

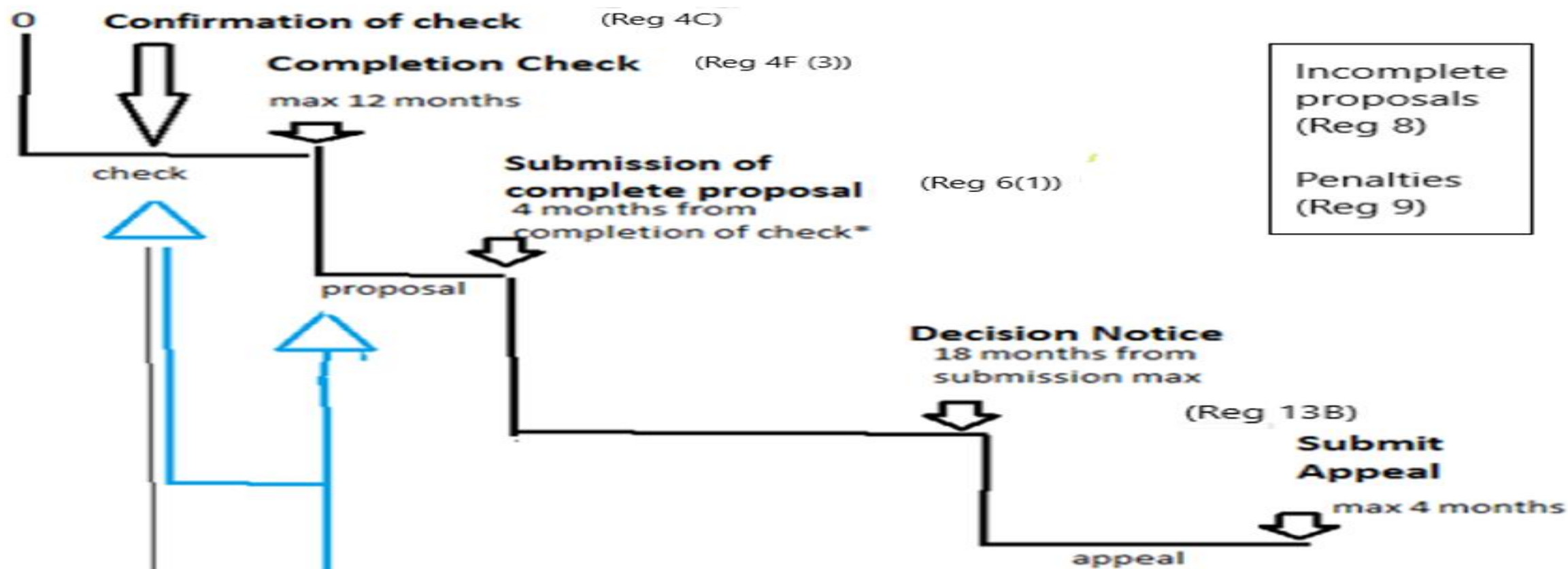
Practical Suggestions for Preparing Challenges

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Golden Rules

- Know the rules
- Think about all of your potential audiences
- Identify your key propositions
- Assemble the evidence to prove key facts and support your valuation
- Think ahead (especially about expert evidence)



MCCs

MCC Regs
Reg 3(7)(b)
SI 1992/556

**Material day for
MCC proposals**

**Submission of MCC
proposals** (Reg 6A)

external MCCs only (Sch2 (7) d & e LFFA 88 - MD
is the later of
-4 months from completion or
-16 months from date of confirmation of check

Check stage

- [Regulation 4A](#) of SI 2009/ 2268 (as amended) defines a check by reference to the steps which must be completed before a proposal may be made.
- [Regulations 4B to 4E](#) set out the steps.
 - [Regulation 4C](#) requires a proposer to confirm to the VO the accuracy of information it holds about the hereditament.
 - [Regulation 4F](#) requires the VO to serve a notice when a check has been completed and provides that a check is taken to be completed if the notice is not served within 12 months of the person confirming the accuracy of information under [regulation 4C](#).
 - Use of Group Pre-Challenge Review (GPCR)

Know the rules (golden rule 1)

