FACULTY OF ADVOCATES

RESPONSE

by

FACULTY OF ADVOCATES

to

SCOTTISH GOVERNMENT

on

THE NON-DOMESTIC RATING VALUATION APPEALS SYSTEM

Suggestions are invited on all aspects of the current appeals system and possibilities for reforms. Although certain themes can be found in the consultation paper, it ends in paragraph 67 with a list of 20 bullet points. The Faculty comments first on each of these points and then provides detailed responses in relation to matters which the Faculty considers the more significant ones.

The Faculty notes that some of the issues raised were raised in a previous Scottish Government consultation document and do not appear to have progressed beyond the position then set out, although doubtless there were reasoned responses from various bodies to that document.

Response to paragraph 67

For ease, the Faculty has given numbers to these bullet points and notes its position below against those numbers:

1 *Powers for the collection, provision and availability of information (such as rental information) throughout the 'quinquennium' (the typical five-year cycle) but particularly in preparation for each revaluation, at the time an appeal is lodged and prior to any hearing.*

Such information is collected by Assessors under their existing powers. The Faculty has no proposals to make beyond (a) the possibility of introducing a statutory fine for a failure to provide a requested statutory return, as is done with e.g. income tax returns and (b) encouragement should be given to parties and to local Valuation Appeal Committees (VACs) to use the powers to exchange information already available under regulation 11(1) of the 1995 Procedure Regulations.

There is a limited time within which an appeal may be lodged and it is unreasonable to suppose that ratepayers will have the same capacity to gather information as Assessors have. Much has been done already to make available through the Assessors' website details of the valuations particularly of subjects valued on the comparative principle, although that only provides the details of the Assessor's valuation and does not disclose any of the evidence upon which the Assessor's scheme of valuation is based. A particular problem which the Faculty perceives to exist is that Assessors are, often with strong justification, unwilling or unable to provide ratepayers with the full extent of the primary evidence that has been gathered. In some cases that can be because an Assessor's scheme of valuation for a particular class of subjects may be based on commercially sensitive information provided by ratepayers to Assessors but which, for obvious reasons, those ratepayers would not wish disclosed to competitors. That naturally hinders the ability of ratepayers to have much information available to them at a revaluation or at the time when an appeal has to be made.

By the time of the hearing, it is the Faculty's view that more could be done. The following is taken from paragraph 19 of the Faculty's response to the previous consultation paper:

> "We think that it would be of great benefit, especially in more complicated cases, if parties were required to exchange in advance the witness statements and productions which they intend to put before the committee. This practice is adopted, at least in relation to productions, in appeals heard by the Lands Tribunal for Scotland but only rarely in appeals before valuation appeal committees. At present it is usually only during the course of the hearing that the other party has sight of these materials. Such advance notice would assist in the focusing of disputes, particularly where the pre-hearing discussions have not assisted in clarifying a party's position. It would also assist the members of committees by giving them the opportunity of advance preparation. In complicated cases it may be difficult for lay members of committees to grasp issues without such advance preparation."

The Faculty remains of that view.

2 *Electronic provision and exchange of information.*

The Faculty strongly supports the provision and exchange of information between parties to be done electronically. There is nothing in the Procedure Regulations which prevents the submission or withdrawal of appeals electronically, provided only that the Assessor does publish an e-mail address for the purposes of paragraph 3 of the Procedure Regulations. Nor is there anything in the Procedure Regulations which prevents the transfer of information required by regulations 10, 11 or 12 by electronic means.

3 *Greater transparency of information.*

These are practical matters which are for Assessors and surveyors to propose.

4 Any *variations to time limits for lodging or hearing appeals or for exchanges of information.*

The existing time limits appear appropriate for the procedure as it is. It is only if there are material changes to other requirements that it might follow that time limits would require to be reviewed.

5 *Measures to encourage or facilitate negotiations instead of or prior to formal hearings.*

Parties, particularly those advised by chartered surveyors, are normally keen to attempt to resolve appeals by negotiation rather than at a formal hearing. That should be capable of being arranged between ratepayers' advisers and Assessors, but sometimes appear to be

deferred until the last minute by Assessors claiming lack of resources. The Faculty has no proposal to make. Such matters are best left to parties.

