CVS

Business Rent & Rates Specialists

Check, Challenge, Appeal: Reforming business rates appeals

CVS' response to the Government's discussion paper

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The Institute of Customer Service MEMBER

January 2016

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If you have any enquiries regarding this document, email comms@cvsuk.com or write to us at:

Communications Department
CVS
Oakland House
Talbot Road
Old Trafford
Manchester
M16 0PQ

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January 2016

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About CVS

CVS, the business rent and rates specialists, is an RICS-regulated commercial property agent which has been involved in business rates for 16 years. CVS employs more than 230 dedicated Rating Staff including over 60 surveyors nationwide.

As of the end of December 2015, CVS had represented ratepayers on over 67,000 appeals against the 2010 Rating List in England and Wales. CVS has submitted some 18.4 per cent of the total number of challenges against the current Rating List, a market share significantly larger than any other rating agent. In 2014, CVS represented its clients on challenges for more than 12,000 properties. Over half of the CVS challenges concluded in 2014 were successful, with an average reduction in rateable value of 8.8 per cent.

CVS welcomes the opportunity for interested parties, including rating agents, to comment on the consultation paper from the Department of Communities and Local Government. We estimate that 93 per cent of all challenges against the 2010 Rating List were undertaken by agents on behalf of ratepayers, with only 7 per cent made directly by ratepayers.

CVS responded previously to DCLG's December 2013 consultation paper, 'Checking and Challenging your Rateable Value' and the HM Treasury and DCLG's April 2014 discussion paper, 'Administration of business rates in England', as well as the subsequent interim findings (December 2014). CVS has also responded to HM Treasury's March 2015 'Business rates review: terms of reference and discussion paper'.

Executive Summary

CVS welcomes the opportunity to participate in this consultation from the Department of Communities and Local Government ('the Department' or 'DCLG'). CVS represents more than 50,000 ratepayers and sees first-hand the challenges and weaknesses in the current system, as well as its strengths and the necessary compromises in place. As a business rent and rates specialist, CVS is a market-leading advisor to ratepayers on their business rates appeals and, by volume, we hold a market share significantly larger than any other rating agent.

This response draws on both the practical experience of our market-leading team of professional rating surveyors and our understanding of our clients' businesses. CVS has championed the need for transparency and fairness within the business rates system – and in particular the appeals process – over many years. We welcome all opportunities to improve the system and would be pleased to participate in further dialogue with the Department.

CVS agrees with the consultation paper that there is "widespread agreement that the business rates appeals system is in need of reform." We agree that ratepayers need to be confident of valuations; that errors should be rectified more quickly; and that the system needs to be clearer and easier to navigate. However, CVS considers that the proposals in the consultation paper will not achieve these aims. Moreover, they risk creating new unfairness for ratepayers and bring no meaningful improvement in transparency about business rates bills. We do not believe that the proposals will improve ratepayers' understanding of their business rates or speed up the resolution of appeals

CVS's principal reservations can be summarised as:

1. The proposed new system creates unfair barriers and disincentives to ratepayers seeking to challenge their rateable value

The proposals would introduce new, complex stages to the appeals process; create onerous requirements for ratepayers wishing to submit a challenge; and introduce significant penalty fines and new charges for appeals. From check to appeal stage, it allows the Valuation Office Agency (VOA) nearly three years to resolve a case. Together, these changes will create significant disincentives for ratepayers to progress legitimate appeals and increases reliance on professional rating agents.

The ratepayer is further disadvantaged by unfair timeframes in which to respond to VOA decisions; increased powers of discretion for the VOA; and potential curtailments in the way in which ratepayers can appeal VOA decisions at Valuation Tribunal and in the Upper Chamber**.**

2. These barriers are introduced without a corresponding improvement in transparency

While on the one hand the proposals introduce requirements for ratepayers to provide evidence underpinning their challenge, on the other, the proposals continue to deny access to the rental evidence on the basis of which rateable values are calculated. CVS is entirely supportive of the Department's objective of earlier engagement between ratepayers and the VOA, but there must be a fair and transparent exchange of information.

Business rates are an assessed tax. As such, the responsibility for explaining and providing the evidence for the assessment should lie with the assessor. Ratepayers, or their agents, should be able to review the evidence used to determine their rateable value and tax liability. This argument has been made powerfully by the British Council of Shopping Centres.

