SUBMISSIONS

In respect of

ENTERPRISE BILL 2015
PART 6: NON-DOMESTIC RATING
CLAUSES 25 AND 26

Prepared by:

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EXECUTIVE SUMMARY

Objectives

I and my colleagues fully support the stated objectives of streamlining the rating appeal system and improving the quality of information provided. The following sets out to examine whether this intended aim will be realised through the changes that are proposed.

Identified Issues

There is a problem of an excessive number of proposals being made under the current system. This inevitably leads to a significant number of appeals to the Valuation Tribunal on expiry of the 3 month deadline authorised by S55 (5) Local Government Finance Act 1988 and regulated by Regulation 13 Non Domestic Rating (Alteration of Lists and Appeals) (England) 2009 SI2009/2268.

The reasons for the excessive number of appeals can be divided into four categories:

1. Proposals are submitted because the ratepayer, with or without professional advice, is concerned that the assessment is excessive and there is a lack of information available to the ratepayer and their advisors to enable the assessment to be checked without a proposal being made. These should be viewed as legitimate appeals.

2. Proposals are made by some firms acting for ratepayers on a blanket approach, i.e. if an instruction is secured to act for a ratepayer, proposals are submitted without any consideration being given to the accuracy or otherwise of the assessment. These are speculative appeals.

3. Where there are changes to the property or location proposals are made for temporary or permanent reductions. Due to the current regulations the proposals must be lodged when the changes or alterations are on-going at which time there is often no specific evidence to support the proposals. These proposals often result in reductions but at the outset are regarded as speculative.

4. There is a fourth specific cause of the size of the current backlog. The regulations previously allowed appeals to be made up to the end of the Rating List and it is normal for a number of proposals to be made at that time but after careful consideration of the evidence that has accrued during the life of the rating lists and considering the financial implications for the ratepayer not only over the life of the list but also in respect of the initial liability under the new rating list. The change to the regulations on backdating appeals, which took effect from 1st April 2015, provided a strong marketing tool for unregulated firms and professional firms alike and forced quick decisions on whether or not to appeal for ratepayers who had previously assumed they had two years in which to consider the pros and cons. Therefore appeals which had been postponed due to lack of financial benefit at the start of the 2010 Rating List were submitted to beat the deadline, and ratepayers who were previously uncommitted where forced to act precipitously or lose 5 years potential savings. Many of these appeals would not have been made if the regulations had not changed.

There are of course a significant number of appeals made which are both legitimate and well founded, many of which result in a reduction in the Rateable Value. It has to be stressed that as the appeal system is weighted against the appellant some appeals will fail not because the appeals are not well founded but because the ratepayer is unable to prove that the Rateable Value is wrong to the satisfaction of the Valuation Officer, who is concerned with defending the Rating List, or the Valuation Tribunal. It is unclear whether the test of proof being applied to the appellant's case is:-

a) Beyond reasonable doubt, or;
b) Balance of probability.

In my 27 years of experience acting for ratepayers and appearing before the Valuation Tribunals, it is apparent that either test may be applied but in general it is the former and not the latter. As this is a matter of taxation, in my opinion, the taxpayer should receive the benefit of the doubt. If the ratepayer must prove their case beyond reasonable doubt, many appeals, that have merit, will fail without the Valuation Officer having to properly consider the evidence in support of a change to the rating list.

Disclosure of Evidence

Clause 25 of the Enterprise Bill allows the sharing of evidence with Billing Authorities, major precepting bodies and their appointed agents, but not with the ratepayers. This reinforces the current lack of transparency between the Valuation Officer and the ratepayer. This lack of transparency is one of the major drivers behind legitimate appeals made to flush out the evidence on which the Rateable Value is based. It follows that greater transparency would potentially reduce the number of challenges and further reduce the need for appeals to be considered by Valuation Tribunal. At the same there will be a greater perception of fairness amongst ratepayers. The Enterprise Bill, as currently drafted, is moving away from transparency.

Amendments to this Clause were proposed at the House of Lords by Lord Lytton which we fully endorse and which, based on our extensive experience of lodging appeals on behalf of ratepayers would, if instigated at the earliest stage, reduce the scope of disputes with the Valuation Officer and thereby reduce the number of appeals.

