Case Name: *Ryan Fisher Carpet and Vinyl Showroom [2018] UKUT 153 (LC) (2 May 2018)*

Topic: Procedural: VTE dismissal of an appeal due to non-compliance with consolidated practice statement effective from 1 April 2017 (failure to lodge a statement of case with the tribunal), where the ratepayer had requested a postponement due to holiday commitments. The Upper Tribunal found that the VTE's dismissal had been unlawful.

Full case: click here

Summary: The ratepayer requested the VTE to postpone the hearing date due to holiday commitments, but the tribunal declined to consider the request until a statement of case had been lodged. The VTE subsequently dismissed the appeal, when no statement had been filed by the original hearing date. The consolidated practice statement required exceptional reasons to prevent dismissal, which had not been established. The Upper Tribunal found that the VTE ought to have considered if a lesser sanction was appropriate and proper consideration should have been given to the postponement application. The case was remitted to the VTE for further consideration.

Commentary: This Upper Tribunal decision related to an appeal from the VTE to reinstate following a dismissal of the appeal due to failure to comply with directions.

The ratepayer had appealed an increase in RV resulting from the installation of a mezzanine floor but the proposal was considered by the VO to be invalid. No fresh proposal was submitted and the matter was referred to the VTE after no agreement could be reached between the ratepayer and the VO. A hearing date was set for 21 September 2017 and the VTE's consolidated practice statement (effective 1 April 2017) applied to the procedural aspects of the case. A statement of case was to have been filed by the ratepayer 6 weeks before the hearing date, with the VO's statement in response being filed 2 weeks later. These requirements appear to have been complied with.

The appellant was also directed to submit a full bundle of evidence to the VTE at least 2 weeks before the hearing. On 5 September 2017 (more than 2 weeks before the hearing) the appellant's managing director emailed the VTE to request a postponement as he would be on his annual holiday on 21 September and asked that someone contact him to arrange for the hearing to be re-scheduled. On the same day a case officer informed Mr Ryan that his reasons for requesting a postponement had been considered but that the case officer "believes it premature to grant a postponement at this stage before the bundle is submitted to the tribunal".

The appellant did not provide a bundle by 7 September but on 13 September Mr Ryan emailed the VTE again to repeat that he would be on holiday on 21 September and said that he had not heard back concerning a re-scheduled hearing. On 15 September a case officer responded by email to say that the request for a postponement had been declined on 5 September, citing the failure to deliver the bundle by 7 September as the reason for the decision.

In reply Mr Ryan protested that his request had not previously been refused (on 5 September), adding that he had the evidence available for the hearing but again requested a

postponement. The following day Mr Ryan submitted a detailed letter and some additional documents explaining why the RV should be reduced and apologised for his absence on 21 September.

Neither Mr Ryan nor anyone else representing the appellant attended the hearing on 21 September. On 11 October the VTE issued a notice of decision to the effect that the appeal had been dismissed. The reason given was the failure to attend the hearing to explain why no bundle had been filed in compliance with the direction. The panel considered there were no "exceptional reasons" given as to why the directions had not been complied with, hence it was entitled to dismiss the appeal. The VO did not participate in the appeal, the reason for which is unclear.

The Upper Tribunal referred to its recent decision in *Simpsons Malt Ltd* v *Jones* and criticised the VO's lack of clarity in her response to the appeal in this case. It referred to paragraph 4 of the consolidated practice statement, which states that the VTE will only grant postponements "if there are (exceptional) good and sufficient reasons for doing so and it is in the interest of justice to do so". In *Simpsons Malt* the UT gave guidance as to how the VTE should comply with this practice statement, in particular that the sanction of striking out an appeal should be imposed having regard to the requirement to deal with cases justly. Further, in considering relief from sanctions it should carefully follow the systematic approach now used by the civil courts (see *Denton* v *TH White Ltd* and *BPP Holdings* v *Commissioners for Her Majesty's Revenue and Customs)* as referred to in *Simpsons Malt* at paragraphs 53-55 and 257-263.

The UT was clear that it was unlawful for the VTE to strike out the appeal in this case, based on the "exceptional reasons" criterion not having been satisfied. The 1988 Act read together with the 2009 Regulations did not permit the VTE to lay down or apply such a test as the sole basis for determining if applications should be struck out (or to bar participation or refuse reinstatement). The VTE ought to have considered whether a lesser sanction would be more appropriate. Proper consideration of the postponement application should have taken place at the time, rather than the "wait and see" approach adopted by the VTE case officer.

The Upper Tribunal allowed the appeal and remitted the case to the VTE for further consideration. It indicated that a fair resolution would be for the case to be heard on its merits.