

# Barclay Implementation Appeals Sub-Group – Minutes

Tuesday 25 June 2019, 12:30 pm

Meeting Room 3E.02, SAH

## **Present:**

Carol Sibbald (Chair)	Scottish Government
Alistair Kirkwood	President, Scottish Assessors Association
Ken McCormack	Royal Institution of Chartered Surveyors
Ian Milton	Scottish Assessors Association
Niall Rankin	Scottish Property Federation
Brian Rogan	Scottish Chambers of Commerce
Graeme Strachan	Lothian Valuation Joint Board
Anouk Berthier	Scottish Government
Adam Scott	Scottish Government

## **Welcome**

### **1. Welcome**

The Chair welcomed all attendees and went over the agenda, the purpose of this meeting being to expand on points raised at previous meetings relating to the proposal and appeal process, supported by information in the agenda annexes.

## **Discussion**

### **2. Previous Minutes**

The revised minutes of the 9 April Appeals Subgroup meeting were agreed.

A number of minor changes were requested to the minutes of the 16 May Appeals Subgroup meeting, mainly concerning the wording of certain points. All changes were agreed and the minutes will be updated accordingly.

### **3. Information requested by the Assessor at valuation**

- Online provision of information by the ratepayer was discussed and it was thought that this could make regular provision of information easier. It was highlighted by Assessors that work to improving this is ongoing.
  - It was suggested that the process for responding to requests for information be streamlined. For example, having responses to 'headline questions' determine whether more detailed questions are needed in that section.

- It was suggested that online provision could allow forms to be pre-populated and simply updated.
- The issue of difficulties completing these types of forms for clients with a large number of properties was raised.
  - In response to this, it was pointed out that arrangements are already in place to facilitate information-sharing and collective submissions for certain types of properties.
- It was mentioned that Revenue Scotland use online provision of information, but that due to differences in what is requested, it would not be feasible to use this information as a shortcut for valuation purposes, even for rent reviews. Assessors have no way other than the current questionnaires to obtain information.
- It was pointed out that information must be provided to Revenue Scotland within 30 days and that the 56 days stated in the NDR Bill in relation to Assessor requests for information was too generous.
  - It was suggested that even if provision cannot be done simultaneously for both returns, there may still be scope to link one form to the other, using the first to pre-populate the second in future.
  - It was also pointed out that Revenue Scotland are in the process of changing their system, which may cause complications for any arrangements Assessors seek to agree with them at this point.
- The desire was expressed to have the information request form condensed and simplified in order to reduce the administrative burden on the ratepayer.
  - However, it was pointed out that obtaining the maximum amount of information early on reduces the burden, as there is less work to be done by all later on.
  - Assessors stated that all the information currently requested to ratepayers was necessary for the purposes of valuation and that additions over time were the outcome of appeal hearings and the information requested therein to ascertain the correct valuation.
  - It was pointed out that the increase in the information being requested had happened alongside the situation becoming more complex.
    - There are around 100 different practice notes and 30 variants of the forms for different property types.
- The issue of repeated requests for previously-provided information, even when there had been no change in circumstances or to the property, was raised.
  - Assessors responded that repeated requests may sometimes be necessary in order to find out if there has been a change.
  - Attendees were asked if they were interested in an ongoing requirement that ratepayers supply information to the assessor as this would eliminate the need for regular requests for information (similarly to Revenue Scotland where information is requested every three years).
    - There was no strong desire for this among the group as it was feared this may overburden ratepayers.

