

## Scope of Proposals

**Dan Kolinsky QC**  
**Landmark Chambers**

## Statutory provisions

- LGFA 1988, s.55 and schedule 11
- Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (as amended)
- Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009/2269

### Key messages

- Technical area; follow the rules closely
- Don't assume jurisdiction
- Don't assume fairness will prevail

# Proposal – key provisions of Regs



- Grounds for proposals – reg 4
  - General rules
    - one bite only
    - one ground only unless material date and effective date are the same
- What must a proposal include  
(see reg 6 of 2009 Regs)
- Regs 9-12 procedure to be followed where the VO is in receipt of a valid proposal. VO's acceptance of the proposal (Reg 10), withdrawal of the proposal (Reg 11), agreed alterations outside terms of proposal (Reg 12).
- Reg 14(8) – “where an alteration needs to be made after the first anniversary of the day on which the next list is compiled, it shall have retrospective effect only if it is made to **give effect to a proposal**”

## Key provisions (2)

Reg 13(1) referral to VTE

Reg 38(4) of VTE Regs

can require a VO to alter a list in accordance with any provision made by or under the 1988 Act

Reg 38(10) creates a power for the VTE to order that ancillary matters be attended to.

## Who can make proposal

- IP – but must have current interest at the time the proposal is made (see Mainstream Ventures v Woolway (VO) [2000] RA 395)
- Billing authorities – (on the rise given rates retention)
- As to VO – NB recent Court of Appeal decision confirming correctness of longstanding understanding that regulations assume power of VO to alter list by VOA notice– see BMC Properties and Management Ltd v Jackson (Valuation Officer) [2016] R.A. 1

# Accuracy



- Mistakes can lead to invalidity - eg

Kendrick (VO) v Mayday Optical Co Ltd [2014] RA 45

- RP states passing rent was £9,500
- Proposal initially accepted by the VO as valid
- VO subsequently noticed that, in a FOR previously submitted, Mayday has asserted a passing rent of £10,000
- VO contended that the proposal was invalid for misstating the rent, and argued before the VTE that the proposal was invalid
- No explanation for the discrepancy

## Accuracy (2) Kendrick

- President of VTE decided that the discrepancy in the rent information could render the proposal invalid.
- But...
- It would be contrary to public law principles to give effect to VO's pedantic objection
  
- Upper Tribunal overturns VTE.
- The test for invalidity of a proposal:
  - Is there substantial compliance with the regulations?
  - If not, has the VO been prejudiced as a result?
- Here, the error was substantial and the VO was prejudiced.
- VO was entitled to question the validity of the proposal on appeal.

## Accuracy (3) Kendrick implications

- VO has the possibility of a “second bite” at an invalidity argument
- Key point – the VTE’s powers and jurisdiction are closely controlled by reference to the legislative scheme; not broad principles of fairness



## Scope of proposal cases (1)

- Why it matters – jurisdiction of valuation tribunal on appeal is limited to the issues raised by the proposal giving rise to the appeal (see Courtney Plc v Murphy (VO) [1998] RA 77; Davey (VO) v O’Kelly [1999] RA 245)
- Marks & Spencer Plc v Fearney (2000) 79 P&CR 514 – slight refinement

At issue - power of the valuation tribunal to adopt a different effective date to that contained in a proposal which challenged the RV of a property.

VT have the power to differ from the proposal as to the effective date and apply the regulations correctly

## Scope of proposals (2)

- “the disagreement there mentioned .... arises from the valuation officer not being of the opinion that the proposal is well founded. That disagreement which defines the issues to go to the Valuation Tribunal is what is referred by the valuation officer to the Valuation Tribunal and gives the Valuation Tribunal jurisdiction in respect of those issues. The powers of a Valuation Tribunal setting an effective date are not the same as those of a valuation officer altering the list. The effective date will be governed by how the regulations apply to the particular circumstances of the case.” (p.520)

## Scope of proposals (3)

- How proposals are to be construed
  - Ex parte Anglia Water [1991] RA 93 – test is how the proposal is reasonably understood
  - Davey (VO) v O’Kelly [1999] RA 245 – exclude special knowledge of VO and intrinsic material

