



# CONSOLIDATED PRACTICE STATEMENT

FOR THE

VALUATION TRIBUNAL FOR ENGLAND

2020

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President of the Tribunal

Effective 1 April 2020

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# Part 1

## Introduction

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

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

This Practice Statement may be cited as the VTE CPS 2020.

## General Matters

1. The overriding objective of the Tribunal is to deal with cases fairly and justly. In doing so it will amongst other things:
  - a) deal with appeals proportionately to the importance of the case, the complexity of the issues, the costs of the case and the resources of the parties including the Tribunal;
  - b) avoid unnecessary formality and being flexible in the proceedings;
  - c) deal with the parties fairly allowing them to participate so far as is practical in the proceedings;
  - d) use the special expertise of the Tribunal effectively; and
  - e) avoid delay, so far as it is compatible with the proper consideration of the issues.
  
2. The Tribunal must, when administering the conduct of a case, further the overriding objective by:
  - a) exercising any power given it by statute;
  - b) applying any Practice Statement or Direction; and
  - c) interpreting any rule or practice Direction to ensure that appeals proceed with due expedition.

In doing so, it will have regard to the decision of the Supreme Court in *BPP Holdings v HMRC [2017] UKSCF 55*<sup>1</sup>.

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

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

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

## **Interpretation**

5. In this Practice Statement:

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

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

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

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

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

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

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

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

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

“Tribunal” means the Valuation Tribunal for England.

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

## **Tribunal Business Arrangements**

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

## **PRE-HEARING, PRELIMINARY AND PROCEDURAL MATTERS**

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

## **HEARINGS**

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

## **HEARINGS WHERE A MEMBER IS UNABLE TO SIT**

11. Where a panel member is unable to sit for any reason or fails to attend, they will be replaced by another member wherever possible. However, a hearing will proceed with a Senior Member alone where necessary, to avoid postponing the hearing.

## **RECUSAL**

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

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

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

## **MEMBERS UNABLE TO AGREE**

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

## **DECISIONS WITHOUT AN ORAL HEARING AND REVIEW OF DECISIONS**

16. Paragraphs 7 to 10 above apply also to the following:

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

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

## **SELECTION OF MEMBERS**

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

18. Notwithstanding paragraph 17 above, the President or Registrar on behalf of the President may direct that a particular case, including reviews under reg. 40(6) of the Procedure Regulations, will be heard by a member or members specified by them; taking account of operational and financial resources.

19. The VTS will make arrangements for the day to day selection of members but the Registrar will ensure that, as far as possible, there is an even distribution of sittings among members. The Registrar may request, on behalf of the President, that such arrangements are made.

## Part 2 The Practice Statement incorporating Standard Directions

### PS1 Extensions of time for making appeals

1. The regulations<sup>2</sup> authorise the President of the Tribunal to permit an appeal to be pursued in the following types of case if satisfied that the person wishing to appeal was unable to appeal by the normal deadline because of circumstances beyond their control:

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

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

- non-domestic rating 2017 List and later Lists;
- non-domestic rating completion notice;
- non-domestic rating penalty.<sup>4</sup>

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

3. To apply for an extension of time limit in any of the above circumstances, the prescribed application form 'Extension of Time Limits for Appeals' must be completed online at the same time as the appeal form or will be sent by post on request to an applicant who doesn't have access to the internet. These forms can be found on the website, <https://www.valuationtribunal.gov.uk/forms/>.

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

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

6. In considering the application:

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

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

<sup>3</sup> Regulations 13C and 19 of The Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (as amended) and regulation 6 (3)(a) of the Procedure Regulations.

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

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

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

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

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



## PS2 Non-domestic rating (NDR) appeals

### a) Rating lists before 2017

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

### Standard Directions for pre-2017 list NDR appeals

#### Discussions

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

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

#### Regulation 17(3) evidence<sup>5</sup>

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

#### The appellant's case

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

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

#### The respondent's case

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

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

appellant:

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

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

### **Sending documents to the Tribunal before the hearing**

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

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

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

### **The hearing**

7. Any disputes over compliance will be determined by the panel on the day. It should be noted that if the panel find there has been compliance, then it will be assumed that the other party has continued to comply with any later Directions and so is able to proceed with the case.

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

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

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

11. Any appellant failing to comply with these Directions could have their appeal struck out or dismissed at the hearing, or some part or all of their evidence excluded. If the respondent fails to comply with these Directions, they may be barred or some part or all of their evidence excluded.

12. Where the parties intend to rely on well-known case law (that is case law listed on the Tribunal's website at <http://www.valuationtribunal.gov.uk/existing-appeal/preparing-for-the-hearing/case-law-list/>), they do not need to produce the full decision in the bundle. However, they must provide the relevant extract they intend to rely on, together with an explanation as to how it assists their case.

13. There is no need for parties to submit photos and plans to the Tribunal at the two-week period, but there should be agreement before the hearing between the parties that any photos and plans submitted to assist the panel on the day are a true representation of the situation at the material day.

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

### **Introduction**

1) All NDR pre-2017 List appeals will be dealt with in accordance with the attached Standard Directions.

2) If such an appeal has been listed before in accordance with Practice Statement A7-1 but the hearing was postponed or adjourned, these Standard Directions will now apply even though the parties may already have produced statements of case. However, previously discussed elements of the appeal do not need to be discussed again (see para. 5). Please note that to comply with Direction 6 it will not be acceptable to rely on a previously submitted statement of case, unless it meets the criteria for a full case.

### **Complying with these Directions**

3) Directions are formal orders and must be complied with. They are intended to help the parties and the Tribunal deal with appeals justly, fairly and economically.

4) Note that compliance with Directions 1-5 means that the parties do not file any documents with the Tribunal. This only occurs at two weeks before the hearing in accordance with Direction 6.

5) It is the responsibility of the appellant (the person who brings the appeal) to make initial contact with the respondent (the Valuation Officer or "VO") to discuss the case and exchange valuation calculations (Direction 1). The appellant must be able to show that they have done this (for example by producing relevant correspondence). The appellant must make contact even if they believe these matters have been discussed prior to listing. However, there is no need to discuss matters again and the VO cannot require it of the appellant; the contact is necessary to confirm the position and clarify any additional matters.

6) Where the appellant has not made this contact with the VO and has not served their case (Direction 4), the VO need not serve its case on the appellant (Direction 5). However, the parties may agree between themselves to vary the deadlines (see paragraph 13 below).

