

20% of traders do not appeal or fight alone

Please contact us if you have any questions regarding this Newsletter

Useful Links:

- [Tribunal Decision Database](#)
- [Calltell Decision](#)
- [Livewire Decision](#)
- [Olympia Decision](#)
- [CTM Website](#)
- [VAT fraud news item](#)

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Increasing number of traders dropping out

Through CTM's own customer base of 50-60 exporters, and through enquiries received from dozens of other companies, it is clear that approximately 15% of traders are walking away from decisions without appealing, and a further 5%, or so, are representing themselves.

Some companies with multi-million pound claims have decided that they do not have either the finance, or the stomach, to continue to fight on. With the average time for an appeal being 12-15 months, it requires a strong will to appeal on your own, if no funding is available.

Our sources within Customs inform us that this is playing very nicely into their hands and the strategy of forcing every company to appeal is working. Within the last week alone, several companies have approached CTM with a decision and most did not have the funds to fight their case.

We fully believe that all traders will eventually receive a negative decision and those that require a no win no fee option should contact us immediately, even if you have not had a decision yet.

We have some mobile phone traders on this arrangement and our investors are now looking for CPU traders, or phone traders with very few deals.

We advise companies to appeal each decision and to stay in the process as long as they can. In the majority of cases, success will come with properly managed cases that challenge every aspect of the Customs case. It is, of course, still an option for companies to appeal without representation and present their case at the hearing. The chances of success are reduced, but it's your money and we advise companies to fight on. Don't forget, Customs have to prove your knowledge of the fraud and not the other way around.

We estimate a further 20% of companies will run out of funds ahead of the hearing, based on what we are hearing. This means that up to 40% of traders will either not appeal, or have to represent themselves at the hearing.

What's the answer?

It's very difficult if you have absolutely no funds; unless the 'no win no fee' option is accepted by one of our investors. However, if you have limited funds, CTM can provide you with a number of options to assist.

Using advisors without Counsel can reduce the cost by more than 60%. CTM is now representing companies up to, and including, the hearing, simply because traders want a thoroughly prepared case, but can't afford Counsel. Those who are only now getting decisions will find this attractive, as CTM, and other advisors, will be able to utilise their experience of assisting Counsel in such cases.

Be wary of companies that cold call you, no matter what their experience. We advise that you stick to known companies with the right infrastructure to manage lengthy, multiple cases.

Interesting Facts:

- **The average Tribunal appeal costs £100,000 - £150,000.**
- **CTM's Tribunal appeals/ assistance costs between £1,000 and £80,000.**
- **Experienced industry Counsel costs £350 - £450 per hour.**
- **Good quality non-industry Counsel can be as little as £175 per hour**
- **Cost for a High Court appeal is £30,000+**
- **CTM do not charge for, and welcome, telephone calls.**
- **Liban Ahmed last month successfully appealed a Customs decision that was 2 years out of date. Showing it's never too late to appeal.**

Next Edition:

Tribunal developments

Other relevant industry news

More facts and links

Bank security

For some reason, many of our clients are hearing that Customs will repay their VAT in full if a bank security is in place. This is nonsense and, if you are lucky enough to receive such a security, it will only lead to an early negative decision and the costs of an appeal that go with it.

A CTM client managed to obtain such a security from a high street bank and was informed by Customs that payment of a multi-million pound VAT repayment claim would be made soon. A few days later, Customs, coincidentally, had reached their decision to deny its VAT and we are now conducting the appeal.

Our advice is, if you want to force a decision, try and get a bank security, but don't be tricked by companies promising that it will mean you will receive any money.

If the situation has, in fact, changed without our knowledge, always ask for details of a company that has been successful in an identical situation and contact them to make sure of the facts.

Tribunal decisions

After the two decisions in Livewire and Olympia, many, including CTM, believed that there would be a flurry of other decisions. This has not materialised for two main reasons. Firstly, there were very few hearings last year and secondly, many that did commence were adjourned for one reason or another.

Note that the Livewire High Court decision will be heard at the end of this year. Contrary to popular belief, there is no evidence to suggest the Olympia and Livewire decisions have been joined, and we see no reason why they should be.

How long does an appeal process take.

For those who are unfamiliar with the Tribunal appeal process, here are some standard requirements and very approximate timescales:

1. Day 1 – An appeal within 30 days of the Customs decision letter.
2. Day 30 - Both parties then have 30 days to submit a list of documents that they wish to rely on at the hearing. Customs also have to provide full details of their case.
3. Day 60 - Both parties have the option to request copies of documents from the lists provided and traders have the opportunity to request additional material that they think is important, such as notes of all conversations Customs had with you, either face to face or over the phone, including contact with Redhill and the Customs National Advice Service. Note, there is always a great deal of correspondence that is required throughout the appeal process.
4. Month 4 - Witness statements and exhibits will be required from both parties and both have the opportunity to respond to each others statements.
5. Month 8 - A directions hearing will be required to agree dates that additional items need to be served by, such as agreed facts of the case, bundle preparation, skeleton arguments etc.
6. Year 1 - The hearing itself, which will last between one and three weeks, depending on the number of witnesses and size of the case? If you're representing yourself, this could be much shorter.

Customs usually ask for between 30 and 90 days extra to serve their Statement of case. Other delaying tactics by Customs could increase the time it takes to get to a hearing by six months. Add a further 3 months to receive a written decision and you find that it takes nearly two years from start to finish. However, proper representation reduces this time significantly.

If you would like any information regarding your case, either before or after the Customs decision, please free to call us any time.