

TRIBUNALS REFORM

REVIEW OFFICER

GUIDED LEARNING UNIT

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Before Moving On

1.1 Introduction

This guided learning unit extends the awareness e-learning unit to provide additional information for review officers and others who need more detail about the new tribunals and review system from 1 April 2009. It provides

- details of how the new review and appeals process will work
- guidance on the scope of reviews and the role of the review officer
- an overview of the new tribunal structure and key procedural rules such as case categorisation and costs
- overview of the HMRC Clearing House.

Study Objectives

After successfully studying this unit, you will

- understand how the new system works
- understand the role of the review officer
- understand how the new tribunals system will work for tax matters and have an overview of basic procedures for tribunal cases.

This unit is intended for officers reviewing cases appropriate to the Tax Chamber of the new tribunals system. It does not cover things like Tax Credit, Child Benefit and Child Trust Fund appeals nor does it cover disputes about the restoration of seized goods. There is further information about restoration of seized goods in

- Notice 12A www.hmrc.gov.uk/index.htm
- ARTG 6200+, 6500+

This unit does not provide

- training on advocacy before the First-tier Tribunal. This is covered in other training products – see the Training Prospectus
- information about other tribunal chambers such as Social Entitlement or Land – further details can be found on the Tribunals Service site on the Internet – www.tribunals.gov.uk

Study Advice

Before working through this package you **must** have completed the Tribunals Reform Awareness e-learning package.

There is a lot more information available if you need it.

- The following appeal and review guidance is either available now, or will be soon.
 - Transitional guidance for staff – now available BGN 008/09
 - Fact sheet for customers – HMRC1 now available <http://www.hmrc.gov.uk/factsheets/hmrc1.pdf>
 - Full guidance for staff – late February/early March 09
- Local operational guidance – ask your manager for more details
- Tribunal Service website – www.tribunals.gov.uk
- Appeals Unit material

You can print off and work through this package as many times as you wish and at your own pace. To print, press and hold Ctrl and P. If not all chapters are relevant to your job, you can also dip in and out of the learning and work through only the parts you need.

1.1.1 Background

Following Sir Andrew Leggatt's Review of Tribunals in 2001, and the Tribunals, Courts and Enforcement Act 2007 ('TCEA'), tribunals across government are being replaced by the First-tier Tribunal and Upper Tribunal. From 1 April 2009, a unified tribunal structure will handle all HMRC tax appeals and customers will be legally entitled to have an independent internal review of our appealable decisions, should they wish. At the same time, HMRC is introducing a new internal review process.

1.1.2 'Direct' and 'indirect' taxes

You will find references to 'direct' and 'indirect' taxes throughout this unit. For the purpose of this unit.

Direct taxes means:

- Capital gains tax
- Corporation tax
- Income tax
- Inheritance tax
- National Insurance contributions
- Petroleum revenue tax
- Stamp taxes
- Statutory payments
- Student loans
- Tax collected under PAYE and the construction industry scheme

Indirect taxes means:

- Aggregates levy
- Air passenger duty
- Alcoholic liquor duties
- Bingo duty
- Climate change levy
- Counter-terrorism decisions
- Customs duty
- Export penalty regs/FA 2003 decisions
- Gaming duty
- General betting duty
- Hydrocarbon oils duties
- Insurance premium tax
- Landfill tax
- Lottery duty

- Money laundering decisions
- Pool betting duty
- Remote gaming duty
- Tobacco products duty
- VAT

This guidance does not cover decisions about the restoration of seized goods as different review and appeal processes apply to those decisions. You can find out more about this at:

- Notice 12A www.hmrc.gov.uk/index.htm
- ARTG 6200+, 6500+

1.1.3 Litigation and Settlement Strategy

HMRC's Litigation and Settlement Strategy (LSS) aims to ensure that we conduct disputes professionally and effectively, to help close the tax gap and give our customers a clear understanding of the law. The new appeals and tribunals processes must be operated in line with the LSS. And officers involved in dispute resolution, and more particularly the new review process, must be familiar with it and conduct themselves accordingly.

1.1.4 Further information for customers

A new factsheet 'HMRC 1' is now available which gives customers background information on the new procedures.

There is also more detailed guidance at <http://www.hmrc.gov.uk/dealingwith/appeals/directtax.htm>

Customers can also find out more about the tribunals created under the TCEA and what to expect once their appeal goes to the tribunal from the Tribunals Service internet site – www.tribunals.gov.uk.

2.1 Role of the Decision Maker

This chapter outlines the role and responsibilities of the decision maker to help put the review officer's role into context. It explains how a decision maker should have worked a case before the review officer receives it, sets out the time scales involved and clarifies how the two roles fit into the new review process but does not replace other published guidance on non-Tribunal Reform enquiry procedures.

Chapter 3.1.9 has more information on this.

The decision maker is the HMRC officer responsible for the decision or assessment or other appealable matter that the customer disagrees with. (For direct tax fixed penalty appeals, the person who first considers an appeal will be treated as the decision maker.)

The decision maker will continue to deal with new information, handle queries about assessments and resolve most cases with the customer as now.

Tribunals hear evidence, decide facts and apply the law – they make decisions based on facts and evidence. It is therefore essential that decision makers are able to decide which facts need to be proved to finalise a case. The decision maker must always work on the basis that they will have to provide evidence for the decisions they make.

2.1.1 Decision letters

When the decision maker sends a decision letter to a customer from 1 April 2009 it must reflect the new appeals and internal review process. In most cases, the decision letter will explain to the customer

- what we believe the facts to be
- what the decision is
- the reasons for our decision
- the legislation and (if relevant) case law supporting that decision

- the tax we believe to be due, if appropriate
- that they should contact HMRC if they do not agree with the assessment or other decision
- their rights and any time limits
- what will happen if we do not hear from them within the time limit.

2.1.2 Appealable decisions

Appeal rights are set out in legislation.

