

# An unappealing prospect

Proposed changes to the business rates appeals process are unlikely to reduce delays

**T**he present system of appeals against business rates does not work well. There are more than 250,000 outstanding appeals, they take too long to resolve, and very often only get settled just before a hearing. The government has announced its intention to reform the system and the Enterprise Bill, published in September 2015, contains powers to make changes.

The first details emerged in a consultation paper entitled *Check, Challenge, Appeal*, published by the Department for Communities and Local Government. It applies only to England, although it appears that the devolved administration in Wales proposes to make similar changes. Any reforms will come into effect from 1 April 2017, which is the date of the next rating revaluation.

At present, ratepayers who are unhappy with their business rates assessment may make a "proposal" to alter their assessment. Such a proposal, which need only include very limited details of the amendment proposed, is sent to the Valuation Office Agency ("VOA"), which is responsible for rating assessments. If the ratepayer and the VOA cannot reach agreement, the matter is referred to the

## ON RATING

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ratepayer may make a formal "challenge" against the valuation.

The "challenge" must be made within four months of completion of the check stage and requires the ratepayer to provide grounds, reasons, and evidence as to why the assessment is wrong, and to set out the alternative valuation that is proposed. Only then will the VOA provide what is described as a "proportionate" response to the ratepayer's challenge. This is the point at which any discussions between the parties will take place and it will conclude with the issue of a "decision notice" by the VOA that will set out whether, in the light of the challenge, it proposes to make any alteration to the assessment, and, if so,

very cumbersome and lengthy process which favours the VOA; new appeal fees; and restrictions on the evidence that may be introduced.

On the issue of transparency, this is an assessed tax, rather than a self-assessed one, and it seems fundamentally wrong that there is no onus on the VOA to explain how it has arrived at its figure, and provide the evidence on which that assessment is based. Instead the ratepayer will first be required to provide evidence as to why the VOA's assessment may be wrong.

The current delays in the system are unlikely to be reduced by replacing a two-stage process ("proposal" and "appeal") with a three-stage one ("check", "challenge" and "appeal") that does not allow for challenges in respect of properties that may be similar to proceed together.

The consultation also proposes quite sweeping powers for the VOA to decide what evidence may or may not be admitted and when discussions are to be deemed to be concluded.

Much better, and simpler, changes would be to legislate to require the VOA to explain to the ratepayer the evidence on

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Valuation Tribunal for England ("VTE") for determination. The consultation paper sets out proposals for an entirely new system based on three stages of "check, challenge and appeal".

### Three stages

Ratepayers cannot formally challenge their assessment until the "check" stage is completed. It requires the ratepayer to validate the facts on which the rating list entry is based and to provide any missing information. The specifics given will be binding on the ratepayer throughout the remaining stages. So what may appear to be a simple "box ticking" exercise could have a significant effect on a ratepayer's later position. There will also be penalties of up to £500 for providing false information, which will further increase the significance of this part of the process.

Once the check stage is complete, the VOA will notify the ratepayer that facts are agreed and make any consequential change to the assessment. When that is done, or in any event after 12 months, the

what that alteration would be. Once such a notice is issued, or if no decision notice is issued within 18 months of a challenge, the ratepayer may then enter a formal "appeal".

An "appeal" can only be made within four months of completion of the "challenge" stage and is limited to considering the VOA decision notice alone. Furthermore, only evidence presented at the earlier stages will be considered and the introduction of any new evidence is strictly limited. The "appeal" is made to the VTE and is likely to involve an appeal fee of between £100 and £300; refundable if the appeal is successful.

### Positive reforms?

It is generally agreed that the present appeal system is not working satisfactorily, but the proposals seem designed more to discourage ratepayers, particularly smaller businesses, from appealing, rather than ensuring that the appeal process arrives at the correct outcome.

The key criticisms of the new system are: a lack of transparency for the ratepayer; a

which it has based its assessment, and to do away altogether with the proposed "check" stage. This seems an unnecessary drag on the whole process because any factual discrepancies will come out in the course of the challenge stage in any event.

The other helpful variation would be to stop all proposals or challenges from automatically becoming appeals. A challenge should only be treated as a formal appeal when both parties agree that it needs to be treated as an appeal, or one party makes an application to the VTE to treat it as such. Changes along these lines would produce a properly transparent system that would be directed towards a formal appeal only in those cases where strictly necessary.

Many people now regard the rating appeals system as broken; while it may not yet actually be broken, the changes proposed in the consultation paper might well do the trick.

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