Check, Challenge and Appeal

Response of the Rating Surveyors' Association to the August 2016 Government consultation document

Introduction

The Rating Surveyors' Association

The Rating Surveyors' Association (RSA) is a professional organisation for experienced Chartered Surveyors who specialise in the field of Non-domestic rates and can demonstrate that they comply with the highest of professional standards. The Association was founded in 1909 and now has over 450 members drawn from private practice, corporate bodies, the Valuation Office Agency (VOA) and local authorities.

The Association is pleased to be offered the opportunity to comment on the consultation document.

General

The RSA supports the need to deliver an improved non-domestic rates appeal system. In many ways it is something of an attempt to return to what was intended by the General Rate Act 1967 system in expecting a detailed proposal, proper discussions between valuation officer and ratepayer and only exceptionally a need to have a hearing before a tribunal. The addition of a 'check' stage clarifying what factual information the valuation officer holds about the ratepayer's hereditament and giving the easy opportunity of correcting that 'on line' is welcomed.

The RSA is keen to work with Government to ensure the new system works for the benefit of all involved particularly ratepayers, but it does have concerns about the new scheme and they are covered in answers to the questions posed below. It is pleased by the seeming enthusiasm to continue the approach to looking at whole shopping areas via its Town Committees, though this is not mentioned in the document, and indeed to expand the approach.

Whilst the consultation uses the word ‘Challenge’ for the second stage of the process the RSA in its response has used the term ‘Proposal’ as used in the draft regulations as being the correct legal term.

Q1 Do you agree the Regulations put in practice the agreed policy intention set out in the Government's policy statement?

The RSA is disappointed the Government chose to amend the existing rather than set down new regulations. It is very difficult to read the draft with the old and be content that it achieves the objectives.

The RSA notes the 'blunting' provision hidden away in the amendment to regulation 3 of the appeals regulations by defining 'inaccurate' in a rather unusual way was not in the original policy statement. Indeed the idea of blunting had been roundly rejected during earlier consultation and the Government had said it was not minded to pursue that idea.

4A(9) uses the phrase 'the VO has changed the facts on which the rateable value is based.' This is not good phrasing:

- It is not the facts that have changed but the valuation officer's understanding of the facts
- The rateable value is not as such based on facts but opinion. Unlike an income tax computation which is a direct result of facts, a rateable value represents either the valuation officer's opinion of value or a determination by a tribunal

The phrasing needs to refer to the facts as understood by the valuation officer or words to that effect.

It is noted that the existing regulations require that the VO must alter the list to correct any inaccuracy. This will mean that where the VO's record of facts are corrected in such a way that might on the face result in an increase in RV, even where other factors should, when taken together, ultimately result in a reduction (e.g. tone/allowance) the ratepayer will be exposed to a higher liability that will only be corrected once the challenge runs its course. This does not seem very satisfactory. It cannot be good for the system for a ratepayer to start a process aimed at a reduction, find his liability temporarily increases as a result, only to fall again when the whole process is complete.

The amended Regulation 4(3) c) appears to no longer permit proposals to be made against those Valuation Officer notices which are implementing an agreement. The RSA can see an argument for not permitting a ratepayer to appeal his own agreement but do not consider it right that any new ratepayer or interested person is barred from appealing his rates liability due to an agreement by a previous ratepayer. Further it appears this will also bite where the VO's decision for a proposal is to, under the new Regulation 13(3)(a)(ii) to alter the list otherwise than in accordance with the proposal. A future ratepayer would be bound by the decision of an earlier ratepayer not to appeal.

In 4A(10) the wording says 'is received.' It should read 'was received.'

In 6(2)(a) it says in brackets 'which is substantially in the form provided by the VOA on 1st April 2017.' The RSA does not understand why it needs to be in substantially the same form. The VOA may well develop the portal so that it is no longer in substantially the same form.

The Check stage is to be operated via the VOA's online portal which will also be the route through which Challenges can be made. A more advanced means of communication between systems is required for multi-site occupiers. It is inadequate for the regulations to provide that the VO may agree other approaches (Reg. 6(2)(b)) and these should be mandated in law.