For example an appeal may be about

- whether a particular provision or relief applies, or
- the amount of income or profits HMRC believe to be chargeable to tax, or
- the amount of tax HMRC believe to be due, or
- a penalty that is wrongly charged or is too high, or
- certain types of notice requiring a customer or a third party to provide information to HMRC.

2.1.3 Direct tax

Appeals to HMRC

If a customer disagrees with a direct tax decision, they must appeal initially to HMRC.

These appeals must

- be made in writing to HMRC within the time limit specified in the decision letter (usually 30 days of the date of the decision)
- be from the person named in the assessment or decision, their personal representative or trustee, or the nominated partner if a partnership
- be against an appealable decision

- contain the grounds for appeal, and be signed and dated.

Options after appeal to HMRC

After the customer has appealed to HMRC they may

- discuss the matter with the decision maker in an effort to settle the appeal
- ask for a review, or
- notify their appeal to the tribunal.

Customer provides further information or enters into further discussions

If the customer appeals within the time limit and is willing to engage in further discussions or provides further information, the decision maker should consider the matter under appeal as appropriate to try to resolve the case. Most disputes will continue to be resolved in this way. If HMRC and the appellant agree, the appeal may be settled by agreement under Section 54 TMA (or relevant equivalent provisions for regimes not covered by TMA) as now.

Alternatively, HMRC may offer review, the customer may ask for a review or they may notify their appeal to the tribunal. However, the customer may not notify an appeal to the tribunal during the review period.

HMRC offers review

If the appeal cannot be settled by agreement and at a time that the decision maker considers is appropriate, the decision maker will write to the customer to give and explain HMRC's view of the matter and offer a review. If there have been any changes since the initial appeal – e.g. if some matters have been agreed – then the letter should set this out and summarise the outstanding points as we understand them. Unless changed by the review (if our offer is accepted) this will form the basis of any appeal to the tribunal. The customer then has 30 days from the date of the review offer in which to

- accept the offer of review **or**
- notify the appeal to the tribunal.

If there is no response the matter will be treated as settled on the basis set out in our letter offering review as if agreed under Section 54 TMA (or relevant equivalents) unless HMRC allow a late review acceptance. HMRC allow a late acceptance if there is

- a reasonable excuse for the delay in submitting the appeal **and**
- there has been no unreasonable delay in making the application after the excuse ceased.

When deciding whether there is a reasonable excuse the decision maker should consider the customer's individual circumstances in the same way as they would for a late appeal (see late appeals below). If the customer's explanation is accepted, then the caseworker should write to tell them they are accepting a review request outside the time limit and forward the papers for review as normal. If the offer is accepted, the case must be sent immediately to the review team who will have 45 days from the date the acceptance is received by HMRC to conduct the review and notify the review conclusions unless a longer period is agreed by both HMRC and the customer. However, the review team will have 90 days to carry out reviews of appeals which were made to HMRC before 1 April 2009, provided the offer of review is made before 31 March 2010. The period of time within which HMRC must complete the review is referred to in this unit as 'the review period'.

It is important that cases are carefully monitored and controlled controlled by the decision maker and review officer, particularly if specialist advice is being sought, to ensure that time limits are met and that the review officer has sufficient time to fully consider the case within the review period.

When the review is completed within the 45 day time period (or longer as agreed), the review officer will issue a letter setting out and explaining the conclusions of the review (which may uphold, vary or cancel HMRC's view of the matter) and explaining to the customer their options from that point onwards. These are explained later in this Unit.

However, if the review officer does not conclude the review and inform the customer of their conclusion within the review period, (and no extension is agreed) HMRC's view of the matter is treated as upheld and HMRC must write to the customer to notify them of this.

In such cases, the customer may send their appeal to the tribunal at any time after the expiry of the review period, provided they do this no later than 30 days after the review officer's letter notifying them that the review is treated as having reached the conclusion that HMRC's view of the matter is upheld.

Customer asks for review

If the customer asks for a review, the request must first be considered by the decision maker who has 30 days to give HMRC's view of the matter (which may be the same as when the appeal was initially made or may have changed). It should set out any changes since the initial appeal - for example, if some matters have been agreed - and summarise the outstanding points as we understand them. The view should in the case of an appeal against an assessment, set out the amount HMRC considers to be due, if this has changed.

After the view is given, the case must be sent immediately to the review team as they have 45 days (or other agreed time) in which to complete the review and notify the review conclusions from the date that HMRC gives its view of the matter. However, the review team will have 90 days to carry out reviews of appeals which were made to HMRC before 1 April 2009 provided the request for a review is made before 31 March 2010. The period of time within which HMRC must complete the review is referred to in this unit as 'the review period'.

It is important that cases are carefully monitored and controlled controlled by the decision maker and review officer, particularly if specialist advice is being sought, to ensure that time limits are met and that the review officer has sufficient time to fully consider the case within the review period.

Time limit for notifying appeal to the tribunal

Once the customer has been informed of the review conclusion (whether the review followed an HMRC offer or the customer's request) they can either

- accept it, or
- notify their appeal to tribunal.

Any appeal must be sent to the tribunal within 30 days of the date of the review conclusion letter.

If the review officer does not send the customer their conclusion within the review period, (and no extension is agreed) the review is treated as reaching the conclusion that HMRC's view of the matter is upheld and HMRC must write to the customer to notify them of this.

In such cases the customer may send the appeal to the tribunal provided they do this no later than 30 days after the review officer's letter notifying them of the conclusion which the review is treated as having reached.

If the customer does not appeal to the tribunal within the time limit the review conclusions are treated as if they are an agreement in writing for the settlement of the matter under Section 54(1) (or other relevant provision) unless the tribunal allows the appeal to be notified late.

Postponement of payment of tax

If the customer has appealed against a decision that tax is due, they may request that payment of all or part of that tax is postponed pending settlement of the appeal.