6 *Valuation appeal panel membership, appointment, qualification, retention and training.*
The Faculty recommends that such matters are left to the discretion of the Sheriff Principals and the members and secretaries of the Valuation Appeal Panels (VAPs). The Faculty is not aware of any suggestion that imposing any formal qualifications of age or other quotas or representation of other interests rather than that of general experience would improve the quality of VAPs. Some training is achieved with the cooperation of individual Assessors and through the loose grouping of VAP chairmen presently coordinated by the Chairman of the Highlands and Western Isles VAP. Retention of members is probably best achieved by not imposing any external administrative requirements upon them, especially if such requirements are perceived by the members to be unnecessary or irrelevant. The Faculty notes that the age limitation requirement was removed as recently as 2007, presumably for the very good reason that some members at or approaching the age of 70 were valued members of the VAPs. See below at **A Appeal Hierarchy** – *Current Appeal Structure* and *Conclusion.*

7 *Valuation appeal committee procedures and timetables.*
This topic has been the subject of consultation since the present Procedure Regulations were introduced resulting in some minor modifications. The Faculty has no proposals to make, beyond the encouragement of parties and committees to make use of the existing powers requiring exchange of information in advance of the formal hearing.

8 *Fast-tracking valuation appeal committees into the new structure created by the Tribunals (Scotland) Act 2014.*
Although the Faculty recognises the potential for a change without too much disruption of valuation appeals created by the delayed next revaluation, the Faculty is seriously concerned about the damage that could be done to the existing appeal system if local VACs are assumed into a first-tier tribunal without, first, giving careful attention to the question of whether they should be so assumed and what benefits and disadvantages, including an inevitable increase in costs, would follow, second, determining whether or not to continue the existing relationship between VAPs, the Lands Tribunal for Scotland (LTS) and the Lands Valuation Appeal Court (LVAC) and, third, considering probably in detailed consultation with particularly the Assessors how to avoid overloading a separate administrative body (the tribunal) with the organisation of the early stage of the inevitable appeals which result from a revaluation.

The basic provisions contained in section 43 of the Tribunals (Scotland) Act 2014, particularly governing the relationship between the different levels of tribunals and also between them and the courts, include provisions which would seem to be superfluous and wrong in relation to valuation appeals, such as the provisions about review, the basis for appeals from one tribunal to the other one and the abolition of the LVAC by providing for appeals to the Court of Session with the possibility of further appeal to the Supreme Court. These are matters of significance and worthy of a dedicated consultation process. Some of the elements are discussed later. See **A Appeal Hierarchy** and **B Transfer into the Scottish Tribunals of LTS and VAPs** below

9 *Scope of appeal, e.g. whether the current scope gives appropriate rights and transparency to ratepayers.*

The Faculty is satisfied that the present appeal provisions are appropriate.

10 *Improved (provision of) information to ratepayers about the appeals system, especially regarding the right of appeal and corresponding procedures around a revaluation.*

The provision of information is one thing. Ensuring that affected people read it is quite another. All Assessors and committees will have had experience of ratepayers who simply take no note of the clear information already supplied and thereby cause unnecessary costs to be incurred and other appeals to be delayed. The Faculty has no suggestion to make which could lead to the avoidance of that situation.

11 *Improved (provision of) information to ratepayers about the valuation process, so that the system is better understood and costs associated with lodging appeals with little or no chance of success might be avoided.*

The Faculty has no suggestion to offer. Most ratepayers accept the need to consult experts and cannot reasonably be expected to be able to present a reasoned appeal without such assistance.

12 *Whether respondents' proposals involve additional costs, caseloads or other burdens to public-sector bodies and, if so, how these might be funded.*

It is the Faculty's clear view that no changes should be implemented which add to the cost of valuation appeals. Before any changes are even contemplated which would add to cost, some counter-balancing benefit from the change should be clearly established.

13 Whether the *charging of a modest fee (which could be linked, for example, to rateable value or to cost recovery) could result in any improvements to the system.*

As discussed below (see **C Balance of Risk** – *Charging ratepayers for appeals*), the Faculty is not against the introduction of modest fees if that is necessary, but does not understand how charging fees could result in any improvement to the system. The charging of fees may have a severely inhibiting effect on the number of appeals, as has happened with the charges now levied on those who wish to apply to employment tribunals, but the Faculty does not consider that reducing the number of appeals in that manner could be described as an improvement to the appeals system.