It is also worth noting that the information held and relied upon by the Valuation Office Agency is sometimes defective or deficient, not due to deliberate action by ratepayers but due to misunderstanding when answering formal questions and due to a lack of opportunity to set out the full details of a deal on a new letting or review of an existing letting. An early disclosure of information would: enable the ratepayer to bring these discrepancies to the attention of the Valuation Officer and; allow the Valuation Officer to correct his records and amend valuations accordingly. The Valuation Officer has a statutory duty in accordance with S41 Local Government Finance Act 1988 to maintain an accurate rating list wherever possible the legislation should place emphasis on ensuring that this duty is facilitated. Restricting the flow of evidence is a backward step in this regard.

We therefore fully endorse any amendment which would permit the ratepayer to require the Valuation Officer to provide the evidence on which his Rateable Value is based thereby enabling proper consideration to be given before an appeal. We believe that this entitlement should be extended to any interested party as currently defined in Regulation 2 Non-Domestic Rating (Alteration of Lists and Appeals) (England) 2009.

Changes to the Appeal Process

Clause 26 makes provision for a new appeal process to replace the current appeal regime set out in S55 Local Government Finance Act 1988 and regulated by the Non-Domestic Rating (Alteration of Lists and Appeals) (England) 2009. This is a major and not a minor amendment.

Whilst Clause 26 sets out a frame work details will be set down in regulation. The 3 stage process currently set out in consultations is considered to be cumbersome and inappropriate to many appeals. This raises the potential for different approaches being required for different grounds of appeal. This will inevitably create confusion.

We do however welcome the removal of the automatic transmission of an appeal to Valuation Tribunal by the Valuation Officer after an unrealistic 3 month waiting period.

In our view, a 2 step process would avoid any need for more than one appeal regime and would fit better with the current process of proposal and then appeal.

Civil Penalty

As noted above, the information held by the Valuation Office is often defective or deficient. Based on my experience of 34 years, this is rarely due to a deliberate act on the part of the ratepayer, owner or advisor.

Deliberate falsification of information is a fraudulent act for which procedures already exist, and such acts of fraud should not simply be subject to a fixed penalty.

Part of the problem with the current information gathering exercise is that completion of forms are rushed due to the threat of a £100 penalty for failure to complete within 56 days of the form being issued. The forms are sent by second class post, often addressed to the property and not to the appropriate person who will hold the information. As details requested may be historic, i.e. more than 12 months old, the necessary information may be archived, or held in the files of the ratepayer's, or owner's professional advisors. Therefore the recipient will often be forced to rely on memory in order to comply with the deadline. This is not conducive to the provision of accurate information.

The civil penalty proposed in Clause 26 is likely to be counterproductive if the intention is to improve the flow of information.

As currently drafted, the penalty would be administered by the Valuation Officer and not by an appropriate independent body. The test that a penalty is due depends upon a view of whether the person completing the form, "knowingly, recklessly or carelessly provided information which is false in a material particular". Whilst the Valuation Officer may be in a position to make such a charge, he is not in a position to objectively determine that the charge is true.

We therefore submit that references to the Civil Penalty, namely proposed S55 (4A) (c) and (43) should be removed from the Bill.

About Lambert Smith Hampton

Lambert Smith Hampton (LSH) is a national commercial property consultancy firm who advise a wide range of ratepayers from sole traders and SME's to large occupiers, landlords, public bodies and local authorities.

LSH has specialist rating teams with a wide range of experience in providing advice on rating matters, negotiating settlements with Valuation Officers, attending Valuation Tribunal as both Experts and Advocates, and acting as Expert Witnesses at Upper Tribunal (Lands Chamber) and previously at Lands Tribunal.

Many of our professional staff have previously been employed by the Valuation Office Agency and have attended Tribunals as the Valuation Officer.

With this range of experience, LSH is well placed to comment on the current appeal process and the likely impact on ratepayers of any new regime.

About Colin Hunter

Colin Hunter is a Director of Lambert Smith Hampton in the Rating Division, advising a wide range of clients but with specific focus on properties in Yorkshire and the East of England, and leisure uses including museums.

Colin Hunter worked as a Chartered Surveyor with the Valuation Office from 1982 to 1989 and has acted for a wide range of private and public sector clients since then.

Lambert Smith Hampton

Submission with regard to Clause 25 Enterprise Bill 2015

Sharing Information

We note that Clause 25 will permit the sharing of information between the Valuation Office and billing authorities. We further note that there are proposed amendments to include authorities in Wales as well as those in England. We endorse the view that the Valuation Officer should be enabled to share information held in order to provide an effective advisory service for billing authorities whose income is affected by decisions on Rateable Values.