Although the fundamental principles of postponement have not changed in these reforms, the procedural rules have been clarified. Customers must send their written application to HMRC within 30 days of our decision or assessment. We may accept postponement applications after this time if there is a relevant change of circumstances or we have accepted a late appeal. The postponement application must state the reasons why postponement is requested and the amount the customer thinks they have been overcharged.

If the decision maker cannot agree the postponement application they should write to the customer outlining why they cannot agree, suggesting a revised amount to be postponed, and the amount that would remain payable. They should explain that the customer may either

- pay the revised amount proposed as being payable, or
- write to the tribunal within 30 days to apply for a decision on the amount of tax to be postponed.

The customer cannot ask the tribunal to consider a postponement application unless HMRC have refused to accept it.

Late appeals to HMRC

The rules for making a late appeal to HMRC are broadly unchanged.

If the customer writes to HMRC and asks for a late appeal to be considered, the decision maker must accept it if there is

- a reasonable excuse for the delay in submitting the appeal **and**
- there has been no unreasonable delay in making the application after the excuse ceased.

When deciding whether there is a reasonable excuse for a late appeal, the decision maker should consider the customer's individual circumstances

- sickness or absence may be a reasonable excuse
- the reasonable excuse must be personal to the customer
- the amount involved is not relevant
- see ARTG 2250 for full details.

If the decision maker is considering not accepting a late appeal, they should discuss this with the review/appeals teams initially.

The decision maker should then write to the customer either confirming that we accept the late appeal application or explaining why we do not and explaining their rights if that is the case. If we refuse to accept the application, the customer may then ask the tribunal to consider their request. HMRC may make representations at the tribunal hearing.

The tribunal's discretion in allowing the late appeal application is **not** limited by the reasonable excuse criteria and its decision is final.

Late notification of appeals to tribunal

If an appeal is notified to the tribunal outside of the time limits the customer may ask the tribunal to accept a late appeal.

Where this is the case the tribunal will notify HMRC that an application has been made and HMRC will have the opportunity to make representations at the hearing, but the tribunal will decide whether or not to accept it.

2.1.4 Indirect tax

Appealable decisions from 1 April 2009

From 1 April 2009, anyone who makes an appealable indirect tax decision (other than a restoration decision) must include an offer of review in the decision letter.

The customer may then either

- accept the decision
- send new information or arguments to the decision maker
- accept HMRC's offer of a review or
- appeal to the tribunal.

If they do not accept the decision they have 30 days to either contact us or appeal to the tribunal.

Customer accepts the decision

If the customer accepts the decision, or takes no action within 30 days of the decision letter, the decision stands and the tax becomes payable subject to the normal rules.

Customer sends in new information or arguments

If a customer asks the decision maker to revisit the decision, it is possible to extend time for appeal or review but only if we notify the customer within 30 days of the original decision. This protects the customer's rights to review and appeal while further information or arguments are being considered. It is important to note that HMRC must grant the extension within 30 days of the decision (the customer does not have 30 days to ask for an extension).

Where appropriate, if new information or arguments are received in time they should be considered and the matter resolved if possible. If the decision is not withdrawn the customer should be issued with another letter. This letter should

- tell the customer that the original decision is unchanged (or, if it has changed, how and why)
- offer review and
- give a new date from which they will have 30 days to appeal or accept our offer of review.

Customer accepts HMRC's offer of a review

If the offer is accepted, the case must be sent immediately to the review team who will have 45 days from the date the acceptance is received by HMRC to conduct the review and notify the review conclusions, unless a longer period is agreed by both HMRC and the customer. This is referred to in this unit as 'the review period'.

If the customer does not accept the review conclusion, they may appeal to the tribunal. Any appeal must be sent to the tribunal within 30 days of the date of the review conclusion letter.

If the review officer does not send the customer their conclusion within the review period (and no extension is agreed), the decision under review is treated as upheld and HMRC must write to the customer to notify them of this.

In such cases, the customer may appeal to the tribunal after the review period has ended, provided it is no later than 30 days after the review officer's letter.

The requirement to pay any disputed tax is normally suspended during the review period. The review officer should check the tax position and ensure that any appropriate action is taken on this point.

If payment of tax has been suspended pending review the review officer should take appropriate action to remove this suspension – subject to any appeal and application for hardship or payment of security.

It is important that cases are carefully monitored and controlled by the decision maker and review officer, particularly if specialist advice is being sought, to ensure that time limits are met and that the review officer has sufficient time to fully consider the case within the review period.

Third parties' right to review

Sometimes a person who has not received the decision from HMRC will have sufficient interest to be able to appeal. For example, a ruling about the VAT liability of a supply may have been given to the VAT registered supplier but the recipient of the supply may want to appeal. If they have a right to appeal they can also ask for a review. The time limit for these 'third party' requests is 30 days from the date the third party becomes aware of the decision.

Hardship and security cases

The tribunal may only hear indirect tax appeals when the tax HMRC have determined to be due has been paid to HMRC unless:

- HMRC or a tribunal have accepted a hardship application – ARTG 3330 or

- in excise and customs cases the customer provides security (usually a bond or guarantee sufficient to cover the tax due) – ARTG 3350 has more detail about this.

Customers may ask HMRC to suspend payment of disputed tax, or waive or reduce the requirement for security on the grounds of hardship until the tribunal appeal is settled. If HMRC do not agree, the customer may then apply to the tribunal to decide the matter. It is for the customer to demonstrate that paying the tax or providing security before the appeal is heard would cause financial hardship.

You will find more detailed guidance on how to assess hardship applications in ARTG 3340.

Restoration decisions

These are decisions about the restoration of seized goods.

Restoration decisions are covered by different rules and the customer cannot appeal to the tribunal against a restoration decision without first asking for a review. This package does not apply to these cases – you can find out more in

- ARTG 6200+, 6500+
- Notice 12A – www.hmrc.gov.uk/index.htm

2.1.5 Late review request

When a late review request is made, the caseworker will need to consider why the review request was not made on time. The caseworker will need to consider whether there was a reasonable excuse for it not being submitted within the correct time limits, and if the customer acted without unreasonable delay once the excuse had come to an end. If the customer's explanation is accepted, then the caseworker should write to tell them they are accepting a review request outside the time limit and forward the papers for review as normal.

