

Case Name: *St John's Senior School v David Jackson (VO) [2019] UKUT 0359 (LC) (19 November 2019)*

Topic: Procedure – appeal from decision to strike out

Full case: [click here](#)

Summary: This case (decided on written representations) concerned an appeal against the VTE's decision to strike out an appeal on the ground that no statement of case had been filed with the tribunal. In refusing an application to reinstate, the VTE had failed to apply the approach set out by the Upper Tribunal in *Simpsons Malt Limited v Jones (VO)* where there has been a procedural breach. The Upper Tribunal allowed the appeal and referred the matter back to the VTE for decision.

Commentary: When the matter first came before the VTE, the notice of hearing and directions had been sent to the headmaster of the school, following the withdrawal of instructions from the original surveyors. The headmaster subsequently died (with no statement having been filed) and some years later an application for reinstatement was made to the VTE, on the ground that the appeal should not have been listed for hearing but instead stayed pending the outcome of another case (*Goodwyn School*) in common with other appeals affecting North London schools. The VTE refused to reinstate, because of substantial delay and (it said) other school appeals had not been stayed.

On appeal to the Upper Tribunal, it was argued for St John's Senior School that the application to reinstate was made as soon as the full facts were known, which took some time as the previous headmaster did not appear to have kept records, and it was also maintained that other cases had in fact been stayed (contrary to the VTE's statement) pending the outcome of *Goodwyn School*. Those other appeals were only now being heard (when the appeal was made to the Upper Tribunal) so the respondent would not be prejudiced by the appeal being restored.

The Upper Tribunal noted that tribunals are not bound by the Civil Procedure Rules or the guidance provided by the Court of Appeal in *Denton v TH White*, but nevertheless it had been decided (by the Upper Tribunal) in *Simpsons Malt* that the tribunals should take a similar approach when considering a matter of procedural non-compliance,

Applying that guidance, the Tribunal decided that the appeal should be reinstated. The VTE had not considered the seriousness of the breach nor whether there was a good reason for it, also failing to consider whether relief should be granted (which is available even where the breach is serious and there is no good reason for the breach). As there had been a good reason for the lack of information available to the appellant and no prejudice to the respondent in the case being reinstated (as the other cases had yet to be heard) the Tribunal was persuaded that the interests of justice would be better served by allowing the appeal. Key to this decision was this comment from the Tribunal in *Simpsons Malt*: "The fact that the striking out of an appeal may leave an inaccuracy in the list uncorrected is a factor which may be taken into consideration at the third stage of a *Denton* assessment."