IN THE UPPER TRIBUNAL (LANDS CHAMBER)

Neutral Citation Number: [2018] UKUT 109 (LC)
Case Nos: RA/80/2017
RA/93/2017

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

RATING – ALTERATION OF RATING LIST – validity of proposal challenging alteration to list made by VO to give effect to agreement – whether abuse of process – Regs. 4, 12, 17 Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulation 2009 – Regs.6(1), 10(2) Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 – appeals allowed and remitted to VTE

IN THE MATTER OF APPEALS AGAINST TWO DECISIONS OF THE VALUATION TRIBUNAL FOR ENGLAND

BY: **(1) THORNTONS PLC**

and

(2) CLARION SOLICITORS LIMITED **Appellants**

Re: (1) Factory and premises,
Thornton Park,
Wimsey Way,
Somercotes,
Alfreton,
Derbyshire DE55 4LS

(2) Ground Floor,
Elizabeth House,
Queen Street,
Leeds LS1 2TW

Martin Rodger QC, Deputy Chamber President and A J Trott FRICS

Decision on written representations

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The following cases are referred to in this decision:

Attorney General v Barker [2000] 1 FLR 759

Johnson v Gore Wood & Co [2002] 2 AC 1

Arnold v National Westminster Bank plc [1991] 2 AC 93

Introduction

1. These two appeals raise the same issue under the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 ("the 2009 Regulations"). They have been considered together under the Tribunal's written representations procedure.

2. The issue arises in this way. In both cases the ratepayer made a proposal under regulation 4(1)(a) challenging the accuracy of a compiled list entry under the 2010 list. A valuation officer ("VO") decided that the proposals were not well-founded and referred them to the Valuation Tribunal for England ("VTE") as appeals. Before the appeals were heard the parties reached agreement that the rateable values should be reduced. Consequently, under regulation 12(1), the VOs altered the list to give effect to the agreements and the proposals were treated as having been withdrawn.

3. Some time later the ratepayers made further proposals to alter the list, this time under regulation 4(1)(d), on the ground that the rateable value shown in the list by reason of an alteration made by a VO was inaccurate. The VOs decided that these proposals were not well-founded and referred them to the VTE as appeals.

4. In neither case did the VO suggest that the second proposal was invalid (having apparently received advice in the first of the appeals that it was open to a ratepayer to proceed as the appellant had done). But in both appeals the clerk to the VTE advised that the second proposal was indeed invalid. The parties having been given the opportunity, albeit at short notice, to comment on the clerk's advice, the VTE proceeded to dismiss the appeals. In doing so it relied on regulation 4(3)(b)(i), the effect of which is that no proposal may be made by an interested person where that person has previously made a proposal to alter the same list in relation to the same hereditament on the same ground and arising from the same event.

The proceedings

5. The appeal in RA/80/2017 is made by Thorntons Plc and has not been opposed by the VO. The hereditament in question is a factory and premises at Thornton Park in Alfreton, Derbyshire. It was entered in the 2010 compiled list with a rateable value of £1,900,000. A proposal was made challenging the accuracy of this assessment on 16 June 2010. After the proposal was referred to the VTE as an appeal, agreement was reached and the VO then altered the list to £1,850,000 on 8 January 2013.

6. On 23 March 2015 a second proposal was made by Colliers International as agent for Thornton's (the papers before us do not indicate whether Colliers had also acted in the original appeal). The ground of the proposal was that the alteration made by the VO two years earlier was "unfair, incorrect, excessive and bad in law" and that as a result of the alteration the list was inaccurate and the entry ought to be reduced to £10.

7. The VTE dismissed the subsequent appeal on 17 October 2017 and Thorntons appealed to this Tribunal on 10 November 2017. Written representations were submitted on its behalf by Mr Laurence Hatchwell MRICS, of Colliers on 5 February 2018.

8. The appeal in RA/93/2017 is made by Clarion Solicitors Ltd ("Clarion") and is also unopposed. The hereditament comprises an office and premises on the Ground Floor of Elizabeth House, Queen Street, Leeds, which was entered in the 2010 compiled list with a rateable value of £104,000 with effect from 1 April 2012. A proposal was made challenging the accuracy of this assessment on 14 January 2013. Agreement was reached and the VO altered the list to £94,000 on 4 November 2014.