14 *Where the balance of risk for appeals should sit, e.g. wholly with the Scottish Government, or shared with ratepayers.*

As discussed in more detail in **C Balance of Risk** below, the expression "balance of risk" is wholly inappropriate in an appeal system which is designed to achieve the correct valuation of property for rating purposes. If the suggestion is that a losing ratepayer appellant whose appeal does not succeed should have his valuation increased above the correct figure, that would not achieve the overall aim of fairness between ratepayers which underlies valuation for rating purposes. See also 16 below.

15 *Measures to reduce the volume of speculative appeals and speed up the resolution process for those with well-founded and evidenced claims.*

The Faculty does not understand what is meant by "speculative" appeals. If it relates to appeals made at a revaluation, then that is likely to be a function of the appeals process in

which an appellant does not have, and cannot reasonably be provided with, the same information that the Assessor has when he issues his valuation. It is only in discussion between a ratepayer's advisers and the Assessor that it will become clear if there is a good ground of appeal. That cannot be achieved in all cases within the sensible time limits that presently exist. And indeed Assessors would be wasting their time by discussing valuations with a ratepayer until it was clear that the ratepayer was intent on appealing. See **C Balance of Risk** – *Speculative appeals* and *Multiple appeals* below.

16 *Whether it should be possible for the rateable value of a property to be increased as well as decreased at appeal (as is the case in England).*

What is plain to the Faculty is that the only possibility for an increase to the rateable value on appeal is an increase to the value which the Assessor should have calculated originally. Anything beyond that must be an unfair penalty. And if during discussion of an appeal or at the hearing of the appeal a mistake and resulting undervaluation by the Assessor is discovered, there presently exist appropriate means of correction of the valuation roll to increase the original valuation. See further in **C Balance of Risk** - *Charging ratepayers for appeals* below.

17 *Limiting the number of appeals per property.*

The Faculty is not aware of any complaint that there are presently too many appeals per property. As discussed in **C Balance of Risk** – *Multiple appeals* below, the Faculty considers that the present rules already limit the number of appeals so far as it is fair to ratepayers to do so.

18 *Introduction of new penalties for those who fail to provide evidence or are deemed to abuse the system.*

The Faculty accepts that it may be reasonable to provide some new penalties in certain situations. In relation to the provision of statutory returns, that could be achieved by statutory fines. In relation to abuse of process there are already powers available and the Faculty has no proposals to add to those powers.

19 *Improvements to availability of rental evidence.*

So far as this is related to evidence being available to Assessors when preparing for a revaluation, such information is quite usually in the public domain and available to Assessors. Certain difficulties have been caused, particularly since the last revaluation tone date. In particular the letting market has suffered badly since the events of 2008 to the extent that very large, but confidential, inducements are sometimes made to incoming tenants to take a lease which, on its face, appears to be a perfectly normal lease although the rent stated may have little relationship to the rent effectively being paid. The Faculty is not aware of any proposals which could resolve that difficulty.

20 *Measures to help ensure values are right first time, reducing the need to appeal.*

This topic it is plainly one which Assessors are best placed to comment on.

The Faculty now makes its more detailed responses.

A Appeal Hierarchy

The Faculty strongly recommends that the existing hierarchy of appeals to the local VACs or LTS with a further appeal to the LVAC should be maintained as also should the mechanics of appeal. They are efficient in time and cost.

Background

The Assessor's duty is to fix the correct rateable value (RV) according to the statutory test, which is very similar to the rent payable under a standard full insuring and repairing lease.

Standard properties such as unit shops in a town centre or offices in a business area are relatively easy to value. They are usually let and the Assessor will routinely collect details of such leases from public records or from ratepayers' returns. With that amount of information the exercise of valuation may be little different from a mathematical exercise with professional judgement being restricted to analysing information to determine the boundaries of areas of differing values and how particular features including size, age and specific disabilities of, for example, layout affect value. Such cases are, in the event of an appeal, obviously ideal for decision by the present local committees of VAPs. The members have knowledge of their local areas and, often, have a business or professional background which prepares them well for this task - which they willingly undertake at very little cost.