7) Whenever a party sends anything to the Tribunal, they must also send a copy to the other party and note this clearly in the correspondence.

8) There is no need for parties to exchange with each other well-known case law (unless the appellant is unrepresented and not familiar with it). However the case must be cited, the relevant extracts provided within documents and its relevance explained. Similarly there is no need to include photographs and plans within the submission to the Tribunal but these can be provided at the hearing provided the parties agree that they represent a true reflection of the circumstances at the material day. Any disputes over the plans or photographs will be decided by the panel at the hearing.

### **Failure to comply with these Directions**

9) A party may not rely on any evidence or argument (including regulation 17(3))

evidence<sup>6</sup>) which has not been served in accordance with these Directions, without the permission of the Tribunal.

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

- admit or exclude evidence;
- adjourn or proceed with the hearing;
- strike out the appeal (this means that the Tribunal would refuse to hear the party's case), or dismiss the appeal (this means that the appeal is turned down and the appellant no longer has an appeal with the VTE), or bar the respondent from taking part in it;
- issue Directions.

11) In particular, if the Tribunal is satisfied that the appellant has not contacted the VO to start discussions (Direction 1), or has not met the requirements to serve its case (Direction 4), or to send documents to the Tribunal before the hearing (Direction 6), the Tribunal may strike out or dismiss the appeal. **If either party fails to produce a full case within the bundle (Direction 6) but relies on a statement of case which fails to comply they may be struck out or barred, or their case limited to such an extent that it has no merit.**

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

### **Varying these Directions**

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

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

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

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

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

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

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

## **b) Rating lists 2017 and later**

These Directions are formal orders and must be complied with. They are intended to help the parties and the Tribunal deal with appeals fairly, swiftly and economically, together with furthering the overriding objective. A party may apply to the Tribunal for any of these Directions, including time limits, to be varied, or for any other appropriate Direction.

### **Practice Statement appeal information and evidence Directions**

1. No later than **four weeks** after being notified of the appeal, the respondent Valuation Officer must serve notice on the Tribunal and the appellant if they believe the appeal was not submitted with the correct evidence or information, particularly if the respondent intends to rely on it at the hearing. This is in accordance with regulation 9 of The Non-Domestic Rating (Alteration of Lists and Appeals) (England) (Amendment) Regulations 2017. The notice must:

- a) state the date on which the information or evidence was provided under reg. 9 together with supporting evidence of service and provide a copy of the missing material; or
- b) state which information or evidence has been submitted with the appeal which was not provided under reg. 9 and why he objects to it being included;
- c) in all cases advise the appellant that he can object in accordance with para. 2.

2. No later than **two weeks** after a notice has been served on the appellant as set out above (where material provided with the appeal is disputed), the appellant can serve notice on the respondent, any other party to the appeal and the Tribunal disputing the notice and providing reasons as to why the material should or should not be included.

3. Where such a dispute arises the Tribunal will decide the point on the papers, or at a case management hearing or as a preliminary point at the substantive hearing. If the appellant does not dispute the inclusion or removal of the evidence or information provided by the respondent it will automatically be added to or removed from the appeal documentation and considered by the Tribunal when disposing of the appeal.

### **Practice Statement Directions for appeals decided without a hearing**

4. Where the appellant wants the appeal to be decided without a hearing (on the papers alone) in accordance with Regulation 29 of the Procedure Regulations they must request this at the time of making the appeal. The Tribunal will consider a late application, but this must be made within two weeks of the notice of the Standard Directions being issued.

5. Where such an application is made with the appeal, the respondent and any other party has **two weeks** from the date they are notified of the request to make any objection to it. If there is no objection the Tribunal will, provided it considers it just to do so, decide the appeal without a hearing.

6. Where a dispute arises about material provided with the appeal the Tribunal will decide the point on the papers as part of the disposal of the appeal without a hearing.

7. As the appeal may be decided without a hearing shortly after the parties are advised that the Tribunal intends to dispose of proceedings without a hearing, it is unlikely there will be any opportunity for a party to submit any further evidence.

### **Standard Directions for 2017 List and later List NDR appeals issued with the notice of hearing**

#### **Further evidence**

1. No later than **four weeks** before the date of the hearing, a party must make written application to the Tribunal (with a copy to the other parties) if it intends to include at the hearing any new evidence which:

- a) was not included within the notice of appeal but which all parties have subsequently agreed in writing to include (together with a copy of the written agreement); or
- b) relates to the ground on which the proposal was made, was not known to the party and could not reasonably have been acquired by the party before the proposal was determined under Part 2 of the NDR Regulations<sup>7</sup>.

2. The application must specify the reasons for the late application and if under b) above set out:

- why the evidence was not available earlier;
- when it came into the possession of the party.

3. Starting from the date the notice is served on them requesting the inclusion of the new evidence, parties to the appeal have **two weeks** to raise with the Tribunal any objection in writing and issue copies to all other parties.

4. The Tribunal will notify the parties of its decision whether or not to include the new evidence. Where it decides to include this new evidence any other party to the appeal may make application within **one week** of the notification by the Tribunal for further new evidence to be considered at the hearing. In making application the party must state:

- why this new evidence is required;
- how it relates to the evidence that the Tribunal has already agreed to include; and
- how it relates to the grounds on which the proposal was made.

The application must include a copy of the evidence the party wishes to include; at the same time copies of the application and evidence must be served on all other parties. Those parties have **one week** from when the application is served to make any objection in writing to the Tribunal, copying in all other parties.

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<sup>7</sup> The Non-Domestic Rating (Alteration of Lists and Appeals) (England) (Amendment) Regulations 2017



5. All documents and applications must be filed and served **electronically** on any party who has provided an email address for service in the proceedings.

### **The hearing**

6. Each party is expected to attend the hearing. An appellant who wants their appeal to be decided without a hearing (on the papers) should state this when making the appeal. In appropriate circumstances and where it would be fair to do so, the Tribunal may allow late written applications within **two weeks** of these Directions being served; any application must be copied to the respondent and any other parties to the appeal.

7. Where such an application is made, the respondent and any other party has **two weeks** from the date they are notified of the appellant's request to make any objection to it. The Tribunal will not consider objections made after that. The Tribunal will, provided it considers able to do so, decide the appeal without a hearing.

8. If a party wants the case to be heard at a hearing without their being there, they must notify the Tribunal at least **two weeks** before the hearing.