If, exceptionally, the caseworker is considering not accepting a late review request, they should seek approval from their review teams before informing the customer in writing. There is no right of appeal against refusal to allow a late review request but customers can ask the tribunal to accept a late notification of their appeal.

2.1.6 Late appeals to tribunal

If an appeal is notified to the tribunal outside of the time limits the customer may ask the tribunal to accept a late appeal.

Where this is the case the tribunal will notify HMRC that an application has been made and HMRC will have the opportunity to make representations at the hearing, but the tribunal will decide whether or not to accept it.

3.1 Role of the Review Officer

3.1.1 What kind of decisions may be reviewed?

Internal review is available for all **appealable** HMRC decisions. It is not available for applications, for example applications to close enquiries or permission to issue an information notice etc.

The majority of decisions affecting the amount of tax customers pay are appealable and therefore subject to internal review.

For example an appeal may be about

- whether a particular provision or relief applies, or
- the amount of income or profits HMRC believe to be chargeable to tax, or
- the amount of tax HMRC believe to be due, or
- a penalty that is wrongly charged or is too high, or
- certain types of notice requiring a customer or a third party to provide information to HMRC.

3.1.2 How the review process relates to appealable decisions.

In **direct taxes**, internal review is only available once an appeal has been made to HMRC and before an appeal has been notified to the tribunal. It will often follow a period of negotiation with the caseworker.

In **indirect taxes**, a review is offered with the appealable decision. Third parties with a right of appeal against a decision can also appeal/ask for a review within 30 days of becoming aware of the decision. If an appeal has been made to the tribunal then review is not available.

There is more information on this in Chapter 2.

3.1.3 Independence of review officers

The review must be a genuine second look at the case and it is important therefore that review officers are not linked to the decision makers (for example by being their line manager). This will benefit both customers and HMRC. Customers will benefit by being assured that review arrangements are fair and transparent. HMRC will benefit because we will only maintain decisions that have a sound legal basis and are in accordance with the HMRC Litigation and Settlement Strategy.

In order to help maintain a detached approach review officers should discuss cases with decision makers only as far as is needed to clarify a particular point or issue. Likewise the review officer should make sure they properly understand the customer's position and offer equivalent telephone or face to face contact to the customer and agent, as necessary.

3.1.4 Principles of review

Review officers will review the decision in question and in doing so will review all relevant correspondence and other material to ensure the decision is well founded. On concluding a review the review officer may decide to

- uphold
- vary or
- cancel the decision under review.

Review officers will not have any additional powers to those available to decision makers but will be able to overturn decisions and vary them under the normal statutory rules. Although there is no legal obligation to write to customers during the review, review officers should ensure that they keep the customer informed of progress, have a clear understanding of the customer's point of view and that they have requested any information needed to complete the review. Customers have a right to make representations to us and we must take those representations into account as long as they are made at a stage in the review period which gives us a reasonable opportunity to consider them.

Review officers have a key role in helping resolve disputes by providing a clear statement of the law and issues to help resolve a case.

A review officer's role when reviewing a case is to make sure a decision

- has been properly made
- is legally correct (in HMRC's view)
- is one which we would want to defend at tribunal in accordance with the Litigation and Settlement Strategy.

The nature and extent of the review will vary depending on

- how HMRC reached the initial decision, and
- steps taken to try to resolve the dispute

For example, if before a decision was made, or (in direct tax) following an appeal, it was subject to extensive internal checking, perhaps including two or more layers of informal review separate from the decision maker, and/or requiring input from specialist technical advisers or counsel, the review officer is not expected to challenge the technical advice unless there is a reason to do so. They should instead confirm that all appropriate procedures were followed and that the decision reflects the approved process.

The important principle to remember is that the role of the review officer is to review the basis of the decision made by the decision maker.

There is much more information in the ARTG manual, in particular Chapter 6, which sets out the role of the review officer in more detail.

On conclusion of the review the review officer must write to the customer setting out the conclusion of the review and their reasoning.

Customers have a statutory right to

- be notified of the review conclusion, and
- have an explanation of the reasons for our decision.

3.1.5 Evidence

Review officers and decision makers need to understand what would constitute evidence before a tribunal. Evidence is documentation or other factual material (including oral evidence) that the review officer or decision maker relies on or considers when making a decision. For example in a compliance case where we consider takings or income to have been under-declared it will be necessary to demonstrate that the records are inadequate before additional profits/turnover can be assumed. Evidence needs to be of a kind which will stand up to cross examination at tribunal. If a review officer considers the evidence inadequate, they may have to vary or overturn the decision. If in doubt, seek the advice of someone experienced in advocacy, such as a member of a local appeals unit or a solicitor.

3.1.6 Specialist advice

Sometimes a case will turn on an issue which relies on technical advice or approval from a subject specialist such as accountancy, legal or valuation. If the caseworker has already sought advice the review officer should accept it unless they have particular reason not to. If this is the case, they must go back to the subject specialist and explain why they think the advice is wrong and seek further advice. If further advice is needed the customer should be asked to agree to an extension to the review time limit if appropriate.

3.1.7 Working with the caseworker

It is not the review officer's role to carry out case work as such but rather, to review the work that has already been done.

The customer may supply new information to the review officer, in which case the general rule is to send the case back to the caseworker to deal with and seek an extension of time to complete the review if necessary. If as a result the caseworker settles the case (in direct tax cases, remembering to formally settle any open appeal under Section 54 TMA, or relevant equivalent provisions for regimes not covered by TMA) there is no need to formally end the review. If the new information is straightforward and clearly affects the case without detailed analysis, returning it to the caseworker may not be good customer service and the review officer should consider whether it is sensible for them to resolve the case.