9. On 18 July 2016 a new proposal was made on Clarion's behalf by Lambert Smith Hampton on the ground that the alteration made by the VO on 4 November 2014 was inaccurate. Lambert Smith Hampton were not the agents who made the previous proposal in 2013, nor were they instructed when the first appeal was withdrawn following the agreement in 2014. In their proposal of 18 July 2016 they described the entry in the list following the VO's alteration as "incorrect and excessive" and "bad in law" and they proposed that it should be reduced to £10.

10. The VTE dismissed Clarion's subsequent appeal on 8 November 2017. Lambert Smith Hampton appealed the VTE's decision to this Tribunal on behalf of Clarion on 4 December 2017. Written representations were submitted by Mr Philip Clarkson FRICS on 14 February 2018.

Statutory provisions

11. In the 2009 Regulations the abbreviation "IP" is used to mean "interested person", an expression defined in regulation 2(1) as including the current or previous occupier of a hereditament, or any other person having a legal or equitable estate entitling them to possession of the hereditament (whether immediately or in reversion to another interest).

12. The route by which an interested person may secure an alteration in the rating list is by the making of a "proposal", which is defined in regulation 2(1) as "a proposal for the alteration of a local list or the central list."

13. Regulations 4, 12 and 17 of the 2009 Regulations have a bearing on these appeals.

14. Regulation 4 provides for circumstances in which a proposal may be made to alter a local rating list; so far as relevant it states:

> "4(1) The grounds for making a proposal are-

(a) the rateable value shown in the list for a hereditament was inaccurate on the day the list was compiled;

…

(d) the rateable value shown in the list for a hereditament by reason of an alteration made by a VO is or has been inaccurate;

(2) Subject to paragraph (3), a proposal may be made –

(a) by an IP who has reason to believe that one of the grounds set out in paragraph (1) exists;

…

(3) No proposal may be made—

…

(b) by an IP, where—

(i) that person …, acting in the same capacity, has made a proposal to alter the same list in relation to the same hereditament on the same ground and arising from the same event;

…

(c) on the ground set out in paragraph (1)(d), to the extent that the alteration in question gives effect to the decision of a valuation tribunal, the VTE, the Lands Tribunal, the Upper Tribunal or a court determining an appeal or an application for a review in relation to the hereditament concerned.

(4) In paragraph (3)—

….

"event" means the compilation of the list, a material change of circumstances or an alteration of the list by the VO;

…"

15. The circumstances in which a proposal may not be made have been amended by regulation 7 of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) (Amendment) Regulations 2017, so that with effect from 1 April 2017 regulation 4(3)(c) now reads (with the substituted words in italics):

> "(c) on the ground set out in paragraph 1(d) to the extent that the alteration *was made as a result of a previous proposal relating to that hereditament or* gives effect to the decision of a valuation tribunal, that VTE, the Lands Tribunal, the Upper Tribunal or a court determining an appeal or an application for a review in relation to the hereditament concerned."

16. Once a proposal has been made the 2009 Regulations require the VO to respond to it in one of three ways. The VO may give notice disputing the validity of the proposal under regulation 8 (in which case the proposer may either make a further proposal or appeal against the invalidity notice), or reach agreement on a different alteration under regulation 12, or disagree with the proposal and refer the disagreement to the VTE as an appeal under regulation 13.

17. Regulation 12(1) provides that where, after the making of a proposal, the VO and the proposer agree in writing on an alteration of the list which differs from that contained in the proposal the VO shall, within two weeks, alter the list to give effect to the agreement. The proposal is then treated as having been withdrawn.

18. Regulation 17 requires a VO to notify the billing authority and other interested persons of alterations made in the list. By regulation 17(2) the VO must notify the ratepayer and any proposer (a) of the effect of the alteration, and (b) of the effect of the application of Parts 2 and 5 of the 2009 Regulations in relation to the alteration. The obligation to notify is modified by regulation 17(4), which provides as follows:

> "(4) Paragraph (2)(b) does not apply in relation to an alteration made to reflect -
>
> (a) a decision of the VO that a proposal is well-founded;
>
> (b) a decision, in relation to the hereditament which is the subject of the proposal, of a valuation tribunal, the VTE, the Lands Tribunal, the Upper Tribunal or a court; or
>
> (c) an agreement under regulation 12."

The VTE decisions

19. In Thorntons' appeal the VTE based its finding that the proposal was invalid on regulation 4(3)(b)(i), saying this:

> "Having regard to regulation 4(3)(b)(i), it was clear that the appellant was not entitled to make another proposal challenging the accuracy of the compiled list entry when an appeal arising from an earlier proposal on the same ground had already been made and subsequently agreed."