At the other extreme from standard premises there are odd and unusual subjects, often of high value, which are never let or are only let as a result of some involved funding transaction. They can come close to defying attempts to give them rationally derived RVs and the correct method of valuation and application to the particular property may give rise to justifiably very different conclusions of professional opinion. For those cases, the professional expertise of the LTS is better suited to judging the competing views of highly skilled professional chartered surveyors, whether those acting as Assessors or those acting for ratepayers.

Current Appeal Structure

The present system of appeals has evolved through experience. In the Faculty's view it is now admirably suited to its purpose and efficient in time and cost.

There are really two sorts of appeal in practice. There are appeals by individual ratepayers (or council tax payers in council tax appeals) who will be likely to know little about valuation principles. In these appeals it is really the duty of Assessors to give appellants as much assistance as they might require on procedure and principles. The other type of appeal is between experts, surveyors specialising in valuation for rating on one side and the Assessors' deputies and staff on the other, sometimes assisted by counsel and sometimes not. These appeals are adversarial and closely resemble cases being heard in a court of law albeit being heard by a lay committee rather than a qualified judge. It is through this adversarial process that cases are aired and tested. Committees do not tend to be interventionist but listen and consider what the parties choose to lead in evidence and then argue in law. We consider that any attempt to meddle with the adversarial nature of the system would be very unfortunate indeed. We do not see that a committee (or judge) led inquiry, perhaps with the committee having power to cite witnesses of its own, would assist at all.

Initial Appeal

After a revaluation – and indeed in all appeals – an appeal has to be made within a relatively short period, six months from a revaluation or from issue of a subsequent valuation notice. The appeal is made to the Assessor in quite informal terms and no administration other than the Assessor's necessary internal administration is needed until the Assessor has considered the appeal and, often, discussed it with the ratepayer or its agent. At that stage it is left to the Assessor to decide how to proceed, usually by prioritising particular classes of subjects. In extreme cases of unjustified delay, there is a power given to local VACs, on application by the ratepayer, to insist on citation of a particular appeal. This power is very little used but its presence in the background may be useful in encouraging early discussion.

As indicated in the consultation paper's statistics, it is discussion that leads to the majority of appeals being withdrawn or compromised by agreement. That can only follow after consideration of all the evidence by then available to the ratepayer as well as to the Assessor.

Appeal to local VAC

The informal nature of the initial appeal becomes more formal with the issue of a citation to a hearing. At that stage (a minimum of 10 weeks before the hearing) it is anticipated that detailed discussions will take place and many appeals will be resolved by agreement, either by withdrawal or by modification of the rateable value. Then, 35 days ahead of the hearing, there is a requirement for detailed grounds of appeal to be provided to the Assessor along with the ratepayer's proposed rateable value.

All the early steps in processing appeals are taken by the Assessor's staff, even including the issue of citations, and therefore there is no duplication of cost that would be consequent on involving administration through the panel secretaries (or a substitute tribunal system).

The discussion paper appears to perceive a problem with cases being appealed without detailed reasoning. But the system works. Appealing generally means the Assessor will require to justify his or her valuations. But in preparing the Valuation Roll the Assessor’s staff will already have done this. There are quite lengthy time limits (in advance of hearings) when matters such as comparisons have to be lodged. We are not aware of large numbers of appeals clogging up the system. Rather the vast majority of cases are either settled by agreement or are abandoned as relevant decisions made during the currency of the Roll emerge.

Appeal to the LTS

At the stage of citation, decisions can be taken by agreement between the parties, or by the local VAC on application, about referring appropriate appeals to the LTS.

That system is, the Faculty considers, suitable and usually results in appropriate appeals reaching the LTS. In the event of the local VAC refusing the application to refer, there is now an appeal procedure to the LTS which will reconsider the question of referral. There are 17 appeal decisions against refusals to refer listed on the LTS website for the current revaluation. Of them, twelve were allowed and five refused. That demonstrates the limited number of such appeals and, the Faculty considers, also demonstrates the need for the appeal provision.

