



CONSOLIDATED PRACTICE STATEMENT

FOR THE

VALUATION TRIBUNAL FOR ENGLAND

2017

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President of the Tribunal

Effective 1 April 2017

Contents	page
Part 1	
Introduction	3
General matters	3
Interpretation	4
Tribunal Business Arrangements	5
Part 2	
The Practice Statement incorporating Standard Directions	
PS1 Extensions of time for making appeals	7
PS2 Non-domestic rating appeals – listed after 1 April 2017 a) Rating lists before 2017	9
PS3 Complex cases	13
PS4 Postponements and adjournments	14
PS5 Decisions without a hearing	16
PS6 Council tax reduction appeals	18
PS7 Lead appeals	23
PS8 Model procedure	24
PS9 Role of the clerk	26
PS10 Statement of reasons	28
PS11 Disclosure in council tax appeals	29
PS12 Private or closed hearings	33
PS13 Reviews and setting aside decisions	35
PS14 Reinstatements and lifting of a bar	38
PS15 Publication of decisions	40
PS16 Consent orders	42

Part 1

Introduction

The President of the Valuation Tribunal for England (VTE) is required to make sure arrangements are in place and make such statements and directions so as to ensure that business before the Tribunal is conducted in accordance with The Local Government Finance Act 1988, Schedule 11, Part 1, paragraph A17(1) and The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009.

In pursuance of that aim, the following Consolidated Practice Statement (which includes some specific standard directions) is made with effect from the 1 April 2017 and applies to all appeals made or listed on or after that date. This Practice Statement replaces previous versions to reflect changes in practice and procedure. It is not the intention of this Practice Statement to cover every eventuality, but rather to deal with issues that commonly require attention to allow the Tribunal to effectively transact its business. Where any issue needs a decision or ruling to be made, the President, a Vice President, Senior Member or delegated official may make such direction or take such decision as is consistent with furthering the overriding objective of the Tribunal

This Practice Statement may be cited as the VTE CPS 2017.

General Matters

1. The overriding objective of the Tribunal is to deal with cases fairly and justly, in doing so it will, amongst other things:

- deal with appeals proportionately to the importance of the case, the complexity of the issues, the costs of the case and the resources of the parties including the Tribunal;
- avoid unnecessary formality and being flexible in the proceedings;
- deal with the parties fairly allowing them to participate so far as is practical in the proceedings;
- use the special expertise of the Tribunal effectively; and
- avoid delay, so far as it is compatible with the proper consideration of the issues.

2. The Tribunal must when administering the conduct of a case further the overriding objective by:

- exercising any power given it by statute;
- applying any Practice Statement or direction;
- interpreting any rule or practice direction to ensure that appeals proceed with due expedition.

In doing so, it will have regard to the developing jurisprudence of the Court of Appeal and in particular the decision of ***BPP Holdings v HMRC [2016] EWCA Civ 121***¹.

3. Parties must, without being asked, conduct each case before the Tribunal in a way that helps the Tribunal give effect to the overriding objective and must:

- prepare and conduct the case in accordance with the overriding objective;
- comply with all Directions made by the Tribunal unless permission has been sought and granted to amend them; and
- inform the Tribunal of any matter or failure which may hinder the Tribunal in furthering the overriding objective unless the Tribunal has amended or dispensed with such Directions.

4. A failure by any party to an appeal to comply with any Direction may lead to the appeal being struck out or dismissed; a party being barred from participating further in an appeal; or, in case of a council tax reduction appeal, a default judgment.

Interpretation

5. In this Practice Statement:

“Act” means the legislation referred to in the Introduction above;

“Full panel” is the group of members selected to deal with an appeal;

“Hearing” is any consideration of an appeal whether the parties are present or not;

“Member” means any member of the Tribunal, including a Senior Member;

“Panel” is the member or members selected to hear an appeal;

“Presiding Senior Member” is the Senior Member selected under paragraph 6 above to hear an appeal and to preside at the hearing or over the panel;

“Procedure Regulations” means The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, SI 2009, No. 2269;

“Registrar” is the title of the officer appointed as the Clerk of the Tribunal;

“Senior Member” means the President, a Vice President or a member of the panel of chairmen (para. A17(4) of the Act).

“Tribunal” means the Valuation Tribunal for England.

¹ This decision makes clear that parties are expected to comply with rules and orders of Tribunals. Flexibility of process does not mean a shoddy attitude to delay or non-compliance by any party.

Tribunal Business Arrangements

1. The following arrangements are made under paragraph A17(1) of Schedule 11 to the Local Government Finance Act 1988 (c.41) (amended by Schedule 15 to the Local Government and Public Involvement in Health Act 2007(c.28) to provide for the selection of the member or members of the Tribunal to deal with any appeal (para. A17(2)).
2. The arrangements may be amended from time to time.

PRE-HEARING, PRELIMINARY AND PROCEDURAL MATTERS

3. Any pre-hearing, preliminary or purely procedural matters (other than the exercise of the powers under regulation 18 of the Procedure Regulations, for which see paragraph 6 below) will be dealt with by a Senior Member, usually without a hearing, unless he or she directs that it should be remitted to a full panel.
4. The Senior Member referred to in paragraph 3 is the presiding Senior Member where one has been selected unless he or she is not available and undue delay would be caused.
5. Any procedural matter that arises during a hearing by a full panel is to be determined by that panel.
6. The powers available under regulation 18 of the Procedure Regulations (summoning of witnesses; orders to produce documents, etc.) are exercisable by the panel, but may be exercised in advance of the hearing by the President or a Vice President.

HEARINGS

7. The hearing of an appeal (including a review of a decision) will normally take place before a panel of two members, unless otherwise directed by the President.
8. At least one of the members dealing with an appeal must be a Senior Member (para. A17(3)).
9. The President may direct that an appeal shall be heard by a Senior Member alone or by a panel of three. The President or a Vice President may deal with a review where he/she has already directed that a review should take place.
10. The President, Vice Presidents and nominated Senior Members may sit alone.

HEARINGS WHERE MEMBER(S) ARE UNABLE TO SIT

11. Where a panel member is unable to sit for any reason or fails to attend and the hearing has not convened, he or she shall be replaced by another member if this can be done without postponing the hearing. The hearing shall proceed with a Senior Member alone where the other member has failed to attend.

12. If a member is unable to act once the hearing has commenced or the appeal is part heard, or the panel has otherwise taken steps in the case, the hearing may proceed with the remaining member or members (para. A18(2) of the Act), provided a Senior Member is present.

13. A Senior Member selected to hear an appeal alone who is unable to act shall be replaced by another Senior Member (para. A18(3)).

14. Where a part-heard appeal is adjourned to permit the selection of another member or members, the case shall be heard afresh.

MEMBERS UNABLE TO AGREE

15. Where an appeal has been heard by a panel with an even number of members who at its conclusion are unable to agree, a completely new panel will be selected in accordance with these arrangements to hear the appeal afresh.

DECISIONS WITHOUT AN ORAL HEARING AND REVIEW OF DECISIONS

16. Paragraphs 7 to 11 above apply also to the following:

(i) appeals where the parties have opted not to have an oral hearing (reg. 29(1) of the Procedure Regulations);

(ii) the review of a decision previously made (reg. 40(6) of the Procedure Regulations), but the review panel may not contain any member who was involved in the decision under review.

SELECTION OF MEMBERS

17. Members shall be selected to hear cases having regard to their location, availability and any other relevant factors, but these arrangements shall not preclude the President from issuing instructions relating to individual chairs and members so as to efficiently use scarce resources.

18. Notwithstanding paragraph 17 above, the President or Registrar may direct that a particular case, including reviews under regulation 40(6) of the Procedure Regulations, shall be heard by a member or members specified by them.

19. The VTS will make arrangements for the day to day selection of members but the Registrar will be responsible for ensuring that as far as possible that members are allocated hearings to ensure an even distribution of sittings and may direct the VTS to make such arrangements as required.

