Issue 49 July 2018

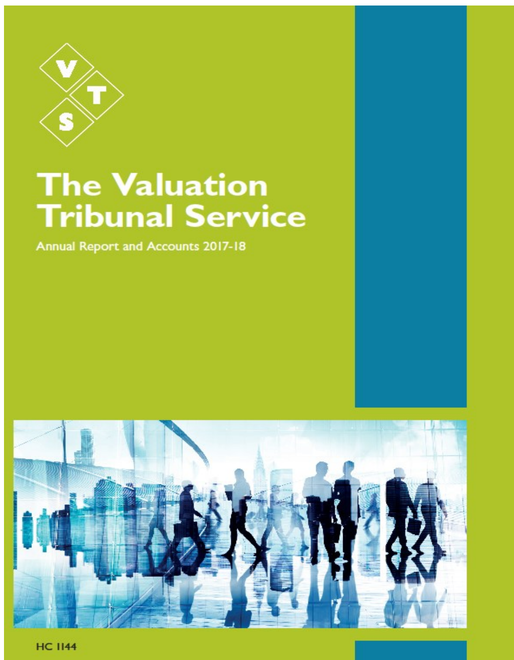
Valuation Tribunal Service

Valuation in Practice

News in Brief

VTS Annual Report & Accounts 2017-18

This was laid in Parliament on 18 July and can be viewed here: https://www.valuationtribunal.gov.uk/about-us/publications-policies/annual-report-accounts/



The highlights reported in it for 2017-18 are:

- Procedures introduced from 1 July 2017, resulted in 50% of listed cases being settled without a hearing (up from typically 20%).
- The number of appeals determined by Tribunal panels rose by 19%, to 4,540.
- The number of listed cases that were postponed fell by 32% to 17%.
- During the year, 1,102 hearings days were held (1,057 in 2016-17), to which we listed 126,785 appeals.
- Our target is to list each council tax appeal to a hearing date that is within five months of the date we received the appeal and we achieved this in 93% of cases.
- 92% of written decisions were issued to the parties within our target of one month from the hearing date.
- A new appeals management system was introduced to handle 2017 rating list appeals.
- Our guidance booklets were all revised and 'crystal marked' by the Plain English Campaign. They are available on the website at https://www.valuationtribunal.gov.uk/preparing-for-the-hearing/guidance-booklets/

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Stayed appeal types at the Valuation Tribunal

Class	Identifier	Reasons
Completion notices	What constitutes effective service in accordance with *UKI Kingsway Ltd v Westminster CC*	Westminster appealed to the Supreme Court
Photo booths	Whether occupation of booths is too transient and therefore not capable of rateable occupation	Now stayed as ATM decision, in part on a similar point, has been appealed to the Court of Appeal
Religious exemption of Church of Scientology properties	VOA is dealing with a number of appeals by the Church of Scientology relating to religious exemption on premises around the country	Appeals postponed and not listed awaiting application
ATM machines at sites in England	Whether each ATM is rateable	Upper Tribunal decision appealed to Court of Appeal
Stables	Stables in proportion to the dwelling; scope of proposal	Stables in Horsham appealed to the Upper Tribunal
Council tax—'up-banding appeals'	'Up-banding' appeals following agreement where the parties wish to rely on evidence after the mistake or error occurred	*Dannhauser v LO* listed in April but adjourned for taxpayer to arrange legal representation
Hereditaments split by the VO following the decision in *Woolway (VO) v Mazars*	Contiguous properties to be treated as one hereditament	Proposed change to legislation, currently a Bill going through Parliament.
NDR—exemption under para 16, Sch 5 to the LGFA 1988	Amount of evidence to be provided for the 'disabled persons test' when seeking the exemption	Test case identified by parties. Draft Directions with the President
NDR— waste processing property	Valuation of property in state of disrepair and for which the current owners do not hold a permit to process the waste on the property. To what extent, if any, this should be reflected in the RV and how this interacts with the statutory hypothesis	Test case to be heard October 2018.

Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Bill

https://services.parliament.uk/bills/2017-19/ratingpropertyincommonoccupationandcounciltaxemptydwellings.html

The Bill, currently at the 'ping pong' (consideration of amendments) stage:

- retrospectively reinstates particular features of business rates valuation practice in respect of contiguous properties occupied by the same ratepayer, which applied before the judgment in Woolway (VO) v Mazars [2015] UKSC 53, and
- gives English local authorities the discretion to charge an increased council tax premium on 'long-term empty dwellings' (empty and substantially unfurnished for two years or more.)