20. The VTE rejected an argument advanced on behalf of Thorntons that the second proposal, having been made under regulation 4(1)(d) in respect of an alteration made by a VO, was made on a different ground to the first proposal, which was made under regulation 4(1)(a). The VTE's view was as follows:

> "The 2013 list alteration was not an alteration which arose from the Valuation Officer's own volition. It was merely an alteration to give effect to an agreement that was reached between the two parties that the compiled list entry be reduced from £1.9 million to £1.85 million.

> Although at face value, the proposal had been made out on the grounds as set out in regulation 4(1)(d), the panel determine that in reality the second proposal was made challenging the accuracy of the compiled list entry under regulation 4(1)(a). The ratepayer seemed to be trying to secure a second bite of the cherry which amounted to an abuse of process."

21. The VTE drew support from regulation 17(2) and (4) for its distinction between alterations made of the VO's own volition, and other alterations. These made it unnecessary for the VO to notify the ratepayer of a change in the list, not only where the change was made to reflect a decision of a court or tribunal, but also where it was made to reflect an agreement.

22. Although the VTE said in its decision that the ratepayer's approach "amounted to an abuse of process" it did not refer to any authority on the meaning of that expression or explain what it understood it to signify, nor did the panel consider whether the circumstances of the appeal satisfied any particular conditions so as to amount to an abuse. The basis of the VTE's reasoning, so far as it was explained in the decision, was limited to equating the grounds on which each of the two proposals had been made and ruling that, for that reason, the second proposal was contrary to regulation 4(3)(b)(i).

23. The VTE's decision on Thorntons' proposal was the first of the two decisions under appeal, and was then the subject of a request for a review. The request was considered by the VTE President who dismissed it on the ground that any challenge to the decision should be by way of an appeal to this Tribunal. The decision and the President's observations on the review were made known to other VTE panels, and in the Clarion appeal the tribunal dismissed the appeal in substantially the same terms as its differently constituted predecessor had disposed of Thorntons' appeal. We have not been supplied with a copy of the President's decision in Thorntons' case but it is apparent from the account given in the VTE's Clarion decision that the President found that the limited circumstances in which a review was possible were not met.

The case for the appellants

24. The appellants' representations in the two appeals are similar and in some respects identical. The only issue addressed is whether the VTE was correct to dismiss the appeals on the basis, in each case, that the second proposal was rendered invalid by regulation 4(3)(b)(i) as having been made on the same grounds as the first proposal.

25. Before the VTE neither VO challenged the validity of the proposals and in this Tribunal both chose not to respond to the appeals, on the ground that the issue had been raised by the VTE of its own motion.

26. The appellants argued that the VTE incorrectly interpreted regulation 4(3)(b)(i) of the 2009 Regulations. They pointed out that the regulation only prevents the

making of a further proposal "on the same ground" and "arising from the same event". They asserted that in both appeals the ground of the first proposal was under regulation 4(1)(a) while the ground of the second was under regulation 4(1)(d). The "event" giving rise to the two proposals was also said to be different: the event giving rise to the first proposal in each case was the compilation of the list, while the second proposal was against an alteration to the list made by the VO. These "events" are recognised in regulation 4(4) as distinct. Therefore, it was argued, the making of the second proposal was not prohibited by regulation 4(3)(b)(i).

27. The appellants questioned the VTE's distinction between alterations to the list made by the VO "of his own volition" and those made as a result of an agreement, pointing out that regulation 4(1)(d) made no such distinction. They also argued that the VTE was wrong to describe the second proposal only as having been made under regulation 4(1)(d) "at face value" and to treat it as one which "in reality" was made to challenge the accuracy of the compiled list entry. The second proposal was expressly and unambiguously directed against the alteration made by the VO. Regulation 4(3)(b)(i) did not prevent the making of such a proposal and the VTE was wrong to describe it as an abuse of process.

28. As for the support derived by the VTE from regulation 17, the appellants submitted that regulation 17 was only concerned with notifying parties about alterations; it did not limit the right to make a proposal under regulation 4(1)(d) and was not concerned with invalidity or limitations on the right to appeal. The right of an interested person to make a proposal did not depend upon the person having received notification of an alteration to the list from the VO. Thus the freeholder of a tenanted property could make a proposal against an alteration by the VO notwithstanding the VO was not obliged by regulation 17 to notify the freeholder of the alteration.