Further the whole provision for proposals is rather vague. The old regulation 6 provided for the proposal to be made by serving a written notice on the VO. The draft regulation does not really say what a proposal is (a notice) or quite whom it is being served upon.

In 6(3)(b) the phrase 'grounds of the proposal including particularly of the grounds of the proposal' appears to be saying the same thing twice. Would not 'grounds of the proposal' be sufficient? This doubling up seems also repeated in 14 in 13(3)(c).

Generally the 6(3) requirements are less detailed than the old ones. They do not even require the address of the hereditament to be stated. This seems surprising!

It is to be welcomed that the complexities of invalidity are swept away. However the regulations would be clearer if they emphasised that a proposal is only a proposal if it is accepted as a proposal.

Regulation 9(4-7) seem to be an overly complicated and unclear way of preventing the ratepayer drip feeding the VO. In part it seems designed to permit the VO to reject relevant evidence on the grounds that it should have been supplied at an earlier stage. This is unacceptable. Once a challenge has been made including whatever rental evidence was readily available, the VO should respond with the evidence he holds and permit additional evidence to be put forward by either party without restriction.

There is no reasonableness restriction on the VO having to supply any further information that comes into his possession under Regulation 9(5). Does this mean any information?

A Challenge is a proposal under the Act and regulations. Under Schedule 9 paragraph 9 to the 1988 Local Government Finance Act a proposal is a public document at present, so will a challenge be in future because under the regulations it is a proposal. The requirement to detail information as part of a challenge and particularly as under new regulation 9 (8) any information provided by the proposer as part of the challenge becomes part of the proposal, this will put information which a ratepayer may regard as confidential into the public domain. This is of concern especially to those valued on the Receipts and Expenditure basis or those classes of property valued by reference to account or trading details.. Provision needs to be made so that information can be provided to the VOA in confidence.

There is no doubt that the VOA website provides a lot of information. However, it does not provide one key ingredient – the underlying evidence upon which the assessment has been based. CCA will only improve the system if the VOA is made to divulge this information at an early stage. The draft regulations do not address this fundamental problem and is therefore an opportunity missed.

VT Regulations

18B(3) does not appear to be properly drafted. It appears not to permit the VTE to take into account certain matters which, notwithstanding they formed part of the proposal or were raised in evidence in accordance with 17(1), if they were in some way agreed between the parties. This seems strange. Is it intended to mean that the VTE should not take into account matters forming part of the proposal etc but which the parties agree should be ignored? Rewording for clarity is desirable.

The government says it wants an easy to navigate system with an emphasis on early engagement by the parties to reach a swift resolution of cases. At present the sharing of information by the VOA with an appellant is left until a stage which is very late in the process.

If the VOA shared data earlier in the process it would resolve a great many "appeals/proposals" at an early stage. The new system will make the situation significantly worse as engagement on the key evidence will not happen until the appeal stage.

Q2 We would welcome your views on the approach to implementing fees on the appeal stage.

The RSA considers the imposition of fees to be unsatisfactory and potentially off putting to ratepayers seeking accurate rateable values. The RSA cannot see there is any point in fees. They seem to achieve nothing other than to dissuade engagement in the system.

If a dispute is agreed following the lodging of an appeal but In advance of a hearing then we suggest there should be a full refund of the fee.

The RSA is strongly opposed to blunting. However if blunting was to be used there is a considerable risk of a fee being paid but no reduction being given, and hence no refund of fee, notwithstanding the ratepayer was able to prove his rateable value wrong but not outside the bounds of reasonable professional judgement. This seems manifestly unfair - not only being denied a proper reduction in rateable value but not even having the fee refunded.

Q3 We would welcome your views on the approach to implementing penalties for false information'

The RSA sees no difference between the wrong of supplying false information on behalf of a large or a small business. As a civil penalty the sum should be the same for both. Whilst understanding the departments view that there needs to be a deterrent to wilfully incorrect supply, the RSA considers the Government is perceiving a risk that does not yet exist. If there is no problem then it seems unnecessary to go to the considerable bother of setting up penalties and a VOA section to deal with them. The threat should simply be made as a warning that there will be future regulation, if needed, perhaps making the offence criminal.

