

CONSULTATION ON SUSTAINING THE JUDICIAL INDEPENDENCE OF THE VALUATION TRIBUNALS

THE GOVERNMENT'S CONCLUSIONS

1. This paper describes the conclusions the Government has reached following the consultation on "Sustaining the Judicial Independence of Valuation Tribunals" and maps the route from the proposals set out in the consultation paper to those conclusions. A summary of the Government's conclusions is at Annex A to this paper.
2. The wide-ranging response to the consultation paper has reinforced the Government's view that it is crucially important to make suitable provision for close working between the VTS Board and the Valuation Tribunals in securing the efficient and independent operation of the Tribunals. Although the proposal to form a Procedures and Members Committee (PMC) was the most popular option, the Government, working closely with the VTS Chairman and Chief Executive, are clear that the consultation model could be improved through the incorporation of ideas proposed in responses, through observation of how the interim Tribunal Liaison Committee (TLC) has developed, and through additional ideas that have come from the Chairman and Chief Executive.
3. It is clear that some concerns remain in parts of the Valuation Tribunal movement about the arrangements proposed in the consultation to sustain judicial independence. Accordingly, considerable effort has been made, in reaching conclusions on the way forward, to emphasise the distinction between the statutory functions of the Valuation Tribunal Service Board on the one hand and the need to reinforce the judicial independence of the Valuation Tribunals on the other: for example by providing clarity about Tribunal membership involvement in decisions about training, and by recognising clearly the need for a forum through which Tribunal members are able reach views and offer advice to the VTS Board on issues of mutual interest within the statutory remit of the VTS.
4. The conclusions reached by the Government take full account of the range of responses to the consultation proposals, and also build explicitly on the helpful discussions that the Chair and Chief Executive of the VTS have been having across the Tribunal movement. In reaching these conclusions the Government has sought to improve on the model put forward in the consultation in a way which builds upon the common ground that has clearly emerged. The Government has concluded that this will be achieved by the way forward set out below under which two committees of the VTS would be formally established.
5. In the consultation paper the Government suggested that under powers in the Local Government Act 2003 it would direct the VTS to establish a committee to advise the VTS Board on judicial matters. The Government

believes that it would support the necessary partnership between the VTS and the Tribunals for the establishment of these committees to be achieved without direction from the Secretary of State at this time. Partnership will encourage evolution and development of the service provided by the VTS to the Valuation Tribunals and by the Tribunals themselves.

Establishment of Committees of the Valuation Tribunal Service

6. The consultation paper identified the Government's preferred option to establish a single committee of the VTS Board (the PMC) to "advise the VTS Board on all matters within the statutory remit of the VTS that might have an impact on the judicial independence of the Tribunals". The Government has now concluded that the way forward should be for the VTS to establish two committees, using its powers in the Local Government Act (paragraph 10 of Schedule 4 to the Act). The Government's view with which it understands the VTS Chair concurs is that the first committee should be called the "Judicial Interface Committee (JIC)" and the second the "Members' Judicial Committee (MJC)".
7. The JIC would be the principal committee for advice to the VTS Board on matters within the statutory remit of the VTS that might impact on the Valuation Tribunals' judicial independence.
8. The second committee (the MJC) would be comprised of representatives of Valuation Tribunals and would advise the JIC from a Tribunal perspective on matters within the statutory remit of the VTS that might impact on the Tribunals' judicial independence. The Government takes the view that the role of the MJC is generally to advise the JIC and through that forum the VTS Board. However in respect of policy decisions about the use of the training budget the Government believes that it is the MJC that should be taking the lead (see paragraphs 30 to 35).
9. The Government's conclusions reflect the advice of the VTS Chair and Chief Executive that two committees, rather than one, should be established. They are, equally, consistent with views and suggestions put forward in response to the consultation proposals. It is clear that a number of those responding on behalf of Valuation Tribunals, and of individuals who are themselves members of Tribunals, believe that the existing statutory requirement for the majority of the VTS Board to be drawn from serving Presidents or Chairs of Valuation Tribunals should be reinforced to sustain the judicial independence of the Tribunals. The Government equally understands the view that it would assist the perception of Tribunal independence if a committee were to be established in which representatives of Valuation Tribunal members could discuss judicial issues of interest across the Tribunal Service. Through such a committee Tribunal members and their representatives would be able to advise and feed in views on judicial issues to the VTS Board. The consultation proposal to establish a single committee would not have achieved this fully.

