

Procedure – VTE and UT (LC) – role of experts

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The Rules: VTE

- Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009
- Say nothing specifically about experts
- Regulation 17: requirement on VO, LO or billing authority to give 2 weeks notice of information:

scope of r17(3)



(a) supplied in pursuance of-

- (i) paragraph 5 of Schedule 9 to the 1988 Act;
- (ii) section 27(1) or (3) of the 1992 Act;
- (iii) regulations made under section 13 of, or Schedule 2 to, the 1992 Act;
- (iv) regulation 24 of the NDR Regulations;
- (v) under paragraph 15A of Schedule 2 to the 1992 Act; or
- (vi) under section 131 of the Welfare Reform Act 2012 for purposes relating to council tax; and

(b) Information contained in –

- (i) any document which, having been produced to HMRC...is for the time being in their possession or under their control; or
- (ii) any land transaction return within the meaning of Part 4 (stamp duty land tax) of the Finance Act 2003.

and a Practice Direction

- Practice Statement: Non-Domestic Rates (Rating List 2010): Disclosure and Exchange
- Reg 17(3) notice must be served 8 weeks prior to the date of the hearing
- *May* be admitted with Statement of Case (6 weeks ahead) if explain why now considered to be relevant and necessary and that not respondent's fault this wasn't realised earlier

VTE Practice Direction (cont)

- Failure to comply with this direction may result in the exclusion of all such evidence tendered subsequently
- This is said to be default position unless there are “exceptional and compelling circumstances which explain and excuse the failure to have served the notice at the correct time.”

Professional Representatives

- VTE/PS/D1
- A professional representative ... is any person who is being or may be paid or recompensed for representing the party... It also includes ... a member of a relevant professional body, including (but not confined to) the following: a solicitor, barrister, legal executive or surveyor.
- You must:

Professional Representatives



- Conduct yourself in accordance with the rules and practices of your professional body, behave ethically and treat members, staff and other parties with due courtesy
- Have a familiarity with the law and practice in the Tribunal
- Comply strictly with directions and time limits; failure to do so, without reasonable excuse, is likely to lead to decisions which may leave the representative vulnerable to legal action by the client and/or disciplinary action by the appropriate professional body

Dress Code



- And observe the dress code prescribed for members:

Members' dress should be sober and discreet. Members should dress in a formal, professional manner. For men, that means a jacket and tie. Women should dress in a correspondingly appropriate manner. A member's dress should not call particular attention or be distracting. Any jewellery should be restrained. There should be no badges, emblems or items of dress indicative of political affiliations or that could bring the member's impartiality into question. The wearing of poppies during the Remembrance period is not prohibited.

The Rules: UT (LC)

- Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010
- Rule 17 – Expert evidence:
 - Duty of an expert to Tribunal overrides that to client
 - No more than one expert without permission (two in mineral valuations and business disturbance cases)
 - Evidence to be in report unless directed otherwise
 - Must contain the appropriate statement

RICS practice statement

- Surveyors acting as expert witness
- 3rd edition – 2009
- Overriding duty as an expert witness surveyor is to the tribunal to whom the expert evidence is given
- Must explain this to your client, even where client is your employer
- If on a conditional fee, advise client that this may influence tribunal and obtain their express written consent

The roles: expert v advocate

- Should only act in dual role where:
 - (a) neither the rules nor the customs of the particular tribunal prohibit you from so acting; and
 - (b) other relevant factors make it appropriate (e.g. the disproportionality of retaining two persons in separate roles).
- Must clearly distinguish between the two roles at all times

The role of the expert witness

- Impartiality
- Agree where appropriate
- Explain disagreements
- Failure to do so may expose your client to costs: Abbey National plc v O'Hara RA/20/2003