When the review is finished the review officer may need to give feedback to the caseworker. This is important to ensure that review helps improve the quality of case working. Procedures for giving feedback vary. But it always needs to be done sensitively, ensuring any learning points are clear, stressing the good points of the case and, if the decision was changed, explaining why in a clear way.

3.1.8 Contact with the customer

When a review officer is allocated a case for review they should tell the customer that they are going to review it and give contact details. Sometimes customers may want to contact the review officer to put their side of the case. HMRC is statutorily required to consider such representations. Further representations or direct contact with the customer might give additional clarity about the facts of the case. And a meeting might also help to settle the case quickly because a face to face or telephone explanation may be more helpful to the customer than a written reply. However review officers should ensure that any contact does not amount to case working and that full written notes of all such telephone calls and meetings should be kept as potential evidence in any subsequent tribunal hearing.

Review officers need to handle unrepresented customers sensitively. Sometimes they might not have been able to put over their point of view clearly in the review request, and review officers should try to get to the bottom of why the unrepresented taxpayer is not content with the decision. This might, for example include asking the customer for clarification either by telephone or face to face.

During the review the review officer should use the most efficient means of communication. Security concerns may prevent the use of email and latest business guidance should be checked on this point. The telephone may well be a quicker way of keeping the customer informed than post.

When the review officer has reached their conclusion they must tell the customer what they have decided. The review conclusion should be set out in a letter explaining our reasoning. The customer should be able to see that the review was thorough, impartial and took full account of their arguments. They should also understand from the review conclusion letter the case that HMRC would be likely to put forward if the case proceeded to tribunal.

3.1.9 Review/Appeal timescales quick guide

DIRECT TAX			
<p>If customers disagree with a direct tax decision they must appeal to HMRC within 30 days of the date of the decision letter. If the appeal cannot be settled through further discussion and considering further information the following time limits apply.</p>			
<p>1. HMRC OFFERS REVIEW</p>			
DECISION MAKER	CUSTOMER	REVIEW TEAM	CUSTOMER
<ul style="list-style-type: none"> Writes to customer to give 'HMRC's view of the matter and Offers review 	<p>Has 30 days to</p> <ul style="list-style-type: none"> appeal to the tribunal or accept review offer <p>If neither is done, the appeal is treated as settled.</p>	<ul style="list-style-type: none"> Has 45 days from HMRC's receipt of the letter accepting the offer (unless another period agreed with customer) to carry out review and issue review conclusions letter If not completed within 45 days and no extension agreed, must issue letter notifying customer that review is treated as having concluded that HMRC's view is upheld Transitional cases: if an appeal was received by HMRC before 1 April 2009 and review is offered before 31 March 2010 the review period is 90 days 	<ul style="list-style-type: none"> Has 30 days from date of review conclusions letter (or from date of letter notifying them that the review is treated as concluded) to appeal to tribunal If the customer does nothing the appeal is treated as settled

DIRECT TAX

2. CUSTOMER REQUESTS REVIEW

DECISION MAKER	REVIEW TEAM	CUSTOMER	
<p>Has 30 days from receipt of request to</p> <ul style="list-style-type: none"> • consider any new information or arguments and • issue 'HMRC's view of the matter' letter 	<ul style="list-style-type: none"> • Has 45 days from date of 'HMRC's view of the matter' letter (unless another period agreed with customer) to carry out review and issue review conclusions letter • If not complete within 45 days and no extension is agreed, must issue letter notifying customer that review is treated as having concluded that HMRC's view is upheld • Transitional cases: if an appeal was received by HMRC before 1 April 2009 and review is requested before 31 March 2010, the review period is 90 days 	<ul style="list-style-type: none"> • Has 30 days from date of review conclusions letter (or from letter notifying them that the review is treated as concluded) to appeal to tribunal • If the customer does nothing, the appeal is treated as settled 	

INDIRECT TAX

If customer disagrees they may send new information or arguments. Within 30 days of the decision letter HMRC may write to customer to extend time limit for appeal/review acceptance to the end of a new 30 day period (which may start from a future date). Otherwise the following time limits apply.

1. HMRC OFFERS REVIEW

DECISION MAKER	CUSTOMER	REVIEW TEAM	CUSTOMER
<ul style="list-style-type: none"> • Makes appealable decision • Issues decision letter (to include an offer to review) 	<p>Has 30 days from the date of the decision letter to</p> <ul style="list-style-type: none"> • contact HMRC with new information or • appeal to tribunal, or • accept review offer 	<ul style="list-style-type: none"> • Has 45 days from HMRC's receipt of the letter accepting the offer (unless another period agreed with customer) to carry out review and issue review conclusions letter • If not complete within 45 days and no extension is agreed, must issue letter notifying customer that review is treated as having concluded that HMRC's view is upheld 	<ul style="list-style-type: none"> • Has 30 days from date of review conclusions letter (or from letter notifying them that the review is treated as concluded) to appeal to tribunal

INDIRECT TAX

2. THIRD PARTY REQUESTS REVIEW

A third party with an appeal right may request a review. They must do so within 30 days of becoming aware of the decision.

DECISION MAKER	REVIEW TEAM	CUSTOMER	
<ul style="list-style-type: none"> • Receives review request • Considers any further information • Sends papers to review team (if appropriate) 	<ul style="list-style-type: none"> • Has 45 days from date HMRC receive the review request (unless another period agreed with customer) to carry out review and issue review conclusions letter • If not complete within 45 days and no extension is agreed, must issue letter notifying customer that review is treated as having concluded that HMRC's view is upheld 	<ul style="list-style-type: none"> • Has 30 days from date of review conclusions letter (or from letter notifying them the review is treated as concluded) to appeal to tribunal 	

4.1 The Decision Maker's and Review Officer's Roles in Tribunal Cases

The tribunals caseworker (in direct taxes) will either be based within business area Appeals Units, or belong to the business unit review team and will in most cases be outside the management chain of the decision maker. However, the tribunals caseworker cannot also have been the review officer in the same case.

