PRACTICE STATEMENT: APPELLANT'S NON-ATTENDANCE

General Directions

1. (1) In all appeals before the Tribunal, a general direction issued pursuant to regs 6(2), 8(1) and 17(1)(a) of the Procedure Regulations[1] applies. The substance of this direction will be communicated to the appellant at the same time, or on the same day, as the notice of hearing. It will require the appellant ***either*** to appear/be represented at the hearing ***or*** give written consent to the matter being heard in his/her absence.

   (2) For the appeal to be heard in the appellant's absence, it is necessary for the appellant to provide the evidence and argument in written form *14* days before the date of the hearing. Annex 2 sets out the requirements for this written submission.

   (3) Failure to comply with the direction may lead to the striking out of the appeal under reg. 10 (3)(a).

2. Model wording for the notification is contained in Annex 3.

3. Any written evidence or argument already submitted by the appellant prior to receiving the notice of hearing containing the general direction may satisfy the requirement to supply written evidence and argument, it being for the panel to determine whether such material contains sufficient substance to meet the requirement of the direction.

Failure to comply with direction

4. There will be a failure to comply with the direction if the appellant does not attend/is not represented at the hearing ***and*** has not given consent for the matter to proceed.

5. In this event, the panel will satisfy itself that the notice of hearing was sent, that no application for a postponement or adjournment has been made and is outstanding, and that nothing has been heard from the appellant or received in writing, and will then ask the respondent if there has been any contact with the appellant.

6. Subject to anything that leads the panel to decide to adjourn the appeal, the appeal will be struck out in accordance with reg. 10(3) and the appellant

[1] The Valuation Tribunal for England (Council Tax and Rating Appeals)(Procedure) Regulations 2009 (SI 2009 No 2269). See Annex 1.

notified accordingly and informed of the right under reg. 10(5) to apply within one month for the proceedings to be reinstated (reg. 10(6)).

7. In any other case where there has been a failure to comply fully with the general direction, the panel will decide how to proceed.

Where request for hearing in absence has been made and written evidence or argument supplied

8. The appellant should send the written submission by the due date to the clerk at the address given on the Notice of Hearing and to all other parties to the appeal.

9. The panel may proceed with the hearing in the appellant's absence if it considers that it is in the interests of justice to proceed (reg. 32).

10. If the panel decides to proceed, it will consider the appellant's written submission and the argument and evidence of the respondent and reach its decision.

11. If it does not proceed with the hearing, it will adjourn the appeal subject to such conditions or directions as it may specify.

12. Regulations 6(1) and (2), 8(1), 10(3), (5) and (6), 17(1) and 32 are annexed to this Practice Statement for ease of reference.

23 March 2010

President

Annex 1

THE VALUATION TRIBUNAL FOR ENGLAND (COUNCIL TAX AND RATING APPEALS) (PROCEDURE) REGULATIONS 2009 (SI 2009 NO 2269)

Appeal management powers
6.—(1) Subject to the provisions of Part 1 of Schedule 11 to the 1988 Act and of these Regulations, the VTE may regulate its own procedure.
(2) The VTE may give a direction in relation to the conduct or disposal of proceedings at any time, including a direction amending, suspending or setting aside an earlier direction.

Procedure for applying for and giving directions
8.—(1) The VTE may give a direction on the application of one or more of the parties or on its own initiative.

Striking out proceedings
10.
(3) The VTE may strike out the whole or a part of the proceedings if—
(a) the appellant has failed to comply with a direction that stated that failure by the appellant to comply with the direction could lead to the striking out of the proceedings or that part of them;
(5) If the proceedings, or part of them, have been struck out under paragraph (1) or (3)(a), the appellant may apply for the proceedings, or part of them, to be reinstated.
(6) An application under paragraph (5) must be made in writing and received by the VTE within one month after the date on which the VTE sent notification of the striking out to the appellant.

Evidence and submissions
17.—(1) The VTE may give directions as to—
(a) issues on which it requires evidence or submissions;
(b) the nature of the evidence or submissions it requires;
(c) whether any parties are permitted or required to provide expert evidence;
(d) any limit on the number of witnesses whose evidence a party may put forward, whether in relation to a particular issue or generally;
(e) the manner in which any evidence or submissions are to be provided, which may include a direction for them to be given—
(i) orally at a hearing; or
(ii) by written submissions or witness statement; and
(f) the time at which any evidence or submissions are to be provided.

Hearing in a party's absence
32. If a party fails to attend a hearing the VTE panel may proceed with the hearing if—
(a) it is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and
(b) it considers that it is in the interests of justice to proceed with the hearing.

Annex 2

Requirements for a written submission

The written submission must be particularised to the instant case and contain the following:

- A statement of the issues in dispute;
- An explanation of 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 appellant or representative.

An unrepresented appellant will not be expected to provide the above material in the form and to the extent expected of a professional representative,[1] 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.

[1] For the definition of "professional representative", see Practice Statement: *Professional Representatives* (VTE/PS/D1: 23 March 2010).

MODEL WORDING

Notification of Hearing and Direction

Your appeal has been listed for hearing.
If you appoint someone to represent you, you must let us know in writing.

If this date is not convenient for you or your representative, you may request a postponement. You will have to give reasons for this.

Unless your case is postponed, it is expected that you (or your representative) will attend the hearing to present your case. Alternatively, you may request that the hearing proceed in your absence, in which case you must send your evidence and/or arguments in writing in advance. 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 Tribunal directs that you must either attend/be represented ***or*** request the hearing to proceed in your absence ***and*** send your written representations.

If –

(a) you or your representative fail to attend; ***and***
(b) you have not requested the hearing to proceed in your absence; ***and***
(c) the Tribunal is satisfied that this notice was sent to you,

your appeal may be struck out. It may also be struck out if your fail to appear and have failed to provide the required written submission by the due date. "Struck out" means that your case will not be considered and will be unsuccessful.

If you fail to attend but have asked for a hearing in your absence ***and*** have sent in a written submission, the panel will decide whether it will consider your case or adjourn to another date. If the hearing proceeds, you may be at a disadvantage if you are not present: if points in your written submission are unclear, you will not able to clarify them; and you will not be able to reply to what is said by the other side. Moreover, in non-domestic rating cases, if you do not attend, you cannot appeal.

If the panel considers that it is not able to deal properly with your appeal in your absence, it may adjourn to another date so that you can attend. If the panel proceeds with the hearing in your absence, it may conclude that you have not made out your case against the other side and dismiss your appeal.