

Check Challenge Appeal; Reforming Business Rates Appeals

23rd December 2015



1. The Local Government Association (LGA) welcomes the chance to comment on this consultation paper.
2. The LGA is here to support, promote and improve local government. We will fight local government's corner and support councils through challenging times by making the case for greater devolution, helping councils tackle their challenges and assisting them to deliver better value for money services.
3. This response has been agreed by Resources Portfolio lead members.

Introduction

4. There are 300,000 appeals outstanding, the majority submitted at the end of the cycle. This is causing uncertainty for councils leading to the need for provisions, which can be as high as £1.75 billion and a £195 million safety net top-slice over 3 years. These affect council's financial position, lead to less grant and therefore more reductions in expenditure than would otherwise be the case.
5. With the move to 100% retention announced by the Chancellor and confirmed in the Spending Review and Autumn Statement 2015, resolving this issue is one of the highest priorities for local government.
6. We therefore welcome the fact that government is proposing to reform appeals. We note that the legislative underpinning is provided in clause 23 of the Enterprise Bill.
7. The government's aim is that the new 'Check Challenge Appeal' system should lead to a more streamlined appeals system so saving resources for all. The Check stage is to validate the facts and can lead to the Valuation Office Agency (VOA) changing the list. At the Challenge stage the ratepayer makes their own proposal based on evidence and can then enter in discussion with the VOA where the VOA may accept the ratepayer's proposal. Only after this stage is exhausted would the ratepayer make an Appeal to the Valuation Tribunal for England.
8. The key test of success of this proposal will be if it leads to less uncertainty for local government and a material reduction in provisions. These proposals go some way but more could be done to streamline the system further.

Submission

9. In particular, it is not immediately clear why the 'check' has to be part of a formal process. It could be made less bureaucratic if a 'check' were to be allowed at any time with a much shorter deadline and with the presumption that any VOA amendment of the list would normally require a challenge rather than a check.
10. This would mean that the formal process would commence with a challenge rather than a check. This would mean that billing authorities as interested parties would not have to be involved in the check stage and that there would be more certainty in establishing a figure for provisions given the fact that the ratepayer has to submit an alternative valuation at the start of the challenge stage.
11. We would also comment that the key point with any new process within the Valuation Office (VO) will be whether they have sufficient resources to deliver the proposals. It is clear from the current large backlog of appeals, that the VO does not currently have the required level of resources.
12. We would also comment that there is good practice in other sectors which could be drawn upon. For example in the insurance industry, according to information given to the LGA the following has been done:
 - Introduction of an appeals portal similar to the portal used for low value injury claims. The portal operates to strict timescale, 35 days for decision on liability, and use of agreed documentation. Appellants make payment for submitting appeals; this funds the portal;
 - The use of joint independent experts; this could be a role for rating agents taking into account any possible conflicts of interest;
 - Parties are encouraged to negotiate and settle at an early stage with financial incentives and penalties;
 - There is one way cost shifting. i.e. the loser pays winner's costs.
13. Looking to the future, the LGA would support more digitalisation of the system for both assessment and collection always assuming that billing authorities are able to correctly account for the amounts due to them. The proposals for a ratepayer account in the document are an important step forward. The LGA would also like to see investigation of a system whereby ratepayers can self-assess their valuation, on the lines to those made in our Spending Review submission 'Spending Smarter'. These can proceed at the same time as implementation of the proposals in this document.
14. If a substantial proportion of valuations could be done via the provision of data on-line which had to be signed as true and fair and updated every year – not only would it be more efficient but it might remove the

need for 5 yearly revaluation, at least for mainstream property types.

15. Detailed answers to the questions asked in the consultation are:

Question 1: We would welcome views on the overall approach set out in this consultation paper.

16. Please see the introductory section above.

Question 2: What are your views on when 'relevant authorities' should be involved in the process?

17. With the move to 100% retention local authorities will have an even greater interest in the system than they do at present. If the check process was to be made more automatic as we suggest then there might be no need for LAs to get involved or to make provisions at check stage; this would only happen at the challenge stage when LAs would have knowledge of the alternative proposal.

18. On the other hand if check is to be the start of the formal process, local authorities should be given an automatic right to join all classes of checks, challenges and appeals (not just some as at present) and should receive automatic notice of them. Currently local authorities are concerned by Valuation Office Notices which can affect the valuation of a property following agreement or a tribunal decision on a similar property.

Question 3: We will consult further on the detail of these penalties, but in the meantime, would welcome general views on implementation and the likely disincentive effect of this measure.

19. The document proposes the introduction of civil penalties for the provision of false information by ratepayers or professional representatives during check or challenge, whether it was provided knowingly, recklessly or carelessly. Penalties could be flat rate or could be linked to rateable value, with a maximum level of £500. They will be applied by the Valuation Office Agency and there will be a right of appeal to the Valuation Tribunal for England.