The Valuation Office Agency is currently withholding evidence in respect of rating appeals from ratepayers. The reasoning given is that the Valuation Officer is not allowed to share information due to limitations imposed by the Commissioner for Revenue and Customs Act 2005. We dispute the Valuation Office Agency's interpretation of this Act and agree with the opinion provided to the Rating Surveyors Association by Mr David Holgate QC prior to his appointment as High Court Judge. In summary the argument is that the Valuation Officer is a statutory position created by the Local Government Finance Act 1988, and prior legislation, and therefore is not covered by the 2005 Act. It is further argued that even if the Valuation Officer is subject to the 2005 Act his duty is in accordance with S41 Local Government Finance Act 1988 is to produce and maintain the rating lists. Part of the maintenance process is to respond to proposals to alter the rating list and therefore disclosure of information is a relevant part of that duty and not in contravention of the 2005 Act. It is however advisable that the Valuation Officer is given the unequivocal authority to release evidence to ratepayer or interested parties, but the Valuation Officer should also be under a duty to release that information. Clause 25 works to the contrary position of protecting the information held by the Valuation Officer.

We agree that the information should be shared with the billing authority, whose income is impacted by the Valuation Officer's decisions, but it is inequitable that the ratepayer, or interested person, whose revenue is also affected by those same decisions has no equivalent right to be provided with the same information.

When acting as an Expert Witness, the Valuation Officer has a duty to provide the Tribunal with all relevant evidence of which he is aware. However the wording of Clause 25 potentially works against that duty and if the evidence is not provided at an early stage to the ratepayer then the ratepayer may have no recourse other than a Valuation Tribunal hearing in order to unearth the evidence used by the Valuation Officer. This is contrary to the aim of reducing appeals.

Non-Domestic Rates (normally referred to as business rates) is a property tax. However, unlike any other taxation, the tax is not based on actual information but on an opinion of value produced by a government department, namely the Valuation Office Agency. Whilst the Rateable Value is available on the Valuation Office Agency website and in most, but not all, cases the breakdown of the valuation is also available, there is no meaningful explanation of how the Valuation Officer arrived at the unit prices and adjustments to those prices, nor is there any means of determining what evidence was used to arrive at those prices. The ratepayers and their advisors are therefore left to guess what evidence may or may not have been used in arriving at the Rateable Value and therefore the tax liability. This lack of transparency is a major factor in both the general dissatisfaction with the rating system and also the number of appeals raised and the difficulty in settling appeals by agreement.

The former President of the Valuation Tribunal for England, Professor Zellick, has commented on this lack of transparency. In an interview with Estates Gazette published on 24th October he said:-

"The ratepayer is never given the full explanation for the valuation. As a result, every time there is a new rating list, ratepayers initiate a challenge – partly to protect their position but chiefly to "flush out" more information.

Unless information is given up front, the system will remain defective and unsatisfactory and unjust. I don't know any other tax that can be levied where the taxpayer doesn't understand in full down to the last detail the basis on which the taxman has calculated the tax due. It's unprecedented, it's unique and it's wrong".

We fully endorse and agree with Professor Zellick's comments.

Having dealt with rating appeals since 1982, I am aware of the many changes that have occurred to both the administration of business rates, and also the changes to the process and procedures adopted by the Valuation Office Agency. Prior to 1st April 2005, it was normal to have full and frank discussions, with the Valuation Office caseworker providing evidence to support the Rateable Value, or a revised value if it was considered that the current entry was wrong. This has changed so that evidence is rarely provided by the Valuation Office caseworker prior to a hearing date for Valuation Tribunal being set. Indeed the Valuation Office Agency has a stated policy of withholding this information. The first time in which evidence is produced by the Valuation Officer is often 4 weeks before the hearing after the Ratepayer has had to provide a Statement of Case. The ratepayer therefore does not have the opportunity to consider the merits of the Valuation Officer's case, nor does the ratepayer have the opportunity to test the evidence relied on by the Valuation Officer which may be flawed or incomplete. This makes the appeal system antagonistic and inefficient.

On 25th November 2015, during the evening debate of the Enterprise Bill in the House of Lords, Lord Lytton, Lord Stoneham of Droxford and Lord Mendelsohn roundly condemned the lack of transparency and spoke in support of amendments tabled in the Lords which would rectify this deficiency by allowing the Valuation Officer to disclose the evidence on which the tax assessment is based, if not requiring the Valuation Officer to release that information. We note that amendments 95, 100, 96, 97 and 98 tabled in the House of Commons on 18th February seek to redress the balance we strongly support the advocacy of the Noble Lords for such an amendment and the amendments now tabled. However we consider the wording of Amendment 95 should be altered slightly deleting reference to "ratepayer" and substituting "interested person".

