

Appeals Working Group Meeting Minutes

10 August 2020

Membership present:

Ian Storrie (Chair)	Scottish Government
Alastair Beattie	Scottish Valuation Appeal Committees Forum (SVACF)
Elizabeth McGillivray	Scottish Valuation Appeal Committees Forum (SVACF)
George Porteous	Scottish Valuation Appeal Committees Forum (SVACF)
David Nicol	Lothian Valuation Appeal Panel
Ken McCormack	Royal Institution of Chartered Surveyors
Ian Milton	Scottish Assessors Association
Derek Kidd	Scottish Business Ratepayers Group (SBRG)
Brian Rogan	Scottish Chambers of Commerce
Niall Rankin	Scottish Property Federation
Graeme Strachan	Scottish Assessors Association
Alastair Kirkwood	Scottish Assessors Association
Kate Crawford	Scottish Assessors Association
Anouk Berthier	Scottish Government
James Messis	Scottish Government

Apologies: Donald Mackenzie, Scottish Valuation Appeal Committees Forum (SVACF)

Agenda:

1. Minutes
2. Role and Remit
3. Disposal Dates
4. Procedure in Civil Penalty Regulations
5. Tone date/revaluation
6. AOB

Previous Minutes

1. The group discussed the previous minutes. It was put to the group that while there had not been unanimous agreement of the previous draft minutes, they had since been amended to capture the various differing perspectives represented by different members. The group subsequently agreed the minutes.

Role and Remit

2. The next agenda item was the role and remit of the group. Various members reflected that the ongoing role of the group should be questioned, with some members believing that the present working group should be a separate distinct group from the Barclay Implementation Advisory Group (BIAG), rather than a sub-group of it, in part due to some members not having been elected by BIAG members but having joined subsequently. It was further stated the group is currently considering matters and issues beyond the scope of it's original remit.
3. The group did agree that it was necessary that issues such as revaluation, valuation notices, timetables etc. be discussed with stakeholders appropriately by government.
4. **ACTION:** SG to consider options moving forwards in relation to the group.

Disposal Dates

5. The group discussed disposal dates starting with those from the 2017 revaluation.
6. It was proposed by one member that as COVID-19 has clearly caused an interruption of work for 6 months, there should be at least a 6-month extension for these appeals, making the disposal date 30 June 2021.
7. Some members of the group continued to support the notion that MCC appeals should be resolved after all revaluation appeals while others did not agree.
8. It was reflected that the progress on appeals varies across the country. Some members highlighted that there are significant questions as to whether the appropriate mechanisms are in place for hearings to proceed at this stage given the various differences in the emergence from lockdown, the different practices, difficulties in accessing premises, etc.
9. Other members proposed that the disposal date for both MCC and 2017 revaluations appeals be delayed until 31 December 2021 – a 12-month delay. This would deliver the same disposal date for all appeals. This was echoed by other members of the group.
10. The group agreed that a 31 December 2021 disposal date was sensible.
11. The group then discussed the joint referral deadline to the Lands Tribunal for Scotland and agreed that this should remain as is, i.e. 3 months before the disposal date (and therefore 30 September 2021 if the disposal deadline is 31 December 2021).
12. Questions were raised in relation to expedited appeals, but it was agreed that these could simply be made under the existing framework.
13. The conversation developed into consideration of citation periods. Members put forward a proposition that the 105-day citation period should be less in instances

where a hearing is cancelled and there is a re-citation. 28 days was initially suggested.

14. Other members considered this proposal and added that there may be circumstances where cases are going to the Lands Valuation Appeals Court and the grounds of appeal may need to be altered at that point. On that basis 35 days or 42 days were recommended as alternatives.
15. The group agreed this in principal, but did not take a view on whether a re-citation period of 28, 35, or 42 days would be most suitable.
16. Some additional comments were made at this point regarding the revaluation date, in particular that any decision on disposal dates should not impact the date of the next revaluation. It was pointed out that an individual can appeal the prior valuation in the following revaluation cycle, and that each revaluation is a 'new start', with assessors not looking to the previous revaluation to inform the next one.
17. The group then moved on to a concern over the use of venues for hearings, one member having stated that for substantive cases, remote proceedings were not appropriate. It was pointed out that while an assessor's office might be used for hearings, they may not have returned to the office themselves. In addition, they may not have the necessary electronic systems in place, nor could their conference rooms necessarily accommodate social distancing measures.
18. With regard to the COVID-19 MCC appeals, the group briefly considered the suggestion that a reduction in rateable values could be delivered to rateable values outwith the appeals process e.g. by agreement.
19. There were differing views amongst the group on this point. It was mentioned that consideration should be given to ECHR in relation to any hypothetical measures that could interact with the appeal rights of those having already appealed.

