

7 January 2016

BHA Response to 'Check, Challenge, Appeal' Consultation

The British Hospitality Association represents the hotel, restaurant and catering industry. Business rates are a major cost for our hotel members, whose premises are generally valued on a turnover-based metric, and for our restaurant members, who more usually rent their premises. We were grateful for the opportunity to discuss the 'Check, Challenge, Appeal' proposals for England with DCLG and VOA officials and for the extension of time to make this response.

We understand and support the need for a more efficient appeals system, but it is important that it takes into account the impact of what can often be a significant increase in costs falling on a business, where profit margins may already be thin. An issue which emerged during the discussions with officials referred to above was in relation to the exchange of evidence. It does not seem logical for the Valuation Office Agency to plead taxpayer confidentiality at the Check stage and then to share 'proportionate evidence' at the Challenge stage. This approach appears designed to drag out the rating process, whereas there is considerable business support for more frequent valuations in order to avoid the sharp changes described above. Indeed, the approach to the provision of evidence to ratepayers may itself be a factor in causing ratepayers to appeal in the first place.

We now respond to the consultation questions:

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

As indicated above, we support reform of the appeals process, but question the approach to transparency and the exchange of evidence. DCLG recognised in its December 2013 consultation paper that "under the current system ratepayers cannot see the rental evidence on which rateable values are based and make large numbers of speculative challenges with little or no explanation of why they think their rateable value is wrong." The Government's proposed approach in the current consultation shifts the burden of proof from the VOA, which has access to all relevant evidence, to the ratepayer who does not. It is fundamental in a trade based valuation that the trade history upon which the valuation has been based should be disclosed to the appellant as part of the Check stage.

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

We would be concerned if local (billing) authorities were to be permitted to intervene in the process in order to affect the rates burden on businesses, especially given the new arrangements under which local authorities will retain 100 per cent of business rate revenue.

Q.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.

We have no comments on the civil penalty proposals.

Q.4: We will bring forward end-of-list proposals in due course, but in the meantime would welcome general views.

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We await the proposals, but, if there is no intention to require the VOA to supply the underlying rental and trade evidence, it is not clear how ratepayers could benefit from the proposed Check stage.

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

These cases should be handled separately from standard 'Check, Challenge, Appeal' cases. The Challenge stage will require a fully reasoned and evidenced valuation to be provided up front, yet it is normally not possible to determine the valuation effect of a material change of circumstances until at least a year after the event. The existing process should therefore continue for these appeals.

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

The check stage seems to be too long at one year if all that can be checked are facts known to both the ratepayer and the VOA, such as the rent the ratepayer is paying.

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

We think the four month period from the completion of the check stage would be reasonable, provided ratepayers are made aware promptly that the check stage has completed, and in particular if the requirements for a complete challenge were far less onerous than set out in paragraphs 31 to 33, on part of which we comment further below under q.9. The burden on the ratepayer is disproportionate, especially in the absence of the VOA having to provide any evidence to justify the Rateable Value. If this is to be the new procedure, then a much longer period will be necessary to allow preparation of the detailed challenge.

Q.8: What are your views on the trigger point for challenge stage?

We think the total of 18 months is too long and should be reduced to 12 months.

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

This aspect of the proposals is unsatisfactory, if not Kafkaesque. The example of substantive grounds in paragraph 32 of the consultation 'that the [VOA] has not taken into account specified relevant evidence' requires the ratepayer to know what relevant evidence the VOA has used, but at this stage the ratepayer may have been denied access to some or all of that evidence. This must be changed. There is also the risk to ratepayers of the VOA waiting until the four month period has almost ended before advising that the challenge is 'incomplete'. 'Pausing the clock' on the last day of the four month period will not help. All of the avowed elements of government policy, on openness, transparency, and reducing uncertainty and cost are missing from these proposals.

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

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The concern about this part of the process is that, while the need for effective handling is important, the VOA has the ability to 'close down' discussion with ratepayers and their representatives, whereas, until now, a more open approach to discussions at this stage has been operated. Whether the process turns out to be fair and effective in ratepayers' eyes will depend on how individual cases are handled by a VOA which will presumably be under continuing resource pressure.

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

This should apply where the ratepayer was content with a paper hearing, but they should be entitled to a full hearing, especially if the papers do not take new evidence into account.

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

The four month limit for proceeding to appeal stage seems reasonable.

Q.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?

We think the proposals for the appeal process are reasonable in principle, but ratepayers should be able to introduce new evidence or respond to new evidence from the VOA, so that the Valuation Tribunal should have all the relevant evidence available to it, including evidence held by the VOA, but not previously disclosed.

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

We support the approach on fees, refundable on successful appeal.

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

We would not support appeals to the Upper Tribunal being restricted to points of law. We understand there are considerable numbers of appeals to the Upper Tribunal on valuation grounds, providing protection for ratepayers. The existing arrangements should continue for appeals to the Upper Tribunal.

We are pleased to confirm that we have no objection to this response being made publicly available and that we should be pleased to take part in further discussions if that would be useful.

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