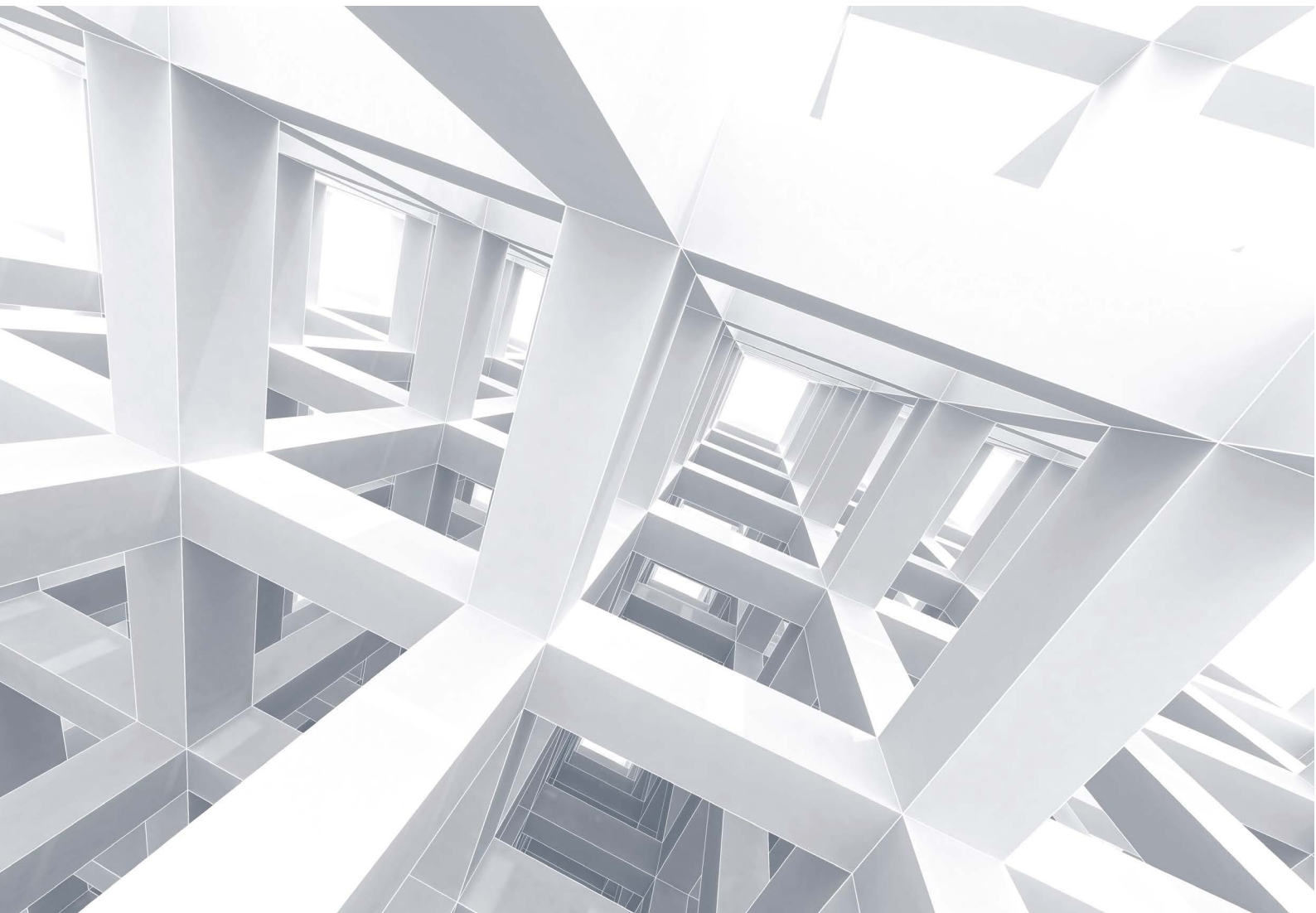




RICS professional standards and guidance, England and Wales

# Rating appeals

4th edition, April 2017



In association with



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# Rating appeals

RICS guidance note, England and Wales

4th edition, April 2017



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# RICS professional standards and guidance

## RICS guidance notes

This is a guidance note. Where recommendations are made for specific professional tasks, these are intended to represent 'best practice', i.e. recommendations that in the opinion of RICS meet a high standard of professional competence.

Although members are not required to follow the recommendations contained in the guidance note, they should take into account the following points.

When an allegation of professional negligence is made against a surveyor, a court or tribunal may take account of the contents of any relevant guidance notes published by RICS in deciding whether or not the member acted with reasonable competence.

In the opinion of RICS, a member conforming to the practices recommended in this guidance note should have at least a partial defence to an allegation of negligence if they have followed those practices. However, members have the responsibility of deciding when it is inappropriate to follow the guidance.

It is for each member to decide on the appropriate procedure to follow in any professional task. However, where members do not comply with the practice recommended in this guidance note, they should do so only for good reason. In the event of a legal dispute, a court or tribunal may require them to explain why they decided not to adopt the recommended practice.

Also, if members have not followed this guidance, and their actions are questioned in an RICS disciplinary case, they will be asked to explain the actions they did take and this may be taken into account by the Panel.

In some cases there may be existing national standards that may take precedence over this guidance note. National standards can be defined as professional standards that are either prescribed in law or federal/local legislation, or developed in collaboration with other relevant bodies.

In addition, guidance notes are relevant to professional competence in that each member should be up to date and should have knowledge of guidance notes within a reasonable time of their coming into effect.

This guidance note is believed to reflect case law and legislation applicable at its date of publication. It is the member's responsibility to establish if any changes in case law or legislation after the publication date have an impact on the guidance or information in this document.

## Document status defined

RICS produces a range of professional standards, guidance and information documents. These have been defined in the table below. This document is a guidance note.

### Publications status

| Type of document                 | Definition   | Status  |
|----------------------------------|--|---|
| <b>Standard</b>                  |  |   |
| International standard           | An international high-level principle-based standard developed in collaboration with other relevant bodies.  | <b>Mandatory.</b>   |
| <b>Professional statement</b>    |  |   |
| RICS professional statement [PS] | A document that provides members with mandatory requirements or a rule that a member or firm is expected to adhere to.<br><br>This term also encompasses practice statements, Red Book professional standards, global valuation practice statements, regulatory rules, RICS Rules of Conduct and government codes of practice. | <b>Mandatory.</b>   |
| <b>Guidance and information</b>  |  |   |
| RICS code of practice            | Document approved by RICS, and endorsed by another professional body/ stakeholder, that provides users with recommendations for accepted good practice as followed by conscientious practitioners.   | Mandatory or recommended good practice [will be confirmed in the document itself].<br><br>Usual principles apply in cases of negligence if best practice is not followed. |
| RICS guidance note [GN]          | Document that provides users with recommendations or approach for accepted good practice as followed by competent and conscientious practitioners.   | Recommended best practice.<br><br>Usual principles apply in cases of negligence if best practice is not followed.   |
| RICS information paper [IP]      | Practice-based information that provides users with the latest technical information, knowledge or common findings from regulatory reviews.  | Information and/or recommended best practice.<br><br>Usual principles apply in cases of negligence if technical information is known in the market.                       |
| RICS insight                     | Issues-based input that provides users with the latest information. This term encompasses thought leadership papers, market updates, topical items of interest, white papers, futures, reports and news alerts.  | Information only.   |
| RICS economic / market report    | A document usually based on a survey of members, or a document highlighting economic trends.   | Information only.   |
| RICS consumer guide              | A document designed solely for use by consumers, providing some limited technical advice.  | Information only.   |
| Research                         | An independent peer-reviewed arm's-length research document designed to inform members, market professionals, end users and other stakeholders.  | Information only.   |

# Introduction

Part 1 of this guidance note provides an outline of the rating appeal system in England and Wales, describing the various processes involved in making a proposal to alter a rating list. There are distinct differences in the requirements in England and in Wales since the establishment of the Valuation Tribunal for England on 1 October 2009.

From time to time, many practitioners are asked by their clients to consider the rating assessment of a property they own or occupy and some may find this a daunting prospect. This is because the subject of rating is recognised as a specialist discipline, dealt with by relatively few people on a regular basis and surrounded by potential pitfalls that can only be avoided by a combination of knowledge and expertise. The aim of this guidance note is to ensure that the main obstacles are at least identified and that, for those with little or no experience, the system is made a little clearer. Surveyors should only take on such work if after reading the guidance they are satisfied that they have sufficient knowledge and expertise to carry out the work with due care, skill and diligence.

