The big cupboard of trouble

Number of unresolved ratings appeals is in danger of overwhelming the tribunal system

ON RATING

Blake Penfold

Business rates liabilities have never had a higher profile than they do at present. Whilst much of the attention focuses on the uniform business rate, there is also considerable concern about the working of the rating appeals system. There are more than 120,000 outstanding business rates appeals in England and Wales. This may not be a significant number in relation to the 1.8m hereditaments, but many of these appeals have been outstanding for a considerable time.

Creaking under the strain

When a proposal to alter the rating list is made, it will automatically be referred to the Valuation Tribunal as an appeal if it is not resolved within six weeks. The tribunal will not list appeals for hearing until they have been through a "programme period" for discussion between the ratepayer and the Valuation Office Agency (VOA). Despite this discussion period, large numbers of appeals are unresolved and are listed for hearing by the Valuation Tribunal. The Valuation Tribunal for England (VTE) has introduced a system of statements of case for appeals that are listed for hearing and in the last six months has received more than 16,000 statements of case from ratepayers and nearly 14,000 statements from the VOA.

The number of unresolved appeals is in danger of overwhelming the tribunal system. As well as appeals with statements of case, nearly 20,000 appeals have been listed for hearing by the VTE but deferred before statements of case were lodged.

Why are so many cases unresolved? Has the business rates system become more contentious over recent years? In part, business rates matters have become more contentious because valuations are based on a valuation date of 1 April 2008, whereas in many cases, current rental values are well below 2008 figures. The scheduling of similar appeals for discussion together has broken down. But it is not simply this that has created the backlog of cases awaiting hearing. A large part of the problem is that the parties are simply not resolving appeals by negotiation.

● In dealing with the 2010 rating list the VOA has announced that it will issue only a "proportionate response" to ratepayers' appeals in the negotiation period. In doing this, the VOA seems to be relying on the adage that "he who asserts must prove". Whilst this is undoubtedly true when it relates to the prosecution of the case at a hearing, it is an inappropriate rule to apply to appeals against rating assessments during the period allowed for negotiation between the VOA and the ratepayer. This is because business rates are not tax self-assessment, they are assessed tax. This is recognised by the courts (for example in *North Somerset District Council* v *Honda Motor Europe Ltd* [2010] EWHC 1505 (QB); [2010] PLSCS 182).

An assessed tax carries with it a duty on the assessing authority (the VOA) to explain to the taxpayer how the assessment is arrived at. This is especially true in the case of business rates where comparability between assessments is one important measure of correctness and where values are based on rents and other information that may not be publicly available to ratepayers but is in the possession of the VOA by virtue of its powers to require the return of such information. This is unlike most other taxes where individual assessments do not involve any consideration of the circumstances of other taxpayers or their property.

Whilst it may not be the intention of the VOA's change of practice to one of "proportionate response", the effect of this is that in many cases it is very easy for the VOA simply to say "you have not produced sufficient evidence to convince me", rather than producing a clear statement about how the assessment was derived and the evidence on which it was based.

A spiralling problem

The effect of this is that many more cases are falling into the lap of the VTE, as witnessed by the number of statements of case being lodged. I have sympathy for the VTE in this respect because the problem arises during the negotiation period, but the tribunal only has powers to deal with appeals once they are listed hearing, which happens when the negotiation period is over.

The president of the VTE has indicated that he proposes to amend the rules relating to statements of case to require process to start with an explanation by the VOA of how the assessment concerned was arrived at and the evidence on which it was based. But it is likely to be some time before this change comes into force and, in any event, it will not apply to those appeals that are currently sat in the big cupboard of trouble, namely those cases that have been listed hearing and deferred without being heard. This problem is most acute in London, where around a third of all outstanding appeals reside.

What can ratepayers do if the VOA will not negotiate in an open and transparent way? The only course of action currently available to ratepayers is to lodge a statement of case in the hope that doing this will draw forth from the VOA a statement of the evidence on which the assessment under appeal was based. As and when any revisions to the VTE statement of case process come into effect this may change but, for the time being, lodging a statement of case seems to be the only option to ratepayers – as evidenced by more than 16,000 such statements being lodged in the last six months alone.

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The VOA's position seems to be short-sighted and may yet come back to bite them. Among those 16,000 statements of case that have been lodged and among the 20,000 appeals that have been deferred without statement of case, there must be many that relate to issues of principle or practice that will affect other valuations. When these cases are determined, other assessments, including some that may have been agreed, may have to be revisited. There is indeed a big cupboard of trouble waiting to be unpacked.

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