9. Where an offer to settle has been made by the respondent but the appeal remains outstanding, the panel may confirm the figure at the hearing if a copy of the settlement offer is submitted to the Tribunal by the appellant in advance, together with a request for confirmation to be made at the hearing.

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

11. Where the parties intend to rely on well-known case law (that is case law listed on the Tribunal's website at <http://www.valuationtribunal.gov.uk/existing-appeal/preparing-for-the-hearing/case-law-list/>) they do not need to produce the full decision in the bundle, but must provide the relevant extract they intend to rely on, together with an explanation as to how it assists their case.

12. There is no need for parties to submit photos and plans to the Tribunal at the two-week period, but there should be agreement before the hearing between the parties that any photos and plans submitted to assist the panel on the day are a true representation of the situation at the material day.

### **Varying these Directions**

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

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

## **Explanatory Note for the Practice Statement and Standard Directions for 2017 List and later List NDR appeals**

This Practice Statement with Directions sets out the way in which the Tribunal disposes of proceedings following the Governments reform of rating appeals and changes to the legislation, in particular:

The Non-Domestic Rating (Alteration of Lists and Appeals) (England) (Amendment) Regulations 2017

The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) (Amendment) Regulations 2017

### **Appeal information and evidence**

- 1) The appeal will be decided on the basis of the documentation provided at the time the appeal is made (unless new evidence is allowed by the Tribunal). It is therefore important that evidence and information that either party wishes to rely on when the appeal is decided is provided with the appeal. As the respondent does not submit his own evidence and information to the Tribunal but relies on copies provided by the appellant, it is important that the respondent has an opportunity to examine what has been submitted.
- 2) Where the respondent considers information and evidence he provided when the proposal was being considered is missing from the appeal documentation, or that evidence or information has been included with the appeal that was not provided by the parties when the proposal was being considered, he has an opportunity to point this out to the Tribunal and the appellant within four weeks of receiving the appeal details.
- 3) If the appellant objects to missing documentation being provided then it is important that they do so within two weeks of being notified by the respondent. They must explain why they object, with any supporting evidence. **If the appellant does not object within two weeks the Tribunal and respondent can assume the material is not disputed and forms part of the appeal documentation.**
- 4) Where a dispute arises the Tribunal will try to resolve matters on the papers before the hearing, if it can, or it may arrange a case management hearing to decide the point or might decide to resolve the dispute as a preliminary matter at the hearing. The Tribunal will notify the parties of the course of action it intends to take.

### **Decision without a hearing**

- 5) The Tribunal and the parties may consent to an appeal being decided without a hearing. This means that the appeal will be decided on all the papers submitted with the appeal and none of the parties will attend. The matters considered will include any dispute over the evidence and information lodged with the appeal.

### **Further evidence**

- 6) There are limitations in legislation on the evidence that the Tribunal can accept after the appeal documentation has been lodged. There are two ways in which evidence can be admitted:

- a) where all the parties agree in writing to the evidence being provided; or
  - b) where the evidence provided by a party relates to the grounds of the proposal and was not known to the party before the respondent issued a decision notice or, if one is not issued, the cut off point for one to be issued (that is the date when an appeal can be made).
- 7) Such an application must be made **four weeks** before the hearing date. In making application the new evidence must be provided to all parties and the Tribunal.
- 8) Parties may still make application at the hearing to allow such evidence, by seeking a variation of the timeframe on the Directions but, as well as meeting the above requirements, they will also need to set out why they failed to make application earlier.
- 9) Where the Tribunal allows new evidence, other parties to the appeal may seek to provide further evidence themselves in response, provided it is in respect of the new evidence and also within the grounds of the proposal.
- 10) Parties may object in writing to any application to include new evidence but in doing so must give their reasons within the prescribed timescale.
- 11) All such evidence must be served on the Tribunal and any other party (provided they have not objected to such a method of service) by email.

### **The hearing**

- 12) The Tribunal panel will decide the appeal on the basis of all the documentation submitted with the appeal form together with any new evidence allowed. Parties do not need to bring bundles for the panel as they will be provided by the VTS.
- 13) If an appellant wants the appeal to be heard in their absence at a hearing then they must send a written request to the Tribunal at least two weeks before the hearing. In such cases it must be assumed that the respondent and any other parties to the appeal will attend unless they also have requested the matter be heard in their absence.
- 14) If an appellant does not appear and has not requested that their appeal be heard in their absence, then the appeal may be struck out on the basis of their failure to attend or dismissed if, due to their non-appearance, the appeal cannot proceed.
- 15) If a respondent or any other party other than the appellant, fails to attend having not requested the matter proceed in their absence, the Tribunal may decide to bar them from taking further part in proceedings, although the appeal will still be heard on the basis of the documentation submitted with the appeal and any new evidence allowed.
- 16) There is no need for parties to exchange with each other well-known case law (unless the appellant is unrepresented and not familiar with it). However the case must be cited, the relevant extracts provided within documents and its relevance explained. Similarly there is no need to include photographs and plans within the submission to the Tribunal but these can be provided at the hearing if the parties agree that they represent a true reflection of the circumstances at the material day. Any disputes over the plans or photographs will be decided by the panel at the hearing.

## PS3 Complex cases

A case is “complex” for the purpose of this Practice Statement, if it has one or more of the following features:

- national implications;
- lengthy or complex evidence;
- novel, important or contentious points of law; or
- any other factor that makes it desirable to manage the case and issue specific Directions, including the selection of a lead appeal under reg. 7 of the Procedure Regulations.

1. The clerk will refer any case which appears to be complex for the purpose of this Practice Statement to the Tribunal administration who will discuss the case with the Registrar. In addition, a party may apply for a case to be treated as complex. This must be done prior to the listing of the appeal.
2. If a party to an appeal believes that a case falls within the category of case as outlined in para.1 above, then an application may be made to the Tribunal administration stating the grounds upon which it is considered that the case is complex outlining the issues and any legal authority to support the contention.
3. On referral by the Tribunal administration, the Registrar, in consultation with the President, will determine whether to treat the case as complex and decide whether it is necessary to list the matter before the President, a Vice President, or a panel including a member with specialist skills.
4. If a case management hearing is held, the Tribunal may alter or substitute any of the standard Directions with alternative Directions as necessary to assist with the swift determination of the appeal.
5. If a party seeks to rely as part of its case on any point of law, regulation, or any decided case then that party must provide a copy to the Tribunal and each party to the appeal. In doing so, the citation and a full copy of the authorised statute, regulation or case must also be provided in accordance with the Directions given by the Tribunal which must include the relevant extract highlighted.
6. The exception to this is that, where the parties intend to rely on well-known case law (that is case law listed on the Tribunal’s website as such), they do not need to produce the full decision in the bundle, but must provide the relevant extract they intend to rely on, together with an explanation as to how it assists their case.
7. Any Direction made by the Tribunal **must** state whether a failure to comply will or may, as the case may be, lead to the appeal being struck out (under reg. 10(1) and (3)), or dismissed or a party being barred.