The current business rates system is opaque and difficult for ratepayers to understand. The Rateable Value is often presented as being an unassailable fact rather than an opinion of value based on evidence. This opacity allows unscrupulous firms offering rating advice to make exaggerated and unsubstantiated claims to ratepayers in order to generate instructions and this, in turn, leads to large numbers of spurious appeals being lodged. A more open and transparent system, starting with the disclosure of evidence by the Valuation Officer, would reduce the number of appeals. It is my direct experience that the more obstacles and deadlines placed in the path of the ratepayer, the greater the level of grievance and the greater the number of appeals. This is amply demonstrated by the effect of imposing a cut-off date for backdating appeals in March 2015. The immediate response of the ratepayers and their advisors, both scrupulous and unscrupulous, was to produce a flood of proposals, in excess of 250,000, to beat the deadline. The opportunity is now available to reverse that position by requiring the Valuation Officer to provide evidence at the outset that will allow considered decisions to be made before an appeal is lodged avoiding many unnecessary appeals.

It has been suggested by the Valuation Office Agency that providing the evidence is a potential breach of confidentiality. The same argument was put forward when it was proposed that Land Registry Title documents should record the sale prices and rents relevant to the last transfer of title. That information is now freely available in the public domain. The information has improved transparency in the property market. The Valuation Officer's argument is also contradicted by the fact that he is obliged to produce this same evidence to the Valuation Tribunal as noted above, and that evidence will then appear in the public record of the proceedings. Finally there is a right to inspect completed forms upon which the evidence is based conferred by Paragraph 9 Schedule 9 Local Government Finance Act 1988 to inspect any proposals made, which will include a statement of the rent. In addition the appellant has the right to inspect evidence collected in accordance with Paragraph 5 Schedule 9 Local Government Finance Act 1998 if that evidence is to be used in Tribunal and may request sight of other related evidence. The appellant also has the right to make full notes of the content of the proposal or rent return, including the name and contact details of the person who completed the form. Therefore, the Agency's argument is flawed.

The Valuation Office Agency is empowered to require owners and occupiers to disclose rental and other information to them in order to carry out its duty to prepare and maintain the Rating Lists. Failure to disclose that evidence, allowing it and its analysis to be tested, is a failure to carry out the duty to maintain the Rating List. It should also be noted that in the current and previous consultations in respect of changes to the appeals process, bodies such as the CBI, British Retail Consortium, British Property Federation, Rating Surveyors Association and other bodies representing owners and occupiers, from whom the Valuation Office obtain the evidence, have spoken out strongly in support of releasing the evidence at an early stage to improve transparency. It would appear that the only body opposed to providing the evidence is the Valuation Office Agency which employs the Valuation Officers.

We accept that there are 2 competing needs. One is the protection of privacy, the other is providing transparency and fairness within a system of taxation. In many ways privacy of information regarding rental evidence is already compromised by the rights of the appellant referred to above in respect of inspecting documents held by the Valuation Officer and in the Valuation Officer's duty to the Valuation Tribunal. Privacy is further eroded by sharing the information with the billing authorities. Clause 25 will not assist in improving the transparency of the taxation, nor will it provide added protection of privacy.

Rental evidence is freely shared, with few exceptions, within the property profession. This is essential to enable negotiations of new or reviewed rents on an informal basis. The withholding of evidence merely leads to litigation. It should therefore be even more incumbent on a decision making public body to ensure that the evidence is shared, tested and transparent when determining a tax liability. It is notable that in rent review or lease renewal disputes, the parties have the right to ask the Arbitrator or Court to order disclosure of evidence. No such right exists with regard to rating appeals, and the current proposals in the consultation, provides the Valuation Officer with control over what evidence can be used. The currently proposed wording of Clause 25 will merely strengthen the argument of the Valuation Office Agency in favour of withholding evidence, which will lead to further litigation. The opinion of David Holgate QC referred to above underlines this point.

Submission in respect of Clause 26: Alteration of Non-Domestic Rating List

This clause sets out a number of provisions amending the Local Government Finance Act 1988 with regard to the process of appealing against entries in the Rating List and the introduction of a Civil Penalty.