The system will be onerous to operate yet seems to be attempting to deal with a problem that does not appear to exist. It would be best to wait and see if penalties are needed rather than implementing a system at an early stage.

Q4 We would welcome your views on the approach to implementing the package for small businesses and small organisations

The RSA does not think there is any need for penalties to be lower for small businesses. If properly designed and implemented, all non-domestic ratepayers (whether businesses or not) should be able to navigate the system with ease. The system should be simple not complex.

The RSA does not consider turnover to define a small business. Turnover can be very high but profitability low. A petrol filling station, for example, has high turnover because the price of petrol is mostly excise duty and VAT. £2M may not be a high turnover for these.

Turnovers and headcount are not information readily available or used by the VOA. Making this a determining factor of a penalty will greatly add to the cost in administering the penalties. The RSA does not see any reason for treating small businesses differently with a lower penalty and consider a single level would be administratively more straightforward. Alternatively simply using the definition of small business by RV already used for Small Business Relief would seem an easy and clear differentiation.

Q5 We would welcome your views on the approach to dealing with Material Changes in Circumstances

Broadly the RSA agrees with the suggested approach. However members are concerned at quite how the Check will define the MCC. Draft regulation 4A (1) simply allows a person to request information from the VO. It is not at all the same as a proposal which needs to clearly identify the MCC. It will not be enough merely that the 'request' carries the implication of an MCC. It is essential it is identified not least so the VO can inspect and view the MCC whilst it is occurring so he or she can make any necessary judgements. It is not satisfactory for VO or ratepayer for the VO to only learn of the MCC late in the day after it has ended or changed.

The RSA is also concerned that it is not completely clear in paragraph 27 quite what 'submitting a check' means. The Check stage defines the physical facts about the hereditament. However these are only established at draft regulation 4A(7) when all the various exchange of information is completed. It would not be at all satisfactory if the material day for a MCC was set at the date the Check was completed under 4A(7) and (8) as much could have changed concerning the MCC between date of submitting the 'request' under 4A(1) and the notification under 4A(8). As drafted there does not appear to be a mechanism for ensuring the date is the date of the request nor how the fact of the MCC might be communicated to the VO at that stage. Of course if the material day was set at neither of these dates but the date of the actual happening then this would avoid the problem. The ratepayer could simply wait to see if the MCC did justify an alteration to the rateable value and then submit a proposal later on having completed a Check.

The RSA considers it would greatly simply the system if the material day for interested person MCC proposals (and indeed checks) could be the same as for the VO i.e. not the Barrett v Gravesend date of proposal but the date of the MCC 'happening.' The retention of the Barrett v Gravesend date merely for ratepayer MCCs is very confusing and complicated for ratepayers and people new to rating. Ending the date of proposal material day and making it the date of the 'happening' as it is for the VO would be a considerable modernisation of the system.

It is proposed that a ratepayer will have up to 16 months after a check to submit a challenge. This will create problems if the compiled list basis has yet to be established – either in relation to RSA Town Committee locations because the RSA Town Committee has yet to complete the pre-filing challenge discussions or that there is an outstanding proposal on the hereditament against the list basis. There needs to be some provision for the 16 month period to be extended in such situations.

Q6 We would welcome your views on the amended approach to determining appeals against valuations

The defining of 'accurate' to mean something outside reasonable professional judgement is unsatisfactory as a concept. Rating raises very substantial sums of money from individual ratepayers and is set at a very high level of multiplier compared to international norms. Ratepayers are reasonably entitled to have their properties accurately assessed. On a £1m assessment a 5% either way (say) reasonable professional judgement margin is £50,000RV or approximately £25,000 a year or £125,000 over the five years of a list. If some form of blunting on appeal is required it should be made explicit by providing a percentage. Either way it seems simply wrong in principle. Rating is founded on the basis of correctness over uniformity. Such blunting could easily result in ratepayers in identical properties paying different levels of rates. This is neither correct, uniform nor fair.