References to regulations are those contained in:

- the *Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009* (SI 2009 No. 2268)
- the *Non-Domestic Rating (Alteration of Lists and Appeals) (England) (Amendment) Regulations 2015* (SI 2015 No. 424)
- the *Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009* (SI 2009 No. 2269)
- the *Non-Domestic Rating (Alteration of Lists and Appeals) (Wales) Regulations 2005* (SI 2005 No. 758 (W. 63)) as amended by
- the *Non-Domestic Rating (Alteration of Lists and Appeals) (Wales) (Amendment) Regulations 2006* (SI 2006 No. 1035 (W. 105)).

Part 2 offers best practice advice to surveyors who may be required to appear before Valuation Tribunals (VT) either on behalf of a ratepayer client or as, or on behalf of, a valuation officer (VO) when dealing with an appeal arising from a proposal to alter a rating list.

The guidance note assumes that all surveyors acting in this capacity are aware of, and have complied with, the RICS professional standards and guidance, *Surveyors acting as expert witnesses* (4th edition practice statement and guidance note, 2014) and *Surveyors acting as advocates* (2nd edition professional statement and 3rd edition guidance note, 2017). Surveyors acting in either of these capacities should also be familiar with and, unless there are good reasons why it is not possible to do so, should have complied with the guidance notes attached to these practice/professional statements.

Although intended primarily for those with little or no experience of appearing before a VT, *Rating appeals* may also be of assistance to those who already have some relevant experience.

Surveyors who have not previously attended a VT hearing are advised to endeavour to do so, if necessary as a member of the public, before their first appearance in order to get the feel of a tribunal hearing and to observe how a case is conducted. Telephone a Valuation Tribunal office to find out when a suitable hearing is due to be held (contact numbers can be found at [www.valuationtribunal.gov.uk](http://www.valuationtribunal.gov.uk)).

In this guidance note 'surveyor' refers to the valuer acting for the ratepayer and 'Valuation Officer' refers to a surveyor who is, or is acting as representative of, the statutory valuation officer.

This fourth edition of *Rating appeals* incorporates amendments necessitated by new regulations and procedures introduced from 1 April 2005 when the 2005 rating lists came into force. It also reflects the changes introduced in England by regulations introduced on 1 October 2009 and the subsequent Practice Statements published by the President of the Valuation Tribunal for England. It includes sections on the effective date of alterations resulting from successful appeals against the 2005 and subsequent rating lists and on the system for programming of rating appeals. From 1 April 2017 the appeal system in England will change and a separate guidance note will be published.

All English VTs merged into a single Valuation Tribunal for England (VTE) with effect from 1 October 2009. From that date, references in this guidance note to 'Local Valuation Tribunal' should, in England, be read as references to the relevant office of the VTE. A single Valuation Tribunal for Wales (VTW) was established on 1 July 2010.

This guidance note should be applied in conjunction with the joint RICS/IRRV/RSA *Rating consultancy code of practice*, 4th edition, March 2017, which has been adopted as a mandatory professional statement of RICS.

This guidance note takes effect immediately on publication.

The system in England will change for 2017 lists from 1 April 2017, however there will be significant numbers of outstanding appeals to be dealt with under the 'old' system and this guidance note is aimed at those. An updated guidance note will be prepared to deal with the 2017 regulations once enacted.



# Part 1: How to make an appeal

## 1 What is a rating list?

**1.1** A rating list is a list of properties that is compiled by a VO. It is used by a billing authority to calculate the amount of non-domestic rates that are payable. These notes refer to the local rating list, where the majority of properties are to be found. There are also Central Rating lists that are compiled by the Central Valuation Officer and contain the assessments of utilities and other properties that are valued as a single national hereditament.

**1.2** All non-domestic properties, if they do not fall into the very restricted category of exempt properties, will be the subject of an entry in a rating list. Each separately occupied property will usually be shown as a separate item in a rating list, although if part of the property is domestic or exempt, the exempt part is excluded and only the value of the non-domestic use included in the rateable value.

**1.3** The entry in a rating list will show a record of the property giving its billing authority reference number, address, a description (to enable it to be identified) and the rateable value. If there has been an alteration to the original entry, the date from which that alteration is effective will also be shown.

**1.4** Copies of rating lists, and in many cases a summary of the valuation calculations, can now be obtained on the website of the Valuation Office Agency ([www.tax.service.gov.uk/view-my-valuation/search](http://www.tax.service.gov.uk/view-my-valuation/search)).

**1.5** A copy of the local rating list is also kept at the office of the relevant local authority, known as the billing authority for this purpose. The lists can be inspected during normal office hours.

## 2 What is the rateable value?

**2.1** Each entry in a rating list has a rateable value. The rateable value is the amount estimated by the VO as being the equivalent of the rent that the property might reasonably be expected to achieve if it were to be let from year to year with the tenant being responsible for all repairs, insurance and payment of rates. This letting or rental value assumes that the property is vacant and to let, is in a reasonable state of repair (excluding any repairs that a reasonable landlord would consider uneconomic), and that the landlord has not imposed any unusual restrictions or obligations on the property that affect its rental value.

**2.2** In order to achieve consistency in calculating the rental value of a property, a specific date, known as the 'antecedent valuation date' (AVD), is used. For rating lists compiled (coming into force) on 1 April 2005 the AVD is 1 April 2003 and for the lists compiled on 1 April 2010 the AVD is 1 April 2008.

## 3 Who can make a proposal to alter a rating list?

**3.1** The details set out in the following sections 3–11, regarding the making of proposals and the effect of proposals once made, relate to the 2010 rating list. If you are dealing with a proposal in respect of some other rating list, refer to the relevant regulations for that list.

**3.2** Generally the occupier or the owner of a property can make a proposal to alter a rating list, or a person authorised to act as agent may do so on his or her behalf, on the grounds set out below. In some circumstances the billing authority, or an agent authorised to act on its behalf, can also make a proposal. Where somebody is entitled to make a proposal, that person is known as an 'interested person'. In addition, where somebody has ceased to be an owner or occupier, that person – although no longer an 'interested person' – can make a proposal if the VO has altered the rating list so as to affect the period when that person was an 'interested person'.

The full list of the parties under the definition of 'interested person' is set out in regulation 2 of the 2005 (Wales) and the 2009 (England) regulations.

## 4 How can a proposal be made?

**4.1** There is no statutory form for making proposals. However, certain information is required by the regulations governing the service of proposals. A proposal must be in writing and show:

- the name and address of the proposer and the capacity (for example, as owner, occupier, agent on behalf of the owner/occupier and so on) in which they are making the proposal
- the property to which the proposal refers
- the way in which it is proposed that the list be altered and
- the grounds on which the proposal is made.

See also paragraph 4.4 below.

**4.2** If a proposal is to be made relying on the decision of a VT, Lands Tribunal, Upper Tribunal (Lands Chamber) or higher court (see section 5.1 para (e)), then the proposal must include:

- details of the property that was the subject of the decision
- the name of the tribunal or court
- the date of the decision



- the reasons for the decision being considered relevant and
- how it affects the appeal property that is the subject of the present proposal.

**4.3** Where the property is occupied under a lease, easement, or licence to occupy, the proposal will also generally need to include a statement of the annual amount payable under the lease, easement or licence at the date of the proposal. The only circumstances in which this information is not required in England is where the proposal is seeking to delete an entry in the rating list, or to change the address or description, or where the proposal is made by somebody who has ceased to be an owner or occupier and the proposal relates to a VO alteration that affected the period when that person was an 'interested person'. If the proposal is made by a party other than the occupier then the maker of the proposal must include a statement of the amount of rent receivable under the lease, easement or licence to occupy by which they have an interest in the property. Where the proposal is made by the billing authority there is no requirement to state the amount of the rent. There is a deficiency in the element of this legislation applying in Wales and at the time of writing (2017) rental information is not required where a proposal is made on any of grounds (h), (j), (k), (m), (n) and (o) in paragraph 5.1 below.

**4.4** The VOA has produced a standard proposal form to assist in the making of proposals. This form can be obtained from the local valuation office or it can be downloaded from the VOA website ([www.gov.uk/government/publications/non-domestic-rating-proposal-to-alter-the-2010-rating-list](http://www.gov.uk/government/publications/non-domestic-rating-proposal-to-alter-the-2010-rating-list)).

**4.5** The completed proposal form, letter or notice in writing, which includes all the information required by the legislation, must be served on the relevant VO, i.e. the one who is responsible for the area in which the property is located.

**4.6** It is also possible to send a proposal by email or via the internet – the VOA website ([www.gov.uk/business-rate-appeals/how-to-appeal](http://www.gov.uk/business-rate-appeals/how-to-appeal)) contains details of how to serve a proposal. A number of agents also serve proposals electronically direct from certain specialist rating databases.