The government has adopted proposals for council tax on empty homes to be quadrupled. Government amendments were tabled to a bill that initially allowed English councils to double council tax on properties left empty for two years or more. The amendments would mean that councils could triple council tax on homes left empty for 5- 10 years and quadruple it on those empty for more than 10 years.

MHCLG Factsheet - Non-Domestic Rating (Nursery Grounds) Bill / House of Commons Briefing Paper No 08323, June 2018: Non-Domestic Rating (Nursery Grounds) Bill 2017-19

The Bill's purpose is to remove the effect of the Court of Appeal's *Tunnel Tech v Reeves* [2015] judgment (see ViP Issue 38 p2) on valuation practice for rating plant nurseries/nursery grounds. It concerns agricultural operations which take place entirely indoors, such as in poly-tunnels, without any connection to the land. The Court distinguished plant nurseries from market gardens, but the Bill, by amending Schedule 5 to the LGFA 1988, would ensure that all buildings which are, or form part of a nursery ground would be exempt if used solely in connection with agricultural operations at the nursery ground.
The exemption would apply retrospectively from 1 April 2015 in England and 1 April 2017 in Wales.

Business Rates Information Letters

3/2018: information about the Rating (Properties in Commons Occupation) and Council Tax (Empty Dwellings) Bill; Fibre Telecommunications Relief; No current intention to implement an early deadline for appeals on the 2017 rating list; Compensation arrangements for the Budget 2017 Rates Relief Schemes.
https://www.gov.uk/government/collections/business-rates-information-letters

Supreme Court: Barton v Wright Hassall LLP [2018] UKSC 12

This judgment recognises that dealing with litigants in person (lacking representation), "will often justify making allowances in making case management decisions and conducting hearings", even if it will not usually justify applying a lower standard of compliance with rules and orders. The Civil Procedure Rules include a number of provisions which allow compliance with procedural conditions or the sanctions for non-compliance to be waived.

The principle outlined in this judgment is that rules (in the VTE's case those contained within the Consolidated Practice Statement) have to be followed and complied with. However, with a litigant in person, their treatment should not be too rigid or dogmatic, if deviating or modifying the way the case is run allows a fair hearing to be achieved.

Remember that you can sign up to receive an alert when any new practice statement or an amendment is published, at: https://www.valuationtribunal.gov.uk/newsletter-signup/

Upper Tribunal: Lands Chamber decisions

Semlogistics Milford Haven Ltd v Webb (VO) [2018] UKUT 019 (LC) RA/12/2016

Contractor's method—adjustments

A former oil refinery used as a storage depot and described as "bulk liquid storage depot and premises" was assessed by the contractor's method. The dispute between the parties was whether an allowance should be made at Stage 2 (adjustment of replacement cost) to reflect under-utilisation of tanks and jetties. There was disagreement between the parties about the type of tanks which were assumed to be constructed and also over the extent and nature of the bunds and underground services. Finally there was dispute over any adjustment at Stage 5 (stand back and look) for what, the appellant contended, was an old, poorly laid out site, therefore more expensive and inconvenient than a modern equivalent, and which also came with an unwanted refinery.

The Upper Tribunal (UT) accepted that there were exceptional reasons for considering the modern equivalent in this case and that a reduction could be made for under-utilisation. The hypothetical tenant could expect to negotiate a 10% reduction for this. However, this did not include under-utilisation of the jetties, as they were necessary for the access by sea to a store of oil and distillates. Further deductions were made for the type of tanks that would be constructed in a modern equivalent and for the length and height of the bunds and underground services. An allowance was also determined for the additional costs to a hypothetical tenant for maintaining the hereditament and for the responsibility of the unwanted rateable parts. The total effect was that the RV was reduced from £1,442,000 to £1,165,000 from 1 April 2005.