Part 2 The Practice Statement incorporating Standard Directions

PS1 Extensions of time for making appeals

1. The regulations² authorise the President of the Tribunal to permit an appeal to be pursued in the following types of case if satisfied that the person wishing to appeal was unable to appeal by the normal deadline because of circumstances beyond his/her control:

- council tax liability;
- council tax completion notice;
- council tax penalty;
- council tax valuation.

2. In the following types of case, a request for an extension of time in which to appeal may be made to the President:³

- non-domestic rating completion notice;
- non-domestic rating penalty.⁴

The request must include the reason the notice of appeal was not provided in time.

3. To apply for an extension of a time limit in any of the above circumstances, the prescribed application form 'Extension of Time Limits for Appeals' must be completed and sent, together with the appeal form to the Tribunal. These forms can be found on the website, www.valuationtribunal.gov.uk/forms.

4. The application will be considered by or on behalf of the President (provided the appeal form in all other respects meets the requirements).

5. Unless the appeal form fails to meet the criteria, the potential respondent and any other party identified will be informed of the application for an extension of time and may be invited to submit any representations.

6. In considering the application:

- information may be sought from other potential parties to the appeal;
- the applicant and potential parties may be invited to a hearing to consider the matter further.

² Council tax liability, completion notice and penalty applications are covered by regulation 21 of the Procedure Regulations. Council tax valuation is covered by regulation 10 of The Council Tax (Alteration of Lists and Appeals) (England) Regulations 2009 (SI 2009 No 2270).

³ Regulation 19 of The Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (SI 2009 No 2268) and regulation 6 (3)(a) of the Procedure Regulations.

⁴ The procedure described here will apply notwithstanding the provision in primary legislation that an appeal must be made within 28 days (Local Government Finance Act 1988, Sched. 9, para. 5C(2), as amended by the Local Government Act 2003, s. 72) as it must be read subject to the Human Rights Act which guarantees the right to a (fair) hearing.

7. The President will have regard to the following and any other matters that appear relevant to determining the application:

- when was the notice actually received?
- was the applicant informed of the right of appeal and the time limit?
- has the applicant acted with all reasonable speed in the circumstances?
- has the applicant advanced, with sufficient proof, any reasons to justify delay, such as illness, absence from home or bereavement?
- is the delay such that it would be contrary to the interests of justice to permit the appeal to be heard or heard fairly?

8. A decision will be issued to the applicant with copies sent to all other parties (or potential parties).

9. There is no right of appeal to the Tribunal against a decision to reject the application and a further application may be made only on the basis of completely new information that was not available or known at the time of the earlier application.

PS2 Non-domestic rating (NDR) appeals

The following directions only apply to appeals where notices of hearing are issued after on or after 1 April 2017. Notices and directions issued prior to this date will remain in force.

(a) Rating lists before 2017

These directions are formal orders and must be complied with. They are intended to help the parties and the Tribunal deal with applications fairly, swiftly and economically, together with furthering the overriding objective.

Standard Directions for pre-2017 List NDR appeals

Discussions

1. After service of these Directions the appellant must initiate discussions with the respondent.
2. No later than **10 weeks** before the date of the hearing the parties must have:
 - a) discussed and identified the agreed facts and the issues in dispute; and
 - b) exchanged valuations (if applicable).

Where discussions took place prior to receiving these Directions and all or some of the above have already occurred, there is no need to discuss those matters again. However, the appellant must still make contact with the respondent to seek confirmation of the position and discuss any outstanding areas.

Regulation 17(3) evidence⁵

3. No later than **eight weeks** before the date of the hearing, the respondent must serve on the appellant a copy of any Regulation 17(3) evidence on which the respondent relies.

The appellant's case

4. No later than **six weeks** before the date of the hearing, the appellant must serve on the respondent:
 - (a) their case setting out in full the grounds for the appeal, the decision sought and any legal argument including authorities (case law) relied upon
 - (b) any expert evidence
 - (c) a copy of all the appellant's relevant documents and other evidence
 - (d) a single index to the documents above.

These documents must be served **by email only** on the respondent by any appellant who has provided an email address for service in these proceedings.

⁵ Evidence covered by Regulation 17(3) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 SI 2009 No 2269.

The respondent's case

5. Where the appellant has served its case according to paragraph 4 above, no later than **four weeks** before the date of the hearing the respondent must serve on the appellant:

- a) their case setting out in full the grounds for resisting the appellant's case, the decision sought and any legal argument including authorities (case law) relied upon
- b) any expert evidence
- c) a copy of all relevant documents and other evidence
- d) a single index to these documents.

These documents must be served **by email only** by the respondent on any appellant who has provided an email address for service in the proceedings.

Sending documents to the Tribunal before the hearing

6. No later than **two weeks** before the date of the hearing the appellant must file with the Tribunal and serve on the respondent:

- (a) a copy of all of the documents disclosed by both parties according to these Directions
- (b) a reply to the respondent's case, if the appellant chooses to make one; or
- (c) a copy of an agreement form signed by the appellant where the respondent has made an offer to settle and the appellant accepts the offer but the appeal remains outstanding, or a signed withdrawal form.

These documents must be filed and served **by email only** by any appellant who has provided an email address for service in the proceedings.

The hearing

7. Each party must bring to the hearing paper copies of a file which comprises only the documents served on the other party in accordance with these Directions. Three copies will be required for the use of the clerk and the panel, unless otherwise directed by the Tribunal; a fourth copy will be required for the other party if it has not already been served on them in paper form. Each page must be numbered.

8. If a party wishes the case to be heard in their absence they must notify the Tribunal at least two weeks before the hearing.

9. Where a settlement has been reached as outlined in 6(c) above and the appeal remains outstanding the panel may confirm the figure offered. Where the appeal has been withdrawn, but remains outstanding the Tribunal will dismiss the appeal unless there is good reason not to.

10. Any appellant failing to comply with these Directions may find their appeal struck out. If the respondent fails to comply with these Directions, it may be barred.

Explanatory Note for the Standard Directions for pre-2017 List NDR appeals

Introduction

- 1) Following a successful pilot, all NDR pre-2017 List appeals will be dealt with in accordance with the attached Standard Directions.
- 2) These Standard Directions replace Practice Statement A7-1: Non-Domestic Rates (Rating List 2010): Disclosure and Exchange (including the Standard Directions) and Paragraphs 13-21 of Practice Statement A2: Listing of Non-Domestic Rating Appeals in respect of these appeals.
- 3) If such an appeal has been listed before in accordance with Practice Statement A7-1 but the hearing was postponed or adjourned, these Standard Directions will now apply even though the parties may already have produced statements of case. However, previously discussed elements of the appeal do not need to be discussed again (see para. 6).). Please note that to comply with Direction 6 it will not be acceptable to rely on a previously submitted statement of case, unless it meets the criteria for a full case.

Complying with these Directions

- 4) Directions are formal orders and must be complied with. They are intended to help the parties and the Tribunal deal with appeals justly, fairly and economically.
- 5) Note that compliance with Directions 1-5 means that the parties do not file any documents with the Tribunal. This only occurs at two weeks before the hearing in accordance with Direction 6.
- 6) It is the responsibility of the appellant (the person who brings the appeal) to make initial contact with the respondent (the Valuation Officer or "VO") to discuss the case and exchange valuation calculations (Direction 1). The appellant must be able to show that they have done this (for example by producing relevant correspondence). The appellant must make contact even if they believe these matters have been discussed prior to listing. However, there is no need to discuss matters again and the VO cannot require it of the appellant; the contact is necessary to confirm the position and clarify any additional matters.
- 7) Where the appellant has not made this contact with the VO and has not served their case (Direction 4), the VO need not serve its case on the appellant (Direction 5). However, the parties may agree between themselves to vary the deadlines (see paragraph 14 below).
- 8) Whenever a party sends anything to the Tribunal they must also send a copy to the other party and note this clearly in the correspondence.

Failure to comply with these Directions

- 9) A party may not rely on any evidence or argument (including Regulation 17(3) evidence⁶) which has not been served in accordance with these Directions, without the

⁶ Evidence covered by Regulation 17(3) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 SI 2009 No 2269.

permission of the Tribunal.