The limited number of appeals suitable for decision by the LTS are, the Faculty considers, correctly appeals to be determined by that expert tribunal. The LTS procedure is not subject to the same time constraints as committees and this allows proper consideration to be given to those complex cases. That this is a more suitable system for resolution of such (usually important and valuable appeals) than the local VAC can provide is demonstrated by a reading of LTS Opinions in the appeals to them. And it should not be forgotten that, once an appeal is referred to the LTS, there is then the necessary time available for detailed discussion to take place between the parties, quite frequently leading to a reduced RV or even withdrawal of an appeal.

Appeal to LVAC

Appeal from the local VAC or from the LTS is to the LVAC, part of the Court of Session. This is limited to appeals in law. Appeals are dealt with expeditiously and are final, since appeal to the Supreme Court is not permitted.

This contrasts with the position in England, where appeals are made from the Valuation Tribunal for England (VTE) to the Upper Tribunal (Lands Chamber) where the appeal is then reheard. From that decision, further appeal is possible, first to the Court of Appeal and thereafter to the Supreme Court. Clearly the English system with its duplication of hearings and the possibility of an added level of appeal will involve substantially more cost than the Scottish system and be productive of potentially quite lengthy delays.

Conclusion

In a review by the Faculty of the appeals system for valuation for rating it would be remiss not to set out the real merits of the existing system and those committee members and secretaries who contribute so much to it. Most members of the public have no idea that VAPs exist. Members are not remunerated and attend, the Faculty considers, due to a sense of public service and responsibility and a real interest in learning about rating law and deciding cases. That they do so willingly and often without even claiming the expenses which they are entitled to must be a testament to the operation of the present system. There has been some criticism of the fairly limited social strata of typical members. We suggest that such criticism rather misses the point that those able to serve in a voluntary capacity will tend to be retired or semi-retired (or at least have some time to spare) and that one of the great advantages of these committees is that members will generally have experience in business or the professions and can bring their varied and valuable experience to bear on appeals.

Furthermore, members are expected to bring their local knowledge to bear. They will know which areas attract new shops or business ventures and which areas are up and coming and which may be in decline. Against this knowledge the evidence brought by appellants and Assessors is tested. We suggest that, like local licensing boards, the local element is of great importance and most members of the public, if they were to think about it at all, would be likely to consider that it is a very good thing that questions of value are dealt with locally under the supervision of the LVAC. In addition members of committees tend to serve for a number of years and so in committees lies a real depth of experience in deciding questions of valuation in their community.

The same is true for secretaries who are solicitors, also local to their valuation area, who provide legal advice including advice on the competency and relevance of evidence as well as

fulfilling the vital role of summarising decisions and stating cases for further appeal. Valuation for rating is an obscure branch of Scots Law and it is probably true that few solicitors outwith the body of secretaries have encountered it much, if at all, before. So secretaries too build up great experience and knowledge which it would be difficult for the general practitioner to grasp on a case by case basis.

The Faculty therefore strongly recommends that the existing structure of appeals being made to the Assessor in the first place, with unresolved appeals being determined by the local VAC (with the possibility of suitable appeals being decided instead by the LTS) and with one stage only of further appeal to the LVAC works very satisfactorily, is ideally suited to valuation for rating appeals and should be retained.

B Transfer into the Scottish Tribunals of LTS and VAPs

General

The Faculty understands that there is an intention to transfer both the LTS and VAPs into the newly established Scottish Tribunals, presumably with the current LTS becoming a specialised division of the Upper Tribunal. The VAPs would be within the First-tier Tribunal.

The Faculty has no strong views about the transfer of the LTS, provided that it retains its jurisdictions in relation to valuation for rating appeals and that attention is paid to maintaining its manner of operation with its specialist President and members and also its knowledgeable clerking staff.

The Faculty has serious doubts about the benefits and cost and efficiency in altering the system of VAPs that has been developed over time. More importantly the Faculty recognises that in its unique jurisdiction it is well served by the present combination of initial appeal handling by the Assessors and hearing and disposal of appeals by locally based persons of experience, supported by a qualified clerk.