29. Finally, the appellants suggested that the recent change to regulation 4(3)(c) introduced under the 2017 Amendment Regulations supported their position. It is now provided in terms that no proposal may be made "on the grounds set out in paragraph 1(d) to the extent that the alteration was made as a result of a previous proposal relating to that hereditament…" The amendment only applied to the 2017 and later lists and did not apply to the proposals which were the subject of the present appeals. It would not have been necessary if the VTE's interpretation of the 2009 Regulations was correct.

Discussion

30. The VTE dismissed each appeal on the grounds that the second proposal was invalid because it was "another proposal challenging the accuracy of the compiled list entry." The VTE held that such a proposal was prohibited by regulation 4(3)(b)(i).

31. Regulation 4(3)(b)(i) bars the making of a proposal by an interested person where the same person has previously made a proposal to alter the same list in relation to the same hereditament on the same grounds arising from the same event. The

purpose of the rule is presumably to prevent the rating system from being overburdened by duplicate proposals. Whether the previous proposal has been withdrawn, accepted, dismissed on appeal or awaits determination does not matter for this purpose. That is to be contrasted with a proposal to alter the list made by a different person in relation to the same hereditament and arising from the same facts, which will only be prohibited by regulation 4(3)(b)(ii) if the proposal has already been the subject of judicial determination.

32. In both appeals the interested person, the list and the hereditament were the same for both proposals, and the question is whether the grounds of the two proposals and the events from which they arose were also the same.

33. The first proposals were made under regulation 4(1)(a), on the ground that the rateable value shown in the list was inaccurate on the day the list was compiled. The second proposals were made under regulation 4(1)(d), because the rateable value shown in the list by reason of the alteration made by the VO to give effect to the agreement of the first proposal was said to be inaccurate. After the making of the alteration the rateable value shown in the list on the day it was compiled had ceased to be of relevance and no longer appeared in the list. It could not therefore be the subject of a proposal for the alteration of the list. The only alteration which could then be made was to the list as altered by the VO.

34. The event from which the first proposal arose was the compilation of the list. The event from which the second arose was the alteration of the list by the VO.

35. We therefore agree with the appellants that the second proposals cannot be said to have been invalid as having been made on the same ground and arising from the same event so as to be contrary to regulation 4(3)(b)(i). We also agree with the appellants' representatives that the change to regulation 4(3)(c) introduced under the 2017 Amendment Regulations suggests that the draftsman considered there was at least doubt whether the prohibition arose where an alteration made as a result of a previous proposal (which might be because of an agreement under regulation 12, or an alteration made by the VO in light of the proposal but without agreement). The tactic adopted by the ratepayers in these appeals may no longer to be available following the amendment of 4(3)(c).

36. In each case the VTE was well aware of the grounds on which the proposals were expressed as being made. That is clear from its reference to the ground being relied on "at face value" whereas "in reality" the challenge was to the compiled list entry. The VTE nevertheless treated the ratepayers' challenge effectively as a single challenge made in two stages, or a cherry which the ratepayers hoped to consume in two bites. We can understand why both panels considered the ratepayers' tactics to be unattractive but we are satisfied that it was not open to them to treat proposals which, on their face, were made on different grounds and in response to different events as if they were really made on the same ground and arose from the same event. In many respects the 2009 Regulations take a rather mechanical approach to the making and

progression of proposals. The ground of a proposal is required to be stated so it will or ought to be clear from the document itself and cannot be second-guessed by the VO or the VTE and be deemed or treated as being a proposal on a different ground.

37. We do not regard the provisions in regulation 17 for the VO to give notice to the ratepayer of certain changes but not others as providing support for the VTE's wider distinction between alterations of the VO's "own making" and those which were based on an acceptance of a proposal, an agreement or a judicial determination. The right to make a proposal on the ground in regulation 4(1)(d) is not controlled by regulation 17, but by regulation 4(3)(c) which noticeably omits any reference to an alteration made by the VO to give effect to an agreement under regulation 12 from the list of alterations which may not trigger a further proposal.

38. Both decisions are expressed in fairly summary terms without a clear chain of reasoning, which makes analysis difficult. The VTE considered that the second proposals had only been made "to secure a second bite of the cherry which amounted to an abuse of process". It is not clear to us whether the proposition that the ratepayers were engaged in an abuse of process was intended as a separate ground of decision or whether the VTE considered that the finding of an abuse was the ingredient which enabled it to treat the proposals as having been made on different grounds from those stated on their face. In either case we think the VTE went further than it was entitled to, at least without a much fuller consideration of the circumstances of the appeals and a proper explanation of why the proposals were considered to be abusive.