10) In the event of failure to comply, the party in question will need to explain to the Tribunal (with evidence in support) why it did not comply. The Tribunal may exercise any of the powers it has under the Regulations, which include deciding to:

- admit or exclude evidence,
- adjourn or proceed with the hearing,
- strike out the appeal (this means that the Tribunal would refuse to hear the party's case) or bar the respondent from taking part in it,
- issue directions.

11) In particular, if the Tribunal is satisfied that the appellant has not contacted the VO to start discussions (Direction 1), or has not met the requirements to serve its case (Direction 4) or to send documents to the Tribunal before the hearing (Direction 6), the Tribunal may strike out the appeal. **If either party fails to produce a full case within the bundle (Direction 6) but relies on a statement of case which fails to comply they may be struck out or barred.**

12) Where the respondent has made an offer to settle the appeal in writing, which the appellant agrees to and has returned the document signed, there is no need for the appellant to produce a hearing bundle, only a copy of the agreement. If the appeal has not been cleared by the date of the hearing the Tribunal may confirm the provisionally agreed rateable value at the hearing. Similarly, where the appellant has withdrawn the appeal there is no need to produce a hearing bundle, only a signed copy of the withdrawal notice. If the appeal has not been cleared by the date of the hearing the Tribunal may dismiss the appeal.

Varying these Directions

13) A party may apply to the Tribunal for any of these Directions, including time limits, to be varied, or for any other appropriate direction.

14) The parties may agree in writing between themselves to vary the deadlines in Directions 1-5, and they should do so where it is practical and reasonable to agree a variation and does not cause unfairness. The parties need not notify the Tribunal when they have agreed such a variation.

15) **The parties may not agree between themselves to vary the deadline in Direction 6.** This is because they may not vary the deadline in reg. 17(4) of the Procedure Regulations.

16) The parties may agree that they can submit additional evidence to each other before the bundle is sent to the Tribunal.

17) An act which these Directions require to be done by a particular day must be done by 5pm on that day.

18) Nothing in this Explanatory Note is to be interpreted as limiting the Tribunal in the exercise of any of its powers. The Tribunal may issue directions to interested or competent parties, to whom these Standard Directions do not apply.

PS3 Complex cases

1. A case is “complex” for the purpose of this Practice Statement, if it has one or more of the following features:
 - i. national implications;
 - ii. lengthy or complex evidence;
 - iii. novel, important or contentious points of law; or
 - iv. any other factor that makes it desirable to manage the case and issue specific directions, including the selection of a lead appeal under reg. 7 of the Procedure Regulations.

2. The clerk will refer any case which appears to be complex for the purpose of this Practice Statement to the Registrar. In addition, a party may apply for a case to be treated as complex. This must be done prior to the listing of the appeal.

3. If a party to an appeal believes that a case falls within the category of case as outlined in para.1(i-iv) above, then an application may be made to the Registrar stating the grounds upon which it is considered that the case is complex outlining the issues and any legal authority to support the contention.

4. On referral by the clerk or application of a party the Registrar, in consultation with the President, will determine whether to treat the case as complex and decide whether it is necessary to list the matter before either the President, a Vice President, or a panel containing a member with specialist skills. The decision of the President or Registrar will be final in relation to the listing of the case.

5. If a case management hearing is held the Tribunal may alter or substitute any of the standard directions with alternative directions as necessary to assist with the swift determination of the appeal.

6. If a party seeks to rely as part of its case on any point of law, regulation, or any decided case then that party must provide a copy to the Tribunal and each party to the appeal. In doing so, the citation and a full copy of the authorised statute, regulation or case must also be provided in accordance with the directions given by the Tribunal which must include the relevant extract highlighted.

7. Any direction made by the Tribunal **must** state whether a failure to comply will or may, as the case may be, lead to the appeal being struck out (under reg. 10(1) and (3)).

PS4 Postponements and adjournments

1. A postponement is an administrative matter, similar to listing, handled initially by staff of the Valuation Tribunal before any hearing has commenced, and, although “administrative”, must be handled in accordance with judicial practice and procedural principles.
2. A party may apply for a postponement in advance of the hearing date. Reasons must be given and the other party or parties notified.
3. An application for a postponement should be made in writing as soon as possible and should indicate the reasons for it and whether the other parties agree. In cases of urgency, the application may be made by telephone, but should then if time permits be followed by a written application sent by email. An application will not normally be considered where the other party or parties have not been informed.
4. **The presumption is against the granting of postponements.**
 - a. Postponements will not therefore be granted automatically but only if there are (exceptional) good and sufficient reasons for doing so **and** it is in the interests of justice to do so.
 - b. No postponement will be granted where an appeal has been settled but the paperwork has not been completed. In the absence of paperwork, the panel will confirm any agreement at the hearing or strike out the appeal where the appellant has withdrawn but the appeal is still outstanding.
5. (a) Good reasons for granting a postponement may include the following:
 - the non-availability of a party or representative owing to unexpected ill-health (although in the case of a representative’s long-term illness it is expected that alternative arrangements for representation will be made);
 - an unexpected or unforeseen event which makes it impossible to attend the arranged day of the hearing (a serious fire or a significant IT problem occurring at the last minute)
 - the recent emergence of new evidence or case law that requires consideration.
 - material or notices sent to an incorrect email address resulting in delay in reaching the correct recipient.
- (b) The following examples do not constitute good reasons:
 - holiday commitments that interfere with the timetable for meeting procedural obligations;
 - the fact that the parties have failed to enter into meaningful negotiations or negotiations are under way and incomplete and are expected to continue beyond the hearing date.

6. Where the applicant has a good and sufficient reason for postponement (as under para. 5a above), it should normally be granted unless either the other party presents a stronger argument to the contrary or the interests of justice require the application to be rejected.

7. The member of staff will advise all parties in writing (normally within three working days) of the decision on the application, together with the reasons, provided that there is sufficient time prior to the hearing.

8. If the member of staff does not grant the application, the applicant may request that it be referred to a Senior Member (or the presiding Senior Member if one has been appointed for the case) if there is time before the hearing. Otherwise, the party may apply at the hearing for an adjournment or, if unable to attend in person, request that the application be considered in their absence, but with the risk that if the application is rejected, the case will proceed. Paragraphs 4-6 will apply to an application made or considered at this stage.

9. The Tribunal may itself postpone a hearing for administrative reasons if it is unable to hear the appeal on the given date, but it will give as much notice as possible to the parties to minimise inconvenience.

Adjournments

10. The Tribunal has the power under regulation 6(3)(h) of the Procedure Regulations to adjourn a hearing.

11. An Adjournment is a decision taken by the panel at the hearing. The general position is that it is always in the interests of justice to proceed with a properly listed hearing unless it would be unjust to do so. The delay in determining appeals is a costly and time consuming matter which must be avoided wherever possible. Parties should be aware that if an application for an adjournment is not granted, the panel will continue the hearing and the parties must be prepared to present their case, if they are not, then the Tribunal will usually dismiss the appeal

Stays

12.(i) Where the decision in an appeal before the Tribunal is likely to be affected by the outcome of another case pending in the Tribunal or in a higher court or tribunal, a party should apply to the Registrar, with **a full explanation**, for that appeal to be stayed (pursuant to reg. 6(3)(j)) until the decision of the Tribunal or the higher court or tribunal has been issued.

(ii) Unless the application is made jointly by the parties, the other party should be informed of the application and should send his/her comments to the Registrar within seven days.

13. The Tribunal may stay an appeal on its own initiative. This will normally be done by the President or a Vice President.

PS5 Decisions without a hearing

1. Reg. 29 of the Procedure Regulations requires the Tribunal to hold a hearing before making a decision which disposes of proceedings unless -
 - a) all parties have consented to, or not objected to, the matter being decided without a hearing; and
 - b) the Tribunal considers that it is able to decide the matter without a hearing.
2. A party may apply for a case to be decided without a hearing.
3. All other parties will be informed of the application and will be required to indicate within 21 days whether or not they object.
4. Where there is agreement, or no objection, a Senior Member will consider whether the appeal should proceed without a hearing.
5. If he/she determines that it can, all parties will be informed and a direction issued requiring them, by a prescribed date, to provide a copy of their case (either electronically or in hard copy) to include a statement of the reasons for the appeal and the decision sought from the Tribunal, together with the evidence and any legal argument.
6. Each party must send a copy of their case to every other party and the Tribunal in accordance with any direction of the Tribunal.
7. As soon as reasonably practicable after all statements have been received, a panel will consider the appeal.
8. The panel will consider whether it is able to decide the matter without a hearing and either adjourn for further consideration and make appropriate directions or decide the appeal.
9. Any party who fails to comply with a direction **may have the appeal struck out or be barred**, as appropriate, in accordance with reg. 10.