Shaw v Benton (VO) [2018] UKUT 0168 (LC) RA/26/2016

The Upper Tribunal recently gave a decision which, seemingly contrary to regulation 3 of the Alteration of Lists and Appeals regulations, concerned two separate matters on one proposal with different material dates. The valuation officer (VO) did not object to both arguments being dealt with. However, the UT noted that, **"the manner in which both these arguments have been raised before the VTE and the Upper Tribunal should not be taken as precedent as to the appropriate steps for the purpose of raising both such arguments (namely deletion and also, if not deleted, a reduction in rateable value)".**

Thorntons plc and Clarion Solicitors [2018] UKUT 0109 (LC) RA/80 and 93/2017

Two VTE panels decided that proposals which challenged notices of alterations to the list to give effect to earlier agreements between the parties were invalid. (See ViP Issue 46, pp5-6). The proposals had been accepted by the VO as valid, primarily because they were made under Regulation 4 (1) (d), the earlier ones under Regulation 4 (1) (a) but the clerk had raised the validity point, in open tribunal, with the parties. The panels decided that it was not open to a party to appeal against their own agreement.

The Upper Tribunal (UT) agreed with the appellants that the second proposals could not be said to have been made on the same ground. The UT understood why both panels considered the ratepayers' tactics to be "unattractive". It was not suggested in either appeal that the VO inaccurately entered the RV when altering the list to give effect to the agreement, nor that there had been a material change of circumstances that would warrant a reduction in RV. It was possible that since the agreements were reached fresh evidence had come to light that could not have been obtained beforehand and that changed the basis for the earlier agreements. In that unlikely scenario the rule of res judicata or estoppel would come into play. The UT concluded that it was likely that the present appeals were brought, as the VTE concluded, to "enable the appellants to resile from their agreements and to argue the same case again". Nevertheless, the UT felt that the VTE went further than it was entitled to. The cases were therefore remitted back to the VTE. As validity was not an issue between the parties, the panel should have offered the parties the opportunity of an adjournment to seek specialist technical advice. The panels also erred in introducing the concept of "abuse of process" and should have relied on their striking out powers under Reg. 10, if they determined that there was a jurisdictional issue or there was no reasonable prospect of the appeal succeeding.

The UT also suggested that the tribunal leave it to the VO to consider whether to apply to strike the appeals out either on the grounds of abuse of process (if applicable) or on the grounds that the issue of the RVs in the 2010 list was *res judicata* and barred from any-other challenge in view of the earlier settlement. The appeals therefore having no reasonable prospect of succeeding, they should be dismissed under reg. 10(3)(c) of the Procedure Regulations.

Note: For the 2017 list the legislation has changed and ratepayers are now prevented in law from making further proposals on the back of alterations to the list which arose following an agreement between the parties.

Ryan Fisher Carpet and Vinyl Showroom [2018] UKUT 0153 (LC) RA/94/2017

The appellant had wanted a VTE hearing of his appeal but had been unable to attend the allocated date because of a family holiday. The request for a postponement having been refused, he believed the VTE ought to have considered the evidence he had presented in writing, but this had not been done. The VTE panel understood that the postponement had been refused because a bundle had not been submitted in time and that Mr Ryan, instead of explaining why this was the case, had submitted evidence to be considered in his absence. The panel had not adjourned the appeal but had dismissed it, finding that there were no exceptional reasons provided for the appellant's failure to follow the direction.

Referring to *Simpsons Malt Ltd v Jones (VO)* [2017], issued 3 months after the VTE's decision, the UT noted that, at that time, the Consolidated Practice Statement (CPS) required "exceptional reasons" for the granting of a postponement request. That approach, for the reasons explained in *Simpson's Malt* it was not permissible at the time of the VTE's decision. The VTE, having found no exceptional reasons for the failure to provide a hearing bundle, considered that was fatal to the continuation

The revised CPS now says expressly that the VTE will apply *Denton* jurisprudence. The UT concluded that, "The application by the VTE of that impermissible policy makes it inevitable that the appeal must be allowed".

Prior to the UT's judgment, the President had reviewed and set aside the panel's decision but the parties had failed to inform the UT.

Benchmark Furniture Ltd [2018] UKUT 0170 (LC) RA/43/2017

A further UT judgment relating to *Simpsons Malt* concerned an appeal struck out for non-compliance with the standard direction, which the appellant contended they had not received.

An application to reinstate the appeal was refused by a senior member of the VTE because, "The notice of hearing was issued to the correct address by postal service and as the notice was not returned undelivered it must be assumed the notice was deemed to have been served." The appellant challenged the refusal to reinstate the application, which was referred to a VTE Vice President, who concluded that there was no reason to interfere with the decision of the senior member.