39. There was no application before the VTE for the proposals to be struck out as being an abuse of the tribunal process and it received no submissions on that subject. That is not surprising since the validity of the proposals was a matter raised by the VTE itself, rather than by the VO. It is also unsurprising when it is appreciated that the VTE's own procedural rules make no reference to a power to dispose of proceedings on the basis that they amount to an abuse of process.

40. The VTE's procedures are governed by the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 ("the Procedure Regulations"). Its power to strike out proceedings (which is effectively what it did in these cases, although it expressed itself as dismissing the appeals) arises under regulation 10. Two specific provisions are relevant to these appeals. The first is the mandatory requirement in regulation 10(2), which provides that "the VTE must strike out the whole or part of the proceedings if the VTE does not have jurisdiction." The second is the discretionary power in regulation 10(3) that "the VTE may strike out the whole or a part of the proceedings if … (c) the VTE considers there is no reasonable prospect of the appellant's appeal, or part of it, succeeding."

41. In making no reference to a power to strike proceedings out or dismiss them as an abuse of process, the VTE's rules are similar to the rules of this Tribunal (The Tribunal Procedure (Upper Tribunal)(Lands Chamber) Rules 2010) and to other

tribunal rules. These tribunal rules are in contrast to the Civil Procedure Rules which regulate litigation in the civil courts and which confer an express power to strike out a statement of case as an abuse of the court's process (CPR 3.4(2)(b)). Whether this difference is significant has not been the subject of submissions in these appeals. It is arguable that the dismissal of a claim or appeal which is an abuse of the process of a particular tribunal is within the scope of its general power to regulate its own proceedings (regulation 6(1) of the Procedure Regulations), but the absence of an express power to strike out for abuse of process must leave the existence of such a residual jurisdiction in doubt. While such doubt remains it would be preferable for the VTE to rely on the grounds for striking out provided by regulation 10, where appropriate, rather than to have recourse to the concept of abuse of process.

42. The VTE did not consider these appeals on their merits, nor did it say what power it was using to dismiss them. As it considered the proposals to be invalid, it is possible that it acted either under regulation 10(2), on the ground that it therefore lacked jurisdiction, or under regulation 10(3)(c), on the basis that the appeals were bound to fail. On whichever basis the VTE acted it was not necessary for it to introduce the concept of abuse of process.

43. In the civil courts the term "abuse" is used to mean "using the process for a purpose or in a way significantly different from its ordinary and proper use" (*Attorney General v Barker* [2000] 1 FLR 759, *per* Lord Bingham of Cornhill, Lord Chief Justice).

44. A number of categories of abuse are recognised in the case law summarised in the notes to CPR 3.4 in Civil Procedure 2017. One such category is where a party seeks to raise in a second action issues or facts which could and should have been, but were not, raised in a first action which was determined or resolved by agreement. The basis of this line of authority is that the processes of the court should not be permitted to be used to harass a defendant by subjecting them to repeated actions concerning the same subject matter. The leading modern authority is the decision of the House of Lords in *Johnson v Gore Wood & Co* [2002] 2 AC 1.

45. The burden of establishing that there has been an abuse of process is on the party who seeks the dismissal of the proceedings. The determination of whether there has been an abuse of process requires the adoption of a broad, merits-based judgment, taking account of all the public and private interests involved and all the facts of the case: *Johnson v Gore Wood & Co per* Lord Bingham at 31D.

46. In these appeals there was no prior judgment or determination of the VTE, the first proposals having been treated as withdrawn following agreement of the rateable values by the parties. When considering whether there has been an abuse of process there is no distinction in law between previous litigation where the case was settled and previous litigation where the case proceeded to judgment. Thus, in *Johnson v Gore Wood & Co* Lord Bingham said at 32-33:

> "A second action is not the less harassing because the defendant has been driven or thought it prudent to settle the first; often, indeed, that outcome would make a second action the more harassing."

47. The basis on which the appellants hoped to persuade the VTE that the grounds of their proposals were well founded does not emerge from the information they have supplied for the purpose of these appeals. There is no dispute that agreement on the compiled list rateable values was reached after the first proposals had been referred by the VO to the VTE as appeals. It is not suggested in either appeal that the VO inaccurately entered the agreed rateable value when altering the list to give effect to the agreement. Nor does either appellant suggest there had been a material change of circumstances that would warrant a reduction in rateable value. Had there been such a material change of circumstances the appellants would have relied on ground 4(1)(b) and not 4(1)(d) in their second proposals.