It remains CVS's view that the Department must take action to improve the disclosure of rental data and evidence which fundamentally underpin the VOA's assessments of rateable values. If necessary, this should extend to

reviewing the implications on the Revenue and Customs Act 2005 and the Rating Surveyors Association has provided a legal opinion from David Holgate QC to DCLG on this subject. Clause 22 of the Enterprise Bill makes provision for the disclosure of Revenue and Customs information to a "qualifying person" for a "qualifying purpose". At present there is no undertaking to include ratepayers or their representatives within this definition.

3. The proposals put too much power in the hands of the Valuation Office Agency while shifting onerous responsibilities to the ratepayer

The proposals would see officers of the VOA hold sole discretion over what rental information is "proportionate" and can be disclosed to the ratepayer; whether a challenge is complete and acceptable; and the appropriate timetable for validation of a challenge. The VOA would determine the timescales within which ratepayers must respond to its arguments and evidence at challenge stage, and the VOA would also determine when such discussions have concluded. The ratepayer is excluded from all of these decisions, creating inherent bias in favour of the VOA at the challenge stage.

Meanwhile, the ratepayer would be required to provide far more detailed and onerous information to support its challenge, including its full evidence and an alternative valuation, which may be impossible for ratepayers not represented by a professional adviser. There is also potential that ratepayers will be required to endorse the veracity of all information provided by their appointed professional representatives. There is no indication that the VOA will be subject to penalties for incorrect information, detailed requirements for the decision notice, or strict timescales for decision-making.

In summary, the proposals would further unbalance the system of business rates challenges and appeals to favour valuation officers over ratepayers

4. If these proposals are to be enacted, further detail and modifications are required to better serve ratepayers

CVS's responses to the consultation paper questions provide detailed commentary on how we believe that the Department's proposals – if enacted – could be improved. Our recommendations include:

- Adapting the proposed triggers for the check, challenge and appeals stages to provide a more level playing field between the VOA and ratepayers and so that appeals are not subject to a potential two-and-a-half-year wait for a resolution. Specifically:
    - The VOA should have 6 months to complete the check stage, rather than 12 months
    - Ratepayers should have 8 months, rather than 4 months, to prepare and submit a challenge following the VOA's check decision (reduced to six months in time)
    - The VOA should have 12 months to complete the check stage, rather than 18 months
    - CVS accepts that special provision should be made for complex cases
- Avoiding an overly-restrictive approach to the introduction of new evidence at Valuation Tribunal
- Maintaining the opportunity for hearings at the Valuation Tribunal (except by mutual agreement between the parties to determine the case based on written submissions)
- Maintaining the opportunity for appeals to the Upper Tribunal, where mistakes made by lay members of the Valuation Tribunal panel are often rectified
- The proposed penalty fines should be removed or, if not, reduced to £100 in line with the penalty applied for the late completion of a tax return
- The proposed charges for appeals should not be introduced or, if they are, the fee should be lower than the £250 fee for an appeal to the Upper Tribunal, which is a higher tribunal.

The proposed reforms reflect a misdiagnosis of the problems with the current business rates system. These stem from a lack of transparency, open engagement and investment in resources at the VOA. It is by addressing these issues that the system can be reformed to benefit both ratepayers and the Government. The current proposals are directed towards reducing the number of appeals and the cost of administering the system and, in effect, risk compromising the rights of ratepayers to challenge their business rates fairly. Nonetheless, our detailed responses to the Department's questions provide information on how we believe these proposals could be improved to better serve ratepayers.

Discussion Paper Questions

Question 1. Views on the overall approach set out in this consultation paper.

The overall aims of the Department's proposals to provide an efficient system for business rates appeals which is "clear and easy to navigate" are welcome. We agree that key issues should be identified by the ratepayer early in the process and resolved as quickly as possible. However, we strongly disagree that the present proposals will fully achieve these aims. This is for four principal reasons:

1. The proposals create new barriers and disincentives to ratepayers

As set out in our executive summary, the proposals create a range of new barriers and disincentives which may unfairly deter ratepayers from pursuing legitimate appeals.

One of the principal reasons for reform of the current system given in this paper and other Departmental communications is that 70% of appeals lodged are unsuccessful and these are often 'speculative' challenges. As in our previous consultation responses, we question the veracity of these statistics. For example, we note that these statistics fail to take account of alterations to the rating list by valuation officers in response to a rating proposal. Moreover, the more pertinent point remains that some 30 per cent of appeals are successful. It is therefore imperative that ratepayers are able to challenge their rateable value unimpeded.