Benchmark's solicitors requested a copy of the notice of hearing but the response was that there was nothing in the VTE's records to suggest that notice had been issued to the appeal property rather than Benchmark's head office. The correspondence address used by the VOA was the head office, and this would have been adopted by the VTE when the VOA electronically transmitted details of the proposal to it. Since the appeal had been cleared from the VTE's system, a copy of the notice could not be provided.

In considering the possible causes for the appellants not having received the notice and standard direction, the UT concluded that any breach of the standard directions was entirely outside the appellant's control, or at least unintentional. The interests of justice favoured reinstatement and refusal to reinstate in these circumstances was "an inappropriately draconian approach". The UT directed that the appeal to the VTE be reinstated.

Home Office v Jackson (VO) [2018] UKUT 171 (LC) RA/30/2017

The office building in Marsham Street, Victoria, measured 52,000 m2 with a rateable value (RV) of £24,960,000. At the Upper Tribunal's (UT's) rehearing of the appeal, the valuation officer (VO), though not seeking an increase, argued that the RV was too low because elaborate security installations increased the rental value on the statutory rating assumptions. The appellant sought a reduction to £20,160,000 RV on the same grounds as argued before the VTE panel, which had dismissed the appeal. (See ViP Issue 44 p6).

- The main space rate was too high; based on its location away from Victoria Station and the main hub of Victoria, it should be £555/m2. The UT agreed there was a decline in office value moving away from Victoria Street but, at 90% of the Victoria Street main space rates, considered that £567/m2 was fair.
- The allowance for quantum should be higher. As the largest single occupied office building in London, the current allowance of 17.5% for quantum was insufficient. The UT agreed that hypothetical negotiations between landlord and tenant would result in a greater allowance and determined this should be 20%.
- No end allowance should be allowed for fragmentation. The property consisted of three separate blocks connected by bridges between four of the seven floors. The UT considered that the disadvantages of this did not outweigh the advantages, in terms of light, views and attractive amenity space on the bridges (to which no rental value was attached).

The UT saw no reason to believe the presence of the security installation, which made the reception area less impressive, was not already reflected in the main space rate. The appeal was allowed in part, with the RV reduced to £22,700,000.

Where we show an appeal number, you can use it to see the full decision on our website, www.valuationtribunal.gov.uk.

Click on the 'Decisions & lists' tab, select the correct appeal type and use the appeal number to search 'Decisions'.

Interesting VTE decisions—non-domestic rating

Validity: alteration of description in the list

The valuation officer (VO) altered the list in terms of the description of the hereditament. The question was whether this enabled the ratepayer council to make a valid proposal for a reduced rateable value (RV) on the ground that the RV shown in the list by reason of an alteration of the VO was inaccurate. The ratepayer's view was that as the description identified the mode or category of occupation, it was relevant to the valuation.

The VO's view was that changing the description was no more significant than changing the address and that the council was attempting to "circumvent the clear intent of Parliament to limit alteration to the rating list before 1 April 2015." The significance of this was that, as the list had been altered in August 2010, if the proposal were valid, there would be a right to challenge the alteration back to that date, whereas it would be limited otherwise. The VO believed that a challenge to the RV could only be made if the alteration had been to the RV in the list.

The VTE panel agreed with the appellant that, by making the change to the description, the VO gave the ratepayer a reason for believing the RV could now be incorrect. The panel made no judgment about the merits of the argument for a reduction in RV but held that the proposal was valid and the appeal against the invalidity notice was allowed.

Appeal no: 174027297828/537N10

Security guardians

The matter for determination concerned the use of property guardians as part of the security measures for vacant offices awaiting demolition and whether their occupation of the property amounted to domestic use.
Temporary bathing and cooking facilities were installed to enable around 50 guardians to occupy the premises according to certain restrictions and duties, which went beyond any usual licence to occupy residential property. These included the requirement to sleep there at least five nights out of seven, move to different rooms as requested and to challenge anyone whom they suspected of being on the premises without permission. They could only use the living space and designated communal areas and had no access to other areas. The licence to the security firm did not grant any right of possession or exclusive possession to the property or any part of it and explicitly stated that no tenancy was created.

