

Procedural Update

Jenny Wigley

Focus on procedure in VTE and Upper Tribunal and lessons to learn from:- $\frac{L}{C}$

- *Simpsons Malt Limited v. Jones (VO)* [2017] UKUT 0460 (LC) (re VTE procedure);
- *Hammerson UK Properties plc v. Gowlett (VO)* [2017] UKUT 0462 (LC) (re UT procedure);
- Point arising from *Telereal Trillium v. Hewitt (VO)* [2018] EWCA Civ 26

General themes arising from civil litigation:-



- Stricter approach to compliance with rules of procedure, directions and orders;
- Need for disputes to be resolved efficiently and at proportionate cost;
- Both in interest of parties and wider public interest.

Approach established in:-



- *Denton v. TH White Ltd* [2014] 1 WLR 3926;
- Application to the tribunals: *BPP Holdings v. HMRC* [2017] 1 WLR 2945;
- Importance of 3 stage test (for extensions of time, relief from sanctions, applications to re-instate).

Denton 3 Stage Test



- (1) Is Breach serious or significant? (extent of breach and consequences)
- (2) Why did failure or fault occur?
- (3) Consider all circumstances so as to deal justly with the application – relevant factors?

Simpsons Malt v. Jones (VO):

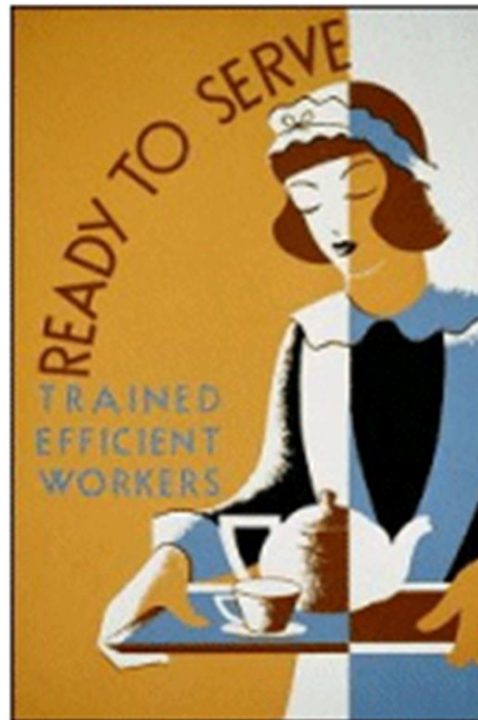


- UT expressly not unsupportive of VTE's efforts to manage its caseload effectively;
- Not condoning breaches of orders or Practice Statements:
- No diminishing of “need for robust case management regime”

BUT

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“Handmaid, not Mistress”



Some specific issues arising :



- Differences between strike out powers under Reg 10(1), Reg 10(3)(a), (b) and (c) and corresponding rights to apply to re-instate under Reg 10(5)
- Differences between:
 - consideration by VTE of application to re-instate (relief from sanctions); and
 - consideration by UT of appeal against strike out

Duty to give decision notice and reasons (Regs 36(2) and 37(1));

What was decided?

- All appeals allowed;
- Automatic strike out for ‘substantial’ failure to provide statement of case is INAPPROPRIATE (para 34);
- Use of “Exceptional reasons” as sole criterion in discretionary strike out decision or application to re-instate is UNLAWFUL – Civil Court principles apply;
- In some cases no procedural failings at all by Appellant;
- In others, failure by VTE to provide reasons.



Practical Take Away Points:



- All appeals allowed – BUT due to faults in VTE decision making – BEWARE failing to comply with procedures without good reason and BEWARE limited role of UT on appeal;
- On application to re-instate ENSURE full information provided in support – gaps difficult to remedy on an appeal;
- CHECK – Has VTE applied *Denton* 3 stage test?
- CHECK – Has VTE complied with duty to provide reasons?

Hammerson UK Properties PLC v. Gowlett (VO) (1)

- Appeal on ground of material change of circumstances;
- Effect on value of opening of competing shopping centre;
- High value case and 'complexities of arguments'
- But no request for special procedure.

Hammerson UK Properties PLC v. Gowlett (VO) (2)

- Time extension for filing grounds of appeal and statement of case
- Time line:
 - 20 Sept: VTE decision
 - 17 Oct: Notice of Appeal & request for extension
 - 11 Nov: UT decision on extension (only to 17 Nov)
 - 15 Nov: Further application for extension
 - 23 Nov: Direction for oral hearing re strike out
 - 1 Dec : Oral hearing
 - 15 Dec: Final date of extension

Hammerson UK Properties PLC v. Gowlett (VO) (3)

- Example of UT application of Denton 3 stage test in practice (paras 55 – 59);
- Very useful practical guidance as to what is, and is not, required in grounds of appeal in a statement of case;
- Examination of what constitute good reasons.



Practical Take Away Points (1):



- Statement of Case
 - identify issues, in summary form basis of fact and law;
include valuation and comparables;
BUT NOT minute detail of facts, full evidence, detailed legal argument.
- 28 days should be adequate (with safeguard in PD 6.2(4),(5))
- Short first extension usually granted if applied for with reasons, good or not so good (PD6.3);

Practical Take Away Points (2):



- Crucial importance of applying for extension before expiry;
- Tribunal practice on a second or further extension (hearing before a Judge);
- Good reason, as opposed to genuine reason for needing an extension?
- Practical guidance when appellant anticipates that case will be significantly different from case below (special procedure, sequential exchange of evidence).

Distinguishing Features of Rating v. General Civil Litigation

- Can be important in Denton stage three (see para 62 in *Simpsons Malt*);
- Potential inappropriateness of asking VTE or UT to determine appeal on basis of Joint Position Paper and assumed facts:

Telereal Trillium v. Hewitt (VO) [2018] EWCA Civ 26

AND FINALLY...



- Important to remember the frontloading rule in appeals on the 2017 list;
- Regulation 17A restricts the VTE's discretion in allowing any evidence that was not submitted with the appeal;
- Reliance on Denton 3 stage test will not help if fall outside Reg 17A circumstances.

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Thank you for listening

Jenny Wigley