## 5 What are the grounds for making a proposal?

**5.1** The grounds for making proposals in respect of rating lists are extensive and are shown in full in regulation 4(1) of the *Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009* (SI 2009 No. 2268) for England and in the *Non-Domestic Rating (Alteration of Lists and Appeals) (Wales) Regulations 2005* (SI 2005 No. 758) for Wales. They may be summarised as follows:

- the rateable value shown in the list was inaccurate on the day the list was compiled
- the rateable value shown is inaccurate due to a material change of circumstances occurring on or after

the day on which the list was compiled. A material change of circumstances is a change in any of the matters mentioned in paragraph 2(7), Schedule 6 to the *Local Government Finance Act 1988*. These generally occur where there has been an alteration to the property, or a change in the locality, which the proposer considers has affected the letting value of the property

- the rateable value is wrong because of an amendment to the classes of plant and machinery set out in the relevant regulations. The relevant regulations are the *Valuation for Rating (Plant and Machinery) Regulations 2000* (SI 2000 No. 540) for England and the *Valuation for Rating (Plant and Machinery) (Wales) Regulations 2000* (SI 2000 No. 1097) for Wales
- the rateable value shown resulting from an alteration by the VO is inaccurate
- the rateable value, or any other information in the list relating to the property, is wrong in light of a decision given by a VT, Lands Tribunal or other court in respect of another property
- the effective day of a VO's list alteration is inaccurate
- a property not in the list should be entered in the list
- a property shown in the list should not be entered in the list
- the property shown in the list is partly domestic or exempt property but the list does not show this
- the property is shown in the list as partly domestic or exempt but this is not the case
- the property is shown in the list as more than one entry and should be one entry or different entries
- the property is shown in the list as one entry and it should be shown as more than one
- the address shown is wrong
- the description shown is wrong
- any statement required under section 42 of the *Local Government Finance Act 1988* has been left out of the list (for example, the billing authority reference number).

## 6 Restrictions on making proposals

**6.1** A proposal can be made by an interested person to alter the list by reference to more than one of the grounds set out above only where the material day (the day by reference to which the physical circumstances of the appeal property and the locality are to be determined) and the effective date of any potential list alteration arising is the same for each of the grounds concerned.

**6.2** No proposal can be made where a proposal has previously been made by the same person on the same grounds and arising from the same event.

**6.3** No proposal may be made where a previous proposal made on the same grounds or the same facts has already

been the subject of a decision by a Valuation Tribunal or the Upper Tribunal (Lands Chamber).

## 7 When can a proposal be made?

**7.1** With two exceptions, it is no longer possible to make a proposal for any list before the 2010 rating lists. The exceptions are where a VO has altered a 2005 list or issued an Invalidity Notice in respect of a proposal made against such an alteration. In these circumstances it is still possible to make a proposal against the alteration made to the 2005 Rating List entry, provided that such a proposal is made within six months of the date of the relevant list alteration and is made on the grounds specified in either subparagraph (d) or (f) set out above in paragraph 5.1 or within the relevant period after the service of an Invalidity Notice – see Section 9 below. After 1 April 2011 the valuation officer is only able to make alterations to the 2005 list to give effect to an agreement in respect of an earlier proposal; so although the right to make such a proposal will still arise it would seem perverse to do so.

**7.2** A proposal to alter a 2010 or later list can be made at any time before the next list comes into effect. Any proposal should be made while a person is still classed as an ‘interested person’. Where somebody has ceased to be an owner or occupier, that person – although no longer an ‘interested person’ – can make a proposal if the VO has altered the rating list so as to affect the period when that person was an ‘interested person’.

**7.3** If a proposal is made under the grounds in 5.1(d) or (f) above (against a list alteration made by the VO) it can be made either before the next list comes into effect or within six months of the alteration, whichever is later. Since 1 April 2015 regulations have amended the effective date applicable to certain list alterations according to when the proposal was served on the VO.

**7.4** If a proposal is made under ground 5.1(e) above (following a decision of a Valuation Tribunal, Upper Tribunal, or other court on appeal) it can be made no later than six months after the day on which the next list takes effect. Note that there is a deficiency in respect of this provision in Wales and at the time of writing (2017) it is not possible to make a proposal on this ground in Wales after the next list takes effect.

## 8 From what date will a proposal be effective?

**8.1** Changes to the relevant regulations in England from 1 April 2015 introduced restrictions on the effective date applicable to alterations arising from some proposals. The rules are illustrated in the table below at 8.5. Where the proposal corrects an inaccuracy on or after the day the list was compiled, then the alteration has effect from the day that the circumstances giving rise to that alteration first occurred. The only exceptions to this rule are:

- where an alteration to the list is made to give effect to a Completion Notice

- where the day on which the relevant circumstances arose is not reasonably ascertainable or
- where an alteration is made to correct an inaccuracy in the compiled list, or arising from a previous alteration, that increases the rateable value.

**8.2** Where an alteration to the list is made to give effect to a Completion Notice, the alteration has effect from the date specified in the Completion Notice or such other date as is agreed or determined on appeal against that Notice.

**8.3** Where the day on which the relevant circumstances first arose cannot be reasonably ascertained, then the alteration has effect from the date of the proposal.

**8.4** Where an alteration is made to correct an inaccuracy in the compiled list, or arising from a previous alteration, which increases the rateable value, the alteration has effect from the day on which the list is altered, unless the inaccuracy arose as a result of error or default on the part of a ratepayer, in which case the alteration has effect from the day on which the circumstances giving rise to that alteration first occurred. This restriction on the effective date applies whether the alteration is being made by agreement of a proposal or otherwise by the valuation officer.

| 8.5 Rules relating to effective dates         |   |          |
|---|---|----------|
| Reason for proposal                           | Date made   | Earliest |
| Compiled list RV inaccurate                   | Before 1/4/15   | Event    |
| Material change of circumstances              |   |          |
| Deletion                                      |   |          |
| Split   | On or after 1/4/15  | 1/4/15   |
| Merger  |   |          |
| New entry                                     |   |          |
| Incorrect or omitted statement                |   |          |
| Exceptions*                                   |   |          |
| RV inaccurate following VO alteration         | Before 1/4/15   | Event    |
| Effective date of alteration incorrect        | Within 6 months of VOR  | VOR ED   |
| Following a VT, UTLC or higher court decision | On or after 1/4/15 and within 6 months of a decision made before 1/4/15       | Event    |
|   | On or after 1/4/15 and more than 6 months after a decision made before 1/4/15 | 1/4/15   |
|   | Before 1/4/15   | Event    |

\* There is also a general exception to be included where a proposal is served under regulation 8(6)(a) in response to an invalidity notice served by the VO. The fresh proposal may be served within 4 weeks of the invalidity notice and such a proposal will be deemed to have been received on the day the original proposal was served. So where a proposal is served before 1 April 2015 but is subject to an invalidity notice a fresh proposal served after 1 April 2015 but within 4 weeks of that invalidity notice will be deemed to have been served on the VO on the day the original [invalid] proposal was served and the effective date will be determined accordingly.

## 9 What happens if an invalid proposal is made?

**9.1** When a proposal is served the VO will examine it and decide whether to contest its validity.

**9.2** A proposal will be considered to be invalid if it:

- has been made by a person who is not entitled to make it
- is a duplicate of one already served on the same grounds
- is a duplicate of one that has already been determined by a tribunal decision
- is made outside the proper time limits or
- is ineligible for any other reason referred to in the regulations.

**9.3** If the VO considers that the proposal is invalid, a notice to this effect is normally served on the maker of the proposal within four weeks of its receipt. This notice must state why the proposal is considered invalid and explain that either another proposal may be served correcting the invalid proposal, if possible, or an appeal may be made against the notice (which will go to the relevant VT to hear) so long as action is taken within four weeks of receipt of the notice.

**9.4** In England, the VO may serve an invalidity notice more than four weeks after receipt of the proposal, provided that the matter has not been listed for hearing by the Valuation Tribunal, and the VO has the consent in writing of the proposer. This procedure is to allow for proposals containing incorrect information (e.g. rent) to be declared invalid by agreement of the parties in order to allow a new, valid, proposal to be served containing correct information.

**9.5** The VO may withdraw an invalidity notice at any time and any appeal against the notice will be treated as if it had been withdrawn.

## 10 What happens after service of the proposal?

**10.1** Once the proposal has been served, the first action of the VO, unless it is considered to be invalid (see section 9), will be to acknowledge it.

**10.2** If the VO decides that the proposal is fully justified (or 'well-founded'), the rating list must be altered as soon as is reasonably practicable after the decision has been made. The billing authority must be notified of the revised entry within four weeks of the alteration and notice will also be sent to the maker of the proposal.

**10.3** If an alteration is agreed with the VO, the rating list must be altered to show the revised entry within two weeks after the date of agreement. The date of agreement is when all the parties (including the VO) have signed the relevant document.