Of the many barriers that the Department's paper proposes to introduce, we are particularly concerned that appeals to the Valuation Tribunal may be i) limited in the scope of the evidence they can consider and ii) determined on the basis of written representations rather than an oral hearing. We also oppose any restriction to the rights of appeal to the Upper Tribunal (Lands Chamber) on valuation grounds in order to reduce the period taken to resolve some business rates appeals.

These processes are vital in ensuring ratepayers have access to fairness and justice at the highest level. We do not believe that the proposed changes at Valuation Tribunal or the Upper Tribunal would generate significant savings in time or cost. Rather, a more effective, collaborative and – crucially – transparent challenge process at the VOA would limit the need for recourse to tribunal.

2. The proposals fail to address the issue of transparency

Contrary to assertions made in the paper, the proposals fail to address the fundamental issue of transparency both in relation to i) the early disclosure of rental evidence on a non-selective basis by valuation officers; and ii) providing greater clarity on how valuations are compiled.

Rental evidence

Examples have previously been provided by the VOA of anonymised rental information that may be shown on its website to support valuations adopted. However, this information is anonymised to such an extent that it cannot be verified or properly analysed by an appellant. Rather than providing anonymised web information, full details should be made available to ratepayers at the challenge stage.

As outlined in the executive summary, the proposals fail to offer any solution to the issue of disclosure and discussion of rental evidence. Clause 22 of the Enterprise Bill amends section 63 of the Local Government Finance Act 1988 to insert a new section 63A relating to the disclosure of Revenue and Customs information. Information may only be disclosed to a "qualifying person" for a "qualifying purpose". These definitions are to be clarified in regulations made by the Secretary of State, but at present there is no undertaking to include ratepayers or their representatives within the definition of a "prescribed person". Together with the professional bodies representing the rating profession, CVS has stressed on previous occasions the importance of reviewing the Revenue and Customs Act 2005 to allow valuation officers to disclose key rental evidence at an early stage in the proceedings.

We currently have no confidence that the VOA will change its current policy of non disclosure without an amendment to the 2005 Act.

How valuations are compiled

There is significant room for improvement in the information ratepayers can access about how their valuation is compiled. For example, under the present system, in many cases end allowances and valuation adjustments are not shown separately in valuation entries shown on the VOA website, but are disguised within individual line entries. Buildings may be aggregated in terms of category and size so it is difficult to tell exactly what has been assessed. Currently the descriptions of valuation schemes that appear on the VOA website will often simply provide a range of values without disclosing key information such as the relationship between rateable value and size. Such practice must change if ratepayers are to rely on valuations published by the VOA.

3. Too much power is given to valuation officers

As set out in our executive summary, far too much discretion is given to valuation officers at the various stages without adequate safeguards for the ratepayer. Further details are set out in our responses below.

4. The proposals appear to reflect the current resource pressures on the VOA, rather than the importance of fairness for ratepayers

Reductions to the budgets of HMRC and the VOA arising from the Government's recent Spending Review would suggest a likely reduction in the number of VOA staff dedicated to appeals. Falling volumes of appeals cannot be relied upon, particularly given the likely upheaval of the new Rating List in 2017.

It is understood that the VOA intends to improve its IT platform to undertake more computer-based processes, but it is unclear from the consultation paper what part the new IT technology will play in the proposed new stages of check, challenge and appeal.

The proposed timescales for the challenge process suggest that an appeal could still take more than two-and-a-half years to complete, unless the VOA is better resourced to deal with each stage within the timescales proposed. As CVS has argued previously, there must also be a greater willingness to engage in discussions with ratepayers' representatives to achieve this.

5. Further information

In response to a number of the questions below, CVS requests that further information is provided to ratepayers and the rating sector prior to the proposals being enacted.

CVS understands that the new system may require ratepayers to provide confirmation that an agent or representative has the authority to act on the ratepayer's behalf. No information on this point is provided in the consultation paper.

There is broad consensus that the VOA's current IT system is outdated and requires major investment. The proposed three-stage system is heavily dependent on a modern, fit-for-purpose IT system. CVS recommends that the rating sector is consulted on the development of this new system prior to it implementation to enable effective engagement between ratepayers, their representative and the VOA.