Present position

Valuation appeals under the Valuation Acts are only part of the jurisdiction of the LTS and also of VAPs. The Faculty's comments relate only to that part of their jurisdictions, although obviously consideration of their other jurisdictions would be essential before determining if, when and how they should be incorporated into the Scottish Tribunals.

Appeals under the Valuation Acts are currently made to the relevant Assessor and come before a local VAC formed from the relevant VAP for decision unless a party requests referral of the appeal to the LTS. The procedure before a committee is relatively informal, although there are time limits and procedural requirements to be met, and a reasoned decision is issued after the hearing, following consideration by the committee members. If a party requests a referral to the LTS, that request may be agreed to by the other party and the appeal is referred to the Tribunal. The LTS has a power to return the appeal if the Tribunal considers the appeal not suitable for decision by it rather than a local VAC. If the request to refer is opposed, the VAP considers that request and the opposition to it without a hearing. If the request is accepted, it will be referred to the LTS. If the application to refer is refused there is

an appeal procedure to the LTS. The LTS's decision on such an appeal is not subject to a further appeal.

The decision reached after a hearing on the merits of the appeal, whether determined by a local VAC or by the LTS, is subject to a right of appeal, although that appeal is on law only. The appeal is to the LVAC with no further appeal possible to the Supreme Court.

Transfer of LTS

The LTS has both first instance matters and also its appellate jurisdiction in relation to valuation appeals. It has various and varied other jurisdictions connected with property and property rights. The LTS already operates in premises it shares with the Scottish Land Court and other Tribunals. It shares its President with the Land Court, which also operates from the same premises. Its staff has considerable experience of both valuation for rating and other property matters with which the LTS deals.

The Faculty considers that the LTS's dual jurisdiction in valuation appeals operates very satisfactorily and that it should be maintained unaltered. The present system whereby the LTS hears some appeals at first instance was introduced in 1984, with an appeal against a VAP's refusal to refer modified in 1990 from an application to the Court of Session by way of a judicial review to the appeal to the LTS. This appeal has been held by the LTS to be an open appeal and not limited to an appeal in law.

This carefully considered procedure works well and efficiently in relation to valuation appeals, whether it is a first instance hearing on a referred appeal, an appeal against a committee's refusal to refer or the manner of appeal from the LTS to the LVAC. In particular the Faculty accepts that appeals against refusal by a committee to refer should continue as open appeals and should not be limited to an appeal in law only. It is surely appropriate that the LTS can determine for itself, on an outline of the facts and arguments, whether a valuation appeal satisfies the statutory criteria for it to be heard by the LTS rather than being constrained by how the VAP dealt with the perhaps more limited information submitted with the original application.

The Faculty notes that the appeal provisions in England differ from the Scottish position. All appeals at first instance are heard and determined by the VTE. From the VTE's decision an appeal is made to the Upper Tribunal (Lands Chamber). It is an appeal by way of rehearing. Further appeal, although in law only, against the decision reached by the Lands Chamber is to the Court of Appeal, with the possibility of a yet further appeal in appropriate cases to the Supreme Court. The English position must be more inefficient in cost and more productive of delays than the existing Scottish system. It is not recommended by the Faculty for adoption in Scotland.

In particular, the Faculty would not consider it appropriate for the LTS to assume an appeal jurisdiction from a local VAC's decision on the merits. Such an appeal, along with an appeal against a LTS first instance hearing decision should both, the Faculty recommends, continue to be made to the LVAC by means of a stated case. If the LTS is incorporated into the Scottish Tribunals, the Faculty submits that those features, along with the other features described above, should be maintained.

Transfer of VAPs

The real benefits of the currently constituted VAPs is described under the heading *Current Appeal Structure*, subheading *Conclusion* (see above).

Although the Faculty does not have access to detailed figures of cost it has been ascertained that, with the usual five-year cycle of revaluations, greater costs are incurred in the operation of the committee system in the earlier years rather than the later years. Beyond the fees paid to the VAP secretaries, these costs appear to be modest and will mainly consist of the cost of hiring appeal venues. What is clear to the Faculty is that these costs, which are all met by the local Assessors, would be bound to increase hugely if the earlier parts of the appeal procedure, currently handled by the Assessors, have to be duplicated because appeals require to be made not to the Assessor but to the Scottish Tribunals. Study of the accounts for the VTE for 2013-2014 (total expenditure in excess of £8m as well as a pension deficit of almost £4m) does not bode well for the suggestion that a first-tier tribunal dealing with the whole administration of valuation appeals across Scotland would be anything other than hugely inefficient in cost compared with the current VAPs as well as being likely to lose the benefit of the experienced members of, and secretaries to, VAPs.