10. The Council on Tribunals, in their response, said that “given suitable arrangements for consulting the VT membership, the statutory requirement for the VTS Board to have a majority of serving Presidents or Chairs should be enough to ensure that the Board fulfils its obligation to carry out its functions in a manner which it considers best calculated to secure their efficient and independent operation”. This is a clear indication that the statutory provision of a majority of Presidents and Chairs on the VTS Board is regarded as sufficient safeguard for maintaining judicial independence. However, the Government believes that the two-committee structure takes a justifiable extra step towards such ‘suitable arrangements’.
11. The Government has also noted that as an interim measure the Valuation Tribunal Service has established a Tribunals Liaison Committee (TLC) to advise the Board on matters within the statutory remit of the VTS that might impact on Tribunals’ judicial independence. It has also noted that this Committee meets in two parts on the same day. Only those members who represent regional groupings of Tribunals attend the first part of the meeting. In the second part of the meeting members of the VTS Board and the Tribunals regional representatives meet together.
12. The Government has taken note of all these views and developments. The establishment of two complementary committees which it now calls for not only builds on the proposals set out in the consultation to establish a PMC, but also makes use of the valuable experience of the interim two-committee structure, where the TLC has provided advice for the VTS. The JIC will take on the role initially planned for the PMC. The Government believes that the establishment of complementary committees will strongly reinforce the independence of the Tribunals themselves while at the same time providing the necessary opportunity for Tribunal representatives to contribute towards the development of a co-ordinated, efficient and independent tribunal service.

Why an independent body should not be established

13. The Government has noted the view of a small number of respondents that a completely independent body of Tribunal representatives should be established as a means of reinforcing the judicial independence of the Valuation Tribunals. It recognises that other jurisdictions have such bodies, but it remains concerned that to establish one for the Valuation Tribunals would undermine the key objective of providing a cohesive service, and that it would make it difficult in practice for the VTS to undertake its statutory functions through strategic planning, budgetary control and effective administrative / estate support. The Government has concluded that the establishment of a committee of representative Valuation Tribunal members within the structure of the VTS achieves the reinforcement both of the Valuation Tribunals’ judicial independence and of the perception of that independence that this small number of respondents seek. Overall the Government has concluded that a two-

committee structure offers proper recognition and sufficient representation of the views of Tribunal members and their representatives.

Committee Chair

14. The consultation paper proposed that the Chair of the VTS Board should be the chair of the PMC. Responses suggested a number of alternative arrangements including the election of the Chair by all members of the committee; that only regional representative members should elect the chair; and that the VTS Board member representatives should be prevented from being the chair. It was also suggested that the committee should be chaired jointly by a member of the VTS Board and by a VT regional representative.
15. The Government has concluded that two committees should be established (see paragraphs 6-12 above), with the JIC being the principal committee to “advise the VTS Board on all matters within the statutory remit of the VTS that might have an impact on the judicial independence of the Tribunals”. Given that the JIC will only be asked to form a view on issues within the statutory remit of the VTS the Government believes the VTS must be seen to be taking the lead. Moreover the Government believes that it would be inappropriate for this, a principal committee of the VTS itself, to be chaired by other than a member of the VTS Board. For the same reasons it does not believe it appropriate to have, as some have suggested, joint chairs drawn from the VTS Board and Tribunal representatives. It has therefore concluded that the Chair of the JIC should be the Chair of the VTS or a VTS Board representative as appointed by the Chair of VTS.
16. The Government is of the view that, in line with suggestions made by some respondents, the members of the MJC should elect their own chair and representatives to the JIC on an annual basis.
17. The Government endorses a proposal from the VTS Chair that in her role as Chair of the JIC, she should hold regular informal meetings with the Chair of the MJC to ensure good networking, communication and liaison and to engage in effective agenda planning for the meetings of each committee.