Changes to the Appeal System

Dealing firstly with the proposed changes to the appeal procedures, this is an enabling provision allowing the Secretary of State to set regulations which will determine the detail of the appeal process. The consultation on the process, now known as 'Check, Challenge, Appeal' closed on the 4th January 2016 and a significant number of professional bodies and bodies representing owners and occupiers have responded. That process is not directly relevant to the wording of Clause 26 but there are relevant factors in the wording which need to be considered.

The proposed S55 (4A) (a), set out in Clause 26 includes the following wording:-

"which may include steps designed to ensure the person checks the accuracy and completeness of any information on which any decision by the Valuation Officer has been based".

The check process set out in the Consultation process is limited in that it would only allow the checking of facts such as floor areas. Unless the Valuation Officer is required to disclose the evidence on which the valuation is based "the person" cannot check the accuracy or completeness of the information used by the Valuation Officer. Therefore, the proposed disclosure rules under Clause 25 of the Bill and the Valuation Officer's reliance on the Commissioner for Customs and Revenues Act 2005 combine to frustrate the stated intention of the proposed amendment to S55.

Any set of appeal provisions must be capable of dealing with all grounds of appeal. Whilst the list of grounds have been amended on a number of occasions since 1st April 1990, the substantive elements have remained unchanged. Most appeals made are either: against the Compiled List entry in a new List; following an alteration to the Rating List by the Valuation Officer, or: due to a material change in circumstances. In the first two instances, the information used by the Valuation Officer is relevant; it is less relevant where there has been a material change. In respect of the other 12 grounds of appeal set out in Regulation 4, Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the relevant facts are often not related to the information used by the Valuation Officer in determining the current entry in the Rating List.

Therefore, for any checking by an appellant to be effective, the Valuation Officer must be required to disclose the relevant information, especially rental evidence, Part 6 of the Enterprise Bill makes no such provision.

We therefore submit that either Clause 25 should be amended, as previously suggested, or that the proposed S55 (4A) to be inserted into the Local Government Finance Act 1988 should be amended. We note that Amendments 99 and 101 propose alterations to the Clause that would redress this and we endorse those proposed amendments. In our opinion such amendments would reduce the need for protective proposals and would address the concerns set out by Professor Zellick.

The proposed Section 55 (4A)(b) permitting the Secretary of State to restrict circumstances and timing is again part of the Consultation on Check, Challenge, Appeal. However, it is noted that if the Valuation Officer is permitted or indeed empowered to withhold relevant information and unreasonable restrictions are placed on the potential appellant, the appeal process will be called into doubt, and further credence will be given to the already vocal complaints that the rating system is not fit for purpose. The proposed changes may therefore exacerbate the view that business rates are unfair and unfit, and lead to appeals being made or payment being withheld. In 1990 when Non-Domestic Rates were introduced the previous General Rates for domestic properties were replaced with the Community Charge. That form of Local Taxation was widely condemned and resisted by taxpayers leading to its replacement with the current Council Tax system. There is an object lesson to be drawn from the imposition of a tax system which is held to be unfair by the majority, or a significant minority, of taxpayers.

As noted above, any limitation on the time frame for submitting proposals has historically increased and not reduced the numbers of appeals lodged. I have cited above the impact on the number of appeals made as a direct result of the imposition of a deadline for backdating appeals in 2015. The same rush to appeal was apparent for the 1990 Rating List when a cut-off for appeals against the Compiled List was set at 30th September 1990. However, at that time, business rates had not fallen into disrepute in the manner that is now expressed in the press and other media. In part, this is due to the relative increase in the burden imposed on businesses by business rates. In part, this is due to heightened awareness of the failings of the rates system and a backlash due to increased local taxation whilst reducing the local services. We note that to an extent this has been addressed by Amendment 101 which we endorse.

Amendment 130 adds in a further category for regulations under the proposed Section 55(5A), we partially endorse this amendment. In our experience the more parties there are to an appeal the less prospect there is for a negotiated settlement to be reached. Therefore including the billing authority as a potential party to the appeal process will slow down the settlement process and lead to more appeals being heard by Valuation Tribunal due to lack of agreement.

Civil Penalty

Clause 26 sets out the provisions for a Civil Penalty. It is our opinion that such a penalty is unnecessary and unhelpful to the process of obtaining full disclosure of relevant information. The process of information gathering by the Valuation Officer is already regulated by Paragraph 5, Schedule 9, Local Government Finance Act 1988. Paragraph 5A introduces a penalty for non-completion of the questionnaires sent out by the Valuation Officer. The current forms have the following standard wording:-

"You may be prosecuted if you make false statements, or be liable to penalties if you do not complete and return this form (or electronic version) within 56 days."