**10.4** If agreement on the proposal cannot be reached within a three-month period from the receipt of the

proposal, the VO is required under regulations to forward the matter to the VT as an appeal. In practice most proposals are not agreed within this period and appeals will be subject to the programming system (see section 11).

**10.5** It is recommended that discussions with the VO still take place, even after the details of the proposal papers transmitted have been sent to the VT as an appeal, in order to seek to settle the matter (see section 11).

**10.6** Note that during this process the rates will remain payable as demanded by the billing authority based upon the entry in the rating list. If there is a change in the assessment as a result of a proposal, any alteration in liability will be made by the billing authority.

## 11 What is programming of appeals?

**11.1** The government decided that for all proposals made after 1 April 2000, including those made under the 2005 and subsequent rating lists, the VO would be responsible for drawing up programmes containing timetables for discussion of appeals.

**11.2** The programmes are not governed by regulations but are a non-statutory process that all parties are expected to adhere to.

**11.3** Briefly, a VO publishes a programme for dealing with appeals on specific categories of property in particular locations. The VO's programme includes a variable number of subprogrammes covering different classes of property to identify when each proposal will be discussed. The subprogrammes identify a 'start date' when discussions will commence and a 'target date' for conclusion of those discussions.

**11.4** More detail about the programming process is available on the VOA website ([www.gov.uk/guidance/how-to-appeal-your-rateable-value#programme-for-discussion](http://www.gov.uk/guidance/how-to-appeal-your-rateable-value#programme-for-discussion)).

**11.5** At the start date for discussion, the VO will write and invite the appellant to make contact in order to progress the appeal. The VO will ask the appellant to explain why they feel the rateable value is wrong and to provide the evidence that supports that opinion. The assumption is that the proposer believes that the list entry is inaccurate. It is therefore for the appellant to show why the list should be altered.

**11.6** Discussions then continue between the parties in an effort to agree the assessment by the target date.

**11.7** If the target date is reached but it has not been possible to settle the appeal by agreement, except where hardship would be caused or there is some other compelling reason, discussions will cease and the appeal will go forward for determination by the VT.

**11.8** Valuation Tribunals adopt a Listing After Target Date (LATD) policy, which means that they will only list for hearing those appeals that remain unresolved at the target date. Every effort should be made by the parties to resolve appeals during the discussion period in order to avoid the

need for the valuation tribunal to deal with cases that have not been properly discussed.

## 12 What if there is no agreement?

**12.1** In England, the President of the Valuation Tribunal for England has published a series of Practice Statements (that may be downloaded from the VTE website). These regulate the procedure to be adopted in relation to the listing and conduct of appeals that remain outstanding after the target date.

The requirements in these Practice Statements vary from time to time and professional representatives are recommended to review the relevant documents on the VTE website to check the current position whenever dealing with an appeal. The Practice Statements cover a number of aspects of case administration and procedural requirements, including:

- listing of appeals
- exchange of evidence and documents
- applications for postponement
- striking out of appeals and barring of a party
- Model Hearing Procedure
- decisions without a hearing
- administrative procedures, e.g. applying for time extensions, sending of documents, witness summons
- complex case procedures
- application for review of a decision.

**12.2** The decision of the tribunal may result in striking out or dismissal of the appeal, confirmation of the existing assessment or a determination that the assessment should be increased or decreased, or the list may be altered in some other way. Each party at the hearing will bear their own costs. If the tribunal decision is to alter the assessment, the VO must alter the rating list entry within two weeks of an order of the tribunal.

**12.3** If any of the parties at the hearing consider the decision to be wrong, either in law, valuation or fact, then an appeal to the Upper Tribunal (Lands Chamber) may be instigated within the relevant time limit (currently 28 days), and subject to the other requirements set down in the Upper Tribunal (Lands Chamber) Rules. Where a party believes that there has been a procedural irregularity in the proceedings, or where they had reasonable excuse for not appearing at the hearing, it is possible to apply to the VTE President for the decision to be set aside and for the appeal to be reinstated. If that application is granted, the appeal will be re-listed for hearing at a future date.

**12.4** If, following an appeal to the Upper Tribunal (Lands Chamber), there is dissatisfaction with the decision of the Upper Tribunal then a further appeal may lie, on a point of law only, to the Court of Appeal and, if necessary, beyond that to the Supreme Court.

## 13 What if further assistance is required?

**13.1** The VO is an independent government officer appointed by the Commissioners of HM Revenue and Customs, with a statutory duty to both compile and maintain rating lists. The VO endeavours to assist ratepayers or their agents in resolving any difficulty of interpretation or procedure in making and dealing with a proposal to alter a rating list.

**13.2** The VOA website presently contains local and central rating lists, summary valuations for the majority of properties, advice on making proposals and the facility to make proposals electronically or to download the relevant forms.

**13.3** The VO is not responsible for the calculation or collection of rates (which is the duty of the billing authority) or for determining the amount of the rate in the pound (which is a central government function). Further advice and information on these aspects can be obtained from the billing authority or from the business rates website [www.gov.uk/calculate-your-business-rates](http://www.gov.uk/calculate-your-business-rates)



## Part 2: Appearing at Valuation Tribunal

### 14 Valuation Tribunals

**14.1** Valuation Tribunals (VT) are established under the provisions of Schedule 11 to the *Local Government Finance Act 1988*, as amended, and proceedings are conducted in accordance with the relevant regulations. The Valuation Tribunal Service (VTS) was established as a non-departmental public body from 1 April 2004 to secure the efficient and independent operation of the VT in England. From 1 October 2009 local VTs in England merged to form a single Valuation Tribunal for England (VTE). There is a separate service for Wales, the Valuation Tribunal for Wales (VTW), which was established on 1 July 2010.

**14.2** A tribunal panel usually consists of three members, although it is possible to proceed with two members if all the parties agree, and in some circumstances the appeal may be heard by a Vice President or the President. One of the tribunal members will be the chairman (in England a 'Senior Member'). Members are usually lay volunteers who receive appropriate training to carry out their role. They are supported at hearings by a salaried tribunal officer who advises on any technical, procedural and legal matters in rating law and valuation. The procedure at a tribunal hearing is fairly informal but it is recommended that the VO and the surveyor who are appearing address the tribunal indirectly as 'the panel' or directly (to an individual) as 'sir' or 'madam' as appropriate and face the members whenever speaking. There is a Practice Statement covering the expected standard of dress for professional representatives appearing at a hearing.

**14.3** The rules relating to the admissibility of hearsay evidence do not apply to proceedings in a VT (see the *Non-Domestic Rating (Alteration of Lists and Appeals) (Wales) Regulations 2005*, SI 2005 No. 758, at regulation 30(14) and the *Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009* (SI 2009 No 2269 at regulation 17(2)). However, in the event of a conflict of evidence between the parties, first-hand evidence (for example, that the surveyor has himself or herself negotiated the letting of the subject property or a property being used for comparative purposes) is likely to be given greater weight by the tribunal than hearsay (for example, information given by another party on the telephone).

**14.4** Specific provision is made in the regulations for the admission of evidence obtained from statutory forms of return containing rental information. The VO is required to give at least two weeks' notice of an intention to bring such evidence to the tribunal, although for most cases to which the standard directions apply in England the period of notice is eight weeks. In Wales the notice period is three weeks. The appellant has the right to inspect these forms in advance of the hearing and to require production for inspection of additional forms of return held by the VO for

up to an equal number of hereditaments as those included in the VO's notice. If proper notice has been given, the information contained in the form of return is admissible as evidence of any fact stated in it, unless the contrary is proved. Notwithstanding the penalties laid down by statute for inaccurate completion of forms of return, some forms are inadequately or inaccurately completed. It is important that the surveyor or VO carefully checks any forms.

**14.5** The VT cannot award costs but there is always the possibility of adverse criticism in the event of poor presentation or misconduct. Failure to comply with the RICS practice/professional statements, *Surveyors acting as expert witnesses*, and *Surveyors acting as advocates* is a disciplinary matter under the *RICS Rules of Conduct*. These documents also contain guidance notes. Members are not obliged to comply with a guidance note. However, guidance notes contain best practice and failure to follow the recommendations in a guidance note may constitute a breach of the *RICS Rules of Conduct*, Rule 4 (Competence) or Rule 5 (Service).

**14.6** The RICS practice/professional statements and guidance notes (PSGNs) contain much important information and it is essential that any surveyor or any VO proposing to appear before a VT is familiar with their requirements and complies with them.

**14.7** Surveyors should note the requirement in the PSGN *Surveyors acting as expert witnesses* to act as an expert witness only where they have:

- '(a) the ability to act impartially in the assignment
- (b) the experience, knowledge and expertise appropriate for the assignment and
- (c) the resources to complete the assignment within the required timescales and to the required standard.' (*Surveyors acting as expert witnesses* PS 3.2)

**14.8** Surveyors should also note the requirement to advise their clients that the PS will apply and to offer to provide a copy of the PS to a client in advance of accepting any appointment (*Surveyors acting as expert witnesses* PS 3.4).