Procedure in Civil Penalty Regulations

20. The group discussed the previously circulated draft Civil Penalty Appeal regulations. The chair invited comments on each section.
21. A number of members of the group disagreed with the current absence of an onward route of appeal on points of law from VAC. One member highlighted that the civil penalty appeals are not merely factual, but a combination of fact and law.
22. These members did not see the judicial review, which would provide an appeal to the Court of Session, as an acceptable alternative, due to the complexity and cost of the process.
23. The group suggested that the Land Valuation Appeal Court was better placed to deal with such issues.

24. The group discussed the information that must be set out by the appellant when appealing a civil penalty. Some members requested that the regulations be more prescriptive.
25. The group discussed the lodging of appeals in the first instance to the assessor and disagreed on whether this should be the case. Some members claimed this did not create a two-stage process in the appeals structure, and questioned the fairness and principle of not having one, stating this would be bad practice. It was further suggested that the Secretary of the VAC should have first sight of an appeal lodged in order to assist with scheduling VAC business.
26. Conversely, other members pointed out that the assessors have the power to mitigate a penalty and the resources to deal with these appeals in the first stage. Contra the argument that this was bad practice, parking adjudication was cited, where parking fines for example are in the first instance lodged with councils, the issuing body.
27. The group discussed oral hearings, with some members stating that they do not believe that reasons should be required if one party requests a hearing rather than having it dealt with by written disposal – it was stated that it is unclear what a ‘reasonable’ reason would be, and therefore that it was not necessary to require it.
28. The group moved on to timescales on submissions (of further information, etc.). Some members called for VAC discretion on all time limits, not just to those set out in the draft regulations.
29. Some members of the group voiced strong opposition to the proposed conferring of a discretion on VACs to disapply the provision in 8(1) that a penalty is *not* payable pending appeal. No member opposed the removal of the proposed discretion.

General Points on Civil Penalties:

30. Some members reflected that there should be a provision similar to Regulation 11 of the Valuation Appeal Panels and Committees (Scotland) Regulations 1996 on record of evidence.
31. Some members supported the inclusion of “including, where the appeal is to be held by telephone or electronic means, the arrangements by which the hearing will be conducted” in regulation 7(4).
32. Again regarding 7(4), the group discussed the 6-week (42 day) notice for citation and highlighted that this might not be feasible for an oral hearing timescale.
33. Under the assumption that appeals are lodged with the Secretary, one member called for the Secretary to have the right to request further information from either party at the onset of an appeal being lodged.

34. The 12-week period for disposal of appeals by VACs was discussed under regulation 7(7), namely the fact this starts at the point an appeal is lodged. Members called for this happen at the point the appeal is passed on to the Secretary, offering the full 12-week period for consideration by the VAC. No member disagreed with this proposal.
35. With regard to the conduct of hearings in Regulation 9, particularly 9(1), (3), (5) and (6), the group suggested that the language of Valuation Appeal Committee (Procedure in Appeals under the Valuation Acts) (Scotland) Regulations 1995 be adopted (specifically regulations 13 to 15 of the 1995 regulations) as these were known and tested.
36. Similarly, with regard to Regulation 10, it was suggested that the language of the 1995 regulations be adopted. It was highlighted that The Council Tax (Alteration of Lists and Appeals) (Scotland) Regulations 1993 and the 1995 regulations both adopt the same wording and therefore a good basis to adopt. The group then discussed Regulation 10 (1), in particular the potential ambiguity as to whether a written decision would have to be given in all instances. The group agreed that reasons must have to be given for any decision, and that these must be in writing.
37. Some comments of concerns were voiced by certain members of the group, that some changes might make the process for Civil Penalties more bureaucratic than is necessary and a timescale of 6 months did not appear congruent with a shortened timeline and more frequent revaluations in future.

Tone date/Revaluation

38. It was presented to the group that retailers in particular are looking at the tone date and revaluation, and any decision on it may have an impact on future closures.
39. Some members of the group requested a meeting with the Minister for Public Finance and Migration.
40. There was agreement that if there were to be a change to the 2022 revaluation, consideration would have to be given to whether this affects the transfer of functions of the VAC to Tribunals Scotland. Any deferral in this transfer should consider the consequential effects on the transition to a new appeals system.

AOB

41. SG officials to raise the meeting request with the minister.