## PS4 Postponements and adjournments

A postponement is an administrative matter, handled initially by staff of the Valuation Tribunal before any hearing has commenced, and, although 'administrative', must be handled in accordance with judicial practice and procedural principles.

1. A party may apply for a postponement in advance of the hearing date. Reasons must be given and the other party or parties notified.
2. An application for a postponement should be made in writing as soon as possible and should indicate the reasons for it and whether the other parties agree. In cases of urgency, the application may be made by telephone but should then, if time permits, be followed by a written application sent by email. An application will not normally be considered where the other party or parties have not been informed.
3. **The presumption is against the granting of postponements.** Postponements will not be granted automatically but only if there are good and sufficient reasons for doing so **and** it is in the interests of justice to do so. No postponement will be granted solely for the paperwork to be completed on a settled appeal. In the absence of paperwork, the panel will confirm any agreement at the hearing or strike out or dismiss the appeal where the appellant has withdrawn but the appeal is still outstanding.
4. Good reasons for granting a postponement may include the following:
  - the non-availability of a party or representative owing to unexpected ill-health (although in the case of a representative's long-term illness it is expected that alternative arrangements for representation will be made);
  - an unexpected or unforeseen event which makes it impossible to attend the arranged day of the hearing (for example, a serious fire or a significant IT problem occurring at the last minute);
  - the recent emergence of new evidence or case law that requires consideration;
  - material or notices sent to an incorrect email address resulting in delay in reaching the correct recipient.
5. The following examples do not constitute good reasons:
  - holiday commitments that interfere with the timetable for meeting procedural obligations;
  - the fact that the parties have failed to enter into meaningful negotiations or negotiations are under way but incomplete and are expected to continue beyond the hearing date.
6. Where the applicant has a good and sufficient reason for postponement (as in para. 4 above), it should normally be granted unless either the other party presents a stronger argument to the contrary or the interests of justice require the application to be rejected.
7. The member of staff will advise all parties in writing (normally within three working days) of the decision on the application, together with the reasons, provided that there is sufficient time prior to the hearing.

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

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

### **Adjournments**

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

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

### **Stays**

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

13. Unless the application is made jointly by the parties, the other party should be informed of the application. They should send any comments on this to the Registrar within seven days of receiving the information.

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

## PS5 Decisions without a hearing (2010 or earlier Rating List appeals)

Reg. 29 of the Procedure Regulations requires the Tribunal to hold a hearing before making a decision which disposes of proceedings unless:

- a) all parties have consented to, or not objected to, the matter being decided without a hearing; and
- b) the Tribunal considers that it is able to decide the matter without a hearing.

1. A party may apply for a case to be decided without a hearing.
2. All other parties will be informed of the application and will be required to indicate within 21 days whether or not they object.
3. Where there is agreement, or no objection, a Senior Member will consider whether the appeal should proceed without a hearing.
4. If the Senior Member determines that it can, all parties will be informed and a Direction issued requiring them, by a prescribed date, to provide a copy of their case (either electronically or in hard copy) to include a statement of the reasons for the appeal and the decision sought from the Tribunal, together with the evidence and any legal argument.
5. Each party must send a copy of their case to every other party and the Tribunal in accordance with any Direction of the Tribunal.
6. As soon as reasonably practicable after all statements have been received, a panel will consider the appeal.
7. The panel will consider whether it is able to decide the matter without a hearing and will either adjourn for further consideration and make appropriate Directions or decide the appeal.
8. Any party failing to comply with a Direction **may have the appeal struck out or be barred**, as appropriate, in accordance with reg. 10, or **dismissed**.

### Requirements for a written submission

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

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



## PS6 Transitional relief appeals

References are to the Non-Domestic Rating (Chargeable Amounts) (England) Regulations 2016 (or 2009 depending on the list that the certificate is relevant to).

A party may appeal to the Valuation Officer (VO) in respect of the value certified. Where the VO is unable to settle the appeal the matter is referred to the Tribunal. The Tribunal will issue a notice of hearing together with the following Directions which the parties must comply with.

### Standard Directions

#### The appellant's case

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

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

#### The respondent's case

2. Where the appellant has served their case according to the paragraph above, no later than **four weeks** before the date of the hearing the respondent must serve on the appellant:
  - their case setting out in full the grounds for resisting the appellant's case;
  - the decision sought and any legal argument including case law relied upon;
  - any expert evidence;
  - a copy of all relevant documents and other evidence;
  - any rental or other evidence which they obtained for the purposes of compiling and maintaining the list and which they consider relevant to proceedings;
  - a single index to these documents.

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

#### Sending documents to the Tribunal before the hearing

3. No later than **two weeks** before the date of the hearing the appellant must file with the Tribunal and serve on the respondent:
  - a copy of all of the documents disclosed by both parties according to these Directions;
  - a reply to the respondent's case, if the appellant chooses to make one; or
  - a copy of an agreement form signed by the appellant where the respondent

has made an offer to settle and the appellant accepts the offer but the appeal remains outstanding, or a signed withdrawal form.

