO EXPERIENCE
  - Again, I have no experience of advising such people.
  - No experience
  - No experience
  - Don't know.
  - No experience
  - No experience of this
-

28) Do you have experience of tax credit appeals

	Percentage	Responses
Yes	0.0%	0
No	100.0%	43
<b>Total responses:</b>		<b>43</b>

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29) If you answered yes to the previous question please give your views on the process and outcomes

(all results shown)

- n/a

- n/a

- You don't have a final "Any other comments" box, so can I just say that I have some comments about the at times inept admin of the VAT & Duties Tribunal office.

- N/A

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## **APPENDIX 3**

### **Members of LITRG who participated in this report**

Martin Clarke - tax compliance specialist on secondment to LITRG from HMRC

Hazel Mazelin-Forbes - Administrator, LITRG

Jane Moore FCA CTA - Technical Manager at the Tax Faculty of the ICAEW

William Norris CTA (Fellow) - Barrister and Chairman of the Tax Disciplinary Committee

Robin Williamson CTA (Fellow), Solicitor - Technical Director, LITRG