In **direct taxes** the tribunals caseworker will liaise with all interested HMRC parties including the decision maker and the review officer, if appropriate, to decide whether the case should be pursued. The amount of contact will vary depending on the case but the tribunals caseworker may seek comments on

- the arguments to be put forward, and
- obtaining witness statements etc.

If the tribunals caseworker decides that the case should be pursued, they will normally prepare and present the case at tribunal. However, in very complex cases they will also liaise with any technical specialist involved in the case who will decide whether solicitors or counsel's advice or representation may be needed.

In **indirect taxes** Solicitor's Office will advise interested parties whether the case should be defended, and will then prepare and present the case and appoint counsel if necessary.

The decision maker and review officer must comply with deadlines imposed by the tribunal and time limits laid down in legislation to avoid delaying the Statement of Case or a hearing as, in certain circumstances, HMRC failing to comply with a tribunal imposed deadline could result in HMRC being barred from any further participation in the appeal process. If new information that may affect the case comes to light, the decision maker or review officer should bring it to the tribunals caseworker's attention immediately.

Review officers may be asked to assist in preparing instructions or a draft Statement of Case for Solicitor's Office or another advocate.

The tribunal caseworker/Sols Office should keep the decision maker and the review officer informed of progress, ensure that they are aware of the hearing date and whether they are required to appear as a witness.

The tribunal may summon any person, including decision makers and/or review officers to attend a hearing as a witness. It is not possible to say in general terms whether a decision maker or review officer will be called as this will vary from case to case and depend in particular on the extent and nature of the officer's involvement in the decision under appeal. They may be called as a result of an application by the customer or on the tribunal's own initiative, and should be aware of the Freedom of Information Act. In practice we usually agree to officers appearing as witnesses without the need for a summons. The Learning Prospectus in On-Line Learning has details of what witness training is currently available.

The tribunal caseworker/Sols Office will review the outcome of the tribunal hearing and liaise with the decision maker, review officer and, if appropriate, policy and technical specialists to decide whether the case should be taken to the Upper Tribunal or the relevant appellate court (ARTG 7940).

5.1 The New Tribunals

5.1.1 The new structure

On 1 April 2009 the tribunals established under The Tribunal, Courts and Enforcement Act 2007 took the place of all existing tax tribunals (VAT and Duties, General and Special Commissioners, 704 and 706 tribunals) and began hearing tax appeals.

The new tribunal has a two tier structure. The First-tier Tribunal Tax Chamber will hear almost all appeals against HMRC decisions. They will also hear applications and other references. The Upper Tribunal will hear appeals against First-tier Tribunal decisions and may undertake some judicial review work at the discretion of the High Court and Court of Session or Court of Appeal Northern Ireland. In addition, a very small number of cases which raise complex legal points and have few facts to be found may transfer to the Upper Tribunal at first instance.

Only cases which fall within the Complex category can be transferred to the Upper Tribunal at first-instance (see "Categories of tribunal case" below for further explanation of case categorisation). The First-tier Tribunal is the primary fact-finding tribunal and any cases which require a significant amount of fact-finding will be heard in this forum, however complex they are. If the First-tier Tribunal considers that a case warrants a first hearing at the Upper Tribunal they may ask the President of the Tax Chamber to direct that it be transferred. Such cases may only transfer if both parties agree, and the president of the Finance and Tax Chamber of the Upper Tribunal also concurs with the direction of the Tax Chamber President.

As well as hearing appeals, the new tax tribunal will also deal with

- customer applications, for example for hardship and postponement (in the event of refusal by HMRC) or closure of self-assessment enquiries, and
- HMRC applications, for example for approval to issue certain information notices etc.

Since 3 November 2008 the Social Entitlement Chamber of the First-tier Tribunal has been hearing appeals on Tax Credit, Child Benefit and Child Trust Fund issues in Great Britain (the Northern Ireland Social Security Appeal Tribunal and Commissioners continue to hear Northern Ireland cases).

The First-tier Tribunal Tax Chamber

First-tier Tribunal cases will be heard in various locations around the country. For a full list of tribunal addresses see the Tribunals Service website.

The panels hearing tax appeals will be drawn from a pool of professionals, both legally and non-legally qualified, with a wide range of experience, skills and knowledge.

The tribunal will decide how cases will be conducted, and may invite the parties to the appeal to a case management meeting.

The Upper Tribunal

The Finance and Tax Chamber of the Upper Tribunal will be based in London (although it is likely that some Upper Tribunal appeals will be heard at other locations, such as Edinburgh or Manchester). It will be less formal than the High Court with no wigs, gowns or requirement for barristers to represent parties.

The Upper Tribunal will deal with some complex first instance tax appeals and applications, but these are expected to be very few. In the main the Upper Tribunal will deal with all appeals from the First-tier Tribunal for tax cases and some tax Judicial Reviews.

The Tribunals Service Central Processing Centre

The Tribunals Service Central Processing Centre (CPC) in Birmingham will receive all tax tribunal appeals and originating applications and liaise with the relevant parties to make arrangements for the appeal to be heard. It is the single initial point of contact between the tribunal and HMRC for all appeals and applications sent to the Tax Chamber of the First-tier Tribunal. It will allocate the case to a category and then inform the HMRC Clearing House of the case and category. It must send the Clearing House copies of relevant documents and an outline of any further information HMRC needs to provide, and the deadlines involved.

Default Paper and Basic cases will be administered from the Birmingham Centre, while many Standard and Complex cases will be administered from the TS London, Manchester or Edinburgh offices.

Once they have all necessary information, the Tribunals Service will write to the parties (or HMRC in a without notice case) with a hearing date.

5.1.2 Categories of tribunal case

The First-tier Tribunal will allocate appeals, applications and other references to a category, but HMRC or the appellant may ask the tribunal to allocate the case to a different category. A request to re-categorise is not an 'appeal' and the decision is ultimately the tribunal's. The tribunal may also decide to re-categorise a case on its own initiative at any time.