Question 2. What are your views on when 'relevant authorities' should be involved in the process?

Billing authorities not participating as owners or ratepayers in a challenge have an interest in the determination of rating appeals for properties located within their billing authority area. This is both in terms of financial planning for rates receipts and in the context of the Localism Act 2011, as well as recent Government measures that will enable billing authorities to retain additional rateable value arising from economic growth in that area.

However, we regard any return to the position before 1990 – when rating authorities could 'opt in' to be party to the settlement of rating appeals – as retrograde step, both in terms of potentially lengthening the timescale of the appeal process, and in terms of the increased costs to ratepayers from discussions with a third party and potential litigation. Before 1990, large rating authorities often employed private sector advisors to validate settlements made between valuation officers and ratepayers, generating frequent appeals to the Valuation Tribunal and even the Lands Tribunal.

Nonetheless, we raise no objection to a billing authority having the right to 'opt in' to being consulted by the valuation officer when a significant reduction (say more than 10%) is being contemplated at the challenge stage, as long as they do not have the right to be a party to the challenge and thereby frustrate an agreement between a ratepayer and valuation officer.

If this 'opt in' provision results in an additional stage being introduced into the appeal process, this will result in further delays to resolving challenges or appeals. It is unclear from paragraph 15 in the consultation paper how a billing authority may "participate" in the new process. Until this is clearer, it is difficult to comment further on this aspect of the proposa**ls.**

Question 3. General views on implementation of penalties and the likely disincentive effect on the accuracy of information and penalties

We agree with the view contained in paragraph 17 of the consultation that ratepayers or their representatives should ensure that information provided to the valuation officer is complete and accurate. However, CVS has a number of concerns regarding the practical implications of introducing penalties for the submission of incorrect information, as well as concerns in principle.

Obtaining accurate information

First, the vast majority of business rates appeals are undertaken by agents acting on behalf of the ratepayer. In this context, it seems unnecessary that ratepayers should be notified by the VOA of information provided by a professional representative and asked to endorse its veracity. This is burdensome and will also incur added expense for ratepayers during the appeal process. The proposal as it stands implies that professional advisers are failing in their duty to provide the necessary information to the VOA. There is no evidence to show that this is the case.

Second, CVS, like many other professional representatives, often finds it difficult to obtain information relating to lease details or trade from its clients, particularly small and medium sized enterprises (SMEs). Leases are often held by solicitors and not easily accessible to clients. Many SMEs have poor systems relating to property transactions and that means tracking data is difficult. Physical facts will be checked on site before a proposal is submitted by a professional representative, but the client will have limited ability to understand whether this is accurate. Many SMEs will not have the resources to check survey data provided by their agent or details of rateable plant and machinery, and this may incur further unnecessary burden and cost.

Information supplied by clients regarding leases or trade can often be incomplete, particularly when a site covers a large area and involves more than one lease. CVS has experienced this in a range of cases, including sites with a number of ground leases and assignments / surrenders for example.

We consider that the introduction of a financial penalty, should the valuation officer deem the error or omission reckless or careless, appears draconian and will do little to improve the quality of information supplied. We support a right of appeal to the Valuation Tribunal, as contained in clause 23 of the Enterprise Bill, as only fair and reasonable in such circumstances.

False information and penalties

Further consultation is required should the Government progress its proposals to introduce civil penalties.

The maximum level of the fine of £500 is contained in clause 23 of the Enterprise Bill, so it would appear that this figure is not open for discussion. In the current consultation paper there is no indication of how the level of fine is to be determined below this ceiling; whether it is linked to rateable value or the circumstances of the individual case; and the degree of carelessness or recklessness, as judged by the valuation officer.

CVS anticipates that a £500 fine could act as a disincentive to ratepayers considering submitting a challenge. As stated in our previous submissions to Government consultations, we believe such disincentives to be unfair, inappropriate and counter to the interests of ratepayers. We also believe that they will disproportionally impact those ratepayers who are not represented by a professional agent. Should fines be more modest, say £100 – in line with the penalty applied for the late completion of a tax return – then the measure may have a reduced disincentive effect.

False information supplied by the VOA

CVS has experience of valuation officers supplying incorrect information in a statement of case, either because a form of return has been incorrectly completed, or that information has incorrectly or incompletely transferred to the VOA rental database. There is no mention of a penalty being imposed on the VOA in circumstances when the information has been supplied carelessly without proper checking. We consider this to be unfair.