Requirements for a written submission

The submission must be specific to the case to be determined and contain the following:

- the issues in dispute;
- the decision sought from the Tribunal;
- details of the arguments in support of the decision sought including any relevant legal arguments (citing the legislation and case law);
- the evidence relied on;
- copies of any relevant documents;
- the details of the other parties to whom a copy of the written submission has been sent and the date it was served;
- the date and signature of the party or representative.

An unrepresented appellant will not be expected to provide the above material in the form and to the extent expected of a professional representative, and will not be struck out for failing to meet those standards, but is required to provide material to the best of his/her ability so that the other parties and the Tribunal are able to deal properly and fairly with the case.

PS6 Council tax reduction appeals

Introduction

1. References are to the Procedure Regulations as amended by SI 2013 No. 465.

Notice of appeal: incomplete information

2. A notice of appeal is valid only if the information prescribed in reg. 20A (2) has been provided and no appeal shall be admitted unless and until that information has been provided.

Striking out

3. Proceedings may or shall (as the case may be) be struck out in the following circumstances:

- (i) where there is a failure to comply with a direction
- (ii) where they are outside the Tribunal's jurisdiction
- (iii) where there is no reasonable prospect of the appeal succeeding (reg. 10(3)(c)).

4. The striking out of proceedings prior to a hearing is a significant step to take. It brings proceedings to an end after a summary process without a hearing and (except under (iii) above) without any consideration of the merits of the case. It is therefore a step that should be taken only when it is clear beyond question that the grounds for striking out are present.

5. The Tribunal must strike out proceedings which are outside the Tribunal's jurisdiction: reg. 10(2).

6. Proceedings are outside the Tribunal's jurisdiction if they are, explicitly or implicitly, a challenge to a billing authority's CTR scheme rather than to the application of the scheme to the particular appellant. A challenge to the former must be by way of an application for judicial review in the Administrative Court: Local Government Finance Act 1992, s.66(2)(ba)[inserted by LGFA 2012, Sch. 4, para. 5(1), (2)]. An appeal arising under a billing authority's discretionary fund is within the Tribunal's jurisdiction: see paras. 25-30 below. [*For appeals where the appellant has been awarded the maximum reduction, see paras. 19-20 below.*]

7. Members of staff may be authorised under reg. 10(9) to strike out proceedings which are outside the Tribunal's jurisdiction. The President has authorised the Registrar, Team Leaders and Case Managers to exercise this power on his behalf.

8. A member of staff who has been authorised by the President for this purpose and who considers that proceedings are outside the Tribunal's jurisdiction shall send the appellant a notice.

9. Proceedings may not be struck out as being outside the Tribunal's jurisdiction without the appellant being given an opportunity to make representations (reg. 10(4)).

Where the appellant makes no representations as a result of the letter, the proceedings shall be struck out by the Registrar or any member of staff authorised to do so under para. 7 above.

10. An appeal where the appellant, whether of pensionable age or otherwise, has been awarded the maximum reduction permitted under the respondent billing authority's scheme may arguably be characterised as outside the Tribunal's jurisdiction, but shall notwithstanding be processed pursuant to reg. 10(3)(c) as an appeal with no reasonable prospect of success, and the appellant shall be sent a notice.

11. As it is not possible to delegate to staff the power to strike out under reg. 10(3)(c), an appeal falling within the preceding paragraph shall be referred to the President or a Vice President or Senior Member whether or not representations have been received, and the appeal shall be struck out or allowed to proceed as the President or Vice President or Senior Member shall determine.

12. Where proceedings have been struck out, the appellant may within one month apply for reinstatement: reg. 10(5), (6). Such applications shall be considered by the President, a Vice President, or Senior Member other than the person who struck out the proceedings.

13. Proceedings may be struck out under reg. 10 at a hearing if it emerges that that is the right course of action.

14. Where proceedings have been struck out, the appellant shall be notified in writing of the decision (regs. 10(9), 36 and 37).

Discretionary reductions in council tax

15. The Local Government Finance Act 1992, s.13A (introduced in 2003) gave a discretion to billing authorities to reduce a person's council tax "to such extent as it thinks fit", even to nil, whether on an individual basis or in relation to prescribed categories. This was in addition to the various statutory reductions, discounts, disregards etc.

16. S. 13A has now been replaced by a new s.13A (Local Government Finance Act 2012, s.10) which is headed "Council tax reduction schemes". The new s.13A not only requires billing authorities to make council tax reduction schemes, but incorporates all of the old s. 13A (s.13A(1)(c), (6) and (7)) and further requires that a billing authority's scheme must state the procedure by which a person can apply for a reduction under s. 13A(1)(c) (1992 Act, Sched. 1A, para. 2(7), inserted by Sched. 4 to the 2012 Act).

17. A person who has made an application under s. 13A(1)(c) has a right of appeal to the VTE against the billing authority's decision to refuse a reduction or in respect of the amount awarded.

18. The Tribunal will consider these appeals on their merits and is not restricted to inquiring whether the billing authority has exercised its discretion lawfully and reasonably. The Tribunal may substitute its view for that of the authority. The proper approach is set out in the decision of the then President, Prof. Zellick, of 27 May 2014 in *S.C. and C.W. v. East Riding of Yorkshire Council*.

19. A decision by a billing authority on a person's application for funding or financial support unrelated to the discretionary scheme referred to in para. 16 does not (subject to para. 20) give rise to an appeal to the Tribunal under s.16, and therefore falls outside the Tribunal's jurisdiction.

20. Where a person wishes to argue that it was an application that should have been considered under s.13A(1)(c) and the authority has improperly chosen to deal with it under different powers, whether to circumvent the right of appeal under s.16 or with the effect of circumscribing that right for no objectively justifiable reasons, the proceedings shall be referred to the President, who will decide, with or without a hearing, whether the Tribunal has jurisdiction to entertain the appeal.

Standard Directions

21. Standard Directions will be sent to the parties with the notice of hearing.

22.(i) A failure by the appellant to comply in the specified time with the standard directions may result in the exclusion of any submission or the appeal being struck out: reg. 17(2)(b)(i).

(ii) A failure by the billing authority to comply with the standard directions in the specified time will result in its evidence being excluded and in its being barred from any further participation in the proceedings: regs. 10(1) and 17(2)(b).

(iii) Where the billing authority has been barred for failure to provide the material specified in the standard directions, the appeal will automatically be allowed by default without any consideration of the merits, but the Tribunal's Order will be delayed for 28 days to allow the billing authority to apply to the Tribunal (which it must do within 14 days) for the appeal to be relisted for hearing on the ground that it did not receive the notice of hearing, that it did comply with the standard directions or for some other exceptional and compelling reason that excuses the failure to comply.

(iv) In applying for the bar to be lifted, the billing authority must state its willingness to comply with the standard directions by supplying the material therein prescribed.

(v) Where the Tribunal is minded to lift the bar, the billing authority will have 14 days within which it must provide the material specified in the standard directions and only on receipt of the material will the bar be lifted.

(vi) In finding for the appellant and allowing the appeal by default, it shall be for the Tribunal to determine, in light of the appellant's notice of appeal, the form of the Order (which may include remitting the matter to the billing authority for the appropriate calculations to be made and implemented).

Listing

23.(i) Any council tax reduction appeal that appears to raise a novel, important, difficult or contentious point of law shall be referred to the Registrar who will consult the President on whether the case should be listed before the President or a Vice-President or a panel.

(ii) A party shall inform the Registrar prior to the hearing if they are of the opinion that the appeal falls within the preceding sub-paragraph.