- SG officials to make clear in the Bill what “changes in circumstances” requiring provision of information to the Local Authority in the NDR Bill refers to.
  - Assessors suggested that there should be a similar requirement towards them.
- Concerns were raised over the risk of unreasonable requests by the assessor was raised, particularly towards a person other than the PTO. Assessors stated this power would only be used in exceptional cases where the PTO was unable to provide the information but another person was known to hold it.
  - Concerns were expressed that the term ‘reasonable’ in reference to the information that assessors are allowed to request from ratepayers was too ambiguous, and that this could lead to problems at the VAC stage if a proposal could be refused by the assessors failing a return of information previously requested and the absence of which had been subject to a civil penalty for non-provision of information.
    - It was mentioned that it would be for Scottish Tribunals to determine when an assessor’s refusal to consider a proposal in the absence of information was reasonable or not.
    - It was pointed out that a precedent for how these cases are dealt with will build up over time in case law.
- The issue of an assessor requesting information from a third party was raised, as the ratepayer may be unaware of this.
- It was mentioned that there is currently a communication issue, as assessors only see a 40% return on rental forms. Return is poor across all property types.
- The issue of the role of landlords in the provision of information on tenant changes was raised. It was suggested that any change to the requirement to provide information be communicated clearly.
- It was mentioned that requesting information from someone other than from the PTO, and potentially serving a penalty on them if they failed to comply, could present difficulties.

#### **4. Information to be provided by the Assessor at (draft) valuation**

##### **a. Comparative method**

- In relation to bulk classes (e.g. shops, offices, warehouses) that make up the majority of entries, SG officials clarified that the assessor will be required to provide addresses for properties that have been used to reach the valuation where this is possible (expected to be around 60% of properties).
- It was mentioned that secondary legislation may need to specify for which classes of property this will be provided. The importance of clear definitions was emphasised.
- It was mentioned that the summary valuation does not necessarily currently enable the ratepayer to understand how the valuation was arrived at.

- It was mentioned that the practice note for the property could assist the ratepayer in understanding the summary valuation, and that emphasis should be put in future in using the practice note to help the ratepayer do so.
- It was suggested that the valuation notice could contain a link to the summary valuation, and that the summary valuation could contain a link to the practice note.
- It was mentioned that work was ongoing on improving consistency among the presentation of information by assessors.
- The distinction between area and reduced area in the information provided by the assessor was discussed in the summary valuation. It was suggested that assessors should include whichever measurement was used to arrive at the valuation.
  - It was pointed out that this is not an issue which would need to be covered by legislation.
- It was mentioned that the meaning of size quantum in the summary valuation is already addressed in the practice note.
- It was mentioned that illustrative examples of valuation in practice notes may cause confusion as it can be hard for the ratepayer to determine whether properties are truly equivalent.
- It was asked whether ministerial guidance would be provided on the detailed content of the summary valuation. SG officials clarified that this would not be the case and that Ministers would be unlikely to intervene as assessors are independent.

#### **b. R&E Method**

- It was asked whether the ratepayer could be issued with a code to access the (potentially confidential) information that had been used to carry out the valuation.
- However, it was pointed out this was not a reasonable development path at this point.

#### **5. Changes to valuation roll**

- It was pointed out that assessors are currently unable to rectify mistakes in the roll in certain circumstances and that this matter should be addressed in the existing legislation.

#### **6. Information to be provided by the ratepayer at proposal**

- SG officials set out that this issue had recently been discussed with the SAA. It was agreed that it was unreasonable to assume the ratepayer will be able to set out detailed grounds at the point of lodging a proposal.
  - However, the ratepayer would still be expected to give an outline of the reason for the proposal being lodged. The group agreed on this point.