The VTE Vice-President found that the owner of the property controlled the occupation of the guardians and so was in paramount occupation and in possession of the whole building, there being no apparent definable smaller separate hereditaments. Also, the provision of living accommodation was a means to achieving the security arrangements; the building was not used wholly for the purposes of living accommodation and could not be said to be domestic. Whereas, prior to this case, some guardian schemes had been accepted by billing authorities and the VOA for rates mitigation use, each case depended on its merits. In this case, the scale of the building and the nature of the licences to occupy led to the conclusion that the hereditament was non-domestic.

Appeal no: 584026075915/537N10

Interesting VTE decisions—non-domestic rating

Wigan Athletic

Is the relegation of a former premier league football club a material change of circumstances? The appellant argued this on the basis of

- the change from a use for predominantly broadcasting purposes,
- a change of use from use as a Premier League Club stadium to use as a Championship Club stadium, with a subsequent change of use to a League One Club Stadium, and
- a change in the matters set out in Schedule 6 Paragraph 2 (7) (d) to the Act, including a change in the mode or category of use, a change in the physical enjoyment of the property and a change although not affecting the physical state of the locality is nonetheless physically manifest there.

Wigan Athletic was relegated first from the Premier League, and then from the Championship.

Both parties invited the President to decide the legal point on the basis that the appeal property was a football stadium with only one possible hypothetical tenant willing to pay a rent for the right to occupy it. However, the facts in *Tomlinson (VO) v Plymouth Argyle* [1960] were not on all fours with this case as the stadium is shared with a Super League Rugby League team, Wigan Warriors, who use exactly the same facilities as the football club. In the light of the authoritative guidance in *Telereal Trillium v Hewitt (VO)* [2018] which warned tribunals about agreeing to a procedure which encroached on their fact finding role, the President decided he could not ignore the actual use of the stadium by the rugby league club.

The hereditament itself had not altered between the list entry and the material day. The physical state of the stadium at the material day was exactly the same as it was when the Wigan team was playing in the Premier League. The President did not regard the closure of a ticket office and covering of some seats with advertising banners as physical changes; they were still available for future use.

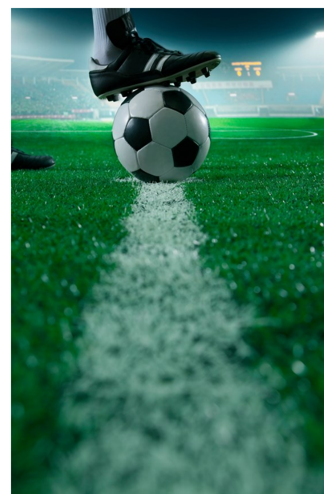
The revenue the football club received from broadcasting rights when it was in the Premier League represented more than 80% of its income. This fell to 23% when it was in the Championship and to around 13% in League One. The media centre and broadcasting facilities had not altered. If the football club achieved its ambition of promotion back to the Premier League, it would need state of the art media and broadcasting facilities, which it retained.

The President concluded that this loss of revenue was an economic factor and could not be considered until the next revaluation.

The appellant's alternative argument was that relegation was a matter affecting the physical enjoyment or a matter that is physically manifest in the locality. However, the only thing that was different was loss of profitability, which also had to be considered to be economic. Attendance levels could be affected by a number of factors including the type of match, the attractiveness of the opposition, the opposition's travelling support and ticket pricing/ promotions. When the club was in the Premier League, there were 346 non-match days. On these days there would be no observable difference at the ground at all, unless Wigan Warriors had a match. The change in visitor numbers to the locality may also be masked by other factors such as other events taking place in the town or the weather. The appellant had failed to establish a causative link between a relevant paragraph 2 (7) matter and a reduction in rental value.

The President concluded that relegation in these appeals was not a material change of circumstances in accordance with the legislation and case law and the appeals were dismissed.

Appeal no: 425026586278/134N10



Fibre optics communications network

The appeal concerned the valuation of the fibre components of Vtesse's network which, it contended, were rated far above the companies with which it competed during the life of the 2010 list, and in particular BT. BT's effective rateable value could be shown to be around £20/km of network, compared to £250/km, which the valuation officer maintained was the settled tone for the list. For the £20/ km figure, the appellant cited a Competition and Markets Authority decision which had looked at RV in calculating the price charged for dark fibre access. However, this was for a different statutory purpose and used a different methodology.

BT plc was assessed under the receipts and expenditure method, whereas most networks were assessed under the rentals method. On the question of whether BT was benefiting from unlawful State aid, the decision of the Commission of the EC against a Vtesse complaint was that it was not; there was no advantage to BT that a different valuation method was used.