24. All other CTR appeals shall be listed in accordance with the Tribunal Business Arrangements.

25. Staff shall consult the President, a Vice President or the Registrar if in doubt about how to classify a particular case.

26. Where a panel of two has been constituted, the Senior Member shall continue with the hearing alone if the other member fails to attend.

27. The President may direct that any particular case or category of cases shall be dealt with other than in accordance with this Practice Statement.

Decisions and reasons (regs. 36 and 37)

28. All panels may reserve their decisions and a written decision notice, together with brief reasons, will be sent to the parties as soon as possible.

29. A party may, within two weeks of receiving the decision notice, request a statement of written reasons.

Standard Directions: Council Tax Reduction Appeals

A. The Appellant (council tax payer)

1. Any further written information or argument you wish the Tribunal to consider, either in response to the material supplied by the billing authority (see B below) or because you will not be attending the hearing, must be provided to the Tribunal and the billing authority at least **two weeks** before the hearing.

2. Anything submitted after the two-week deadline may not be considered by the Tribunal.⁷

B. The Respondent (billing authority)

1. You are required to provide the Tribunal with the following at least **four weeks** before the hearing⁸ and you must send a copy to the appellant at the same time:

- a copy of your notification to the appellant on CTR;
- a copy of the appellant's notice to you under s.16(4)(c);
- a copy of your response (if any) to that notice;
- a copy of relevant extracts from the appellant's CTR application;
- copies of any other relevant communications between the parties;

Notes: The Valuation Tribunal for England (Council Tax & Rating Appeals)(Procedure) Regulations 2009:

⁷ Reg. 17(2)(b)(i).

⁸ Reg. 8.

- a summary of your response to the appeal, including references to the relevant legislation, case law and CTR scheme.

2. This material is to be supplied in the order specified above, with the pages numbered sequentially and with a cover sheet constituting an index listing each document and its initial page number.

3. If you fail to provide this by the deadline specified, or in the manner prescribed, you will automatically be barred from further participation in the proceedings⁹ and any such evidence or argument will be excluded;¹⁰ and the appeal will automatically be allowed by default.

C. General

1. Material may be supplied either electronically or by mail.

2. Material must be provided no later than 5pm on the day of the deadline.¹¹

3. A party may apply for any of the requirements in these Directions to be varied.¹²

⁹ Reg. 10(3)(a) and (7)(a).

¹⁰ Reg. 17(2)(b).

¹¹ Reg. 14(1).

¹² Reg. 8(5).

PS7 Lead appeals

1. On occasions a particular case will be of such significance that the decision made will have an impact on other appeals awaiting a decision. In such circumstances the following procedures will be adopted and the case will be considered a 'lead appeal'.
2. The appeals that are impacted by the decision on the lead appeal will be 'stayed' and continue to be stayed for one month (or such other period as the Tribunal may direct) after the Tribunal's decision has been issued to all of the parties concerned. With the decision will be a notice informing the parties of their right to apply for a direction as described in the following paragraph.
3. During the month, parties to a related appeal may apply in writing for
 - a direction that the decision does not apply to, and is not binding on, the parties to that particular related appeal, or
 - a further direction facilitating the disposal of the appeal.
4. Any such application shall specify the grounds on which the application is made and shall be served on the other party or parties who then have 14 days to make representations.
5. Applications will be determined by a chair or panel, normally without a hearing, as a chairman shall direct, but a party arguing that the decision does not apply to and is not binding on the particular case is entitled to a hearing if requested.
6. Subject to para. 8, any related appeal where there has not been an application under para. 4, or where such an application has been rejected, shall then be disposed of in accordance with the Tribunal's decision in the lead appeal or appeals, or further directions may be made.
7. Where, within one month of the issue of the decision under para. 2, a party to the lead appeal or appeals has initiated an appeal against the Tribunal's decision to the High Court or Upper Tribunal, including an application for judicial review, the Tribunal will direct (unless it has already made a direction pursuant to reg. 7(4)) under reg. 7(5) that the related appeals will continue to be stayed until the High Court or the Upper Tribunal, as the case may be, has determined the appeal.
8. Once the High Court or Upper Tribunal has determined the lead appeal, the Tribunal will so inform the parties in the related appeals and send the Tribunal's directions providing for the disposal of the related appeals in accordance with the judgment.
9. A party to a related appeal who has received a direction made in accordance with the preceding paragraph may apply in writing within one month for that direction to be varied on the ground that the judgment does not apply to, and is not binding on, the parties to that particular appeal, and any such application shall be determined by a chairman or panel without a hearing unless the chairman, panel or applicant requires one.

PS8 Model Procedure

It is the aim of the Tribunal to keep proceedings as informal and flexible as possible, consistent with the proper consideration of the appeal and having regard to regulation 3 of the Procedure Regulations.

1. It is not the aim of this guidance to be prescriptive but rather to offer a flexible formula which can be followed and adapted as required by the circumstances of each case. However, any significant departure from the procedure should be noted on the case file by the clerk outlining the reasons for the departure.
2. A Tribunal will be assisted by a professional clerk who can advise on practice and procedure plus substantive issues of law. (The role of the clerk is explored in the next section).
3. The venue and set up of the hearing room will be attended to by the clerk
4. It is important that the Chairman takes control of proceedings and directs the course of the hearing, making sure that the parties have adequate time to put their relevant arguments and submit their evidence. The Chairman shall, if it feels appropriate, stop a presentation that has moved away from relevant matters, and direct the party to concentrate on the issues in the case.
5. It is vitally important that the Chairman deals tactfully with repetitive or irrelevant evidence by politely explaining to the party why the evidence being introduced is relevant or repetitive, in line with the overriding objective of dealing with cases justly.
6. The Tribunal can only consider the evidence before it when making a decision in a case.
7. The strict rules of evidence do not apply to the Tribunal and it is up to the panel to consider what is presented to them and give such weight to it as they consider appropriate.
8. Evidence is not given on oath and there is no power to administer one.
9. There is no power for the Tribunal to award costs.

The hearing

10. The Chairman opens proceeding with introductions and explains to the parties that the panel has considered the evidence already submitted if this is the case.
11. The clerk outlines the nature of the appeal.
12. The appellant normally presents his case first followed by the respondent. Questions may be asked by either party of the other and the panel may also ask questions as appropriate.

13. An unrepresented appellant may be assisted by the panel to formulate and clarify appropriate questions. However the panel cannot act as the appellant's advocate.
14. Either party may call witnesses to support their case and those witnesses may be cross examined.
15. Once all the evidence has been heard from both parties each will be invited to make final submissions, with the appellant having the final word.
16. Before retiring to consider the decision, the clerk may advise the panel in open session on any matter of law that the clerk feels the panel should be aware of, together with any advice that is felt appropriate. The parties may comment on the advice the clerk gives.
17. The panel will then retire to consider the decision. The parties should remain for a short period in case further clarification is needed by the panel. Then the parties can be released and told that the decision will normally be communicated in writing within a month.

PS9 Role of the clerk

1. Introduction

1.1 Judicial decision making rests exclusively with the members of the panel, but the system depends critically on being guided and taking appropriate advice from the clerk at the hearing.

1.2 Four fundamental principles are:

- Justice must not only be done, but must be seen to be done (which in this context means that it should be clear to everyone that it is the panel that is finding the facts and making the decision)
- Any substantive advice given to the panel by the clerk/tribunal officer must be given in public and the parties, if present, must be given an opportunity by the presiding Senior Member to comment
- The clerk has a duty to give appropriate advice and the panel must co-operate in this regard
- The clerk has a duty to ensure that every case is conducted fairly and to further the overriding objective of dealing with cases justly

1.3 These principles apply the case law developed in respect of advice to magistrates.

2. During the hearing

2.1 The clerk is responsible for providing advice to the panel which it requires properly to discharge its functions, whether or not the panel has requested that advice, on:

- questions of law;
- questions of mixed law and fact;
- matters of practice and procedure;
- any relevant decisions of the superior courts and tribunals;
- the decision-making structure to be applied in any given appeal.