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

### **The hearing**

4. Any disputes over compliance will be determined by the panel on the day. A party should be aware that if the panel find there has been compliance then it will be assumed that the other party would have complied with any later Directions.
5. Each party must bring to the hearing paper copies of a file which comprises only the documents served on the other party in accordance with these Directions. Three copies will be required for the use of the clerk and the panel, unless otherwise directed by the Tribunal; a fourth copy will be required for the other party if it has not already been served on them in paper form. Each page must be numbered.
6. If a party wishes the case to be heard in their absence, they must notify the Tribunal at least two weeks before the hearing.
7. Where a settlement has been reached as outlined above and the appeal remains outstanding the panel may confirm the figure offered. Where the appeal has been withdrawn but remains outstanding, the Tribunal will dismiss the appeal unless there is good reason not to.
8. Any appellant failing to comply with these Directions may find their appeal struck out, dismissed at the hearing or their evidence excluded. If the respondent fails to comply with these Directions, it may be barred or their evidence excluded.
9. Where the parties intend to rely on well-known case law (that is case law listed on the Tribunal's website at <http://www.valuationtribunal.gov.uk/existing-appeal/preparing-for-the-hearing/case-law-list/>) they do not need to produce the full decision in the bundle but must provide the relevant extract they intend to rely on together with an explanation as to how it assists their case.
10. There is no need for parties to submit photos and plans to the Tribunal at the two-week period but there should be agreement before the hearing between the parties that the photos and plans are a true representation of the situation at the material day.

## PS7 Lead appeals

On occasions a particular case will be of such significance that the decision made will have an impact on other appeals awaiting a decision. In such circumstances the following procedures will be adopted and the case will be considered a 'lead appeal'.

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

## **PS8 Model Procedure**

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

The Tribunal is not a court of record and as such the proceedings are not minuted or recorded, but a note is taken by the clerk of the important issues in the case. The record of proceedings is produced in the form of a formal decision which is issued to the parties.

It is not permitted to use any electronic recording devices of any sort within the Tribunal hearing room whilst the proceedings are in session.

1. It is not the aim of this guidance to be prescriptive but rather to offer a flexible formula which can be followed and adapted as required by the circumstances of each case. However, any significant departure from the procedure should be noted on the case file by the clerk outlining the reasons for the departure.
2. A Tribunal panel will be assisted by a professional clerk who can advise on practice, procedure and substantive issues of law. (The role of the clerk is explored in the next section of the Consolidated Practice Statement).
3. The venue and set up of the hearing room will be attended to by the clerk.
4. The Chairman controls proceedings and directs the course of the hearing, making sure that the parties have adequate opportunity to put their relevant and admissible arguments to the panel. The Chairman may stop a presentation that has moved away from relevant matters and direct the party to concentrate on the issues in dispute in the case; this includes where a party has provided an estimated time to present their case and has overrun. Time management is an important part of the hearing process.
5. The Chairman will deal tactfully with repetitive or irrelevant argument by politely explaining to the party why it does not need to be heard, in line with the overriding objective of dealing with cases justly.
6. The panel can only consider the evidence submitted in accordance with the Tribunal's Directions when making a decision in a case unless additional evidence and/or argument has been allowed.
7. The strict rules of evidence do not apply to the Tribunal and it is up to the panel to consider what is presented to them and give such weight to it as they consider appropriate.
8. Evidence is not given on oath and there is no power to administer one.
9. There is no power for the Tribunal to award costs.

## **The hearing**

10. The Chairman opens proceedings with introductions and explains to the parties that the panel has considered the evidence already submitted (if this is the case) and will be concentrating on the matters in dispute.
11. The clerk outlines the nature of the appeal. They may summarise the matters and issues that have been agreed and outline the matters in dispute for the focus of the hearing.
12. The appellant normally presents their case first followed by the respondent.
13. An unrepresented appellant may be assisted by the panel to formulate and clarify appropriate questions. However the panel cannot act as the appellant's advocate.
14. Any party may call witnesses to support their case and those witnesses may be cross examined.
15. Once all the evidence has been heard from both parties each will be invited to make final submissions, with the appellant having the final word.
16. Questions may be asked by either party of the other and the panel and clerk may also ask questions as appropriate.
17. Before the panel retires to come to a decision, the clerk may raise, in open session, any matter of law that they feel the panel should be aware of together with any advice that is felt appropriate. The parties may comment on what the clerk introduces.
18. The panel will then retire to make the decision. The parties should remain for a short period in case the panel needs further clarification. Then the parties can be released, having been informed that the decision will normally be communicated in writing within a month.

## **PS9 Role of the clerk**

### **1. Introduction**

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

1.2 Four fundamental principles are:

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

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

### **2. During the hearing**

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

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

2.2 The clerk will keep a personal note of the evidence and submissions of the parties at the hearing to assist in drafting the decision. No verbatim record of proceedings is made.

2.3 The clerk must not make findings of fact or law but may assist the panel by reminding it of the evidence and arguments from their notes.

2.4 The clerk may ask questions of witnesses and the parties in order to clarify the evidence and any issues in the appeal when invited to do so by the Chairman. They may seek clarification of an answer or point at the time.

2.5 The clerk is under a duty to assist unrepresented parties to present their case, without becoming an advocate for the party concerned.

### **3. At the conclusion of the hearing**

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

3.2 Normally the clerk will not withdraw along with the panel members who will discuss the case themselves before inviting the clerk to join them to assist with any technical aspects of the case and advice on the law. It is of course the duty of the panel to make the final decision in the case. Any member of the panel may seek the clerk's advice at any time.

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

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

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

3.6 The clerk may request the panel to adjourn briefly to provide an opportunity to seek guidance from the Registrar or a colleague and the Chairman will normally comply with such a request.

3.7 Where there is no separate retiring room and the panel must deliberate in the hearing room, these provisions should be read accordingly. The parties, their representatives, members of the public and the clerk must withdraw from the hearing room and be re-called as appropriate.

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

### **4. Decision**

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

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

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

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

## **PS10 Discretionary reductions in council tax (liability appeals)**

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

S. 13A was replaced by 13A (Local Government Finance Act 2012, s.10), which incorporates all of the old s.13A ((1)(c), (6) and (7)). It further requires that a billing authority's scheme must state how a person can apply for a reduction under s. 13A(1)(c). (1992 Act, Sched. 1A, para. 2(7), inserted by Sched. 4 to the 2012 Act).

1. A person who has made an application under s. 13A(1)(c) has a right of appeal to the VTE against the billing authority's decision to refuse a reduction or in respect of the amount awarded.
2. The Tribunal will consider these appeals on their merits and is not restricted to inquiring whether the billing authority has exercised its discretion lawfully and reasonably. The Tribunal may substitute its view for that of the authority. The proper approach is set out in the decision in *S.C. and C.W. v. East Riding of Yorkshire Council* (27 May 2014).
3. A decision by a billing authority on a person's application for funding or financial support unrelated to the discretionary scheme does not give rise to an appeal to the Tribunal under s.16, and therefore falls outside the Tribunal's jurisdiction.
4. Where a person wishes to argue that it was an application that should have been considered under s.13A(1)(c) and the authority has improperly chosen to deal with it under different powers, whether to circumvent the right of appeal under s.16 or with the effect of circumscribing that right for no objectively justifiable reasons, the proceedings will be referred to the President, who will decide, with or without a hearing, whether the Tribunal has jurisdiction to entertain the appeal.
5. The respondent will be expected to present a copy of the billing authority's determination as part of their evidence bundle.