Rental evidence was not fully relevant to BT's hereditaments as its networks were unique in providing an 18 million km backbone connecting local loops, connecting to around 25.5 million UK households; the average value of a kilometre of fibre network could be very different according to the characteristics of the networks it belongs to. BT was also subject to a universal service obligation as to the provision of basic phone services at regulated prices. The VTE Vice-President found that the networks of Vtesse and BT were not in comparable legal and factual situations.

He also rejected the argument that the BT network would be an appropriate comparator if it were disaggregated, since this treatment had been rejected by the Lands Tribunal in 2008. The appeal was dismissed.

Appeal no: 394017376068/537N10

Interesting VTE decisions—non-domestic rating

CCA appeals

Valuation of a pub

An appeal against the 2017 rating list entry was upheld by the President and the rateable value (RV) was reduced. In the challenge stage the valuation officer (VO) had determined that the proposal was not well founded and the appellant appealed to the VTE on the basis that the existing valuation was not reasonable. Then another VO caseworker visited the appeal property and submitted a revised valuation as new evidence under reg. 17A of the VTE Procedure Regulations. The VO's argument that permission was not required for the submission of a revised valuation as new evidence, because it could not have been reasonably acquired at the challenge stage, was rejected by the Tribunal. The appellant did not initially give his consent for this evidence to be admitted, but the parties later agreed in writing to admitting certain additional evidence from both sides.

The VO conceded that the adopted figure for the fair maintainable trade (FMT) was high and agreed it should be £190,000. The issue in dispute between the parties concerned the category this public house should be in for the purposes of the Valuation of Public Houses Approved Guide for the 2017 Rating List. The VO had valued the public house in Category 1 but the appellant's argument that it was a Category 3 was upheld by the President. The property was a wet-trade led, community public house, not like a Yates's Wine Bar or a Wetherspoons and, while it was located on the outskirts of a town centre, Bridgnorth could not be classed as a major town. It might be seen as at the lower level of Category 1 because it was an older prop-

erty of average design, layout and quality but, as an older building, repair costs were likely to be higher than for other public houses. Furthermore, the appellant did not prop up his trade by laying on entertainment. The President ordered the RV to be reduced, based on the FMT at 6.9% and the appeal fee refunded.

Appeal no: CHG 100003684

CCA—Procedural points

A panel upheld an appeal against the 2017 rating list compiled list entry. The issue in dispute was the main space price. The VO's case was undermined because neither he nor his expert witness had seen the property or visited the locality and they were unable to assist the panel in identifying the comparable properties on a map. The VO was also reliant on rental evidence but failed to produce the forms of return.

The appellant's representative wished to submit plans and photographs at the hearing, as allowed for in the practice statement. However he had overlooked the requirement to agree this in advance with the VO. The VO was therefore given time to study this material before the hearing started and he consented to their admission, which the panel agreed to.

In written evidence, the VO had described the appeal property as being on a main arterial road. However, after studying the map, he conceded that that was not the case; the appeal property sat on a cut through road.

Having regard to the competing comparable evidence presented, the appellant's representative's arguments were made out. The VO's adopted main space price for the appeal property of £90 per m² appeared excessive given that shops in a far superior location were valued at £80 per m². It also appeared excessive when compared to a superior, refurbished, more modern shop, closer to the town centre, assessed at £85 per m². The RV was to be reduced accordingly and a refund of the appeal fee made.

Appeal no: CHG000000120

Check, Challenge and Appeal decisions can be found at: https://www.valuationtribunal.gov.uk/about-us/vte-publications/vte-decisions/

Challenge to validity of a completion notice by way of appeal against list entry

This case followed an interim decision which clarified the VTE's jurisdiction (see ViP Issue 48 p6). The ground, first and second floor office properties had been considered to have reached practical completion by October 2008; completion notices were issued with a completion date of February 2009 and they were entered into the list in March 2009. The three properties were each let between 2013 and 2015 and proposals made on each in March 20deletion of the properties and reduced RVs. The proposals cited the former VTE President's decision in *Tull Properties Ltd v South Gloucs Council,* which determined that a refurbished building was not a new building and so the completion notice procedure wasn't valid.