**14.9** Surveyors and VOs, intending to appear before a VT are advised to be aware that their primary duty in giving expert evidence is to the VT and that will override any duty to their employer (*Surveyors acting as expert witnesses* PS 2.5).

**14.10** Surveyors and VOs may also appear at VT in the 'dual role' of both advocate and expert witness (*Surveyors acting as expert witnesses* PS 9.1) where they are satisfied that it is appropriate to do so. The VT is normally happy for surveyors and VOs to adopt the dual role, as it would in most cases be disproportionate to retain two people in separate roles. But the parties are advised to consider whether there are any features of the particular case (e.g.

the need for extensive or detailed legal representations) that might make it appropriate to separate the roles (*Surveyors acting as advocates* PS 3.9–3.11).

**14.11** Where surveyors and VOs are appearing in the dual role it is essential that they distinguish at all times between the two roles, whether in oral hearings or in written representations (*Surveyors acting as advocates* PS 3.12).

**14.12** The VTE has extensive case management powers that would enable it to hold pre-hearing reviews or to issue directions with a view to clarifying the issues to be dealt with at a hearing and to secure that all the parties make such admissions and agreements as ought reasonably to be made by them in relation to the proceedings. (Valuation Tribunals in Wales also have powers to hold such reviews.) The object is to provide for the just and expeditious disposal of the proceedings. Case management might also involve the designation of a 'lead' case and staying of other cases or determining when and where cases are to be heard, the order in which they are to be listed for hearing, documents to be provided (and their form) as well as any other matters.

**14.13** A VT hearing is not a review of any negotiations that may have taken place. The tribunal members have no previous knowledge of the matter beyond the material provided in the parties' statements of case before going into the hearing, so they usually start with fresh minds. They may have knowledge of the locality and the subject premises and are entitled to apply this knowledge generally, along with other expertise, in helping them to come to their decision. However, any decision will be based solely on the evidence presented at the hearing.

**14.14** A surveyor and a VO due to appear before a VT are advised to arrive in good time and be absolutely clear about how their case is to be presented. It is recommended that the case be well prepared and the evidence and submissions set out in a framework. It is advisable to make the presentation in a structured way and to use prepared notes. A practice or 'mock' presentation prior to the actual hearing may be prudent. A surveyor or VO who has not previously presented a case to a VT is advised to attend at least one VT hearing to observe the practices and procedures. Telephone the relevant listing officer of the VTE or the clerk of the local valuation tribunal office to find out when a suitable hearing is due to be held (contact numbers can be found at [www.valuationtribunal.gov.uk](http://www.valuationtribunal.gov.uk)). Tribunal members are not paid for sitting as a tribunal and so it is recommended that surveyors and VOs prepare adequately so as not to waste tribunal members' time.

**14.15** A last-minute negotiation leading to an acceptable compromise is always possible. Further agreement on facts and values is also encouraged, even if it does not lead to settlement of the appeal. Although discussions should be concluded during the appeal subprogramme period, parties should be prepared to show some flexibility and to take any consequential amendments into account.

## 15 Work prior to the hearing

**15.1** As soon as the possibility of the dispute going to a hearing arises, the parties are advised to consider critically the merits of either taking the case to the VT or settling the appeal by agreement (or withdrawal).

**15.2** It is advised that each party continues to review the possibility of achieving a settlement up to the 'target date'. Where it is clear that a settlement would not be reached by the target date, it is recommended that contact be made with the VT Clerk (or relevant listing officer of the VTE) before this date approaches if the parties wish to ensure that the appeal is not listed. Failure to do so will mean that the appeal is listed as part of the VT's Listing After Target Date (LATD) policy and a deferment will then fall under the VT's postponement policy.

**15.3** From the point of view of a surveyor advising a ratepayer, it is primarily a matter of whether the cost to the client of pursuing an appeal is likely to be justified by the prospect of a possible reduction in rates payable, or some other advantage. Among other matters to be considered is the possibility that the case may go beyond the VT to become an appeal to the Upper Tribunal if either party is dissatisfied with the VT determination. The VT is not able to charge a fee for an appeal or to award costs to a successful party, but a subsequent appeal to the Upper Tribunal may incur both. The surveyor should advise the ratepayer that the VT also has certain powers to increase rateable values.

**15.4** A surveyor may continue to assist a client who wants the matter to proceed to a hearing even if the surveyor advises that it may be unwise to pursue the appeal. However, surveyors should not accept instructions to appear as an advocate or expert witness before a VT if they consider there is no case to be sustained, or if they do not agree with the value being sought. Neither a surveyor nor a VO should appear at a VT hearing if the matter is beyond his or her experience or if there is insufficient time to prepare the case properly.

**15.5** Parties should try to obtain a proper settlement of the appeal by negotiation to avoid unnecessary litigation. On the other hand, they need not avoid litigation just because it is a demanding task. A surveyor **must not** advise a client to pursue an appeal merely to earn extra fees.

**15.6** Where it is not possible to reach a settlement and the appeal needs to be heard by the VT, the surveyor should confirm with the client his or her instructions and fees, and refer the client to the contents of the RICS practice statement (PS), *Surveyors acting as expert witnesses*, including offering to provide a copy of the PS to the client. In the context of fee arrangements, *Surveyors acting as expert witnesses* PS 3.6 and PS 10.1 make it clear that: 'You shall not undertake expert witness appointments on any forms of conditional or success-based arrangement including when those instructing you are engaged on such a basis' (PS 3.6), that is to say any remuneration made conditional upon the outcome of proceedings or upon the nature of the evidence given. *Surveyors acting as expert*

witnesses GN 19 contains important further guidance as to conditional fees.

**15.7** Valuation Tribunals are not courts of law (see *Attorney General v BBC* (1981) and *Jeremy Pickering (t/a City Agents) v Sogex Services (UK) Ltd* (1982)). This means that such fees do not make expert evidence given to VTs inadmissible. However, surveyors are advised to be clear that any such fee arrangement may be incompatible with the duty of impartiality and independence required of an expert and that, accordingly, conditional fees may not be appropriate to expert witness work. Surveyors acting in the dual role of advocate and expert witness who intend to undertake this work on a conditional fee basis must advise their clients of the risk that the tribunal may view evidence given under such an arrangement as being tainted and may attach less weight to it or even refuse to admit it. For cases where the amounts at stake are small and a ratepayer may be unable to meet the costs of a VT hearing in any other way, a surveyor may consider that access to justice for that ratepayer justifies such a fee basis. If he or she adopts such a fee basis, the existence of such a conditional fee arrangement must be declared to the tribunal (*Surveyors acting as expert witnesses* PS 10.3).

**15.8** The surveyor is advised also to consider carefully the desirability of undertaking the dual role of surveyor-advocate and expert witness and discuss with the client the advantages and disadvantages of the dual role. It is important to agree with the client whether the dual role is appropriate and, if not, then whether legal representation is required. It is normal for both roles to be undertaken by a single person at VT, but the advantages and disadvantages of this should be carefully considered and discussed with the client before doing so (see *Surveyors acting as advocates* PS 3.9–3.11 and *Surveyors acting as expert witnesses* PS 9).

**15.9** A considerable amount of careful work needs to be done in advance of presenting the appeal at a VT hearing. This preparatory work would include any of the following that has not already been undertaken:

- (a) detailed inspection and measurement of the subject premises
- (b) compilation of information on the immediately surrounding area and the general locality in which the subject premises are situated
- (c) compilation of a list of comparable properties that each party considers relevant, whether these support the valuation or not. It is recommended that all details of such premises be ascertained, as far as possible, by enquiry and inspection. The relevant details include address, description, age, construction, floor areas, rents payable, rateable values, and any other relevant factors
- (d) communication with the other party in order to agree as many facts as possible. If the other party does not respond to invitations to agree facts, it may be useful to have copies of faxes, letters, emails and a note of any telephone calls on file to demonstrate, if necessary, what attempts have been made to reach agreement. Communication between the parties may

continue notwithstanding that the appeal is proceeding to a hearing and

- (e) preparation of any submissions to be made as surveyor-advocate, an expert's report setting out details of any expert evidence to be presented and, if legal representation is to be provided, notes for the guidance of the counsel or solicitor. It is advised that these notes include an alert as to any perceived weaknesses in the expert's report, or perceived vulnerability to cross-examination, so that counsel or the solicitor can consider appropriate means of dealing with the problem. Any written documents to be put into the VT must clearly separate any expert evidence from submissions to be made as surveyor-advocate. See 16.5 for advice on the expert's report.