## **PS11 Disclosure in all council tax and completion notice appeals**

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

### **Standard Directions: All Council Tax and Completion Notice Appeals**

These Directions should be read in conjunction the explanatory guidance.

#### **A. For the Appellant (ratepayer or council tax payer), the Tribunal directs that:**

1. Any further information you wish the Tribunal to consider, must be sent to the respondent at least **four weeks** before the hearing. This may include case law or references to the legislation and you must set out what change you are seeking in your appeal and the date(s) it would apply to.
2. Anything you send to them after the four-week deadline will not be considered by the Tribunal unless you can demonstrate good reasons why the evidence was not available at the time.<sup>8</sup>
3. Unless your case is postponed or settled by agreement or withdrawal, it is expected that you (or your representative) will attend the hearing to present your case. You may request that the hearing proceeds without you being there by contacting the Tribunal at **least 24 hours before the hearing day**.
4. If you or your representative do not attend the hearing and have not requested the case to be heard in your absence at least 24 hours before the hearing, your appeal may be struck out or dismissed. 'Struck out' means that your case will not be considered and will be unsuccessful. 'Dismissed' means your appeal is turned down and you no longer have a case with us.

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

1. At least **six weeks before the hearing date**, you must provide the appellant with your full case in response to the appeal, including arguments, evidence, legislation, case law and documents (including those covered by regulation 17) that you wish to rely on at the hearing. This will constitute your full case, and the Tribunal will not consider anything submitted after that date unless you can demonstrate good reasons why the evidence was not available at the time, or it forms part of your rebuttal at paragraph 3 below. You do not need to serve evidence again that you submitted in your decision notice but must make it clear to the appellant which evidence, information and/or argument you intend to rely on as part of your case.
2. If you fail to provide the above by the six-week deadline you will be prevented from submitting further evidence or a rebuttal (in accordance with paragraph 3) unless you can demonstrate at the hearing good reasons why the full case was not served by the due

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

<sup>8</sup> Reg. 17(2)(b)(i).

date but was subsequently served before the hearing. The panel must be satisfied that the appellant has not been prejudiced.<sup>9</sup>

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

4. You may request that the hearing proceed in your absence, in which case you must send your request to the Tribunal at least **one week** before the hearing. A failure to comply with this part of the Directions may result in you being barred from taking further part in proceedings.

### **C. General**

1. Material must be provided no later than 5pm on the day of the deadline.<sup>10</sup>

2. A party may apply for any of the requirements in these Directions to be varied.<sup>11</sup>

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<sup>9</sup> Reg. 17(2)(b).

<sup>10</sup> Reg. 14(1).

<sup>11</sup> Reg. 8(5).

## Guidance to the Standard Directions for all Council Tax and Completion Notice Appeals

### General

- 1) The Directions require each party involved in the appeal to disclose their full case to the other party before the hearing. This is so that delays are avoided and to encourage parties to resolve their differences without the need for a hearing.
- 2) There is no need for the appellant to send any documentation to the Tribunal. The respondent (the billing authority/council or the VOA listing officer) is required to produce the hearing bundle for the Tribunal and parties prior to the hearing and this will include the appellant's as well as the respondent's documents.
- 3) The Tribunal will NOT accept extra information from either party that was not included in the hearing bundle unless there is good reason to do so. An example of a "good reason" is where the evidence and/or argument was not reasonably available to the party at the time they sent their case to the other party.

### Advice for the Appellant (the ratepayer or council tax payer)

- 4) At least **six weeks** before the hearing date you should receive the respondent's full case. This will include their arguments, evidence, legislation, case law and documents that they will refer to at the hearing. If they serve their case late the panel might still accept it, so you should continue to prepare for the hearing on that basis. The panel will decide at the hearing whether or not to accept their case.
- 5) If you do not hear from them, your appeal will be decided on the basis of what you said in and included with your appeal form, the respondent's decision to you (if you received one) and any additional evidence and argument provided by you at least four weeks before the hearing.
- 6) Any evidence and argument that was not included in your appeal form and any response to the respondent's case that you wish the Tribunal to consider must be sent to the respondent at least **four weeks** before the hearing. This includes where the respondent has failed to provide its case at six weeks. **Please do not send your case to the Tribunal direct.**
- 7) If you require more time to prepare your case you must write to the Tribunal before the four-week deadline to seek permission for a delay and let the respondent know that you have done this.
- 8) You must have made it clear in your appeal or in the document you send to the respondent what it is you are seeking from the Tribunal (the change you want) and the date(s) any change would apply to.
- 9) Anything sent after the deadline will not be considered by the Tribunal unless there are good reasons.<sup>12</sup> The respondent will provide the Tribunal with your case together with their case in one bundle at least two weeks before the hearing. They will

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

<sup>12</sup> Reg. 17(2)(b)(i).

also send you a copy, either by post or by email, whichever you have told them you prefer. **If you believe the bundle is incomplete please raise your concerns with the Tribunal immediately.**

10) You (or your representative) must attend the hearing to present your case. The other option is for the hearing to go ahead without you being there. This means your case will be decided on the papers provided; the respondent will still be present. It is better if you attend because then the Tribunal's panel will be able to ask you questions to make sure they understand your case. However, if you would prefer not to attend **you must ask the Tribunal at least 24 hours before the hearing day.**

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

### **Advice for the Respondent (billing authority or listing officer)**

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

13) If you fail to provide this by the deadline, all your evidence will be excluded<sup>13</sup> apart from any evidence included in the decision notice you provided to the appellant prior to the appeal. However, if you serve your case late and then explain to the panel at the hearing why it was issued late, the panel may allow it to be included in your case. This will depend on the reasons for the delay and whether the appellant has been prejudiced. If you require further time to prepare your case you must seek permission in writing from the Tribunal in advance of the deadline and advise the appellant.