C Balance of Risk

The consultation paper mentions the intention of the Scottish Government to seek to initiate a "*separate review of the valuation appeal system*" (para 3) and it sets out the scope at para 7 to seek views on "*how the operation, transparency and efficiency of the valuation appeal system might be improved*." The context is that of improving the valuation appeal system (para 8).

Para 38 of Consultation Paper (December 2014)

> "*The financial risk of the appeals system sits with the Scottish Government, which must bear any reduction in overall business rates income resulting from a successful appeal. There is no such risk to the ratepayer in the current system as appeals are free to lodge and carry no risk to the ratepayer of an increase in rating liability, whilst multiple appeals can be lodged on a single property*."

Within that paragraph there are various concepts:

(a) the provision of an appeal system to correct an error by the Assessor;
(b) the cost of such an appeal system;
(c) the potential variation ("financial risk") in income available to the Scottish Government from business rates following a successful appeal.

> "*It is not appropriate for the Scottish Government to comment on decisions made on appeal cases. Likewise, under current funding arrangements, council funding is protected insofar as a council sees no reduction in its income due to appeal losses, as the Scottish Government makes up any shortfall against projected business rate income through an equal and offsetting increase in general revenue grant*." (para 39).

The Faculty is clear that the purpose of the appeal system is to provide a mechanism by which a business ratepayer can have an impartial and evidence–based decision made by a local VAC, the LTS or the LVAC as to the accuracy or inaccuracy of assessments. It is not appropriate in that appeal process or in the design of such an appeal process to consider the Scottish Government income derived from business rates. The appeal process is to ensure the correct assessment is used when rates are levied by the rating authority on the taxpayer. The

parties to the appeal are the ratepayer and the Assessor, the independent professional entrusted with the task of fixing fair values appropriate to the local valuation areas. The subsequent direction of funds arising from correct assessment is not a matter for either the Assessor or the taxpayer but a question of finance and policy falling within the ambit of the Scottish Government and the relevant local authority in whose area the assessed property is located.

The Scottish Government position on "financial risk" and a potential "loss" following a correction to an assessment should therefore be outwith the ambit of a consultation on the appeals procedure and the direct cost of such procedure. A reduction in assessment following appeal must mean the assessment was incorrect. If the assessment was too high then the "financial risk" of such an incorrect assessment does indeed fall on the rating authority and, through it, the Scottish Government. However it is a reduction back to the correct figure and should not be considered a "loss". The question of the Scottish Government "loss" of income is not relevant to consideration to the Assessor's duty to make a correct assessment and the taxpayer's right under the law to challenge such an assessment. It is noted that para 61 suggests any such "loss" following appeal is low:

> Para 61 "*It can be seen that the relative loss on appeal is a fairly low proportion of total rateable value under appeal (around 4.8% as at 30 September). This supports the view that a large number of appeals are speculative and that if their numbers were reduced, the remaining appeals could progress more quickly*."

At para 47 reference is made to Table 2: at September 2014 the total revaluation values had been reduced on appeal by 3.3% to a total of £219m. "*This would suggest a significant proportion of those appeals have seen very little or no reduction*."

Charging ratepayers for appeals

The Faculty assumes that there is no suggestion that valuations should be increased by a fixed percentage of the value if the appeal fails. That would plainly be inequitable.

The prospect of penalising a ratepayer who appeals by increasing his rating liability increases the potential inequality of arms between the parties where the taxpayer is in effect making a challenge against a state or local authority salaried appointee who has access to a wealth of information not easily accessible to the taxpayer. In any event, under the present provisions it is open to the Assessor to increase an assessment that is discovered to be mistakenly low.

If the suggestion that the direct cost of an appeal system requires to be addressed then that has the potential to be addressed in the usual business way by: (a) making a reasonable charge at various stages for the processing of such appeals and/or (b) reducing the administrative costs in running the system.