**15.10** When all the foregoing information has been gathered, it is necessary to incorporate it in relevant documentation. The required documentation usually falls into five categories:

- (a) statement of agreed facts and matters in dispute
- (b) plans
- (c) photographs
- (d) legal or surveyor-advocate's submissions (if any) and
- (e) an expert's report (including schedules of rents and assessments of comparable properties) and the surveyor's or VO's valuation (including the reasoning behind the valuation).

## 16 Documentation

### 16.1 Statement of agreed facts and matters in dispute

**16.1.1** It is recommended that the statement of agreed facts encompasses those matters which are agreed and those which are in dispute. This will assist the parties and the VT to define the issues that require determination. Here it is only possible to give an outline of the items to be included, but a statement would normally comprise such matters as:

- the history of the appeal and
- a description of the appeal hereditament and its situation with such dimensions and areas as are appropriate.

Similar information about the comparable properties, including assessments, rents and lease details may be included if agreed. The statement needs to be signed by both parties and dated.

**16.1.2** Only matters that are actually agreed should be included in the statement of facts: facts incorporated in the statement are effectively being admitted as evidence that can be relied on by either party at the hearing. Any matter that is not agreed should be excluded from the statement. This applies particularly to transactions, for example, lettings or sales.

**16.1.3** Prior agreement of factual matters helps to save costs and the time of all parties (including the tribunal). However, if appropriate, a fact may be agreed 'only for



the purpose of this appeal to the VT'. This keeps open the possibility of the matter being disputed at a later stage, for example, in the event of an appeal to the Upper Tribunal (Lands Chamber).

## 16.2 Plans

**16.2.1** It is recommended that plans:

- (a) be to a professional standard appropriate to the hereditament and issues in dispute
- (b) be to a suitable scale and annotated as appropriate
- (c) be flat or folded, not rolled
- (d) carry a reference number
- (e) show the scale(s) to which they are drawn (or marked 'not to scale' if appropriate)
- (f) carry a North point
- (g) have a key, if appropriate
- (h) identify the appeal hereditament and all comparable properties and
- (i) in the case of shops, show the established Zone A pattern (if any).

**16.2.2** One agreed plan is preferable to several plans from each party. A location plan is normally essential and other plans, such as floor plans or those illustrating the flow of pedestrians or traffic, may also be appropriate.

## 16.3 Photographs

**16.3.1** It is advised that photographs:

- (a) be to a professional standard
- (b) be agreed by the parties (if possible)
- (c) be described and dated on the front
- (d) carry a reference on the front
- (e) where appropriate, be accompanied by a plan showing the location and direction of the camera, cross-referenced and
- (f) be mounted.

**16.3.2** One agreed set of photographs is preferable to different sets from each party.

## 16.4 Legal or surveyor-advocate's submissions

**16.4.1** Any legal or other submissions made as advocate should be clearly separated (either as a separate document or as a separate section of a single document) from expert evidence (see 16.5 below) and should comply with the requirements of the RICS PSGN *Surveyors acting as advocates* (PS 3.12 and GN 3.4 and 3.5).

## 16.5 Expert's report including schedules, documents and valuation

**16.5.1** The expert's report should comply with the requirements set out in the RICS PSGN *Surveyors acting as expert witnesses* as to format and content (PS 5). In particular, the report must include the Statement of Truth and the declarations set out in PS 5.4(p)(i) and (ii).

**16.5.2** The following checklist applies to schedules and documents to be handed to the tribunal at the hearing. It is advisable that:

- (a) the paper used is strong, flat, and the contents are legible
- (b) every document carries a reference number, with the contents pages numbered
- (c) if necessary, documents are bound, but in such a way that single sheets may be readily removed
- (d) documents are cross-referenced between themselves and
- (e) schedules are referenced both vertically and horizontally. A simplified example is set out in Appendix A. In many cases the evidence to be presented will be substantially more complex and detailed than that shown in Appendix A, which simply shows an example of the minimum level of detail expected.

**16.5.3** It is recommended that the valuation is presented in the usual way. It is advisable, if not essential, that the calculation is checked for each party by someone other than the surveyor or the VO, as the parties involved are not always best placed to identify errors in their own work. A simple example is set out in Appendix B.

**16.5.4** The valuation should be signed and dated. It will normally form *part* of the expert's proof of evidence or written report. However, if it is the *only* written piece of expert evidence to be put to the tribunal, it should include the Statement of Truth and the declarations detailed in PS 5.4(p)(i) and (ii) of the RICS PSGN *Surveyors acting as expert witnesses*.

**16.5.5** If possible, it is preferable that all parties set out their valuations and prepare their documents in the same way to facilitate comparison.

## 16.6 Case law and legislation

**16.6.1** If it is intended to refer to a statute or a case as part of legal submissions, the party concerned should notify the clerk prior to the hearing and make available copies of the whole (or a substantial part) of the statute or case— a short extract could be misleading. To assist the tribunal, it is advisable that the particular part on which it is intended to rely is clearly marked. In England, references to case law to be referred to during the hearing must have been included in the statement of case required to be served on the other parties and VTE six weeks before the hearing (four weeks before in respect of the VO's statement) and a copy of the reported case made available at the hearing in case of queries – see VTE Practice Statement B6.

## 16.7 Copies of documents

**16.7.1** Copies of all documents that are to be handed to the tribunal should be checked to ensure that they are correct and legible. At least seven copies of every document will be required:

- three for the tribunal (one for each member)
- one for the clerk/tribunal officer
- one for the other party

- one for personal use and
- one spare.

## 17 The dual role of advocate and expert witness

**17.1** When appearing at a VT without legal representation (as is usually the case), the surveyor and the VO is each combining the roles of three individuals who would usually be present at a hearing in the High Court or Upper Tribunal:

- counsel (advocate)
- the instructing solicitor and
- the valuer as an expert witness.

This combination of roles results in much work, a heavy responsibility and wider preparation than that required if the surveyor or the VO were acting only as an expert witness.

**17.2** At the hearing **it is essential that**, when each party is acting (a) as an advocate, and (b) as an expert witness, the two roles are kept entirely separate. As VT hearings are normally less formal, the separation of the roles need only be made clear at the change from advocate to witness by the statement 'I will now give my evidence'. The surveyor or VO may also wish to consider moving position (perhaps from standing to sitting) to emphasise the change of role (see *Surveyors acting as expert witnesses* GN 17.10).

**17.3** When acting as advocates, the surveyor and the VO deal with matters of law and present their respective cases: they address the tribunal and make submissions, but must never seek to give evidence in this role. They should be familiar with and comply with the RICS PSGN *Surveyors acting as advocates* and in particular PS 5 and 6 which cover conduct as an advocate as to statements of case, submissions and evidence.

**17.4** When acting as expert witnesses, they must restrict themselves to evidence and not make legal submissions. They are concerned with matters of fact and opinion (i.e. their expert evidence), rents, assessments, valuations and similar matters.

**17.5** In either capacity it is their duty to assist the tribunal. As an expert witness or a witness of fact, they must provide their evidence openly and honestly and must not seek to conceal any relevant matters. As an advocate they may emphasise a point in a particular way, but not to the extent that they mislead the tribunal.

**17.6** The duties and responsibilities of an expert witness were summarised by Cresswell J in *National Justice Compania Naviera SA v Prudential Assurance Co. Ltd* (1993), usually referred to as the 'Ikarian Reefer case'. The relevant extract from this case is set out in Appendix D. Although the requirements contained in the RICS practice statement *Surveyors acting as expert witnesses* will only apply to RICS members, it is important to understand that the duties of an expert witness set out in this case apply to anybody seeking to give expert evidence, whether they are professionally qualified or not.

## 18 General presentation

**18.1** It is recommended that the surveyor and the VO stand to address the tribunal or when the tribunal addresses them directly, unless the chairman advises them otherwise.

**18.2** The surveyor and the VO should speak clearly and at an appropriate volume. Pace may be judged by watching the reactions of the tribunal and of the clerk/tribunal officer (who will probably be taking comprehensive notes of the proceedings).

**18.3** It is advised that addresses to the tribunal and the provision of evidence are kept at an even pace. Hurrying (or being hurried) is to be avoided, particularly when answering questions put in cross-examination.

**18.4** A degree of flexibility in the procedure of giving evidence is desirable; the surveyor or the VO is advised to give way where it is reasonable to do so.

**18.5** Unless the surveyor or the VO considers it absolutely vital to the case, neither party should interrupt the other. It is advisable to remain polite at all times.

**18.6** Negotiations that have already taken place should never be referred to at the hearing; if either party does so, the other may object, and should do so at once. The same applies to letters and documents that are 'without prejudice'. However, simply marking all documents in this way does not confer such status on them and surveyors and VOs should familiarise themselves with the general rules on without prejudice documents.