Under the current system, if incorrect rental information is stated on the form of proposal it will usually be treated as invalid, unless there is no material effect on the valuation. This system seems to work well as an incentive to provide accurate information, and a similar penalty of making a proposal or challenge invalid for non-compliance is preferable to fines. This system may also prevent the creation of disproportionate disincentives for unrepresented ratepayers.

Question 4. General views on end of list proposals.

We can see no reason why dual list maintenance should not continue as at present. The VOA will continue to maintain the rating list until the new list comes into force, and may make list alterations up to that date. Ratepayers must have the opportunity to check, challenge and appeal such alterations for a period of a further six months. If a proposal is made before the end of list the check stage should continue into the life of a new list.

The provisions of regulation 5(2) of the Non Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 should also remain.

Question 5. What arrangements should apply to temporary material change of circumstances cases under the new system?

Under the present system the material day for a material change of circumstances (MCC) case is the date on which a proposal is submitted. This date fixes the physical circumstances of the property and the locality in which it is situated for valuation purposes. If a physical change of a temporary nature occurs in that locality, such as a large infrastructure project or redevelopment of an adjoining site, the effect on the valuation will depend on the severity and duration of the change, so that the date a proposal is submitted can have a critical bearing on the valuation outcome. If the appellant submits a proposal while the temporary works are in progress, the valuation officer can make a judgement as to whether the temporary change warrants a reduction in rateable value. Once the works are completed it will be much more difficult to judge their effect on value.

Under the new system, the three stage check, challenge, appeal process is not suited to the particular requirements of an MCC appeal. Before a formal challenge can be made (equivalent to the existing 'proposal' procedure), a check stage may last for a period of up to 12 months, with a further 4 months for the ratepayer to issue a formal challenge against the decision of the valuation officer. By this time the temporary change may well have ceased, or its impact may be expected to last for no more than a few more months. It is therefore crucial that

the material day is linked to the day that the ratepayer first makes an application to the valuation officer to check the assessment. This will fix the day on which the physical circumstances of the property and the locality must be considered, whether or not the issues can be resolved at the check, challenge or appeal stage.

A further difficulty arising from a temporary MCC is that it may take considerable time for the impact of the change on rateable value to be assessed. For example, it has taken several years for the VOA and appellants' representatives to assess the valuation impact of major projects relating to Crossrail in central London. The delay while market evidence is being collected, analysed and assessed will take many temporary MCC situations outside the time limits for the check or challenge stages, so arrangements need to be put in place to enable extensions of time to be granted by consent of the parties.

On the basis of the information above, the Department should also consider whether MCC appeals should be processed via a separate procedure to compiled list appeals

Question 6. What are your views on the trigger point for check stage?

We consider that it is sensible to include trigger points for each stage to ensure that decisions are not unreasonably delayed and to encourage resolutions to be reached as quickly as possible. However, we consider that in the vast majority of cases the check stage can be completed within 6 rather than 12 months. This may not be possible for complex cases so it is sensible to make provision for a 6 month period to be extended to a maximum of 12 months (subject to certain criteria being met) or by agreement between the parties.

The time required for the VOA to make a decision at the check stage will depend on the nature of the property under consideration; whether the check stage will be limited to purely factual issues or will include valuation matters; and the resources the VOA makes available at the check stage (e.g. the staff grade level at which such decisions will be made). Paragraph 4 of the consultation paper would suggest that only relevant factual matters will be considered, that is to say the physical characteristics of the property and probably at a level below the technical / professional caseworker. In those circumstances we can see no reason why such a decision should take more than six months, other than in exceptional circumstances.

Question 7. What are your views on the time limit for submission of a complete challenge, following check stage?

We consider that a four-month period for submission of a challenge is insufficient. The time required to fully assemble the ratepayer's case can often be more than four months and this stage will have a major bearing on what evidence can be considered at the proposed appeal stage. Given the change in requirements for the new challenge stage, in effect the ratepayer or their representative will be assembling a full case equivalent to that which would be prepared for Valuation Tribunal under the present system. It will exceed what is required for a statement of case, which will contain summary arguments and submissions, rather than a full explanation of the appellant's case. There may be particular pressures for appellants and the VOA around the commencement of the new rating list.