Committee Membership

18. The consultation paper proposed that membership of the PMC should comprise up to three members of the VTS Board and one representative from each of the administrative groupings of Tribunals who must also be serving Tribunal members. Some respondents were concerned about the number of committee members proposed to be drawn from the VTS Board while others took the view that VT representatives should be in the majority. It was also suggested that those members of the VTS Board who were also Presidents or Chairs of Valuation Tribunals should be prevented from being regional VT representatives on the PMC. Equally some

respondents felt it necessary to emphasise that representatives must be serving members of Valuation Tribunals, even though this was a part of the consultation proposal.

19. Given that the Government's overall conclusion is that two committees be established (see paragraphs 6 to 12 above) it takes the view that separate arrangements are appropriate for membership of each of the two committees.

The JIC

20. The Government has concluded that the JIC (which would be the principal forum for interface between the VTS Board and the Tribunals' representatives) should have equal numbers of members from the VTS and the Valuation Tribunals. The Government has come to this view because it believes it important for the VTS and the Tribunals to come together. The JIC provides a high level forum for this. It should be the forum in which the VTS and members of VTs mutually agree a way forward on issues within the remit of the VTS that might have bearing on or could impact on judicial matters. By virtue of its statutory functions, the VTS needs to take a view on such issues and must consult Valuation Tribunals before doing so. The JIC provides a forum for doing so.
21. In the Government's view the JIC should have a maximum of three members drawn from each of the VTS Board and from among the regional representatives on the MJC (see paragraph 22 below), making a committee of six including the committee Chair. The members of the MJC would select by election on an annual basis their regional representatives on the JIC.

The MJC

22. Building on the existing arrangements for the interim TLC, the principles of which received wide support in the consultation, the Government has concluded that members of the MJC should be drawn from among the membership of the Valuation Tribunals. One representative should be elected by and represent all the Valuation Tribunals in each of the administrative areas into which the Tribunals are organised. Should any representative be unable to attend a committee meeting, a deputy may attend. To avoid potential conflicts of interest neither a regional representative nor a deputy should also be a member of the VTS Board. Additionally, the Government has concluded that the chairs and members of both the JIC and the MJC, other than the VTS Chair, should be appointed to the committees for a time limited period of one year, although they may be re-appointed thereafter.

Regional Meetings

23. The consultation proposed that the regional representatives to the PMC should convene four meetings a year of presidents and chairs to inform

their work on that committee. While the proposal to hold meetings was widely welcomed, there were suggestions from respondents about those to be invited to such a meeting and about whether such meetings should be mandatory.

24. Building on the consultation proposals, the Government believes it is important that the regional representatives on the MJC not only represent the views of their constituent members but are also seen to represent them. The Government has therefore concluded that representatives on the MJC should hold regional meetings in each administrative area, which it suggests be named 'Regional Presidents Groups' (RPG), and that either Presidents or their representatives should attend. The Government also believes that conclusions reached at such meetings should be regarded as mandating on representatives.
25. Additionally the JIC should be able to assure the VTS Board that Tribunal Presidents, through their representatives on the MJC, have endorsed the policies on issues within the statutory remit of the VTS which may have bearing on judicial matters and which require implementation by the VTS.

Quorum

26. Consultation proposals said that the PMC should not be quorate unless two members of the VTS Board were present. There was considerable disquiet among some respondents to this proposal and the Government recognises that it must be adjusted. Suggestions from respondents ranged from inclusion of a requirement for a minimum number of regional representatives also to be present through to either a simple majority of members or half the regional representatives plus one member of the VTS Board. The Government now concludes that for the JIC the quorum should be two members from each of the VTS Board and the regional representatives on the committee. For the MJC it is proposed that the quorum should be 50% of the members of the committee present.

Additional advice and administrative support

27. There were some suggestions that the committee might benefit from technical advice being made available and that formal arrangements be put in place to provide administrative support. The Government sees merit in both these suggestions and proposes that the VTS should provide a serving Valuation Tribunal Clerk to act as Secretary to the committees and to provide any necessary technical advice.

Terms of Reference

Assert judicial independence of Valuation Tribunals

28. The consultation paper proposed that the PMC should "assert the judicial independence of Valuation Tribunals". The Government agrees with suggestions put forward by some respondents that this should be

expanded and has concluded that both the JIC and the MJC should be required to “assert and maintain the judicial independence of Valuation Tribunals”.