2.2 The clerk will keep an accurate note of the evidence and submissions of the parties at the hearing.

2.3 The clerk/tribunal officer must not make findings of fact or law but may assist the panel by reminding it of the evidence and arguments, using notes of the proceedings for the purpose.

2.4 The clerk may ask questions of witnesses and the parties in order to clarify the evidence and any issues in the appeal. The clerk when asking questions must ensure that they do not adopt a partisan role in the proceedings or convey their personal views

on the appeal to the panel. The clerk should await the invitation of the Chairman before asking questions, but may seek clarification of an answer or point at the time. The Chairman must give the clerk the opportunity to ask any questions after that opportunity has been given to the other panel members. The clerk should use this opportunity sparingly.

2.5 The clerk is under a duty to assist unrepresented parties to present their case, but must do so without appearing to become an advocate for the party concerned.

3. At the conclusion of the hearing

3.1 At the conclusion of the hearing and before retiring, the Chairman should ask the clerk whether there is anything further they wish to say. If the clerk does and makes substantive points, it will be necessary to invite the parties to comment if they wish.

3.2 The clerk should not withdraw along with the panel members. The panel should first deliberate on the case in private and then, before coming to a final conclusion, must invite the clerk to join them. The clerk will thus be fully informed of the reasoning behind the decision, be able to raise any queries or make any suggestions and be fully able to reflect the panel's reasoning in the written decision. Any member of the panel may seek the clerk's advice.

3.3 If in the course of discussions in the retiring room, the clerk gives substantive advice to the panel which has not been previously canvassed during the hearing, it will be necessary to reconvene the hearing for that advice to be tendered in the presence of the parties and for them to be given an opportunity to comment on it. If the parties have already left, it may be necessary to adjourn and re-list the case for a further hearing.

3.4 In the retiring room, the Chairman shall ensure that the clerk is informed of the panel's reasoning and their understanding and findings on the facts, so that the final written decision with reasons may be drafted. In addition, the clerk may assist the Chairman with the wording of any oral decision that is to be communicated.

3.5 The clerk should return to the hearing room separately from and in advance of the panel members.

3.6 The clerk may request the panel to adjourn briefly to enable him/her to seek guidance from the Registrar or a colleague and the Chairman should normally comply with such a request.

3.7 Where there is no separate retiring room and the panel must deliberate in the hearing room, these provisions should be read accordingly, with the parties, their representatives, members of the public and the clerk/tribunal officer withdrawing from the hearing room or being called in as appropriate.

3.8 The clerk must accompany the panel on any site visit.

4. Decision

4.1 The clerk is responsible for recording the panel's reasons and drafting the decision for approval or amendment by every member of the panel. The chair will sign the final agreed version of the decision before it is sent to the parties.

4.2 The draft should accurately record the findings of fact and law made by the panel.

4.3 It is the duty of the panel to produce a decision that gives a clear explanation for its decision.

4.4 The clerk should make a clear and full note where the panel has refused to follow advice given, a copy of which should be sent to the Registrar.

PS10 Statement of Reasons

1. In all council tax liability appeals, the parties will be sent the decision notice together with summary reasons, but without a written statement of reasons within the terms of the Procedure Regulations.

2. The decision notice and summary reasons referred to in the preceding paragraph must state clearly and prominently that a party may apply for a written statement of reasons within two weeks.

3. A request by a party for a written statement of reasons must be made within two weeks of the decision notice being sent to the parties (reg. 37(5) of the Procedure Regulations as amended by SI 2013 No. 465).

4. A request received after this date must be supported by a written explanation of the reasons for and justification of the delay so that the Tribunal may consider whether to grant an extension to the time limit under reg. 6(3)(a).

5. Applications for an extension of time will be considered by the President.

6. The President may make some allowance where the applicant is unrepresented, but it would require exceptional circumstances to justify any extension of time for a respondent.

7. No application for an extension of time can be granted where the clerk's notes are no longer available.

PS11 Disclosure in council tax appeals

The following directions only apply to appeals where notices of hearing are issued after 1 April 2017. Notices and directions issued prior to this date will remain in force.

These directions are formal orders and must be complied with. They are intended to help the parties and the Tribunal deal with appeals fairly, swiftly and economically.

Standard Directions: Council Tax Liability and Valuation Appeals

These Directions should be read in conjunction the explanatory guidance.

A. For the Appellant (the council tax payer), the Tribunal directs that:

1. Any further information you wish the Tribunal to consider because of the material supplied by the respondent (see B1 below), must be sent to the respondent at least **four weeks** before the hearing. This may include case law or references to the legislation and you must set out what change you are seeking in your appeal and the date(s) it would apply to.
2. Anything you send to them after the four-week deadline will not be considered by the Tribunal unless you can demonstrate exceptional reasons why the evidence was not available at the time.¹³
3. Unless your case is postponed or settled by agreement or withdrawal, it is expected that you (or your representative) will attend the hearing to present your case. You may request that the hearing proceeds without you being there by contacting the Tribunal at **least 24 hours before the hearing day**.
4. If you or your representative do not attend the hearing and have not requested the case to be heard in your absence at least 24 hours before the hearing, your appeal may be struck out. "Struck out" means that your case will not be considered and will be unsuccessful.

B. For the Respondent (billing authority or listing officer), the Tribunal directs that:

1. At least **six weeks before the hearing date**, you must provide the appellant with your full case in response to the appeal, including arguments, evidence, legislation, case law and documents (including those covered by regulation 17) that you wish to rely on at the hearing. This will constitute your full case, and the Tribunal will not consider anything submitted after that date unless you can demonstrate exceptional reasons as to why the evidence was not available at the time, or it forms part of your rebuttal at paragraph 3

Notes: The Valuation Tribunal for England (Council Tax & Rating Appeals)(Procedure) Regulations 2009:

¹³ Reg. 17(2)(b)(i).

below. You do not need to serve evidence again that you submitted in your decision notice, but must make it clear to the appellant which evidence, information and/or argument you intend to rely on as part of your case.

2. If you fail to provide the above by the six-week deadline you will be prevented from submitting further evidence or a rebuttal (in accordance with paragraph 3) unless you can demonstrate exceptional reasons as to why the full case was not served by the due date¹⁴.

3. At least **two weeks** before the hearing you must submit electronically to the Tribunal and by either email or post to the appellant, a bundle of documents including any documents provided to you by the appellant (see A1 above), your case as submitted to the appellant under this Direction and, provided you complied with the Direction, any rebuttal statement you may wish to make in light of the appellant's case. If you failed to provide your full case in accordance with paragraph 1 above and the evidence is excluded, you will only be able to include in the bundle any documents provided by the appellant and the evidence provided within your decision notice.

4. At the hearing, you must bring sufficient hard copies of the bundle for each panel member. Alternatively, you may request that the hearing proceed in your absence, in which case you must send two hard copies of the bundle and your request to the Tribunal at least **one week** before the hearing. They should be sent to the Tribunal office at the address specified in the notice of hearing. A failure to comply with this part of the Directions may result in you being barred from taking further part in proceedings.

C. General

1. Material must be provided no later than 5pm on the day of the deadline.¹⁵

2. A party may apply for any of the requirements in these Directions to be varied.¹⁶

3. These Directions do not apply to council tax reduction appeals (appeals against council decisions on council tax reduction or support) for which separate Directions are set out.

Guidance to the Standard Directions for Council Tax Liability and Valuation Appeals

General

1. The Directions require each party involved in the appeal to disclose their full case to the other party before the hearing. This is so that delays are avoided and to encourage parties to resolve their differences without the need for a hearing.

¹⁴ Reg. 17(2)(b).

¹⁵ Reg. 14(1).

¹⁶ Reg. 8(5).

2. There is no need for the appellant to send any documentation to the Tribunal. The respondent (the billing authority/council or the VOA listing officer) is required to produce the hearing bundle for the Tribunal and parties prior to the hearing and this will include the appellant's as well as the respondent's documents.

3. The Tribunal will NOT accept extra information from either party that was not included in the hearing bundle unless there is exceptional reason to do so. An example of an "exceptional reason" is where the evidence and/or argument was not reasonably available to the party at the time they sent their case to the other party.