As discussed above, the Faculty does not believe that valuation appeals would be dealt with more cheaply if the system were to be transferred into the Scottish Tribunals. Therefore the Faculty would oppose the introduction of new charges into the present valuation system.

If the suggestion is that the costs of administration cannot be reduced by increasing the efficiency of the administration of the Scottish Tribunals, the Faculty would not be opposed to appellants being required to meet reasonable administrative charges if VAPs are indeed

transferred, as presently happens with the LTS. The Faculty would not accept that charging should be introduced into the present system since it would plainly be inappropriate for the Assessor to levy charges against those who have disagreed with his valuation. Such charging would have to be deferred until valuation appeals were moved into the Scottish Tribunals. In relation to council tax appeals, those very rarely raise significant financial questions and the Faculty considers that it would be most inequitable to impose any charge on council tax appellants. The Faculty would also strongly oppose any suggestion that there should be cross-subsidy for council tax appeals from charges levied on rating appellants.

Moreover, since a successful appeal demonstrates that the subject had been incorrectly valued, the Faculty considers that consideration should be given to refunding such expenditure to a successful appellant, who has had to appeal to have an Assessor's mistake corrected, especially if the charges are other than nominal.

The Faculty accordingly has no strong objection to the introduction of administrative charges upon the tribunal system becoming operational, but we would recommend that such charges be of a modest amount, and fixed at a such a level as would apply to each stage of process of each appeal regardless as to the value, or estimated value, of each appeal, or the value of the lands and heritages involved in each appeal.

Speculative appeals

If it is the case that the consultation paper is suggesting establishing a route by which "speculative" appeals are penalised or deterred, the Faculty does accept that improper or inappropriate behaviour should be deterred. What the Faculty strongly disagrees with is the notion that appeals are inappropriately made merely because they are lodged before full consideration has been given by the ratepayer or its adviser to the rateable value given by an Assessor.

For the purposes of a revaluation, the Assessors have a period of several years, and a wide spread of individual rental and other information to provide the evidence on which to base their revaluations. Ratepayers will not usually have any ready access to rental and other information other than in respect of their own terms of occupation. The ratepayer's advisers, generally chartered surveyors, may have some information, and may be able to obtain further information but they only have a limited time after a revaluation, a period of six months, for ratepayers to instruct them, for the advisers to examine the relative details of the subjects in question, and then to assess whether an appeal should be lodged. And it has to be borne in mind that a ratepayer may have many properties across Scotland for his adviser to consider. Any appeal requires to be lodged by 30 September in the year of a revaluation. It is for this reason that the appeals system, as presently regulated, does not require an appeal, when made, to state an alternative value. That requirement arises in the period preceding the Hearing (not less than 35 days prior to the Hearing date). We consider that to describe such appeals as "speculative" is to prejudge their merits.

At the stage when counsel are instructed to appear in an appeal, it is clear that the appeal is not speculative and is likely to proceed. It does not appear to us that either Assessors or ratepayers' agents spend significant time on the substantive consideration of appeals until they have reached the stage of citation and certainly no expenditure is incurred by Assessors beyond the necessary for their own purposes.

Multiple appeals

We remain unclear as to what is meant by the suggestion to limit the number of appeals or by reference to “multiple appeals” on a single property.

If what is contemplated is a limitation to the number of persons who may make an appeal, that is in the Faculty's view unnecessary. At present, the proprietor, tenant and occupier of a property all have the same rights of appeal against the entry and the valuation in the valuation roll. However, in our experience, this is not a problem in practice because parties make appropriate arrangements for all these appeals to be heard together at one Hearing with common representation.

If what is contemplated is a reduction in the substantive grounds on which an appeal may be taken, the Faculty considers that would, as a matter of principle, be misguided. The current opportunities to lodge an appeal arise in four situations:- 1) at a revaluation; 2) upon a change of ownership, tenancy or occupation; 3) upon a material change of circumstances; and 4) upon the discovery of an error. The interests of fairness, in our view, require the existence of all those opportunities. Any limitation of them would potentially result in the unfair situation of the rateable value of a property being incorrect but the ratepayer having no ability to challenge it.