


Our ref: NB/SMH

Ask for: Nick Bennett

Your ref:

 01656 641150

Date: 29 October 2015



Mrs Jocelyn Davies
Chair of the Finance Committee
National Assembly for Wales
Cardiff Bay
CARDIFF
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Dear Jocelyn

Tax Collection and Management (Wales) Bill

Thank you for your letter dated 21 October 2015 seeking further information on my response to the Finance Committee's consultation on the Tax Collection and Management (Wales) Bill. Here are my responses to your queries:

- **What discussions have taken place between yourself and the Welsh Government regarding your role in dealing with complaints against the Welsh Revenue Authority (WRA)?**

Meetings were held with Welsh Government officials concerning the potential of the Welsh Revenue Authority being a body within the Public Services Ombudsman for Wales's (PSOW's) jurisdiction. I agreed that it would be consistent, and appropriate, for the Welsh Revenue Authority, as a devolved body, to be a listed authority under Schedule 3 of the Public Services Ombudsman (Wales) Act. People in Wales currently have access to the Parliamentary Ombudsman in respect of the present arrangements for Stamp Duty Land Tax and Landfill tax; it follows that there should be recourse to the PSOW for the new devolved Land Transaction Tax and Landfill Disposals Tax arrangements

Also discussed was the fact that, should the WRA be brought within my jurisdiction, I would expect that body to have an appropriate complaints handling procedure in place.

- **What type of complaints do you envisage arising from devolved taxes?**

I would anticipate that the complaints I would consider would relate to administrative failures or errors not already resolved by the Welsh Revenue Authority.

- **How do you currently interact with tribunals and do you anticipate all cases against the WRA being considered by tribunal in the first instance?**

To my recollection, the role of the PSOW in relation to tribunal arrangements for devolved tax collection and management has not been explored; discussions have been centred on the PSOW's role in considering complaints of maladministration by the Welsh Revenue Authority.

However, in response to your query, my interaction with tribunals varies depending on the nature of the tribunal concerned, for example:

- in relation to school appeal and school exclusion panels, these are listed authorities under Schedule 3 of the PSOW Act 2005. In these circumstances, I can consider whether the panel and/or its staff acted maladministratively;
- in the case of tribunals which are specified by Welsh Ministers, such as valuation tribunals, I can only look at the administration function carried out by the tribunal's staff, I have no power to consider the decision of the tribunal itself.

Now, in relation to a tribunal concerning the Welsh Revenue Authority, there appears to be a complication. As I understand it, it is intended to enter into an arrangement with the UK's Ministry of Justice (MoJ) and use that Ministry's two-tier tax tribunal system. As the MoJ is a non-devolved government department, the question arises as to whether maladministration complaints about MoJ administered tribunals are ones that should come within the PSOW's jurisdiction (as these are devolved matters), or the jurisdiction of the Parliamentary Ombudsman (who considers complaints about the MoJ and the staff of its tribunals). I would venture that this is a question for those with a role in advising upon 'devolved competence' matters to provide a view.

- **Do you foresee a need for devolved taxpayers to be given any right of recourse where they have otherwise failed to exercise their rights under the Tax Collection and Management (Wales) Bill (or the tax specific legislation when it is enacted)?**

Under the jurisdiction that I have, when someone has a right to appeal to a tribunal and it is evident that it was not reasonable to expect them to have exercised that right, for example, due to incorrect advice provided by the public body, then I would be able to investigate that body (the WRA in this case). But this would be in exceptional circumstances and not merely on the basis that the person concerned simply did not take up the rights that they had.

I hope that my answers above are helpful and sufficiently comprehensive for your purposes.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Nick Bennett', with a large, sweeping flourish above the name.

Nick Bennett
Ombudsman