There will be four different case categories in the First-tier Tribunal.

A new feature of the arrangements is that many of the simplest cases we deal with will be dealt with on paper unless we or the customer choose to have an oral hearing.

Default paper category

Default paper category cases are normally

- Appeals against
 - Self assessment late return fixed penalties
 - Employer end of year return penalties
 - Construction industry late return penalties
 - Corporation tax return fixed penalties
 - Class 2 national insurance contribution notification penalties; and
 - Income tax fixed percentage surcharges.
- Applications for penalties under section 93(3) of the Taxes management Act 1970.

Cases in this category will be decided on the basis of written documentation including an HMRC Statement of Case. The Statement of Case must be provided within 42 days of the date the tribunal sends us notice of the appeal (and its categorisation). The appellant may send a response to our Statement of Case if they wish. They must do this within 30 days of the date we send our Statement of Case to them. Unless the tribunal directs otherwise, there will be no further exchanges and the case will be decided on the papers provided.

A written decision will be sent to all parties after the appeal has been considered by the Tribunal. The ARTG has more detailed information on the Default Paper process at ARTG 8370 if you need it.

Basic category

Basic category appeals are normally

- Appeals
 1. against late filing and late payment penalties (except those in the default paper category)
 2. against penalties for incorrect returns except
 - a) appeals against penalties for deliberate or concealed action;

- b) cases where an appeal is also brought against the assessment to tax to which the penalty relates and
 - c) indirect tax cases
3. on the basis of reasonable excuse against indirect tax penalties
 4. against CIS gross payment status decisions and
 5. against information notices.

- Applications for
 1. permission to make a late appeal
 2. postponement of tax where HMRC do not agree the amount and
 3. a direction that HMRC close an enquiry.

ARTG 8350 has more detail on this category.

The hearings for Basic category cases will be informal (similar to hearings before the General Commissioners of Income Tax or to how VAT & Duties Tribunals category 1 cases were heard) with a limited exchange of papers prior to the tribunal hearing. HMRC are not required to provide a Statement of Case, but if we want to rely on any information or argument that we have not already communicated to the appellant we must inform them as soon as we are aware that this is the case, and give sufficient detail to enable the appellant to respond to these points at the hearing.

Cases will be listed for hearing at a variety of venues across the UK. Decisions will often be announced on the day of the hearing. The tribunal will always send a written decision notice outlining the decision and setting out any rights of appeal against the decision.

Standard category

Standard category appeals are

The great majority of cases other than those in the Default Paper or Basic categories, where a longer hearing is required to consider facts and arguments, for example traditional direct tax 'contentious' hearings or substantive indirect tax hearings.

These cases will be categorised by the tribunal who will then ask HMRC to provide a Statement of Case within 60 days. On receipt of the Statement of Case, the parties will have 42 days in which to file a list of the documents they have in their possession and intend to rely on or produce at the hearing.

Standard cases will be heard in tribunal centres around the UK.

In Standard category cases, decisions may be announced by the tribunal on the day of the hearing, but more usually a decision will be reserved and given later in writing.

Complex category

Complex category appeals will be

- Cases the Tribunal considers
 - a) will require lengthy or complex evidence or a lengthy hearing
 - b) involve a complex or important principle or issue or
 - c) a large financial sum.

These cases will be filed and categorised by the Tribunals Service who will then ask HMRC to provide a Statement of Case within 60 days. On receipt of the Statement of Case, the parties will have 42 days in which to file a list of the documents they have in their possession and intend to rely on or produce at the hearing.

Complex cases will normally be heard in London, Manchester, Birmingham, Belfast or Edinburgh.

In complex category cases, decisions may be announced by the tribunal on the day of the hearing, but more usually a decision will be reserved and given later in writing.

5.1.3 Appeals against tribunal decisions

There is a right of appeal, with permission and on a point of law, to the Upper Tribunal against decisions made by the First-tier Tribunal. This is unless an express exception applies (e.g. information notices). The Tribunal may also review its own decision on receipt of an application for permission to appeal, and change it if is clearly wrong. The First-tier Tribunal can also be asked to reconsider its decision on the grounds of procedural irregularity.

Applications for permission to appeal are to be made to the First-tier Tribunal, who will consider whether to give permission. If the tribunal refuses permission they must explain why and tell the applicant that they have a right to ask the Upper Tribunal for permission to appeal and the procedure and time limits for such applications.

Appeals against decisions made by the Upper Tribunal will be heard by the Court of Appeal or Court of Session, as appropriate. Appeals from those Courts will be to the House of Lords. At any stage, including at the First-tier Tribunal, a case may be referred to the European Court of Justice.

5.1.4 Costs

The First-tier Tribunal can award costs (or expenses in Scotland) only

- if the customer or HMRC has acted unreasonably, or
- in a Complex case (unless the customer asked for the case to be excluded from the costs regime within 28 days of receipt of notice that the case had been categorised as Complex).

The First-tier Tribunal cannot award costs without considering either the customer's or HMRC's representations, or, if the customer is an individual, without taking the customer's means into account.

The Upper Tribunal can award costs in tax cases. The tribunal cannot award costs without considering either the customer's or HMRC's representations. In addition, in any case heard at first instance by the Upper Tribunal where the customer is an individual, they must consider the customer's financial means before making an award of costs.

5.1.4 The HMRC Clearing House

The HMRC Clearing House is part of Local Compliance, and based in York. It will be our first contact point with the Tribunals Service. Its role will be to receive notifications of appeals from the Tribunals Service and identify which Appeals Unit in HMRC to send them to. The Clearing House will forward direct tax appeals (and originating applications from taxpayers) to the relevant Appeals Unit. Indirect Tax cases will be sent to the Solicitors Office, copied to the relevant Appeals Unit, if identifiable. The Appeals Unit/Solicitor's Office will then notify the Tribunals Service of the contact details of the person preparing the case. Any future correspondence will then be between them and the Tribunals Service without reference to the Clearing House.

