



**PRACTICE STATEMENT:  
NON-DOMESTIC RATES (RATING LIST 2010): DISCLOSURE AND EXCHANGE  
VTE/PS/A7-1: 8 NOVEMBER 2011**

**PRESIDENT'S EXPLANATORY COMMENTARY**

**Introduction**

1. This commentary seeks to assist all those who are affected by the Practice Statement – parties, professional representatives, staff and members of the Tribunal. It does not replace or supersede the text of the Practice Statement itself, which remains authoritative, nor does it seek to cover every aspect of the procedure, but is designed to assist by explaining the process and the thinking behind it.

**Scope**

2. The revised procedures introduced by this Practice Statement apply only to appeals arising from the 2010 Rating List and only where the notice of hearing has been issued after 1 January 2012. Earlier appeals will continue to be governed by the original PS A7: 28 July 2010 (for which there is a separate Explanatory Commentary), unless para. 4 of the Practice Statement provides otherwise (as explained in para. 3 below).

**Postponements**

3.
  - (a) A postponement granted before the deadline for submission of the appellant's Statement of Case will lead to the issuing of a new notice with standard directions under the new Practice Statement (*i.e.* A7-1), even if the case was a pre-2012 one and previously governed by PS A7. There will thus be a completely new timetable in accordance with the A7-1 standard directions.
  - (b) However, if the postponement is granted *at any time* after submission of the appellant's Statement of Case, a new hearing date will in due course be given but the timetable will remain unchanged, *i.e.* the original timetable will apply in relation to the original hearing date even though it has been postponed, unless the Tribunal issues specific directions to the contrary. Reg. 17 notices and Statements of Case already submitted remain in place and should not be amended or added to without the permission of the Tribunal.

**Purpose**

4. The procedure is designed to achieve the following:
  - For each party to be informed of the essential aspects of the other party's case, to avoid "trial by ambush" and to allow each party to consider the other party's arguments and prepare for the hearing;
  - To avoid the need for adjournments caused by evidence or argument adduced at the hearing without prior notice;

- To save time at the hearing by identifying in advance the principal issues;
  - To avoid difficulties at the hearing by revealing any preliminary, procedural or technical issues that may be present;
  - To allow the clerk and panel members to prepare for the hearing.
5. The need for advance disclosure and exchange should also encourage parties to prepare fully for the hearing, which is in their own interests and the interests of justice. In addition, it will enable both sides to review the relative merits of their cases so as to make an informed judgment whether the appeal should be pursued or settled.
  6. Statements of Case are required to be prepared only for appeals that are actually proceeding to a hearing where efforts to reach agreement through discussion have failed. The Tribunal expects the parties to have engaged in meaningful discussions and all parties should co-operate to that end.

### Outline of the procedure

7. The procedure begins with the issue by the Tribunal to all parties of "Standard Directions" along with the notice of hearing. The standard directions, annexed to the Practice Statement, inform the parties of what they must do prior to the hearing, and the timetable for doing so. The attached flow chart illustrates the process, but it must be read in conjunction with the Practice Statement itself and this Commentary.

### Procedure and timetable

| When?                                       | What?  | By Whom?   | Consequence of failure to comply   |
|---|--|------------|--|
| At least <b>8</b> weeks before hearing      | Reg. 17 evidence to be issued by respondent if basis provided by appellant | VO         | Rental evidence submitted later by VO may be excluded  |
| At least <b>6</b> weeks before hearing      | Statement of Case  | Appellant  | Appeal struck out  |
| At least <b>6</b> weeks before hearing      | Notice to Tribunal if appellant does not wish to attend hearing            | Appellant  | If appellant does not appear and has not so informed the Tribunal, appeal will be struck out |
| No later than <b>4</b> weeks before hearing | Statement of Case (plus Reg. 17 evidence)                                  | Respondent | Barred from taking any further part in the proceedings; Reg. 17 notice excluded.             |