We therefore propose that the period in which to issue a formal challenge should be extended to 12 months, but that this time period should be reviewed after two years with a view to reducing to six months once the new system has bedded in.

There clearly needs to be provision for the time period to be extended in exceptional circumstances, but these will need to be defined by regulation, with a right of appeal to the Valuation Tribunal against any discretion exercised by the VOA.

Question 8. What are your views on the trigger point for challenge stage?

As stated in response to Question 6, CVS considers that it is sensible to include trigger points for each stage to ensure that decisions are not unreasonably delayed and to encourage resolutions to be reached as quickly as possible. However, in our March 2014 response to the Department's consultation 'Checking and Changing your Rateable Value', we

proposed that the VOA should have a maximum of 12 months to consider a challenge (longer than the three months under the current system). Failure to reach a decision within that period should result in an appeal being automatically transferred to the Valuation Tribunal without any
separate appeal application.

We have no reason to change this view. The proposed period of 18 months is excessive. One of the aims of the new system is to speed up the resolution process between ratepayers and the VOA, but under the proposed system it could take over three years for all three stages to be completed, in particular if the VOA defers decisions until close to the trigger point at each stage.

Clearly for some complex cases 12 months or even 18 months will not be sufficient, but these are likely to be a small minority. In those cases, an agreement between the parties should allow the time period to be extended, as proposed in paragraph 30 of the consultation.

CVS believes that there must also be provision within the challenge stage, for the VOA to serve notice on the challenger of the rental evidence upon which the valuation is based, and which will be used in
proceedings at the appeal stage (equivalent to the current regulation 17 procedure). There should be an
additional trigger point for this purpose, such that a notice of this evidence must be served within six months of the commencement of the challenge stage. Correspondingly, there should be an equivalent trigger point for the challenger to serve notice on the VOA of any further rental evidence they wish to introduce
subsequent or in addition to that included in their formal challenge. If the challenger is required to
comprehensively disclose all evidence upon which their case is based, then there must be a reciprocal duty placed on the VOA to maintain fairness between the parties

Question 9. Do you agree that these requirements for a challenge are the best way to ensure early engagement on the key issues?

CVS regards the requirements proposed in paragraphs 31 and 32 of the consultation paper to be reasonable, but they must be matched by an equal duty placed on the VOA to disclose the rental information upon which the valuation is based, as outlined in response to Question 8.

Whether these requirements are the best way to ensure early engagement on the key issues will depend on the length of the challenge stage and the resources made available to the VOA to engage with challengers. CVS' experience over recent years gives us no confidence that valuation officers will engage quickly and seek to resolve the key issues as soon as possible.

Without significant change and an increase of resources at the VOA, we anticipate that the VOA will typically defer engagement with representatives of the ratepayer until close to the trigger point deadline, unless this is monitored and regulated by a Service Level Agreement. If there is a concentration of challenges in the first two years of the new rating list, this will also create additional pressure.

We are concerned that under the proposed challenge stage the VOA appears to be the sole arbiter of whether a challenge is complete and can be accepted. This is very much open to exploitation by valuation officers seeking to keep the number of challenges to a minimum. If there is to be no replacement of the current validity procedures, there must be a mechanism to appeal to the Valuation Tribunal against the decision of a valuation officer to refuse a challenge. Regulations should prescribe the circumstances in which a challenge may be rejected, and limit rejection based on subjective factors, such as whether the challenger has submitted sufficient evidence to support their case. That decision should be made at the appeal stage.

We believe that the regulations should prescribe a strict timetable for the VOA to make a decision on the validity of a challenge, similar to the current invalidity provisions. Any deficiency should be brought to the attention of the challenger as early as possible in the challenge stage, so that the challenge period is not unduly extended. In CVS's view three months should be adequate for this purpose.

Question 10. Do you agree that the challenge process allows the ratepayers to make their case in a fair and effective way?

The fairness and effectiveness of the proposals for the challenge process will depend in great measure on how they are implemented by valuation officers. In particular, if a restrictive view is taken on the admission of new evidence and other matters during the discussion stage then there will be unfairness and the process will become less effective than it is currently.