If reasonable professional judgement was judged to be 10% then if two similar properties were assessed 10% either way of the likely correct figure they would both be within a 10% tolerance yet 20% apart. It is reasonable to repeat this is neither correct, uniform nor fair – and it is not that much better if reasonable professional judgement is judged to be 5% as a 10% difference is still 10%!

The approach to achieving blunting is very hidden away and requires the reader to follow through the regulations using the definition of 'inaccurate.' In particular the aim seems to be to bind the VTE to decide the outcome of an appeal on the basis the RV was or was not 'inaccurate' within the new restricted bounds. If it considers the existing RV is within the bounds of reasonable professional judgement it would only be able to find the appeal not well founded because it has determined the RV is not outside the bounds of reasonable professional judgement. This would be rather than deciding the correct RV.

Seemingly this would apply as much to a MCC appeal as to a compiled list challenge as a view that the RV was affected by the MCC to say 5% might well be within reasonable professional judgement on the original RV. The inaccuracy relates to the RV in the list and the reasonable professional judgement test would relate to that not merely the effect of the MCC on its own.('inaccurate,' in relation to a rateable value, means outside the bounds of reasonable professional judgement). Under the new proposals most MCC allowances and building works would be inadmissible even though it is considered/agreed that the value is excessive. This cannot be fair.

The effect of blunting could be quite dramatic in the case of Small Business Relief. Whilst the RSA disapproves of the long term and arbitrary relief for small business of up to 100% without consideration of whether the business is highly profitable or not, the effect of blunting could be to bring a business in or out of SBRR quite disproportionately to the blunting.

International usage of blunting is, from the research undertaken by the RSA, only used in countries with very low tax rates. The UK has about the highest level of property taxation in the world. It is quite inappropriate to use any form of blunting when

ratepayers are paying so much. Equality of taxation is simply not provided. Ratepayers are entitled to have their properties properly and accurately assessed so they pay on exactly the same fair, open market rental value basis, as their neighbours.

Many valuations are used as evidence for other valuations. Rating valuations are very often undertaken having regard to what is known as the 'tone of the list.' This is a means whereby both ratepayers and valuation officers can look at assessments in the local list and gauge the general level or tone applied to similar properties. A 'settled tone' being one where there has been agreements with the valuation officer or determinations by the valuation tribunal. If entries in the list are subject to unknown and unspecified blunting (there will be no easy way of knowing whether an assessment is blunted or not) then the tone then becomes fuzzy and unclear. This will not at all assist anyone.

If there is a system of refunding appeal fees and there is an adjustment to the list there is the risk of the Valuation Tribunal for England finding that a rateable value should be reduced but then saying it was within some professional tolerance and not doing so. This would compound the injustice on the appellant.

The RSA wishes to emphasise that much of the disquiet of ratepayers within the appeal system is because Non-Domestic Rates are so high. With such a high level of tax it is essential the basis of tax is correct.. The proposal of adjusting the system so that being wrong is no longer a problem is unjust.

The RSA regards this as a very bad idea indeed.

Q7 We would welcome your views on the role of local authorities in the reformed system

On balance the RSA agrees with the suggested reduction in rights to make proposals by billing authorities. There are two schools of thought:

1. Billing authorities are as interested in the outcome of any proposal/appeal as the ratepayer. It is the ratepayer's money being paid in rates and the billing authority's money when it receives it. Both are equally interested and should have equal rights. The local valuation officer's role as the independent statutory officer is to stand between the two and fairly assess rateable values and listen to both parties concerns. On this basis the billing authority should have full rights to be involved in proposals and appeals and to make its own.

2. Since the 1950s the valuation officers have been responsible for valuation when the function was removed from the local authorities. As you have an independent statutory officer (though these days each valuation officer deals with more than a single billing authority – unfortunately too many) whose job is to ensure accurate valuations there is no need for the billing authority to be particularly involved in valuation and potentially it is a duplication.

The RSA, on balance, favours the latter.

Conclusion

The Rating Surveyors' Association would be pleased to amplify any points it makes in its response or attend any meeting to discuss.

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Rating Surveyors' Association
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