



**PRACTICE STATEMENT:
NON-DOMESTIC RATES (RATING LIST 2010): DISCLOSURE AND EXCHANGE
VTE/PS/A7: 28 JULY 2010**

PRESIDENT'S EXPLANATORY COMMENTARY

Introduction

1. This commentary seeks to assist all those who are affected by the Practice Statement – parties, professional representatives, clerks and tribunal officers, 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 new procedures introduced by the 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 2011.

Purpose

3. The new 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.
4. 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.
5. 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.

Outline of the procedure

- 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.

Procedure and timetable

When?	What?	By Whom?	Consequence of failure to comply
At least 6 weeks before hearing	Any Reg. 17 rental evidence to be used by respondent	VOA	Rental evidence by VOA may be excluded
At least 4 weeks before hearing	Statement of Case	Appellant	Appeal struck out
At least 4 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 2 weeks before hearing	Statement of Case	Respondent	Barred from taking any further part in the proceedings

Statement of Case

- Para. 11 of the Practice Statement and paras 2, and 5 and 6 of the Standard Directions define the nature and scope of the Statement of Case.
- 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.
- 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.
- 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.

Striking out and barring

11. 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 new procedural regime. Panels should however be mindful that as these are severe sanctions, they should be imposed only when essential and they are particularly advised to apply these powers carefully in the early days of the new procedure as parties and their representatives become familiar with the standards expected.
12. The test to be applied for determining compliance is whether the Statement fulfils the objectives, particularly the first, set out in para. 3 above.
13. 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 without a hearing.

New/additional argument or evidence

14. See paras. 9 and 10 of the Practice Statement. Panels are urged to use common sense in considering requests to deploy argument or adduce evidence not covered or referred to in the Statement of Case and in particular to extend some latitude in the early days as parties and representatives become familiar with the new procedural regime and the standards expected.

Failure to attend

15. 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. four 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).
16. Where the appellant has given such notice, 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

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



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President

Practice Statement: Non-Domestic Rates: Disclosure and Exchange (VTE/PS/A7: 28 July 2010): Flow Chart