**18.7** It may be useful for the surveyor and the VO to both have an assistant present at the hearing to take verbatim notes of the proceedings.

**18.8** If the case is particularly complex, especially where questions of law are involved, it may be preferable for two surveyors to be at the hearing, one acting as surveyor-advocate, the other as the expert witness. In very large or important cases, the appellant may be legally represented by a solicitor or counsel and in such cases both the VT and VO should be given sufficient notice.

**18.9** The surveyor and the VO are there to assist the tribunal in all matters and evidence is not given to 'win' the case but to enable the tribunal to come to the correct conclusion.

**18.10** It is advisable to avoid repetition of a particular point so long as the surveyor or the VO feel the tribunal has understood its significance. If the surveyor or the VO feels otherwise, the point could be raised either in cross-examination of the other side (stages 3 and 6 below) and/or in summing up (stages 8 and 9 below).

**18.11** In opening, if the subject premises or the immediately surrounding area has some particular feature or association, that fact can be used by the surveyor or the VO to catch the interest of the tribunal.

**18.12** It is recommended that the surveyor and the VO be able to support with documentary evidence any statement made in the course of the hearing.

## 19 The hearing

**19.1** The ratepayer is always the appellant at a VT hearing. In this part of the guidance note the valuer acting for the appellant ratepayer is referred to as 'the surveyor' and the representative of the respondent valuation officer is referred to as 'the VO'.

**19.2** When the case is called, the surveyor and the VO are advised to take time to arrange papers, scales, calculators, etc. before starting, so that the tribunal is not kept waiting during proceedings. As a matter of courtesy, the surveyor and the VO may give each other a copy of the documents to be put into the tribunal before the hearing begins, but it is normal to wait until stage 1 (see section 20 below) to hand copies to members of the tribunal.

**19.3** It is advisable for the surveyor and the VO to have their own copy of *Ryde on Rating and the Council Tax* with them so they can look up any points that may arise during the course of the hearing.

**19.4** The conduct of the hearing is in the hands of the chairman of the tribunal panel, but in England the usual sequence, governed by VTE/PS/B1 Model Procedure, is as set out in sections 20 to 32 below.

## 20 Stage 1: The advocate – outlining the case

**20.1** It is only where the appellant is unrepresented and it is thought that it will result in a fairer hearing that the panel may invite the VO to go first, so the surveyor begins the hearing by 'opening the client's case'. This is the opportunity for the surveyor to outline the case for the benefit of the tribunal. It is at this stage that the tribunal would be told briefly about the history of the case (i.e. the assessment appearing in the rating list); the proposal made; the property concerned; and the valuation sought by the appellant. This is also a good time for the surveyor to briefly explain what he or she believes the VO's case to be and what is considered to be wrong with the VO's view.

**20.2** If the surveyor intends to address the tribunal on legislation or case law, this is the opportunity to do so. The necessary extracts would be read in full (the relevant copies having been handed to members of the tribunal) and any legal argument to be put to the tribunal presented.

**20.3** Throughout stage 1 the surveyor is appearing as an advocate, not an expert giving evidence. At the conclusion of stage 1, it should be made clear to the tribunal that the surveyor intends to change role from that of surveyor-advocate to that of expert by saying, 'I will now give my evidence'.

## 21 Stage 2: The expert witness – evidence in chief

**21.1** At this stage of the hearing the surveyor takes the tribunal through his or her evidence, putting the documents in turn to the tribunal. This evidence includes not only facts that support this opinion but also any that are against it.

If these are dealt with at this stage they may carry less impact than if revealed later on. Criticisms of the VO's valuation and his or her supporting evidence, if known, are also included here. This stage is referred to as the surveyor's 'evidence in chief'.

**21.2** A copy of the expert's report would normally have been handed to the tribunal and to the VO by this stage. However, evidence is not simply to be read from the report. Rather, the surveyor is advised to 'speak to' the report setting out the investigations made, the evidence resulting from those investigations and the conclusions drawn from the evidence. An explanation of the valuation arrived at as a result of those conclusions is normally the final section of the surveyor's evidence in chief.

**21.3** When all the surveyor's evidence in chief has been given, he or she should conclude by saying, 'That is my evidence'.

## 22 Stage 3: Cross-examination by the valuation officer

**22.1** Stage 3 is the opportunity for the VO to cross-examine the surveyor. Relevant questions may be put in any form; it is not limited to questions on the evidence already given. Leading questions are permissible in cross-examination but, as a general rule, it is advisable not to seek to 'trap' or harangue the opponent.

**22.2** As far as possible, it is recommended that questions are prepared in advance. The general advice is that a party would never ask a question to which he or she does not already know the answer. The better the preparation, the more likely this will be the case. It is recommended that questions focus on exposing inconsistencies in the factual evidence and in the conclusions drawn from that evidence.

**22.3** The surveyor will naturally turn towards the VO when questions are put to him or her, but it is advisable that answers be directed to the tribunal panel.

**22.4** The surveyor should answer the VO's questions in a concise but clear manner and avoid rambling statements when replying to questions. It is good practice for the surveyor to make a careful note of the questions and the answers to assist in any clarifications he or she may wish to make at stage 4.

## 23 Stage 4: Re-examination

**23.1** This stage, known as 're-examination', provides an opportunity for a witness to clarify or expand on the answers to questions put in cross-examination. No other matters should be covered at this stage. Re-examination is sometimes omitted at VT proceedings but if the surveyor thinks it is necessary for further explanation to be made to properly understand any answer given in cross-examination, he or she may ask the tribunal to be allowed to do so. The other party cannot ask any further questions, so it is recommended that the witness remind the tribunal of the question and the answer and then proceed to expand as necessary on the matter.

**23.2** Upon completion of any re-examination, the surveyor's case is concluded (unless other witnesses are to be called) and it is advised that this be made clear by stating, 'That concludes my case'. If other witnesses are called, the above procedure is repeated for each witness with the surveyor acting as advocate in taking each witness through their evidence.

**23.3** This is the most appropriate point for the tribunal to put questions to the surveyor, although it may do so at any time during the hearing. It is recommended that the parties are prepared for such questions to be detailed and searching.

**23.4** It is now the VO's opportunity to present his or her case and the usual practice is for the VO to go straight into the next stage. However, there may be some occasions where it could be appropriate for the VO to make a short statement to clarify certain matters, but it is important that he or she does not trespass on the scope of stage 8 (re-examination).

## 24 Stage 5: The valuation officer's submissions

**24.1** The VO will make submissions along the lines set out at stage 1. If not already submitted, the VO should now provide any documentation to the VT and to the appellant. The surveyor is advised to take careful note of this. Throughout this stage the VO is appearing as an advocate, not an expert giving evidence. As with the surveyor, it is important that the VO makes the tribunal aware of the change of role between that of advocate in making submissions and that of expert witness in giving evidence in chief. At the conclusion of this stage, it should be made clear to the tribunal that the VO intends to change role from that of advocate to that of expert by saying, 'I will now give my evidence'.

## 25 Stage 6: The valuation officer's evidence in chief

**25.1** The VO will present evidence in chief along the lines set out at stage 2. As with the surveyor, the VO takes the tribunal through his or her evidence, putting the documents in turn to the tribunal. This evidence includes not only facts that support this opinion but also any that are against it. If these are dealt with at this stage they may carry less impact than if revealed later on. Criticisms of the surveyor's valuation and his or her supporting evidence, if known, are also included here. This stage is referred to as the VO's 'evidence in chief'.

**25.2** When all the VO's evidence in chief has been given, he or she should conclude by saying, 'That is my evidence'.

## 26 Stage 7: Cross-examination of the valuation officer

**26.1** This gives the surveyor an opportunity to challenge the VO's evidence by putting questions to him or her. The scope of the questions has been indicated in stage 3, but

it is worth restating that questions may be asked in respect of any matter that may be relevant, whether it has been given in evidence in chief by the VO or not.

**26.2** The surveyor is advised to put questions to the VO (not to make statements), to keep questions short and to take them one at a time, avoiding 'multiple' questions. It is important to focus on the main issues and not waste time pursuing minor matters. This is not an opportunity for the surveyor to make further submissions or give further evidence.

## 27 Stage 8: Re-examination

**27.1** This is an opportunity for the VO to clarify his or her answers given in cross-examination and is the same as stage 4. It is recommended that the surveyor ensures that the VO keeps within the scope of the rules for re-examination, but the surveyor is advised to object only if it is vital to his or her case.

**27.2** Upon completing the evidence the VO should make this clear to the tribunal. This is the most appropriate point for the tribunal to put questions to the VO.

**27.3** It is important that, at this point, both parties have made their contentions clear and that the tribunal fully understands the issues to be decided.

