

VTE's Procedures  
Has the pendulum swung too far?

Jenny Wigley

Too relaxed



Too draconian ?





## CONTEXT

- 250,000 live non-domestic rating appeals (before April 2017)
- Statements of case received in only 22% of listed appeals (2015-16)
- Substantive decision required in only 1.5% of 2010 list appeals
- “Formidable burden” on VTE’s resources

---

## OUTLINE – *Simpsons Malt Limited v. Jones (VO)* *[2017] UKUT 0460 (LC)*



- What was the case all about?
  - Overall general approach of UT to VTE’s procedures and actions
  - Specific issues arising
  - What was decided?
  - Practical take-away points
-



## What was the case all about?

- Five separate cases
  - All appeals to UT against  
decisions of VTE to strike out; and  
refusals of VTE to re-instate
- 



## What was the case all about? (2)

- Alleged non-compliance with VTE directions included:
    - Failures to contact VTE to indicate whether proceedings are still active (7 to 14 days before hearing date) PS/A2;
    - Failure to re-serve statement of case under VTE pilot directions;
    - Alleged failure to serve original statement of case.
-

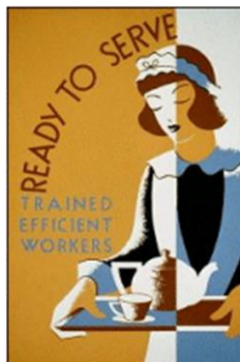
## Overall general approach of UT to VTE's procedures $\frac{L}{C}$ and actions:

- 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"
- 

## Overall general approach of UT to VTE's procedures $\frac{L}{C}$ and actions (2):

**BUT**

"Handmaid, not Mistress"





## Specific issues arising (1):

- Appropriateness of automatic strike out for 'substantial failure' to provide statement of case (paras 9 & 10, PS/A7);
  - 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
- 



## Specific issues arising (2):

- Lawfulness of 'exceptional reasons' criteria used in VTE approach and stated in Consolidated Practice Statement 2017;
  - Duty to give decision notice and reasons (Regs 36(2) and 37(1));
  - Interpretation of various Practice Statements and the pilot scheme.
-



## 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 (1):

- 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?



## Has VTE applied *Denton* 3 stage test ?

- *Denton v. TH White Ltd* [2014] 1 WLR 3926 (CA) and *BPP Holdings v. HMRC* [2017] 1 WLR 2945 (UKSC) – non-domestic rating NOT exceptional case.
- (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? Anything specific to rating – (para 62)?

## Has VTE complied with duty to give reasons? Consequences?

$\frac{L}{C}$

- Statutory duty under reg 36(2) and 37(1);
- Importance of duty and can decision be set aside for failure:
  - What factual issue relied on by tribunal?
  - What power relied on by tribunal?
  - Do rights to apply to re-instate arise?
  - Did tribunal take into account relevant factors and exclude irrelevant factors?
  - Relevance of *S.Bucks DC v. Porter (No 2)* [2004] 1 WLR 1953 (para 195).

## AND FINALLY.....

$\frac{L}{C}$

- Avoid:



- Parties (particularly VO) expected to adopt a “principled approach”



**VTE's Procedures – Pendulum swung too far**

**Thank you for listening**

**Jenny Wigley**

---