

Issues Relating to the Closure of the Rating List

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What is happening?

- 2017 rating list (finally) ends on 31 March 2023
- First rating list to which check, challenge appeal (CCA) regime applies
- Regulations setting deadlines for proposals (aka challenges) under 2017 rating list expected imminently
- Past practice: no RP proposals after list end; VO gets an extra year
- Unknown at the moment precisely how this will be tailored to CCA regime (despite the promise of early visibility in the Interim Review of CCA (Feb 2020)).

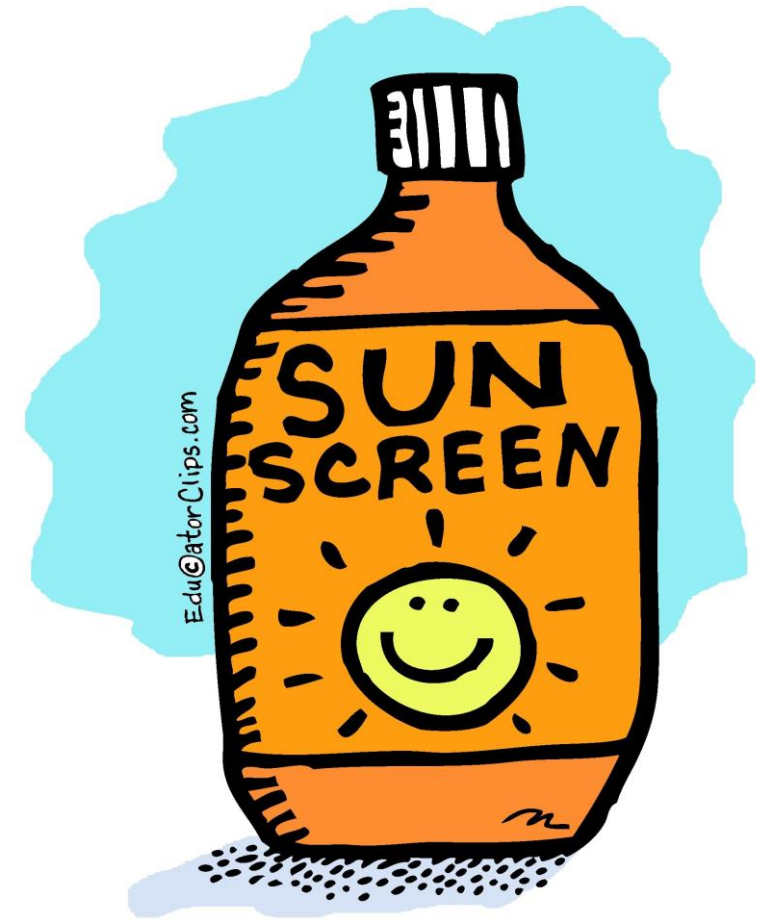
If I could offer you one piece of advice.....

- **Get your checks in**in plenty of time

Rules for checks in reg 4A – 4F of NDR (ALA) (E)

Regs 2009/2268 (as amended)

- It is a 2-way exchange of information with VO
- Important to see how rules will apply especially if some delay on the part of the VO



Thoughts on possible cut off points

- Reg 3 of 2009 Regs defines “confirmation” by reference to regulation 4C(1)(c)
- RP confirmation under Reg 4C is response to information provided by VO under reg 4B
- If confirmation used as step that must be completed before 31 March 2023 – what happens if delay/glitch in VO provision of information under reg 4B?

Exceptions to the general cut off point

- NB – certain time limits existing grounds for proposal (Reg 4(1)) apply from later date than end of list:
- (d) RV of V0 alteration is inaccurate
- (f) day of alteration is wrong;
- (e) inaccuracy shown by decision of VTE/UTLC/Court in relation to another hereditament.

Regs need to apply bespoke cut off for these provisions. It has generally been 6 months from triggering event. But what will need to happen by then?

The rest of my talk.....

- Has no basis more reliable than..... past experience
- 4 points:
 - Draft challenges/proposals carefully
 - May need to think through alternative scenarios
 - Anticipate anomalies
 - Check the backdoor

(1) Draft proposals/challenges carefully

- Beware the ‘era of technicalities’
 - Proposals may be carefully construed (see **Hughes (VO) v York Museums and Gallery Trust**) [2017] UKUT 200 (LC) at [84] “unattractive technical point “raised – and then succeeds in part [109-110].
 - MCC proposals particularly problematic
 - Do the circumstances identified in the proposal cause the RV to be inaccurate? (see for example – **Patel v Jackson** (VO) [2019] RVR 232 at [22] and [28])
 - Inaccuracies may invalidate proposals (**Mayday Optical v Kendrick** (VO) [2013] UKT 548(LC)– (wrong rent invalidates proposal) - see now **Alam v Stoyles** [2018] UKUT 266 (LC) at para 24 which emphasises the question of validity depends on substantial compliance and prejudice