## Scope of proposal (4)

- Galgate Cricket Club v Doyle (VO) [2000] RA 21
- - benevolent approach to proposal challenging RV and contending that “assessment bad in law”
- held claim that clubhouse entitled to exemption
- (para 6) “The words quoted are indeed wide enough to encompass the question of rateability, and I can see no reason to limit their scope so as to prevent the ratepayer from advancing a legitimate argument and this Tribunal from ordering the list to be corrected if it finds it to be inaccurate in this respect. Indeed, since it is desirable that inaccuracies in the list should be corrected and since the valuation officer has had sufficient notice of the point, there are strong reasons against adopting such a restrictive approach. The valuation officer certainly understood that rateability was raised by the proposal.”

## Scope of proposals (5)

- Leda Properties Ltd v Howells (VO) [2009] RA 165.
- proposal was for the deletion of an entry from the list;
- later contended, tribunal had power to consider challenge to the RV of the property as well
- proposal form had not indicated an intention to challenge the RV; only the deletion box was selected
- The tribunal held that it did not have jurisdiction to consider a challenge to the RV in these circumstances. President Bartlett QC (distinguished Galgate):

## Scope of proposals (6)



“It is not in my view reasonably possible to construe the completed form as encompassing a proposal for a change in the description of the hereditament or the reduction in its rateable value. The option to specify these ... was not exercised, and the ground specified in Part C was deletion. In these circumstances the inclusion of the standard formulaic words “The present assessment is incorrect excessive & bad in law” was .... patently insufficient to permit the proposal”.

## Scope of proposals (7)

- Johnson (VO) v H&B Foods Ltd [2013] UKUT 0539 (LC)
- Described Leda as correctly decided on its facts
- proposal for a merger of two hereditaments; on its true construction wide enough to cover the determination of the RV for the new hereditament if the tribunal allowed the appeal and ordered the merger.
- “proposal identified “the respects in which” it was proposed that the list be altered, which was what was required by [regulation 6\(1\)\(d\) of the NDR regulations](#) . And those “respects”, in our view, included the rateable value of a single, merged hereditament including both of the respondent's properties.”

# Scope of proposals (7)



- 38(10) – limited power
- Leda – takes restrictive approach
- Approved by H&B Foods
- See also – Metis Apartments and Grace (VO) [2014] RA 222 – completion notice rules ineffective in determining proposal under 2010 rating list but can't use s.38(10) to go back and correct 2005 rating list in absence of proposal



# Discussion point 1– multiple proposals + scope of reg14(8)



- Reg 14(8) “where an alteration needs to be made after the first anniversary of the day on which the next list is compiled, it shall have retrospective effect only if it is made to give effect to a proposal”
- wide or narrow meaning of giving “effect to a proposal”

# Big issue to be resolved.....



- How does subsequent alteration affect prior proposal?

## MEPC Birchwood v Grace (VO) [2013] RA 399



- Completion notice served in respect of property
- Entry made for whole property
- Part of property becomes occupied
- Proposal challenging validity of completion notice for whole property
- President of VTE decides that proposal challenging validity of completion notices puts in issue correctness of subsisting entry in respect of unoccupied part

## Birchwood (2)

- Achieves this through emphasis within statutory scheme on proposal relating to “property” not “hereditament”
- Disdain for technical emphasis on form over substance
- Will this be followed and expanded?

# Ebury



- See also Re Ebury [2003] RA 261 at paragraphs 16-22
- prior proposal not swept away by subsequent entry (even though statutory scheme no longer contains express provision for deemed appeal).

## Considerations at play

- Technical areas – statutory rules to be applied
- Proposal is ratepayers way of facilitating determination of dispute which bears of how property shown in list
- Does article 6 of ECHR have a role in construing provisions (eg Reg 14(8)) so as to avoid negating determination of issue that has been properly raised by ratepayer's proposal?

## Discussion point 2

- The revised regulation 14 minefield
- reg 6(5)- can a challenge to the RV and/or date of alteration open up possibilities for challenge which might otherwise be closed off?