Advice to the VTS Board on procedural matters

29. The consultation proposals suggested that the PMC should provide general advice to the VTS Board on procedural matters in relation to hearings before Valuation Tribunals. There were some suggestions that the Committee should be able to direct the VTS Board on such matters including on issues within the statutory remit of the VTS. One of the functions of the VTS set out in the Local Government Act 2003 is to give the Valuation Tribunals “general advice about procedure in relation to proceedings before Tribunals” and it therefore has a statutory duty to do so. The Government therefore believes it to be inappropriate for the VTS Board to receive direction on such matters. The Government has concluded that the JIC should advise the VTS Board on such procedural matters, drawing on the advice of the MJC.

Decisions about the Training Budget

30. The 2003 Act places on the VTS a function to provide or arrange for the provision of training for members and staff of Tribunals. The consultation paper proposed that the PMC would decide how the budget for training, as set by the VTS Board, would be used. It also proposed that the PMC, in conjunction with the VTS Board and the Chief Executive’s staff, should advise on a programme of training for new Members of Valuation Tribunals which should be undertaken satisfactorily before such members could sit on Tribunals.
31. One of the key concerns that emerged from the consultation was the extent of the respective roles of the VTS and of the membership of the Valuation Tribunals in the provision of training for members. A significant number of respondents took the view that the training of members was a judicial matter and sought clarification about the extent of the role of the VTS in policy on the of training of members.
32. It was largely recognised that the VTS, as the statutory body responsible for the provision of training for members, should have the final say in the amount of resources to be made available in the members training budget, and provide the training. But some respondents suggested that there should be a clear mechanism through which the Tribunal members are able to advise and agree with the VTS both about the level of the budget and about annual priorities for the training of members. More importantly a significant number of respondents were of the view that decisions about the training and development of members, and about how the training budget was spent, should be the responsibility of a grouping of VT members’ representatives.

33. The consultation confirms that agreement to the training budget and decisions about its use is a high priority issue for Valuation Tribunal members, and is crucial to their perception of the independence of the Tribunals. We have therefore concluded that we should build on the consultation proposals. Firstly we have concluded that the JIC should be charged with agreeing a ring-fenced budget for members' training and conferences drawing on advice from the MJC. In this arrangement responsibility would be delegated to the MJC both for determining how the budget for training is to be spent and for putting forward to the JIC annual proposals on priorities and budget requirements. The MJC would also decide the requirement for member training and offer advice as appropriate about training for the Clerks to the Tribunals in their judicial support role. The VTS Chief Executive and his staff would arrange training for members in accordance with the requirements outlined by the MJC. The MJC would also provide feedback to the VTS on the quality of the training provided.
34. Following on a suggestion from the VTS Chairman and Chief Executive the Government also believes that the remit in relation to training requirements should be extended to encompass conferences because in many cases they are a form of training. From within their ring-fenced budget, the MJC should be charged to hold and arrange an annual conference of Valuation Tribunal Presidents, plus other chairs or members as they see fit.
35. This arrangement would place policy decision making about members training in the hands of the MJC, leaving the VTS to execute the required training schedule and plan.

Advice on secondary legislation concerning Valuation Tribunals

36. Most respondents welcomed the consultation proposal that the PMC may make recommendations to the VTS Board in relation to amendments to secondary legislation concerning Valuation Tribunals. In the Government's view this responsibility for advising on those parts of secondary legislation in which the VTS has an interest consequent on its statutory functions should be placed on the JIC drawing as appropriate on the advice of the MJC.

Other terms of reference

37. There was general agreement among respondents in relation to a number of the proposed terms of reference for the PMC set out in the consultation. The Government has therefore concluded that those set out below, which relate to advice to the VTS Board, should be rolled into the terms of reference for the JIC, which in turn would draw on the advice of the MJC as appropriate:
- advise on proposals relating to interpretation of regulations relating to procedure;

- encourage consistency of practice, efficiency and effectiveness;
- advise on VTS policies affecting the training of members and Clerks;
- advise on policy and development issues that might impact on judicial independence or member interests;
- undertake specific pieces of work, within its terms of reference, as requested or in agreement with the VTS Board.