4. These Directions do not apply to council tax reduction appeals (decisions of the council on council tax reduction or support); different Directions apply to those appeals and can be found at www.valuationtribunal.gov.uk.

Advice for the Appellant (the council tax payer)

5. At least **six weeks** before the hearing date you will receive the respondent's full case. This will include their arguments, evidence, legislation, case law and documents that they will refer to at the hearing. If you do not hear from them, your appeal will be decided on the basis of what you said in and included with your appeal form and the respondent's decision to you (if you received one).

6. Any evidence and argument that was not included in your appeal form and any response to the respondent's case that you wish the Tribunal to consider must be sent to the respondent at least **four weeks** before the hearing. **Please do not send your case to the Tribunal direct.**

7. If you require more time to prepare your case you must write to the Tribunal before the four-week deadline to seek permission for a delay and let the respondent know that you have done this.

8. You must have made it clear in your appeal or in the document you send to the respondent what it is you are seeking from the Tribunal (the change you want) and the date(s) any change would apply to.

9. Anything sent after the deadline will not be considered by the Tribunal unless there are exceptional reasons.¹⁷ The respondent will provide the Tribunal with your case together with their case in one bundle at least two weeks before the hearing. They will also send you a copy, either by post or by email, whichever you have told them you prefer. You (or your representative) must attend the hearing to present your case. The other option is for the hearing to go ahead without you being there. This means your case will be decided on the papers provided; the respondent will still be present. It is better if you attend because then the Tribunal's panel will be able to ask you questions to make sure they understand your case. However, if you would prefer not to attend **you must ask the Tribunal at least 24 hours before the hearing day.**

Notes: The Valuation Tribunal for England (Council Tax & Rating Appeals)(Procedure) Regulations 2009:

¹⁷ Reg. 17(2)(b)(i).

10. If you (or your representative) do not attend the hearing and have not asked for the case be heard without you being there, your appeal may be struck out; that means you will no longer have an appeal with the Tribunal..

Advice for the Respondent (billing authority or listing officer)

11. You must provide the appellant with your full case in response to their appeal, including your arguments, evidence, legislation, case law and documents (including those covered by regulation 17) that you wish to rely on at the hearing at least **six weeks** before the hearing date. This will be your full case, and the Tribunal will not consider anything else submitted unless it forms part of your rebuttal or it is allowed by the Tribunal as exceptional.

12. If you fail to provide this by the deadline, all your evidence will be excluded¹⁸ apart from any evidence included in the decision notice you provided to the appellant prior to the appeal. If you require further time to prepare your case you must seek permission in writing from the Tribunal in advance of the deadline and advise the appellant.

13. At least **two weeks** before the hearing you must send the Tribunal the hearing bundle of documents, by email. This must include all your documents and those provided by the appellant. A copy must be sent to the appellant either electronically or in the post. You should agree the method of service on the appellant with them. If you wish to comment on the appellant's subsequent case (not the appeal form) you may also include a rebuttal statement setting out those areas that you dispute and your reasons for doing so provided you submitted your full case to the appellant. You cannot include a rebuttal if the appellant does not provide additional written documents in accordance with the Direction.

14. The Tribunal has restrictions on the amount of data that can be sent with an email. Please check with the Tribunal's administration the arrangements for lodging the hearing bundle.

15. At the hearing you must bring sufficient hard copies of the bundle for each panel member. This will usually be two copies but check with the Tribunal's administration before the hearing.

16. Alternatively, you may request that the hearing proceed in your absence, in which case you must send two hard copies of the bundle and your request to the clerk at the Tribunal at least **one week** before the hearing. If you do not attend the hearing the Tribunal's panel will not be able to ask questions or seek clarification on any points. This might put you at a disadvantage.

17. If you do not attend the hearing and have not requested that the matter is heard in your absence you may be barred from taking further part in proceedings.

¹⁸ Reg. 17(2)(b).

PS12 Private or closed hearings

Introduction

1. The general rule is that “all hearings must be held in public” (Procedure Regulations, reg. 31(1) unless there is an exceptional reason to depart from that practice. The Tribunal in dealing with cases in line with the overriding objective will hold its proceedings in public unless there is an exceptional reason not to do so.

Hearings in private

2. Exclusion of the public should be ordered only if alternative measures short of exclusion would not suffice.

3. The grounds for holding a hearing (or part of a hearing) in private are as follows:

- a) publicity would defeat the object of the hearing; or
- b) the case involves matters relating to national security; or
- c) it involves especially confidential information (including information relating to personal financial matters, and commercially sensitive information) and publicity would cause damage; or
- d) a private hearing is necessary to protect the interests of any child or vulnerable person; or
- e) it is otherwise necessary in the interests of justice on such grounds as public safety, public order, personal safety, privacy or family life.

4. An application must be made to the Tribunal in writing before the hearing date with full reasons and supporting argument. A copy of the application must be served on the other party or parties, who may make representations to the President.

5. Where an application is made orally at the hearing, the appeal will normally be adjourned and the party advised of the proper procedure, unless the panel is of the view that the application is entirely without merit and is being used merely to delay proceedings and secure an adjournment.

6. Applications will be determined by the President or a Vice President.

7. A direction to exclude must be clear as to who is permitted to attend and who is not.

8. The President or Vice President’s decision will normally be made public even if the hearing has been held in private.

9. Any published report of a case may be redacted in light of any decision made under this procedure

Extraordinary venues

10. Hearings will normally be held in public at a normal venue, but in exceptional circumstances, the Tribunal may direct that the hearing, or part of the hearing, shall be held in a venue nominated by the appellant.
11. The venue may be the appellant's home or such other place to which they have access or at which they are staying, even if this would mean that members of the public could not attend.
12. The proposed premises must be suitable for the purpose of a hearing, and, in the judgment of the Valuation Tribunal Service, suitable in terms of health and safety.
13. The appellant must apply in writing and advance compelling grounds for not being able to attend a hearing at the normal venue.
14. Medical or other evidence, as appropriate, in support of an application should normally be provided.
15. Applications should be made to the relevant local office addressed to the Registrar.
16. The views of the respondent will be invited if the Registrar is of the opinion that the application has merit.
17. The President or a Vice President may consider whether, instead of granting the application, alternative arrangements, such as telephone conferencing or the use of other technology, would be practicable and preferable.
18. The decision on the application will be taken by the President or a Vice President; the appellant (and, where appropriate, the respondent) will be informed.

PS13 Reviews and setting aside decisions

1. A decision may be reviewed under reg. 40 of the Procedure Regulations.
2. There are three stages to the procedure:
 - the application for a review is considered
 - if granted, the review will take place and a decision reached on whether to set aside the decision
 - if the decision is set aside, the appeal will be considered afresh.

Grounds: procedural irregularity

- 3 The only grounds on which a review is possible are those set out in reg. 40(5).
4. The words “some other procedural irregularity” in the regulation are not designed to cover any alleged error by the panel, but refer to defects in process as opposed to substance that is the way the decision was reached and not the actual content of the decision. A procedural irregularity occurs where there has been a failure to comply with the procedures set out in the relevant legislation (Acts of Parliament or statutory regulations) or the Tribunal’s own Practice Statements, or where there has been a breach of the legal duty to act fairly.

Applications

5. An application must be made to the appropriate Tribunal office, **within 28 days** of the date the written decision was sent out.. The application must state the following:
 - the names of the applicant and representative (if there is one)
 - the name of the other party or parties
 - the address of the subject property
 - the appeal number
 - the date and place of the hearing
 - the address for correspondence
 - the ground(s) on which the application is made by reference to reg. 40 (5)
 - the facts or argument supporting the application, together with any relevant evidence.
6. In exceptional cases and for good reason, the President may consider an application which has not been made within the 28-day period (reg. 6(3)(a) of the Procedure Regulations).
7. It is not necessary to await receipt of the written decision where the grounds for making an application are known beforehand, especially where the grounds may also constitute a judicial complaint, and parties are strongly advised to make an application at the earliest opportunity, for example immediately following the hearing.
8. Such an application, which is outside reg. 40 until the decision is issued, will be dealt with by the President as he sees fit.