## Statement of Case

8. Para. 6 of the Practice Statement and paras 2, 5 and 6 of the Standard Directions define the nature and scope of the Statement of Case.
9. It is not intended to replace oral argument at the hearing or to cover everything that the party or representative plans to say. It must in its entirety be written for the particular appeal and not be a standard document adapted to the instant appeal by a few lines of bespoke material, but there is nothing wrong with a standard format or template or some brief passages that may be common.
10. A Statement of Case that contains appreciable amounts of extraneous or irrelevant material will be regarded as non-compliant. Material will be judged extraneous or irrelevant if it bears no conceivable relevance to the issues in dispute and to be determined. Responsible representatives and parties need have no fear that they will be penalised under this provision. It is intended to catch only egregious instances of non-compliance.
11. It is not enough merely to make assertions unsupported by evidence or argument. E.g. "The valuation is excessive and unlawful" or "The valuation should be £1" will not suffice.
12. While it is not possible to prescribe optimal or even typical length, two or three pages of A4 are likely to suffice for most cases, though some may require something longer. Complex cases are in any event covered by a different procedure: see Practice Statement: *Complex Cases: Case Management*, VTE/PS/A3: 23 March 2010.
13. A form for completing a Statement of Case, intended primarily for unrepresented appellants, may be found at [www.valuationtribunal.gov.uk/Attending\\_A\\_Hearing/PracticeStatements.aspx](http://www.valuationtribunal.gov.uk/Attending_A_Hearing/PracticeStatements.aspx).

## Striking out and barring

14. These are severe consequences. They arise where there has been "substantial failure to comply". They are the only sanctions available to the Tribunal and are therefore essential to secure the effectiveness of the procedural regime.
15. The test to be applied for determining compliance is whether the Statement fulfils the objectives, particularly the first, set out in para. 4 above.
16. Application can be made for reinstatement of an appeal and lifting of a bar: see Practice Statement: *Applications for reinstatement following striking out and withdrawal and lifting of a bar*, VTE/PS/C2: 26 July 2010. Such applications will be considered by a senior member normally without a hearing.

## Reg. 17(3) rental evidence

17. The procedure will begin (eight weeks before the hearing) with the service by the respondent VO of a reg. 17(3) notice, but this will be done only if the appellant has, in the original proposal or any communications between the

parties, provided a basis for the VO to believe that a reg. 17(3) notice is required.

18. If a reg. 17(3) notice has not been served at this stage but the appellant provides such a basis in his Statement of Case, the VO may include a reg. 17(3) notice in his own Statement of Case if he can demonstrate that he was justified in not providing it at the earlier stage and that the appellant's Statement of Case now affords a basis for doing so.
19. If the appellant objects to its introduction at this stage, he must advance reasons and the Tribunal will admit the evidence only if it satisfies the requirements of para. 5 of the Practice Statement.
20. The four weeks then available to the appellant to deal with the evidence is regarded as sufficient without the need for a postponement.

#### **New/additional argument or evidence**

21. Paras. 13 and 14 of the Practice Statement describe the approach to requests to deploy argument or adduce evidence not covered or referred to in the Statement of Case.

#### **Failure to attend**

22. An appeal will be automatically struck out if the appellant fails to appear at the hearing without having informed the Tribunal by the due date (i.e. six weeks prior to the hearing) that he/she wishes the appeal to be heard in his/her absence (and has provided no valid reason to justify non-attendance on the day).
23. Where the appellant has requested the appeal to proceed in his/her absence, it is for him/her to ensure that the Tribunal has all the necessary evidence and argument to be able to deal with the appeal at the hearing.

#### **Unrepresented appellants**

24. The Practice Statement and the procedures set out in it apply to all parties, represented and unrepresented, except that the Tribunal recognises that an unrepresented appellant is unlikely to possess the skill, knowledge and experience of a professional representative. Some allowance will therefore be made, as it always is in courts and tribunals, for the "litigant in person". They are not exempt from the requirements of the Practice Statement and the Standard Directions, but their Statement of Case will not be assessed with the same rigour as one produced by a professional representative.



8 November 2011

President

**Practice Statement A7-1: President's Explanatory Commentary: Flow Chart**

(This chart must be read in conjunction with the Practice Statement and the President's Explanatory Commentary.)

**Not less than two weeks after target date when discussions between parties should be ended.**