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

15) If you do not provide your case to the appellant at six weeks (or later) you must still send any evidence or argument provided by the appellant to you at four weeks to the Tribunal at two weeks.

16) The Tribunal has restrictions on the amount of data that can be sent with an email. The Tribunal's administration has provided [guidance](#) on the submission of the hearing bundle.

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<sup>13</sup> Reg. 17(2)(b).

17) You may request that the hearing proceed in your absence, in which case you must make your request to the clerk at the Tribunal at least **one week** before the hearing. If you do not attend the hearing the Tribunal's panel will not be able to ask questions or seek clarification on any points. This might put you at a disadvantage.

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

## **PS12 Private or closed hearings**

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

### **Hearings in private**

1. Exclusion of the public should be ordered only if alternative measures would not suffice.
2. The grounds for holding a hearing (or part of a hearing) in private are as follows:
  - a) publicity would defeat the object of the hearing; or
  - b) the case involves matters relating to national security; or
  - c) it involves especially confidential information (including information relating to personal financial matters, and commercially sensitive information) and publicity would cause damage; or
  - d) a private hearing is necessary to protect the interests of any child or vulnerable person; or
  - e) it is otherwise necessary in the interests of justice on such grounds as public safety, public order, personal safety, privacy or family life.
3. An application must be made to the Tribunal in writing before the hearing date with full reasons and supporting argument. A copy of the application must be served on the other party or parties, who may make representations to the President.
4. Where an application is made orally at the hearing, the appeal will normally be adjourned and the party advised of the proper procedure, unless the panel is of the view that the application is entirely without merit and is being used merely to delay proceedings and secure an adjournment.
5. Applications will be determined by the President, a Vice President or a Senior Member.
6. A Direction to exclude must be clear as to who is and is not permitted to attend.
7. The decision will normally be made public even if the hearing has been held in private.
8. Any published report of a case may be redacted in light of any decision made under this procedure.

## **Extraordinary venues**

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

## PS13 Reviews and setting aside decisions

A decision may be reviewed under reg. 40 of the Procedure Regulations when a party completes the Tribunal's Review Application Form (which can be found on the website or obtained from the Tribunal's offices).

1. There are three stages to the procedure:
  - the application for a review is considered;
  - if granted, the review will take place and a decision reached on whether to set aside the decision;
  - if the decision is set aside, the appeal will be considered afresh.

### Grounds: procedural irregularity

2. The **only grounds** on which a review is possible are those set out in reg. 40(5).
  - (a) a document relating to the proceedings was not sent to, or was not received at an appropriate time by, a party or a party's representative;
  - (b) a document relating to the proceedings was not sent to the VTE at an appropriate time;
  - (c) a party or its representative was not present at a hearing relating to the proceedings and the party shows reasonable cause for its or its representative's absence;
  - (d) there has been some other procedural irregularity in the proceedings;
  - (e) the decision is affected by a decision of, or on appeal from, the Upper Tribunal or the High Court;
  - (f) where the decision relates to an appeal against a completion notice, new evidence, whose existence could not have been discovered by reasonable inquiry or could not have been foreseen, has become available since the conclusion of the proceedings.

3. The words "some other procedural irregularity" in the regulation are not designed to cover any alleged error by the panel. They refer to the way the hearing was conducted and not the actual content of the decision. A procedural irregularity occurs where there has been a substantive failure to comply with the Tribunal's Practice Statement.

### Applications

4. An application **on the appropriate form** must be made to the Tribunal office, **within 28 days** of the date the written decision was sent out. The application must state the following:
  - the names of the applicant and representative (if there is one);
  - the name of the other party or parties;
  - the address of the subject property;
  - the appeal number;
  - the date and place of the hearing;



- the address for correspondence;
- the ground(s) on which the application is made by reference to reg. 40(5);
- the facts or argument supporting the application, together with any relevant evidence.

5. In exceptional cases and for good reason, the President may consider an application which has not been made within the 28-day period (reg. 6(3)(a) of the Procedure Regulations).

6. Where the grounds for making an application are known before the written decision has been issued, especially where the grounds may also constitute a judicial complaint, an application may be made. Parties are strongly advised to make an application at the earliest opportunity, for example immediately following the hearing.

7. Such an application, which is outside reg. 40 until the decision is issued, will be dealt with by the President as he sees fit.

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

9. The application, together with the clerk's notes from the hearing and any comments of the other party or parties, will be sent to the President as soon as possible.

10. Where the application concerns the conduct of or advice given by the clerk, the Registrar will be consulted and the matter will be passed to another member of staff.

### **Consideration of application**

11. The President will consider the papers and decide, normally without a hearing, whether one or more of the grounds specified in reg. 40(5), have been satisfied.

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

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

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

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

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

## **Review**

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

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

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

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

21. It is for the applicant to satisfy the Tribunal, on the balance of probabilities, that the requirements in para. 20 above have been met.

### **Where the decision is set aside**

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

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

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

25. The Registrar will arrange for the original appeal to be heard afresh as soon as possible before a different panel from the one that originally heard the appeal.

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

## PS14 Reinstatements and lifting of a bar

1. An appeal that has been struck out or withdrawn may, within one month, be reinstated on application in writing by the appellant. (Regs. 10 and 19 specify the time from which the one-month period begins to run.) However, given that the Tribunal must have regard to the overriding objective of dealing with cases justly and swiftly, it will scrutinise any application closely and will only exercise its discretion to reinstate a case if the party can satisfy the Tribunal that there was a good reason for any failure, non-compliance with any Direction, practice statement, or order made by the tribunal.
2. An application for reinstatement/lifting of a bar may be on the ground that **either**:
  - there was compliance with the relevant Direction and the decision to strike out was therefore in error, **or**
  - there are good reasons to excuse the non-compliance which justify relief from the sanction of striking out/barring.
3. Reasons to explain or excuse non-compliance may include illness, compassionate circumstances, or any other reasons or circumstances judged to be compelling and reasonable. Relevant considerations include the interests of the administration of justice, whether the application has been made promptly, whether the failure to comply was intentional, accidental or negligent, whether there is a good explanation for the failure, and the effect on the parties of granting the application.
4. It is for the applicant to satisfy the Tribunal that the reasons are such that it is in the interests of justice to reinstate the appeal or lift the bar. There is no presumption in favour of doing so and reinstatement will not be ordered merely because the striking out will deprive the appellant of having the appeal determined on its merits.
5. An appeal struck out because the party's case sent electronically was not received by the 5pm deadline will be reinstated if it can be shown that it was sent at least 10 minutes before the 5pm deadline but will otherwise be reinstated only if the lateness can be explained in accordance with paras. 3 and 4 above.
6. An application for reinstatement must give the reasons, together with any supporting documentation. It is for the appellant to provide adequate reasons and proof and it is not for the Tribunal to seek amplification or explanation. Where it is asserted that a notice of hearing or other relevant notice was not received, the appellant should, wherever possible, identify the steps that have been taken to support that assertion, such as checking postal records, mail book or electronic systems.
7. The Tribunal may seek the comments of the respondent where it is thought necessary, in the interest of all parties, for the fair determination of the application.
8. Written reasons must be given for the decision.
9. Where an application to reinstate or lift the bar has been granted, all parties will be notified. Where it is rejected, only the applicant will be notified (unless the respondent had been informed of the application).
10. A decision on the application is final and may not be renewed or form the subject of a request for review under reg. 40.