Provision of false information is punishable. However, it is possible to complete the forms accurately and still end up in dispute with the Valuation Office when the information contained clashes with other information held on their system or simply with a belief held by the Valuation Officer that is contrary to the view of the person being required to complete the form.

As an example of the difficulties that can arise, I have been directly involved in Penalty Notices for failure to complete rent returns. The returns had been served on a person whom the Valuation Officer believed to be in occupation of several hereditaments. The hereditaments were subject to appeal, one of the grounds of appeal being that the hereditaments identified by the Valuation Officer in fact formed part of other larger hereditaments and that the person considered by the Valuation Officer to be in occupation was not in occupation. Documentation in relation to the tenure of the buildings had been provided to the Valuation Officer and agreed as facts for submission to Valuation Tribunal for England, prior to the rent returns being issued. As the rent returns were not returned, the Valuation Officer issued Penalty Notices for non-completion, which were appealed. The Valuation Officer then appointed solicitors and barristers to respond to the appeal against the Penalty Notices. The Valuation Tribunal for England, in dealing with the substantive appeals against the rating assessments, found that the purported occupier was not in occupation and that the hereditaments to which the rent returns referred should be merged into the larger hereditaments.

Three months after the decision of the Valuation Tribunal determined the rating appeals, the Penalty Notices were withdrawn. However, there is no formal procedure for the withdrawal of penalties and no redress for costs against the Valuation Officer for raising unwarranted penalties, there was a significant cost for the party on whom the penalty notices had been served. This is inequitable and the provisions of the proposed S55 (4A) (c) and (4B) do not address this inequity but merely create a further litigious process making the role of the Valuation Officer even more antagonist.

The wording of S55(4A)(c) is also vague and subjective, i.e.:-

"knowingly, recklessly or carelessly"

Unrepresented ratepayers, under threat of penalty for non-compliance, will often complete forms to the best of their ability without fully understanding the questions in the forms. Due to having only 56 days to reply, they will often complete the form without fully researching the lease documentation or taking professional advice, for which there may be a fee. This could be construed as "recklessly or carelessly" leading to a Civil Penalty. Alternatively, timely completion of the form could be construed as having been carried out in good faith in a manner to ensure compliance with a 56 day time limit.

The requests are usually addressed to the property which causes delays if the person with the knowledge and authority to complete the form is located elsewhere adding to the pressure to complete the form quickly once it has arrived with the appropriate person. Larger firms with multiple properties will often receive several requests in quick succession further adding to the problems of compliance. It is therefore understandable that errors may be inadvertently made, with no intention to mislead, when the forms are completed. It is our experience that often the errors work to the disadvantage of the ratepayers as relevant information that reduces the analysis of the rent has been omitted.

The cost of appealing a Civil Penalty is likely to greatly outweigh the penalty itself and will therefore further disadvantage ratepayers and owners who have not intentionally misled the Valuation Officer. Similarly, the Valuation Officer's costs of responding to an appeal will greatly outweigh the amount of the Civil Penalty received.

Therefore, the introduction of a Civil Penalty as envisaged by Clause 26 will increase the amount of litigation and work load of the Valuation Tribunal but will not improve the quality of information received by the Valuation Officer.

We do however consider that fraudulent information should be subject to prosecution. This is a matter for the Civil Courts and not a matter of a fixed penalty and is already provided for. Alternatively if the Civil Penalty was administered by the Valuation Tribunal on application by the Valuation Officer this may redress the imbalance that the current proposals create.

Fees for Appeals

We note that Amendment 102 proposes the deletion of the wording creating this fee. We fully endorse the amendment. The imposition of a fee to appeal to the first tier when there are legitimate reasons for a dispute with the Valuation Officer is an imposition of a barrier to justice for a perceived over payment of tax. If the Valuation Officer has provided all of the relevant evidence and the parties cannot agree the end figure then this is a dispute between equally placed parties and the imposition of a fee on only one of those parties is unfair and unjust. If the Valuation Officer is permitted to withhold evidence as currently sanctioned by Clause 25 and the 2005 Act referred to above then the ratepayer's only recourse to uncover the evidence is to appeal to the Valuation Tribunal, therefore the imposition of a fee is grossly unfair and unjust.