(2) Thinking through alternative scenarios

- Key case is: **Avison Young v Jackson (VO)** [2021] EWCA Civ 969
 - Approach to regulation 38(7) of VTE Regs 2009 – power of VTE to require an alteration to a rating list to be limited to the duration of the circumstances giving rise to the alteration.
 - Context is aftermath of Monk litigation and peculiarities of 2010 rating list closure arrangements
 - RV reduction (AY); deletion (Great Bear) for Monk works

Thinking through alternative scenarios (2)

- CA rejects narrow view of regulation 38(7) powers
 - in both cases it has **no difficulty in finding that the circumstances giving rise to the proposal had ceased to exist when the property was no longer incapable of beneficial occupation** (paras 48-54)

Purpose of reg 38(7)

is to enable the VTE to ensure that its order for alteration of the list has effect only for the duration of the circumstances which justify that alteration, but to give the VTE a discretion not to do so.

Present cases fall squarely within the scope of this power.

Thinking through alternative scenarios (3)

- In both cases – effect of resulting entry was an inaccurate RV
- And no chance to propose alterations to it (as not a VO alteration which would trigger the chance to make a further proposal under reg 4(1)(d))
- By CA untroubled by this – see para 63

“In restricting the alteration to the entry.... in the list to the period for which the property was incapable of beneficial occupation, the VTE accurately reflected the duration of the circumstances which justified the alteration. **The inaccuracy in the list for the succeeding period was not caused by the VTE exercising its power under regulation 38(7): it was caused by the failure of either party to take the steps necessary to alter the list to reflect the change in rateable value of the hereditament as a result of the works in time**”.

Thinking through alternative scenarios (4)

- So the ratepayer may now need to think through all of the changes that might need to be made and make a number of proposals when the list is closing
- How realistic is this?



Thinking through alternatives (5)

- Ricketts (VO) Cyxtera [2022] RA 22 (UTLC)
 - Part of property (631) held to be not capable of beneficial occupation as not practically complete (on date VO purported to alter list)
 - Post Avison Young debate about whether VO can use regulation 38(7) to secure list entry takes effect from point where part of the hereditament capable of beneficial occupation
 - Tribunal declined to exercise discretion
 - Fact specific decision due to: -
 - Lack of properly articulated and consistent case (not pleaded)
 - Lack of valuation evidence
 - Tribunal inclined to accept could have been jurisdiction if properly articulated but “*we decline to use our expertise to indulge in guesswork*” [74]

Thinking through alternatives (6)

- Overall reflections
 - RPs need to be vigilant about issues that might arise **where there is a dynamic situation** close to the end of the list
 - Danger arises where entries only catch up with events in the VTE (after closure of list) rather than through VON alterations (which give rise to a further opportunity to make a proposal)
 - Reg 38(7) as used by CA in AY/GB shifts onus on ratepayer to be proactive (ask: might I be left without a remedy if the VO does not make an alteration within the life of the list?)
 - But Cyxtera also stresses that VO has to be anticipate the basis of any proposed reliance on reg 38(7) in tribunal proceedings

(3) Anticipate anomalies

National Car Parks Ltd v Baird (VO)[2004] R.A. 245.

- Alteration by agreement at time when effective date prescribed by regulations was no earlier than 1/2/92
- But law change meant that by time alteration made so that effective date was 1/4/90 (disadvantageous to RP)
- VO required to give effect to law as it applies at the date of alteration
- JR by RP fails - there was no general expectation that the valuation officer would alter the list at any particular time and he was bound to apply the law as it was at the time of the alteration.

[No legal expectation that you can continue to benefit from favourable rules]

(4) Check the Backdoor

Womersley (VO) v Hart District Council and Rushmoor District Council [2008] RA 279

- Proposals made under reg 4 (4) of the Non Domestic Rating (Alteration of Lists and Appeals) Regulations 1993
- Where “a ratepayer is of the opinion by reason of... (a) decision of a valuation tribunal...the rateable value was wrong” [time for proposal is 6 months from decision]
- held proposal valid because **there was a casual link between the previous decision of a valuation tribunal referred to in the proposal and the formation of the ratepayers’ opinion that the rateable values of the subject hereditaments were incorrect**, since the ratepayers’ valuer could only responsibly form the opinion that the values shown in the list for the subject hereditaments were wrong if he had a valid basis for contending (Rather than merely grounds for suspecting) that these values should be set at figures which did not follow the tone of the list, and that basis was provided by the previous valuation tribunal decision.

Check the backdoor (2)

- Quite a wide concept
 - Did RP actually form the view ?(subjective)
 - On a credible basis? (objective)
- Drafting of Reg 4(1)(e) has been simplified since then – but on either wording this is potentially quite an important exception to the headline list closure rules.

- But trust me on the

“GET YOUR CHECKS IN.....”

Thank you for listening

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