The Clearing House will not enter into correspondence with a customer. If details are not clear, the papers will be passed to the relevant business area to trace the decision maker or contact the customer, as appropriate.

Learning Check – Answers

1. What should a customer do if they disagree with one of our appealable decisions?

The customer should write and tell HMRC within the time limit (usually 30 days).

They may also:

In direct tax, once they have appealed to HMRC they may notify their appeal to the tribunal or request a review.

In indirect tax, they may ask for a review or alternatively appeal to the tribunal within 30 days.

You looked at this in Chapter 2.1.3 – Appeals to HMRC and 2.1.4 – Appealable decisions from 1 April 2009.

2. What should happen when the customer contacts HMRC to disagree with an appealable decision?

The decision maker should try to resolve the matter through discussion with the customer. In indirect tax, the decision maker may want to extend the time for a review/appeal.

You looked at this in Chapter 2.1.3 – Customer provides further information or enters into further discussions and 2.1.4 – Customer sends in new information or arguments.

3. When does the review period start?

From the date HMRC received the letter accepting the review offer or

- where a direct tax review requested by customer, the date we gave our view, or

- where a third party gives notice that they require a review of an appealable indirect tax decision, the date HMRC receive their letter.

You looked at this in Chapter 3.1.9 – Review/Appeal timescales quick guide.

4. What is the normal time limit within which we must complete a review and how can this be varied?

45 days; varied only by agreement with the customer; or if a direct tax appeal made before 1 April 2009 and a review requested before 1 April 2010, 90 days or longer where agreed.

You looked at this in Chapter 3.1.9 – Review/Appeal timescales quick guide.

5. What should we do if we may not be able to complete the review in time?

Try to agree a longer period of time with the customer.

You looked at this in Chapter 3.1.8 – Contact with the customer.

6. What two key rights do customers have in relation to reviews?

To make representations and to be given reasons for the decision.

You looked at this in Chapter 3.1.4 – Principles of review.

7. What three things should the review focus on?

Whether the decision is wrong in law, based on incorrect or unreasonable analysis, or not one we would want to defend at tribunal.

You looked at this in Chapter 3.1.4 – Principles of review.

8. What do we do if we have not completed the review in time?

If the customer will not agree to an extension, write and tell them that the review is treated as concluding that the decision should be upheld, and that they have 30 days from the date of the letter within which to notify an appeal to the tribunal.

You looked at this in Chapter 2.1.3 – HMRC offers review or Customer asks for review and 2.1.4 – Customer accepts HMRC’s offer of review.

9. When is it not possible for an appeal to be made, or notified, to the tribunal?

During the review period.

You looked at this in Chapter 2.1.3 – Customer provides further information or enters into further discussions and 2.1.4 – Customer accepts HMRC offer of review.

10. When can a customer notify an appeal to tribunal after review?

Within 30 days of issue of conclusions on review; or at any time after the review period has expired provided it is within 30 days of the date of the letter notifying the customer that the review is treated as having upheld the decision.

You looked at this in Chapter 2.1.3 – Time limit for notifying appeal to the tribunal and 2.1.4 – Customer accepts HMRC offer of review.

11. In direct taxes, when can/should decision maker offer review and give our view of the matter?

Any time after the appeal is made, where the decision maker considers the time has come to progress the case, provided the customer has not asked for review and has not notified the appeal to the tribunal.

You looked at this in Chapter 2.1.3 – HMRC offers review.

12. In direct tax, what happens if the customer does not accept our offer of review or notify appeal to tribunal within 30 days?

The appeal is treated as settled.

You looked at this in Chapter 2.1.3 – HMRC offers review.

13. When can a customer ask for a review in direct tax?

Any time after appealing, provided the decision maker has not offered a review and the customer has not notified the appeal to the tribunal.

You looked at this in Chapter 2.1.3 – Options after appeal to HMRC and HMRC offers review.

14. In direct tax, what must the decision maker do when a customer has asked for a review, and when must they do it by?

Give the customer our view of the matter within 30 days, and then send immediately for a review.

You looked at this in Chapter 2.1.3 – HMRC offers review.

15. What is the normal time limit in cases where a direct tax appeal was lodged with HMRC before 1 April 2009?

90 days. (If the review was requested on or before 31 March 2010)

You looked at this in Chapter 3.1.9 – Review/Appeal timescales quick guide.

16. When is the earliest a customer can notify a direct tax appeal to tribunal?

As soon as they have sent an appeal to HMRC.

You looked at this in Chapter 2.1.3 – Options after appeal to HMRC.

17. When do we offer review in indirect tax?

At the time we issue our decision.

You looked at this in Chapter 2.1.4 – Appealable decisions from 1 April 2009.

18. What is the earliest a customer can appeal an indirect tax decision to tribunal?

As soon as we have issued our decision (unless it is a restoration decision).

You looked at this in Chapter 2.1.4 – Appealable decisions from 1 April 2009 and Restoration decisions.

19. On what grounds can an appeal be made to the Upper Tribunal against a First-tier Tribunal decision?

An appeal may be made on a point of law if the tribunal gives permission (unless an express exception applies).

You looked at this in Chapter 5.1.3 – Appeals against tribunal decisions.

20. If a case has been categorised as Default Paper, is there a right to an oral hearing?

Yes. The tribunal must hold a hearing to decide the case if either the customer or HMRC ask for one.

You looked at this in Chapter 5.1.2 – Categories of tribunal case.

Before Moving On

If you have successfully completed the Learning Check, you will have achieved the study objectives, which are to

- understand how the new system works
- understand the role of the review officer
- understand how the new tribunals system will work for tax matters and have an overview of basic procedures for tribunal cases.

If you have not met any of the objectives, go back and reread the relevant part(s) of the chapter before moving on. If you are still having problems, make a note of them below for discussion with your manager.

Notes