The Government has also concluded that the term of reference in the consultation relating to encouraging existing members of Valuation Tribunals to participate in training should be among the responsibilities placed on the MJC.

New terms of reference

38. There were some suggestions for additional terms of reference to which the Government is either attracted or which it believes might be developed further. Firstly it was suggested that the committee should review its terms of reference on a regular basis. The Government feels this suggestion has merit in that it allows for the role of both the committees to evolve in line with practice. It has concluded that both the JIC and MJC should agree with the VTS Board and the ODPM the circumstances under which terms of reference would be revised.
39. A number of respondents expressed concern about the handling of any disagreements within the proposed PMC and between that Committee and the Board. The Government welcomed the suggestion from the Chairman of the VTS Board that, in circumstances where the VTS Board felt unable to accept the advice of the JIC or MJC, no decisions would be taken until the chair of the MJC had an opportunity to attend a VTS Board meeting to put the case. But the final decision must rest with the VTS Board. Similarly any unresolved disagreements within the MJC should be referred to the JIC.
40. There is also a proposal supported by a number of respondents that a committee formed of Valuation Tribunal regional representatives should itself appoint a judicial auditor to monitor and report on the standard and quality of the judicial provision in the Valuation Tribunals, including the effect of VTS processes on the judicial function. The role of such a judicial auditor was described as “to have an overview of the quality of the judicial process and of training... and of the effect of the support service provided.” The Government has already concluded that decisions about the use of the members training budget should be placed in the hands of Tribunals themselves, via the MJC. But it also takes the view that it would be inappropriate for a committee of the VTS Board to involve itself in an audit of judicial decision making and therefore rejects that aspect of the proposal. Furthermore, the Government is firmly of the belief that it is the role of the Secretary of State to take a view about the service provided by the VTS. It also believes that the terms of reference set out in this paper are drawn sufficiently widely to allow the committee of Tribunals’ regional

representatives (the MJC) to offer advice about the service provided to the Tribunals by the VTS.

41. As a consequence of moving to a two-committee structure, in the Government's view some further refinements to the terms of reference or additional terms are required.

The JIC

- The VTS Board has statutory responsibility for a number of functions as set out in the 2003 Act and any issues coming before the JIC will relate to the VTS statutory remit. Any decisions taken by the JIC on such issues based on recommendations from the MJC or in relation to priorities must, in the Government's view, be made in the light of the VTS' agreed strategy and its resource position. To do otherwise would undermine the statutory position and responsibilities of the VTS Board.
- Where proposals have been agreed, one of the responsibilities of the JIC will be to propose implementation strategies for presentation to the VTS Board and this role needs to be reflected in its terms of reference.

The MJC

- One of the duties placed on the VTS is to carry out its functions in a manner best calculated to secure the efficient and independent operation of the Valuation Tribunals. One of the ways the VTS seeks to fulfil this duty is by promoting consistency of practice across the Tribunals and in the Government's view the MJC should have a clear role in assisting the VTS in this.
- The Government has already noted that a substantial number of respondents felt the need for a forum through which Tribunals are able to advise and feed in views to the VTS Board. The Government sees this as an integral part of the role of the MJC and takes the view that this should be reflected in its terms of reference.
- There are two areas in relation to Tribunal issues in which the Government believes the MJC might on the first take the lead and on the second offer advice. Firstly it believes the Committee should be tasked to take forward the development of the current system of judicial appraisal for Tribunal members. This is clearly a judicial matter, but is also a necessary part of the members training programme. Through appraisal comes understanding of how members are performing and identification of their needs. Secondly, while it is the Secretary of State's responsibility to determine the complement of members for Tribunals, it would be helpful for the MJC to offer advice. In the Government's view this advice should come through the VTS, since it also has an interest in member complements by virtue of its function of providing staff to Valuation Tribunals placed on it by the 2003 Act.

Future amendments to terms of reference

42. The consultation proposal also included provision for the amendment of terms of reference with the agreement of the VTS Board and the Office of the Deputy Prime Minister. There was little disagreement with the basic proposition and the Government therefore proposes this should be rolled forward into the terms of reference for both committees.

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