## 28 Stage 9: The valuation officer's closing submissions

**28.1** After re-examination the VO will wish to make the closing submission. In doing this the VO will be acting as advocate and will need to tell the tribunal of this change of role. The VO might do this by saying, 'I will now sum up'. At this stage the VO should address the tribunal on points of law (if any) and briefly put forward his or her submissions (similar to those referred to at stage 1). The VO may cover all the evidence before the VT as well as the appellant's submission on law made at stage 1, but may not raise any new matters.

**28.2** The VO will normally conclude the case with a request to the tribunal to dismiss the appeal or to determine the rateable value at the figure for which he or she contends and the effective date that is appropriate and to deal with any ancillary matters.

## 29 Stage 10: The appellant's closing

**29.1** The appellant in VT hearings usually has the advantage of the last word and this is the surveyor's opportunity to respond to issues raised by the VO and to sum up. The surveyor will again be acting as an advocate at this stage and may not raise any new matters, but is advised to attempt to deal with any points raised by the VO.

## 30 Adjournments

**30.1** If there are points of law or other matters raised by either side during the hearing that the other party has not previously considered, an adjournment may be requested to allow for due consideration of the points raised. If it is a point of law or some other matter that does not necessitate immediate consideration, it may be convenient to suggest that the tribunal continues with the case until a natural break, such as lunch, and that the procedure at the hearing is adjusted to allow the point to be addressed after the break. The tribunal will normally appreciate a request of this kind, as it will make optimal use of the members' time.

**30.2** If the matter necessitates immediate consideration, it is advisable to seek an adjournment straightaway. If factual differences emerge that have to be checked before the hearing can continue, an adjournment to another day may be necessary. In this situation both parties are advised to recognise that it may be difficult for the tribunal officer/clerk to assemble the same panel of members within a convenient timescale and that there may be considerable additional cost to the parties. The panel may issue directions in relation to the matters to be established and a timetable for doing so in order that the hearing may be reconvened without undue delay.

The VT is a tribunal of fact and may determine factual matters whether or not the parties have agreed every aspect. An adjournment may not be granted simply because the parties have a dispute, for example, about the area of the property.

## 31 Inspection

**31.1** Either party may raise the question of viewing the subject property and/or the comparable properties if the panel or clerk/tribunal officer does not mention it. It will be the panel's decision as to whether an inspection is considered appropriate and whether it requires the parties to be in attendance. Inspections by the VT in the presence of one party only are not advisable unless the other party has declined the opportunity to attend.

**31.2** Where an inspection is to be undertaken and the parties are to be present, both parties are recommended to take care not to seek to introduce additional evidence during the inspection.

## 32 Decision

**32.1** At the conclusion of the hearing the tribunal will retire, to consider the evidence adduced and the arguments advanced. In most cases the tribunal will reserve its decision, issuing it in writing; normally within 28 days. The tribunal is required to provide its reasons for a decision in writing even if, exceptionally, the decision is given orally at the hearing.

**32.2** There are limited grounds for application for a review of a VT decision, and appeals against a decision of a VT lie to the Upper Tribunal. There is a strict time limit to be observed for both, namely that applications for a review of

decision or appeals to the Upper Tribunal must be made within four weeks of the date the decision was given.



## Appendix A: Appellant's comparables – rents and analyses

| Ref. A.B.S.1 |                   |             |                 |                          |                              |  |
|--------------|-------------------|-------------|-----------------|--------------------------|------------------------------|--|
| A            | B                 | C           | D               | E                        | F                            | G  |
| Ref on Plan  | Address           | Rent p.a. £ | Date rent fixed | Area ITZA m <sup>2</sup> | Rent per m <sup>2</sup> £ ZA | Remarks  |
| 1            | 39 High Street    | 22,000      | Dec 2007        | 115.5                    | 190                          | Letting to new tenant. Shop vacant for 3 months.           |
| 2            | 35-37 High Street | 42,000      | Feb 2007        | 240                      | 175                          | Agreed rent on operation of review clause in lease.        |
| 3            | 31-33 High Street | 30,000      | June 2008       | 207                      | 145                          | Fixed by court under <i>Landlord and Tenant Act 1954</i> . |
| 4            | 41 High Street    | 27,000      | Nov 2009        | 80                       | 337                          | Fixed by arbitration on review clause in lease.            |

[All rents are on the basis of full repairing and insuring leases]

## Appendix B: Example of a valuation for rating purposes

by **A.B. Smith FRICS**  
instructed by the owner occupiers **Apex Ltd of 30 High Street, Cromwell**

Ref A.B.S.2

Description of hereditament: **Shop and premises**

2010 Rating list for: **Cromwell Borough**

Date of proposal: **1 May 2010**

Effective date: **1 April 2010**

Antecedent valuation date: **1 April 2008**

| <b>Floor</b>              | <b>Area ITZA m<sup>2</sup></b> | <b>Rate per m<sup>2</sup></b><br><b>£</b> | <b>£</b>       |
|---------------------------|--------------------------------|---|----------------|
| Ground [Sales]            | 174                            | 130                                       | 22,620         |
| First [Stock/Staff]       | 244                            | 25  | 6,100          |
| Second [Store]            | 130                            | 10  | 1,300          |
|                           |                                |   | <b>£30,020</b> |
| <b>say Rateable value</b> |                                |   | <b>£30,000</b> |

[Note: The valuation will normally form part of the expert's written report which should contain a reference to the fact that it complies with the requirements of the RICS as set down in the RICS PSGN, *Surveyors acting as expert witnesses*. In addition the report should include the Statement of Truth and declarations set out in Appendix C. If the valuation is the only written document put into the VT, it should carry the Statement of Truth and declarations.]

[Signed]

A.B. Smith FRICS

[Dated]



# Appendix C: Statement of Truth and declarations to be included in an expert's report or attached to a valuation

[See Surveyors acting as expert witnesses PS 5]

## Statement of Truth

'I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.'

## Declarations

- 1** I confirm that my report has drawn attention to all material facts which are relevant and have affected my professional opinion.
- 2** I confirm that I understand and have complied with my duty to the valuation tribunal as an expert witness which overrides any duty to those instructing or paying me, that I have given my evidence impartially and objectively, and that I will continue to comply with that duty as required.
- 3** I confirm that I am not instructed under any conditional or other success-based fee arrangement.
- 4** I confirm that I have no conflicts of interest.
- 5** I confirm that I am aware of and have complied with the requirements of the rules, protocols and directions of the Valuation Tribunal.
- 6** I confirm that my report complies with the requirements of RICS – Royal Institution of Chartered Surveyors, as set down in the RICS practice statement *Surveyors acting as expert witnesses*'.

## Appendix D: Leading case on the role of expert witnesses

Below is an extract from the judgment of Cresswell J in *National Justice Compania Naviera SA v Prudential Assurance Co. Ltd* [1993] 2 Lloyd's Rep 68 Commercial Court; [1995] 1 Lloyd's Rep 455, CA (the 'Ikarian Reefer' case):

'The duties and responsibilities of expert witnesses in civil cases include the following:

- 1** Expert evidence presented to the court should be, and should be seen to be, the independent product of the expert uninfluenced as to form or content by the exigencies of litigation: see *Whitehouse v Jordan* [1981] 1 WLR 246 at p256 *per* Lord Wilberforce.
- 2** An expert witness should provide independent assistance to the court by way of objective unbiased opinion in relation to matters within his expertise: see *Polivitte Ltd v Commercial Union Assurance Co. plc* [1987] 1 Lloyd's Rep 379 at p386; *Garland J and Re J* [1990] FCR 193 *per* Cazalet J. An expert witness in the High Court should never assume the role of an advocate.
- 3** An expert witness should state the facts or assumptions upon which his opinion is based. He should not omit to consider material facts which could detract from his concluded opinion: see *Re J supra*.
- 4** An expert witness should make it clear when a particular question or issue falls outside his expertise.
- 5** If an expert's opinion is not properly researched because he considers that insufficient data is available, then this must be stated with an indication that his opinion is no more than a provisional one: see *Re J supra*. In cases where an expert witness, who has prepared a report, could not assert that the report contained the truth, the whole truth and nothing but the truth without some qualification, that qualification should be stated in the report: see *Derby & Co. Ltd v Weldon (No 9)* The Times, 9 November 1990, *per* Staughton LJ.
- 6** If, after exchange of reports, an expert witness changes his view on a material matter having read the other side's expert's report or for any other reason, such a change of view should be communicated (through legal representatives) to the other side without delay and when appropriate to the court.
- 7** Where expert evidence refers to photographs, plans, calculations, analyses, measurements, survey reports or other similar documents, these must be provided to the opposite party at the same time as the exchange of reports: see *Guide to Commercial Court Practice* 15.5.'



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