20. We support the introduction of civil penalties for false information. £500 is a low level for rateable values which can go into the tens of millions. One idea could be to have a scale with 0.1% of the rateable value or £250, whichever is the higher. Allowance should be made for small businesses and when incomplete information has been submitted in haste.

Question 4: We will bring forward end-of-list proposals in due course,

but in the meantime would welcome general views.

21. In order to encourage 'checks' to take place early there could be a cut-off say 36 months before the end of the list except for exceptional circumstances or when new evidence comes to light of which the ratepayer or agent could not reasonably have been expected to have been previously aware. This would still give the ratepayer 2 years in which to launch a 'check' process which does not seem unreasonable.

Question 5: What arrangements should apply to temporary material change of circumstances cases under the new system?

22. This affects circumstances such as the effects of major roadworks. It may be sensible for these cases to be expedited; for example the check stage should take no more than 3 months and the challenge no more than 6.

Question 6: What are your views on the trigger point for check stage?

23. The document proposes a 12 month trigger point for check stage at least initially; this may be reduced at a later stage. 12 months seems a long time for what is essentially a fact checking process. We would propose 3 months for a check. During that time the VOA would have to supply the evidence for the valuation but the presumption would be that any amendment to valuation would come as a result of a challenge.

Question 7: What are your views on the time limit for submission of a complete challenge, following check stage?

24. The consultation proposes that a challenge must be submitted up to 4 months after completion of check stage, with an override for exceptional circumstances (e.g. illness). The LGA considers that since a challenge will have to contain full details so a time limit like 4 months seems sensible, but extensions to this should not become the norm.

Question 8: What are your views on the trigger point for check stage?

25. The consultation proposes the right to move to appeal stage 18 months after entering challenge stage even if the latter has not been completed. This seems quite a long period; it would mean that at the maximum it could be 30 months from the date a check is lodged to an appeal being submitted. There is the danger that this will not reduce the uncertainty for councils materially. We would propose 12 months for challenge stage, thus reducing the 30 months maximum to 15 months.

Question 9: Do you agree that these requirements for a challenge are the best way to ensure early engagement on the key issues?

26. It is right that the ratepayer should be asked to give full details of an alternative valuation proposal with evidence. Currently some large appeals such as Virgin Media's proposal to merge hereditaments are causing uncertainty and the ratepayer has not yet come up with any

supporting evidence. We agree that the VOA should take steps to make sure that these requirements are not unduly onerous for small businesses.

Question 10: Do you agree that this process allows the ratepayers to make their case in a fair and effective way?

27. The document says that there may be further exchanges during the challenge process. The VOA will indicate timescales by which the ratepayer must respond to further information. The VOA will indicate when the discussions have concluded and will issue a decision notice, stating clearly what has been agreed, any matters in dispute and the evidence upon which the VOA has relied. Following the completion of challenge stage there will not be further discussion between the parties.

28. Subject to the comment on reducing the timescale for challenge stage above, we note these provisions. We would like to see the onus on both the VOA and the ratepayer to ensure that the challenge stage is completed as quickly as possible.

Question 11: What are your views on whether straightforward appeals could be determined on the papers, without the need for a hearing?

29. We agree that the tribunal process should be expedited as much as possible; currently there are long delays before appeals come to tribunal.

Question 12: What are your views on the time limit for submission of an appeal, following challenge stage?

30. The document says that appeals must be submitted within 4 months of the completion of the Challenge stage. A ratepayer must have gone through the challenge stage to be able to launch an appeal. The Valuation Tribunal for England president will have discretion on late appeals.

31. We agree that following the completion of the challenge stage there should be a short deadline for appeals. The ratepayer will already have a lot of the information which the tribunal needs and will have the VOA decision from Challenge stage so we would propose three rather than four months.

Question 13: How should we best ensure that the appeal stage focuses on outstanding issues and, as far as possible, is based on evidence previously considered at challenge stage?

32. The consultation says that the appeal stage should not reopen facts agreed at challenge stage and the Tribunal should have the full documentation from challenge stage and the VOA decision. There could be a bar on introduction of new evidence except by agreement between the parties or in exceptional circumstances. We agree that as

much as possible the tribunal should not have to go over ground already covered in previous stages.

Question 14: We will consult further on the details of these fees, but in the meantime, would welcome general views on implementation.

33. The consultation proposes the introduction of fees for appeals; these should could be flat rate or linked to rateable value. Ratepayers would receive a refund if the appeal was successful. The LGA considers that since rateable values vary dramatically we would support a fee linked to the rateable value.

Question 15: We would welcome general views on whether changes to appeals to the Upper Tribunal (Lands Chamber) would be beneficial.

34. Appeals to the Upper Tribunal should be on a point of law only rather than on law and facts of the case as it is at the moment. This would put business rates on a par with other legal systems - for example employment tribunals. We would support this.

Local Government Association
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