- The Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (SI 2009/ 2268) ('Appeal Regulations') as amended by (SI 2017 /155)
 - Reg 4 statutory grounds for making proposal
 - Must have same material and effective date (reg 4(3)(a) and note also reg 6A(4) for MCC proposals)
 - One bite of the cherry (per person) (reg 4(3)(b)(i))
 - Time limits (4 months from check unless reg 6A(2) exception applies ["external" MCC under schedule 6 para 7(d) or (e)])
 - Reg 6 – sets out requirements for content of proposals (see next slide)

Proposal must include (reg 6(4))

- (a) the name, address and contact details of the proposer;
- (b) the grounds of the proposal including the particulars on which each of the grounds is based (“particulars of the grounds of the proposal”);
- (c) details of the proposed alteration of the list;
- (d) the date from which the proposer asserts the proposed alteration should have effect;
- (e) the date on which the proposal is served on the VO;
- (f) evidence to support the grounds of the proposal; and
- (g) a statement as to how the evidence supports the grounds of the proposal.

Think about audience(s) (golden rule 2)

- VO
- VOA hierarchy/strategic decision makers
- Your client
- VTE
- Upper Tribunal (Lands Chamber)

Identify your key propositions (golden rule 3)

- Why is the list wrong and what should it say
 - Link to statutory grounds
 - Where appropriate demonstrate cause of inaccuracy (eg MCC)
 - What entries/valuation(s) result?
 - How are they substantiated?

NB - MCC

- critical to formulate the propositions and the causation with great care
- differential time limits
- consider legal advice at formative stage (MCC/causation/valuation considerations)

Assemble the evidence to prove key facts and support your valuation (golden rule 4)

- Facts – what evidence do I need to establish the challenge? Expert vs factual
- Valuation – comparables (best evidence not kitchen sink)
- Beware without prejudice material
- Think practically and strategically - Can facts be agreed at this stage or assembled in a way that is designed to be agreed at a later stage?
- How in practice is the evidence put forward? (use of witness statements; who has first hand knowledge?; what documents substantiate key assertions?)

Think ahead (especially about expert evidence) (golden rule 5)

- What is factual evidence and what is expert evidence?
- Expert giving factual evidence
- Company witnesses (expertise but not experts)
- **Gardiner & Theobald v Jackson (VO)** issues (see also **Senova v Sykes (VO)** – application to expert giving factual evidence and **Merlin** (paras 162-170) and UTLC PD (2020)
 - Declare conditional fees in VTE; barred in UTLC (PD UTLC (10/20) at 18.27
 - Approach to connected cases
 - Professional obligations (RCIS – Surveyors Acting as Expert Witnesses 4th ed)
 - VTE approach
 - But, what would then happens in the UTLC? Vital to think ahead!

What could possibly go wrong?

- Reg 8 – incomplete proposals (note approach to 4 months time limit and disregards in reg 8(3) and (4)) ; no appeal right
- Reg 9A – penalty for false information
- Latent problems (see next slide)

Appeals

- Appeals (reg 13A) (following reg 13 decision notice)
 - Valuation not reasonable or list not accurate
 - VTE strict approach to new evidence not included in notice of appeal (regulation 17A of 2009/2269) if not agreed

- UTLC – more liberal approach in theory (see next slide) but beware
 - Proposals can be carefully construed (see **York Museums**)
 - Inaccuracies may invalidate proposals (**Mayday Optical v Kendrick** and see now **Alam v Stoyles** at para 24)
 - Pleading points can affect cases (**Cyxtera**)

UT(LC) Procedural cases 2017 rating list

- 2017 list – 1st appeal to UTLC

Stock Auto Breakers Limited v Sykes (VO)

- Para 73 – approach to new evidence in UTLC

“The Tribunal is not bound by Regulation 17A. The 2009 procedure regulations only apply to the VTE and not to this Tribunal, which is governed by its own procedure rules and in particular Rule 16 (evidence and submissions). **There is no equivalent rule** to regulation 17A although rule 16(2)(b)(iii) provides that the Tribunal may exclude evidence that would otherwise be admissible where it would otherwise be unfair to admit it. That is not the case here.”

Concluding reflections:

- Lots of traps for the unwary
- Understand what is needed in terms of analysis and evidence (if in doubt get advice early – eg MCC formulation).
- Factual vs expert is critical
- Think ahead tactically as challenge is the platform for the case going forward

Thank you for listening

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