## PS15 Publication of decisions

The Tribunal is a judicial body and as such its work is of public interest and, in the spirit of open justice, decisions will be published on its website, as data protection legislation allows. There is an abundance of case law to illustrate the point and indeed the Court of Appeal in the recent case of **Q Ltd v L [2019] EWCA Civ 1417** illustrates this principle that open justice is paramount. However, there are a very limited number of categories of case where it is not appropriate to publish any of the personal details of an appellant and in those types of cases a redacted version of the case may appear.

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

- non-domestic rating (including penalty notice) appeals;
- council tax valuation (banding) appeals;
- council tax liability decisions;
- council tax penalty appeals.

(ii) Council tax reduction decisions are not placed on the website unless the President directs otherwise on the ground that the decision in question involves a point of principle or law.

2. Notwithstanding the above, any person may inspect any decision (reg. 41(4) of the Procedure Regulations).

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

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

5. It is for the applicant to satisfy the Tribunal that the application should be granted and must be made promptly.

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

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

7. The above grounds are not exhaustive, and an application may be made and granted on other grounds.

8. An application under para. 3 may be made in writing before the hearing, or orally at the hearing, or exceptionally in writing after the hearing, in all cases supported by full

reasons. An application made orally at the hearing should be reinforced at the time or immediately afterwards by a written submission.

9. In an application, the party must indicate whether they believe it would be possible to draft the decision so that the sensitive material can be omitted. Alternatively, where the material is crucial to the reasoning and must therefore be included in the decision issued to the parties it could be redacted in the published version.

10. It is not enough for an applicant merely to claim that the material falls within a particular category. It must be shown convincingly that its publication would be damaging.

11. The application will be referred to the President, together with any observations of the panel and the clerk. If granted, a draft of the decision may be shown to the applicant or other party before it is formally issued.

12. An application made after the decision has been issued may be considered, but the applicant must then explain why the application was not made earlier. The decision may in the meantime have already been placed on the website and, even if it is removed, remain retrievable for some time through search engines, such as Google. In such circumstances non publication may become obsolete and impractical.

13. An application may be referred for comment to other parties to the appeal at the discretion of the President.

14. The President's decision on an application will be issued in writing to the parties, with or without full reasons as the President determines.

15. The President will decide whether to grant or refuse the application. If it is granted, the President will decide whether the decision should be drafted so as to exclude the sensitive material or whether the decision should be redacted, with a full decision being issued to the parties but deletions made for the published version.

16. A decision already issued to the parties cannot be rewritten on an application under para. 3 but can be redacted.

## **PS16 Consent Orders**

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

## PS17 Proceedings in other appeal types

This Practice Statement and General Direction apply to the following types of appeals:

- non-domestic rating penalty notice appeals;
- non-domestic rating invalidity appeals;
- council tax valuation invalidity appeals
- council tax penalty notice appeals;
- drainage rate appeals.

There is an expectation in all of these types of appeals that the parties have fully exchanged evidence and argument before the appeal was lodged and therefore there is no disclosure process. However, evidence or argument which a party has not shared with the other party must be exchanged prior to the hearing. This General Direction is issued with the notice of hearing.

### General Direction

#### Appellant

1. The Tribunal directs that you must either attend/be represented **or** request the hearing to proceed in your absence **and** send your written representations at least fourteen days before the hearing.
2. Your appeal may be struck out or dismissed if –
  - you or your representative fail to attend; **and**
  - you have not requested the hearing to proceed in your absence; **and**
  - the Tribunal is satisfied that this notice was sent to you.

'Struck out' means that your case will not be considered and will be unsuccessful.  
'Dismissed' means your appeal is turned down and you no longer have a case with us.

3. Unless your case is postponed, it is expected that you (or your representative) will attend the hearing to present your case. **You should notify the Tribunal at least two weeks before the hearing if you intend to appear, as the Tribunal tends to over list the number of appeals and time may not be available for your case to be heard without prior notification.**
4. Any written submissions must be received by the Tribunal at least 14 days before the hearing. They should be sent to the clerk at the above address and also to all other parties to the appeal. The panel will hear the appeal in your absence. Please be aware that you may be at a disadvantage if you are not present: if points in your written submission are unclear, you will not be able to clarify them; and you will not be able to reply to what is said by the other side.

## Respondent

5. The Tribunal directs that you must either attend/be represented **or** request the hearing to proceed in your absence **and** send your written representations at least fourteen days before the hearing.

6. The appeal may be heard in your absence without your evidence and/or argument if –

- you or your representative fail to attend; **and**
- you have not requested the hearing to proceed in your absence; **and**
- the Tribunal is satisfied that this notice was sent to you.

## Evidence and argument

7. There is an assumption that, due to the nature of these types of appeals, the parties will have fully exchanged evidence and argument before the hearing. Any such material provided for the first time at the hearing may not be allowed by the panel unless there is good reason for the late submission and the other party is not prejudiced.

8. Both parties must bring to the hearing four copies of their full case including all evidence and argument (for each panel member, the clerk and the other party, unless the other party has indicated in advance, they do not require a copy and in which case only three copies are needed).

9. Where the parties intend to rely on well-known case law (that is case law listed on the Tribunal's website at <http://www.valuationtribunal.gov.uk/existing-appeal/preparing-for-the-hearing/case-law-list/>) they do not need to produce the full decision at the hearing but must provide the relevant extract they intend to rely on, together with an explanation as to how it assists their case.