9. The application will be acknowledged, a copy sent to the other party or parties with a request to provide comments within 14 days, and the High Court/Upper Tribunal notified if an appeal on the same point is pending.

10. The application, together with a note by the clerk at the hearing and any comments of the other party or parties, will be sent to the President as soon as possible.

11. Where the application concerns the conduct of or advice given by the clerk, the matter shall, following consultation with the Registrar, be passed to another member of staff.

Consideration of application

12. The President will consider the papers and decide, normally without a hearing, whether one or more of the grounds specified in para. (5) of the regulation, have been satisfied.

13. The President may call for further information or inquiries to be made, or invite the applicant to make oral submissions, before reaching a decision.

14. The President shall decide whether to grant or refuse the application for a review and that decision shall be final.

15. Where the application is refused, the parties (and the High Court/Upper Tribunal, if an appeal on the same point is pending) shall be informed.

16. There is no right of appeal against the President's decision in this respect, nor may the applicant submit a further application in respect of the same decision, but the applicant's basic right of appeal to the High Court or Upper Tribunal is unaffected.

17. Where the application is granted, the President shall specify which ground was satisfied and direct that the decision, or part of the decision, as the case may be, shall be reviewed.

Review

18. In a straightforward case the President will normally deal with the review forthwith.

19. Any other case may be dealt with by the President or referred for review by a panel, and any further information sought from the parties, which must be provided within 14 days.

20. The President or panel (as the case may be) may decide that a hearing will be held.

21. The decision, or part of the decision, shall be set aside by the President or panel only if at least one of the grounds in reg. 40 (5), has been satisfied **and** it would be in the interests of justice to do so.

22. It is for the applicant to satisfy the Tribunal, on the balance of probabilities, that the requirements in para. 21 above have been met.

Where the decision is set aside

23. The Tribunal shall produce a fully reasoned decision as soon as possible which shall be sent to the parties and the members of the original panel.

24. Any order made in consequence of the decision that has been set aside shall be revoked and the parties informed.

25. Where an appeal to the High Court or Upper Tribunal is pending, the Court/Tribunal shall be informed that the decision has been set aside and a new hearing ordered.

26. The Registrar shall arrange for the original appeal to be heard afresh as soon as possible before a different panel from the panel that dealt with the original hearing of the appeal.

27. The new hearing may proceed immediately if all parties are present and they and the panel agree.

PS14 Reinstatements and lifting of a bar

1. An appeal that has been struck out or withdrawn, may on application in writing by the appellant within one month be reinstated. (Regs. 10 and 19 specify the time from which the one-month period begins to run.). However, given that the Tribunal must have regard to the overriding objective of dealing with cases justly and swiftly, it will scrutinise any application closely and will only exercise its discretion to reinstate a case if a party seeking such relief can satisfy the Tribunal that there was an exceptional reason(s) for any failure, non-compliance with any direction, practice statement, or order made by the tribunal.

5. An application for reinstatement/lifting of a bar may **either** be on the ground that

- there was compliance with the relevant direction and the decision to strike out was therefore in error, **or**
- there are reasons to excuse the non-compliance which are exceptional and justify relief from the sanction of striking out/barring.

3. Reasons to explain or excuse non-compliance may include illness, compassionate circumstances, or any other reasons or circumstances judged to be compelling and reasonable. Relevant considerations include the interests of the administration of justice, whether the application has been made promptly, whether the failure to comply was intentional, accidental or negligent, whether there is a good explanation for the failure, and the effect on the parties of granting the application.

4. It is for the applicant to satisfy the Tribunal that the reasons are such that it is in the interests of justice to reinstate the appeal or lift the bar. There is no presumption in favour of doing so and reinstatement will not be ordered merely because the striking out will deprive the appellant of having the appeal determined on its merits.

5. An appeal struck out because the party's case sent electronically was not received by the 5pm deadline will be reinstated if it can be shown that it was sent at least 10 minutes before the 5pm deadline, but shall otherwise be reinstated only if the lateness can be explained in accordance with paras. 3 and 4 above.

6. An application for reinstatement must give the reasons, together with any supporting documentation. It is for the appellant to provide adequate reasons and proof and it is not for the Tribunal to seek amplification or explanation. Where it is asserted that a notice of hearing or other relevant notice was not received, the appellant should, wherever possible, identify the steps that have been taken to support that assertion, e.g. checking postal records, mail book or electronic systems.

7. The Tribunal may seek the comments of the respondent where it is thought necessary, in the interest of all parties, for the fair determination of the application.

8. Written reasons must be given for the decision.
9. Where an application to reinstate or lift the bar has been granted, all parties will be notified. Where it is rejected, only the applicant need be notified (unless the respondent had been informed of the application).
10. A decision on the application is final and may not be renewed or form the subject of a request for review under reg. 40.

PS15 Publication of decisions

The Tribunal is a judicial body and as such its work is of public interest and in the spirit of open justice decisions will normally be published on the website. There are certain categories of case where it is not appropriate to publish any of the personal details of an appellant and in those types of case a redacted version of the case will appear.

1. (i) The following decisions of the Tribunal are placed in full on the website:

- non-domestic rating (other than penalty notice) appeals
- council tax valuation (banding) appeals

(ii) The following are placed on the website but with appellants' names and other identifying information removed in the interests of privacy and family life unless the President (having consulted the appellant) in a specific case directs otherwise:

- council tax liability decisions

(iii) The following are not placed on the website unless the President directs otherwise on the ground that the decision in question involves a point of principle or law:

- non-domestic rating penalty notice appeals
- council tax penalty notice appeals
- council tax reduction appeals

2. Notwithstanding the above, any person may inspect any decision.

3. A party may apply to the Tribunal for a decision to be redacted or anonymised, that is for material to be omitted from the published decision, such as names or other identifying information.

4. The Tribunal will grant an application only where the arguments and evidence advanced by the applicant outweigh the fundamental principle that decisions are normally published in full.

5. It is for the applicant to satisfy the Tribunal that the application should be granted.

6. An application may be granted on the grounds that it is in the interests of one or more of the following:

- national security
- public safety or public order
- personal safety
- privacy and family life
- protection of children
- protection of commercially sensitive information.

7. The above grounds are not exhaustive, and an application may be made and granted on other grounds.
8. An application under para. 3 may be made in writing before the hearing or orally at the hearing or exceptionally in writing after the hearing, in all cases supported by full reasons. An application made orally at the hearing should be reinforced at the time or immediately afterwards by a written submission.
9. An application must indicate whether the party believes it is possible so to draft the decision that the sensitive material can be omitted or whether the material is crucial to the reasoning and must therefore be included in the decision issued to the parties but redacted in the published version.
10. It is not enough for an applicant merely to claim that the material falls within a particular category. It must be shown convincingly that its publication would be damaging.
11. The application will be referred to the President, together with any observations of the panel and the clerk, and if granted a draft of the decision may be shown to the applicant or other party before it is formally issued.
12. An application made after the decision has been issued may be considered, although the decision may in the meantime have already been placed on the website. The applicant must then explain why the application was not made earlier.
13. An application may be referred for comment to other parties to the appeal at the discretion of the President.
14. The President's decision on an application will be issued in writing to the parties, with or without full reasons as the President determines.
15. The President will decide whether to grant or refuse the application. If it is granted, the President will decide whether the decision should be drafted so as to exclude the sensitive material or whether the decision should be redacted, with a full decision being issued to the parties but deletions made for the published version.
16. A decision already issued to the parties cannot be rewritten on an application under para. 3 but can be redacted.

PS16 Consent Orders

1. Where an appeal remains outstanding the parties may jointly apply for a consent order where they consider appropriate.
2. Application must be in writing and include:
 - the appeal number
 - the existing entry in the list (rateable value, description and address)
 - full details of the names of the parties, and
 - the date(s) and amounts of any reduction together with the entry (if different) that the list is to revert to if a temporary reduction is sought.
3. No hearing will be necessary.
4. The application will be considered by a Senior Member.
5. The order will dispose of proceedings.
6. Reasons need not be provided by the Tribunal in either making the order or deciding not to.

-ENDS-