Paragraph 30 of the consultation paper gives no assurance that the VOA will make full disclosure of all of the rental evidence upon which the valuation is based, only what is "proportionate" in the eyes of the valuation officer. This gives the VOA an unfair advantage over the ratepayer. Only the VOA can judge what is "proportionate". In CVS's view, this represents misuse of the provisions of the Revenue and Customs Act 2005. There has been no attempt to address this issue in the latest consultation paper despite the representations of many respondents to earlier consultations. As long as these issues remain unresolved and there is no level playing field between valuation officers and ratepayers, there can be no guarantee of fairness for ratepayers at the challenge stage.

In paragraph 40, the consultation paper stipulates that the VOA will dictate timescales within which the ratepayer must respond to its arguments and evidence, and that the VOA will also determine when discussions have concluded. This excludes the ratepayer from these decisions, creating inherent bias in favour of the VOA. This clearly undermines the ability of the ratepayer or their representative to make their case in a fair and effective way. There is also no indication in the consultation paper that the VOA's decision notice will disclose the evidence basis for the decision.

The requirement placed on ratepayers in paragraph 41 is unnecessary and there is no indication of what sanction, if any, will be applied should the ratepayer fail to comply.

Question 11. What are your views on whether straightforward appeals could be determined on the papers, without the need for a hearing?

We believe that if the appeal stage is reached then the arguments of both parties are best tested at an oral hearing where the interpretation of evidence and the credibility of an expert witness can be challenged. Provision should be made for the determination of an appeal by written representations if both parties agree, but not otherwise. It will be almost impossible to define a "straightforward" case, and using a rateable value threshold would unfairly penalise small businesses.

To limit the right to a hearing is contrary to natural justice and, in particular, will deny an unrepresented ratepayer the same ability to present their case as the VOA. Unrepresented ratepayers will generally not possess the professional skills required to write expert reports, marshal relevant facts and evidence, or make written submissions in the appropriate manner. This puts them at a severe disadvantage compared with a professionally qualified and experienced valuation officer.

In addition, the importance of hearings is underlined by the fact that members of the Valuation Tribunal panel are not valuation or legal experts and they will often require guidance on both valuation and legal matters.
At present, panel members frequently put questions to the parties during a hearing to better understand the evidence or submissions presented by an advocate, expert witness or ratepayer. This would become more difficult should a hearing proceed using written representations only.

CVS believes that it is unrealistic and unduly restrictive to prevent further discussions during the appeal stage should new evidence or circumstances arise. New rental evidence could arise, for example, from discussions in other related cases or as a result of a late third party determination in a rent review case. In addition, it is possible that after the decision notice has been issued by the VOA, a separate decision in the Valuation Tribunal or a higher court could have a direct impact on the appeal in question, requiring either the VOA or the appellant to reconsider their previous position.

Question 12. What are your views on the time limit for submission of an appeal, following challenge stage?

CVS believes that four months is adequate time for submission of an appeal, assuming there has been full disclosure of evidence during the challenge stage. However, as stated in our response to Question 7, there should be a far greater time period than that proposed for the submission of a challenge following the check stage.

Question 13. How should we best ensure that the appeal stage focuses on the outstanding issues and, as far as possible, is based on evidence previously considered at challenge stage?

CVS agrees that it is right that the appeal stage should focus on issues raised during the challenge stage, rather than dealing with new issues and evidence. However, as outlined in our response to Question 11, an overly restrictive approach to the introduction of new evidence at appeal stage is unreasonable and fails to take proper account of the matters that can change between the stages of challenge and appeal. This could include new decisions by the courts or new rental evidence that may not have previously existed and which is vital to establishing the correctness of the VOA decision.

If, as proposed in paragraph 53 of the consultation paper, both parties must agree to the introduction of new arguments or evidence, this will enable one party to block any matter that is prejudicial to its case, which cannot be fair to the other party. In CVS's view, should the parties fail to agree to its introduction at the appeal stage, the Valuation Tribunal should make the decision on the introduction of new relevant evidence based on the circumstances of each case.

Q14. We will consult further on the details of these fees, but in the meantime, would welcome general views on implementation

As stated on page 11 of CVS' March 2014 response to the Department's consultation 'Checking and Changing your Rateable Value', CVS opposes in principle the introduction of a charge for making a formal appeal.

Business rates are an assessed tax, and as such, the responsibility for explaining and providing the evidence to support the assessment should lie with the assessor. If a charge is imposed it must be modest, at a standard fixed level and refundable. The fee for lodging an appeal to the Lands Chamber of the Upper Tribunal is £250, and it is considered that any fee levied by a lower tribunal should be less.