By the time of the second hearing the billing authority (BA) and valuation officer (VO) as respondents agreed that the parts of the building in dispute had not been capable of beneficial occupation following practical completion of the works. The appellant sought a temporary removal of the list entries for the ground floor and first floor, but deletion of the second floor for the life of the list.

Considering S.46A of the 1988 LGFA and the decision in Tull Properties, it was apparent that a 'new building' could either be a brand new building or one that had been transformed by alterations to the extent that it could be said to be a new building. The President examined whether each of the 3 could meet the criteria set out in the legislation for the issuing of a completion notice. In the case of the second floor, the works that had been carried out were clearly structural, affecting the size and nature of the floor.

The appeal was dismissed. In the case of the first floor, it was agreed that no structural alteration of any consequence took place and so the completion notice could not correctly be served; the property must be deleted from the list until the date it was ready for occupation. For the ground floor, though there was little hard evidence about the alterations made, it appeared that partitioning had been used to create an entrance to the domestic properties on floors above, and that the works were not structural. That appeal was also allowed and the property was to be deleted from the list from 1 April 2010 to the date it was ready for occupation.

Appeal no: 246525454690/538N10

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Interesting VTE decisions—council tax reduction

Employment

The appellant had been entitled to a council tax reduction (CTR) from 1 April 2013 to 31 March 2017, calculated based on her earnings from a company. The billing authority (BA) then decided that the appellant was a self-employed earner on the basis of the appellant's previous declarations. From 1 April 2017, the BA amended its CTR scheme to include a requirement to deem an applicant as being in receipt of a minimum level of earnings. The phrase "employed earner" is defined in the scheme providing that it is to be construed in accordance with section 2(1)(a) of the Social Security Contributions and Benefits Act 1992 (SSCBA):
"*employed earner*" means a person who is gainfully employed in Great Britain either under a contract of service, or in an office ... (with . . . [earnings]); and

"*self-employed earner*" means a person who is gainfully employed in Great Britain otherwise than in employed earner's employment (whether or not he is also employed in such employment)."

Whether a person's work is employment or self-employment under the SSCBA is a matter of fact and degree, determined by examining multiple factors such as: control of business; supply or use of equipment; financial risk; basis of payment; mutuality of obligation; holiday pay, sick pay and pension rights; right to terminate a contract; length of engagement; intention of the parties.

The appellant's job role was to act as a communications conduit between the Turkish-based company and its clients in the UK. Although she has a significant degree of autonomy as a remote worker, the panel found that she appears to represent the company and follows its direction. She does not appear to provide a personal service to the company, but to provide the company's services to its clients. The appellant is not exposed to any financial risks, she does not share in the company's success; she is paid her salary irrespective of the company's performance.

The panel found the intention of the arrangement appeared to have been to create a relationship whereby the appellant was engaged by the company, but dealt with her own taxation affairs. The company continued to pay her during periods of agreed holiday absences.

On balance, the panel concluded that the appellant's activity was more akin to employment than self-employment; despite incorrectly describing the activity as self-employment in the past, the appellant was in fact in employment, acting on behalf of the company.
The appeal was allowed.

Appeal no: 5270M215913/CTR

Time period for appealing

The appellant had served notice upon the billing authority (BA) setting out the grounds upon which he was aggrieved and the BA replied on 13 February 2018, having decided that the grievance, against both housing benefit and council tax reduction (CTR), was not well-founded. The BA initially sought to have the appeal struck out, contending that the time period for appealing against its decision of 29 July 2015 had long since expired. However a panel held its calculation was not a final determination for the purposes of section 16. The panel also determined that the BA had not informed the appellant about his appeal rights if he was unhappy with its CTR calculation. Therefore the BA was wrong to contend that the appellant should have served an aggrieved person's notice within 2 months of receiving notification of the BA's CTR calculation.

Even where a BA continues to administer the assessment of a person's entitlement to CTR in conjunction with housing benefit, it must ensure that, where it provides advice to the tax payer as to their right of appeal and the procedure to follow, it does do clearly and correctly. Failing to do so frustrates the proper administration of justice.

In this case, having determined that it had jurisdiction to hear the appeal, the panel dismissed it because having regard to the facts, the BA's CTR calculation was deemed correct.

Appeal no: 5360M227853/CTR

Please note that we don't publish CTR decisions on our website, but a redacted copy may be available on request.

Administering council tax and business rates appeals for the Valuation Tribunal for England

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