48. In both appeals the appellants says the alteration made by the VO to give effect to the agreed compiled list rateable value was inaccurate because it was incorrect, excessive and bad in law. It is possible that since the agreements were reached fresh evidence has come to light that could not have been obtained by reasonable diligence beforehand and that such evidence entirely changes the previous cases upon which the agreements were based. That seems unlikely, but we cannot say it is impossible. Whether, in such a case, it would be open to the ratepayer to make a second proposal is open to doubt. To do so might be thought to engage another legal rule (separate from but closely related to the type of abuse of process of which *Johnson v Gore Wood& Co* is an example), namely the prohibition on re-litigating the same dispute once it has been decided by a court or tribunal. The rule is referred to either as the *res judicata* principle or as "cause of action estoppel". It prohibits the making of a second claim where the basis of the claim is identical to a claim in earlier proceedings between the same parties. In such a case the bar on the second proceedings is absolute (unless fraud or collusion is alleged) and even the discovery of new evidence which could not have been found before the previous proceedings were settled or determined will not allow the dispute to be re-opened (see *Arnold v National Westminster Bank plc* [1991] 2 AC 93).

49. The appeals have been conducted on the single issue of the validity of the second proposals and we have not received any evidence about the accuracy of the list as altered following agreement. It seems likely that the present appeals have been brought, as the VTE concluded, to enable the appellants to resile from their agreements and to argue the same case again rather than to bring forward fresh evidence of which they had been unaware at the time of the previous agreements. Nevertheless, these appeals have been argued on one side only and the VTE did not examine all the facts, including the evidence that was before them, and we will limit our own decision to dealing with the VTE's reasoning. We are satisfied that the VTE's general reference to abuse of process did not provide any basis for its decision that the second proposals were invalid because they were made on the same grounds as the first proposals.

Disposal

50. For these reasons we will allow both appeals and remit the proceedings to the VTE for reconsideration. Because we are satisfied that regulation 4(3)(b)(i) is not engaged, it follows that there is no question of the VTE being required to determine whether it has jurisdiction to determine the appeals.

51. It would have been open to the VO to have responded to the second proposal in each of these appeals by serving an invalidity notice under regulation 8 of the 2009 Regulations on the ground that the rateable value had already been agreed and, in the absence of a material change of circumstances, the ratepayers were barred by their own agreements from proposing a further alteration. The VO might alternatively have applied to strike out the appeals under regulation 10(3)(c) of the Procedure Regulations on the ground that, in view of the agreement of the original proposals, there was no reasonable prospect of the appeals succeeding. In either event the issue of whether the appeals should be allowed to proceed to substantive consideration could then have been determined after both parties had had an opportunity to address the issues properly.

52. In contrast, the manner in which the VTE chose to deal with these appeals was much less satisfactory. In the first appeal the VO had thought about the issue of the validity of the second proposal and had sought specialist advice, which he informed the VTE was to the effect that the proposal was valid. The ratepayer's representative had not been put on notice of any challenge to the validity of the proposal, and would have no reason to prepare to meet it. In the second appeal the VTE also decided the appeal on the basis of an argument which had not been advanced by the VO and which neither party had had an opportunity to prepare. Although neither appeal has been argued before us on the grounds that the VTE breached the rules of natural justice, and we do not decide them on that basis, we nevertheless record that for the VTE to raise the issue of validity for the first time at the hearing and to decide the appeals against the ratepayers without giving them an opportunity to consider their position and to seek proper advice appears to us to have been unfair. It also created a real risk that the VTE's impartiality might appear to be compromised.

53. When the appeals return to the VTE we therefore suggest that the better course would be for the tribunal to leave it to the VO to consider whether to apply to strike the appeals out either on the grounds of abuse of process (if applicable) or on the grounds we have suggested above, namely that the issue of the rateable value of the hereditaments in the 2010 list was *res judicata* and barred from further challenge in view of the settlement of the original appeals and that the second appeals therefore have no reasonable prospect of succeeding and they should be dismissed under regulation 10(3)(c) of the Procedure Regulations.

Martin Rodger QC, Deputy Chamber President

A J Trott FRICS Member, Upper Tribunal (Lands Chamber)

27 April 2018