

Litigation in practice: hints and tips

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Introduction



- Main fora for rating litigation:
 - VTE
 - Upper Tribunal
 - Magistrates' Court
 - Slightly different approaches required in each
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Statements of Case

- Required in both VTE (2010 List) and Upper Tribunal
 - Purpose – to set out the basis on which you propose to advance your case
 - VTE (Pre-2017 List): Direction 6 of the standard directions
 - Upper Tribunal: Para 6 of the Practice Directions
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Statements of Case

- Purpose – to identify the issues for the Tribunal to decide, the parameters of your case, and the legal and evidential basis of your case.
 - Must address:
 - Grounds of challenge
 - The decision actually sought
 - Factual basis on which the challenge is advanced
 - Evidence (factual and expert) to be called
 - Legal points to be advanced
 - Append critical documents
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Statements of Case

- Style and structure:
 - Include a summary – i.e. explain in no more than half a page why you should win!
 - Must identify all issues to be advanced, but don't need to advance them fully in the SoC. Not a speech!
 - Include your valuation
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Hearings in the VTE

- Generally informal ... but some formality can assist your case
 - Particular issues where valuer acts as expert and advocate
 - Must ensure clarity as to the “hat” being worn at any given time
 - Strategic considerations ...
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Procedural breaches and sanctions in the VTE

- Governed by reg 3 of the VTE Regs – the overriding objective
- See also reg 9: faced with a breach, VTE can take such action as it considers just, including:
 - Waiver
 - Requirement for remedy
 - Making directions
- In short, plenty of mechanisms short of strike out for dealing with breaches



Hearings in the Upper Tribunal

- Considerably more formal than the VTE
- Distinction between evidence and submissions much cleaner
- Judicial expertise – how does this affect the “tone” of your case?



Breaches and sanctions in the Upper Tribunal

- Governed primarily by rule 7 of the Lands Chamber Rules
- Main difference: costs! See rule 10
- Bear in mind dicta of Lord Dyson MR in *Denton v White* para 43:



“The court will be more ready in the future to penalise opportunism. The duty of care owed by a legal representative to his client takes account of the fact that litigants are required to help the court to further the overriding objective. Representatives should bear this important obligation to the court in mind when considering whether to advise their clients to adopt an unco-operative attitude in unreasonably refusing to agree extensions of time and in unreasonably opposing applications for relief from sanctions. It is as unacceptable for a party to try to take advantage of a minor inadvertent error, as it is for rules, orders and practice directions to be breached in the first place. Heavy costs sanctions should, therefore, be imposed on parties who behave unreasonably in refusing to agree extensions of time or unreasonably oppose applications for relief from sanctions.”



Magistrates' courts

- Disputes about non-Rating List aspects of rates liability frequently end up in the magistrates' court:
 - Identity of the occupier (can include “cross-over” issues, e.g. paramountcy)
 - Empty rates relief
 - Charitable relief



Magistrates' courts

- Remember: panel is not specialist
- Many have no rates experience at all!
- Take nothing for granted when setting out case (e.g. what is a hereditament??)



Magistrates' courts – the first hearing

- Courts always list a first hearing
- Extremely unlikely to resolve a contested claim at this stage
- Can avoid first hearing if directions can be agreed

Magistrates' courts – directions



- Need to address:
 - Formal adjournment of first hearing
 - Dates for witness evidence
 - Experts?
 - Skeleton arguments
 - Bundles/authorities
 - Final hearing – time estimate
 - Type of judge?
- Remember – the billing authority is the complainant



Magistrates' courts – costs

- Leading case: **Camden v Patel** [2013] RA 439
- Endorsed following principles (from **Bradford v Booth**):
 - starting point – court has a discretion to order such costs as are just and reasonable. Applies to liability and quantum
 - Exercise of discretion depends on all the circumstances. Costs may follow the event, but do not have to



Magistrates' courts – costs

- “Where a complainant has successfully challenged before justices an administrative decision made by a police or regulatory authority acting honestly, reasonably, properly and on grounds that reasonably appeared to be sound, in exercise of its public duty, the court should consider, in addition to any other relevant fact or circumstances, both (i) the financial prejudice to the particular complainant in the particular circumstances if an order for costs is not made in his favour; and (ii) the need to encourage public authorities to make and stand by honest, reasonable and apparently sound administrative decisions made in the public interest without fear of exposure to undue financial prejudice if the decision is successfully challenged.”



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