A charge should not be made if the VOA fails to issue a decision notice, since the ratepayer will in such circumstances have no alternative than to proceed to the appeal stage. It is understood that the appeal fee is refunded should the appeal be successful. No detail with regard to the fee is provided if an appeal is part successful but CVS propose that should the appeal result in a reduced Rateable Value then the full fee should be refunded.

Question 15. We would welcome general views on whether changes to appeals to the Upper Tribunal (Lands Chamber) would be justified.

CVS entirely agrees with the aim expressed in paragraph 58 of the consultation paper that it is important to explore ways to speed up the resolution of business rates appeals. However, we do not agree that restricting the right of a ratepayer to pursue an appeal to the Lands Chamber of the Upper Tribunal on valuation grounds is the correct way to achieve this.

The number of appeals against the decisions of Valuation Tribunals in England is modest. By the third week of November 2015, the Lands Chamber had issued only 11 decisions on cases classified as valuation, compared with 6 in 2014 and 8 in 2013. There are of course an unknown number of appeals on valuation grounds that are settled by Consent Order, but even so the number of appeals to the Upper Tribunal is insignificant in comparison with the number of cases dealt with by Valuation Tribunals.

To deny a right of access to the Upper Tribunal would represent a severe curtailment of the right of ratepayers to fairness and justice, by demeaning their ability to raise their grievances taken at a level at which they can be satisfied that the issues have been fully investigated. Lay members of Valuation Tribunal panels are not valuation experts. Mistakes occur in the interpretation of evidence presented by the parties, and it is the perception of many professional representatives that Valuation Tribunals are often too deferential to valuation officers who appear before them on a regular basis.

Some cases contain major issues of valuation and the decision will create an important precedent. An example in 2015 is the decision of the Lands Chamber in the case of Hardman (VOA) v British Gas Trading Ltd. This case concerned the valuation of a power station in Peterborough and involved important valuation issues such as the length of the hypothetical tenancy and the use and application of the receipts and expenditure method of valuation. Other important recent decisions on valuation matters include the treatment of air conditioning systems in a retail warehouse, and when the 'tone of list' can be said to exist. It would be unfair to small businesses to allow complex valuation cases to proceed to the Lands Chamber stage but deny that same right to a small hotelier or shopkeeper.

The consultation paper's comparison with other tax regimes is misleading. The determination of personal and corporate tax liability will seldom have any impact on other taxpayers other than in cases involving the legal interpretation of a tax statute, whereas valuation decisions can have a significant impact on the tax liability of other ratepayers who will be bound by the precedent created.

Improving the appeal stage

There are other changes which could improve the effectiveness of the appeal stage. For example, when the parties cannot reach agreement in a case which raises complex issues of law or valuation, there is merit in exploring the option of transferring the appeal direct to the Lands Chamber of the Upper Tribunal by agreement between the parties, rather than to the Valuation Tribunal. The Lands Chamber may decide at a preliminary hearing whether to hear the case if such a step is merited on the facts and the issues in dispute.

The Valuation Tribunal provides useful functions in narrowing the issues, agreeing facts, presenting evidence in a coherent manner, and rehearsing the legal and valuation arguments. However, the level of expertise of lay members is often insufficient when dealing with the small number of complex appeals. Even when a complex case is heard by the President or a Senior Vice President of the Valuation Tribunal for England, there is no guarantee that the decision will not be reversed on appeal – this has occurred a number of times in recent years.

Most of the time taken to resolve business rates appeals will be at the check and challenge stages. Any changes at appeal stage and to the Valuation Tribunal process are unlikely to achieve a great saving of time or cost to either the appellant or the VOA.

If the Department wishes to speed up the resolution process in the Upper Tribunal, rather than limit the right of appeal for ratepayers, we suggest that the Lands Chamber puts in place procedures to reduce the time lag between the lodging of an appeal (28 days after the Valuation Tribunal decision) and when the case is heard. In the extreme case of The Commissioner of the Police of the Metropolis v Woolway (VOA), two consolidated appeals were heard by the Lands Chamber in January 2014 in respect of decisions made by the Central London Valuation Tribunal on 20 March 2008 and 9 January 2009. Such a delay is rare, but delays of up to two years are common. This adds considerably to the period of time such appeals remain unresolved and should be avoidable with proper case management.