- SG officials set out that the ratepayer's requested change will be required at the beginning of the proposal stage.
  - It was also discussed whether evidence for this proposal should be submitted at the same time, as this would allow the assessor to make clearly validate necessary changes straight away.
  - It was suggested that there be a 70-day period of discussion before the Proposal Disposal Date (equivalent to the current 105 days).
  - It was confirmed that positions could still change during the 70-day discussion period.
- Working Group to consider timeline scenarios for information-sharing to inform secondary legislative drafting.
- The issue of mandates for submitting of appeal was raised.
  - Following discussions with solicitors, SG officials confirmed assessors can refuse appeals lodged by a third party without a mandate, and that future legislation would seek to ensure further clarity on this point.
- It was mentioned that the current Portal IT system is able to deal with bulk appeals as it is designed for agents' systems to feed into it. No issues are reported with this.
  - SG officials confirmed that outstanding requests for information leading to a penalty under section 18 of the NDR Bill would need to be answered at the proposal stage, otherwise the assessor could refuse to consider the proposal. It was confirmed that the decision on whether the request for information is reasonable could be appealed to the VAC/Tribunal. It was also suggested that these appeals may follow the same procedure as council tax appeals, which would go to the Court of Session.
  - It was pointed out that appeals against assessor refusals to consider a proposal failing a return of information may upset the timetable for resolution. It was suggested that appeals of this nature would have to be expedited.
  - However, it was also pointed out that this restriction on lodging proposals was necessary to ensure the reduction in appeals lodged as a matter of course and ensure the timeous management of information-based appeals.
- The group was in agreement that there should be a statutory deadline only for Proposal Disposals, not for the issuance of a Proposal Disposal Date (PDD), beyond the requirement this be done minimum 70 days before the PDD

## **7. Right to request an expedited proposal**

- It was agreed that the proposer will be able to request the right to an expedited proposal from the assessor. If the assessor refuses to do so, this can be appealed to the VAC. It was suggested that if the VAC agrees it

should be expedited, it will set a timeframe for the deadline by which the assessor must deal with and dispose of the proposal by.

#### **8. PDD schedule of agreement for bulk classes (RICS/SAA)**

- It was suggested that the SRS or the SRSF would be the best group for this, rather than RICS.
- It was agreed that the schedule of agreement could include all classes of properties rather than just bulk classes.
- It was agreed that it was unnecessary to have the deadline for the schedule of agreement set out in legislation.

#### **9. Right to continue proposal by agreement between parties**

- It was agreed that continuation beyond the PDD may be needed in some cases and that if both parties agree, this should be possible.
  - It was suggested that if both parties disagree about whether a continuation is necessary, the tribunal will decide, issuing a revised PDD if they conclude that continuation is necessary.
- 

#### **10. Information to be provided by the appellant at appeal**

##### **a) Appeal not automatic after proposal**

- It was agreed that appeals will not be lodged automatically after the proposal stage. The proposer will simply be allowed to lodge an appeal after the PDD, or after a statutory deadline after the proposal has been lodged.

##### **b) Both parties can request appeal**

- Concerns were expressed that as currently drafted the Bill does not allow assessors to appeal on a property that has had a proposal lodged against it.
- Concerns were raised around an assessor being able to appeal their own valuation however. The view was expressed that appeals may not be the best format to rectify mistakes in the assessor's valuations.
- It was pointed out that to address this the Barclay Review had recommended that it be possible for valuations to increase on appeal.
- It was clarified that the Bill would be amended to allow for assessors to appeal.
- The group was reminded that one of the aims of Barclay was to reduce the number of spurious appeals.

#### **11. Information to be requested by VAC/Tribunals on appeal**

- SG officials informed the group that they are working with colleagues in Devolved Tribunals to explore limiting the information that Tribunals can

request after the move from VACs to Tribunals to that which has already been provided at proposal stage (unless it was not in existence at the time such as subsequent relevant rulings).

- It was mentioned that tribunals' general resistance to restrictions being imposed on them may mean that future legislation may be limited in its capacity to constrain the information they choose to request.
- It was mentioned that ratepayers may end up submitting as many arguments as possible at proposal stage to avoid being restricted if the case goes to appeal.
- SG officials reassured the group that a more solid answer on this should be available at the next meeting.

### **AOB**

- Assessors pointed out that disposal rates for appeals at this revaluation are low. Only 49% of appeals and 26% of values in this current cycle at this point. The aim is for these to all be complete by this September.
  - This represents a capacity and resource issue for both the public and private sector and does not deliver timeous resolution of appeals. They stressed the need for the reduction in spurious appeals in order to allow access to justice for all ratepayers.

### **Next Steps**

- The next Working Group meeting will take place on 8 or 9 August. SG official to attend but not contribute to the discussion.
- The next Appeals Subgroup is scheduled take place on 28 August.