THE VALUATION TRIBUNAL FOR ENGLAND

Non Domestic Rating Penalty Appeal; failure to provide the Valuation Officer information; Schedule 9 to the Local Government Finance Act 1988; appeal dismissed.

RE: Six Bells, Old Perry Street, Gravesend, DA11 8BT

APPEAL NUMBER: VT00009672

BETWEEN:	D P	Appellant
	and	
	Ms D Bunyan (Valuation Officer)	Respondent

PANEL: Mr M Smith (Senior Member)
Mrs F Duggan

CLERK: Mr R Gath IRRV (Hons)

REMOTE HEARING 1 on 22 November 2022

APPEARANCES: Mrs K Giles (Valuation Office representative)

Summary of decision

1. Appeal dismissed. The panel upheld the decision by the Valuation Officer (VOA) to impose a penalty of £100 for not providing information the VOA requested.

Introduction

2. This appeal is brought in respect of a penalty of £100 imposed by the VOA on 15 December 2021, because the appellant failed to respond to the VOA's request for information. The appeal was accepted by the Tribunal under Schedule 9 to the Local Government Finance Act 1998 (the '1988 Act').

3. The appellant had failed to join the remote hearing.

4. The panel had regard to regulation 32 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 [SI 2009 No 2269] (the "Tribunal Procedure Regulations"). This provides –

   "32 Hearing in a party's absence

   > If a party fails to attend a hearing the VTE panel may proceed with the hearing if–
   > (a) it is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and
   > (b) it considers it is in the interests of justice to proceed with the hearing."

   Regulation 3 of the Tribunal Procedure Regulations, provides –

   "3 Discharge of VTE's functions: general

   > In giving effect to these Regulations and in exercising any of its functions under these Regulations, the VTE must have regard to–
   > (a) dealing with appeals in ways which are proportionate to the importance of the appeal, the complexity of the issues, the anticipated costs and the resources of the parties;
   > …
   > (e) avoiding delay, so far as compatible with proper consideration of the issues."

5. The panel was aware that the appellant had been notified of the hearing. Whilst the appellant did provide an email address, the clerk had attempted to email him to check whether he was attending the remote hearing, however, the email had been returned as the address no longer existed. The appellant had not provided a telephone number on his appeal form, although the VOA's evidence bundle did contain a telephone number. The clerk tried to telephone the appellant several times on 21 November 2022 and on 22 November but there was no answer.

6. The panel concluded that the penalty appeal was not a complex issue. Furthermore, the panel was satisfied that both parties' evidence contained sufficient information for the panel to give proper consideration to the appeal and that there was little to be gained from adjourning it. The panel therefore decided to hear this appeal based on the paperwork which had been submitted with the appeal form and the VOA's evidence bundle.

7. This tribunal decision document is not and does not purport to be a verbatim record of proceedings.

Issue

8. The appellant disputed the VOA's decision to impose a penalty of £100.

Evidence and submissions

10. Mrs Giles argued that on 13 May 2021, the VOA had asked for information that it considered essential for the 2023 rating list. It had also issued a reminder notice on 14 and 28 June 2021.

11. The appellant had subsequently emailed the VOA on 6 July 2021 stating that he had just taken over the business from a partner and wanted to talk to an accountant, he asked for additional time in which to submit the Form of Return. The VOA refused the request.

12. On 18 November 2021 the appellant was issued with a letter advising him that a penalty of at least £100 would be imposed if he failed to provide the evidence by 7 December 2021. The penalty was subsequently imposed on 15 December 2021.

13. It was noted that the appellant contacted the VOA on 4 January 2022 stating that the Form of Return had just been returned.

14. On his appeal form the appellant stated that he returned to work after a bout of Covid. He stated that following the receipt of the Form of Return he had asked his accountant for assistance with it and he believed that it had gone astray. Furthermore, he did not receive the reminders that were issued by the VOA on 14 and 18 June and had no reason to believe that the form had not been returned. When the appellant received the penalty notice he completed the form and returned it to the VOA.

Legislation

15. Paragraph 5 of Schedule 9 to the 1988 Act, as amended states (as far as relevant to this appeal):

(1) A valuation officer may serve a notice on a person who is an owner or occupier of a hereditament requesting him to supply to the officer information-
  (a) which is specified in the notice, and
  (b) which the officer reasonably believes will assist him in carrying out functions conferred or imposed on him by or under this Part.

(1A) A notice under sub-paragraph (1) must state that the officer believes the information requested will assist him in carrying out functions conferred or imposed on him by or under this Part.
(1B) …
(1C) …
(1D) …

(2) A person on whom a notice is served under this paragraph sub-paragraph (1) shall supply the information requested . . . in such form and manner as is specified in the notice . . ..
(2A) …
(3) …
(4) If a notice has been served on a person under this sub-paragraph (1), and in supplying information in purported compliance with sub-paragraph (2) above he makes a statement which he knows to be false in a material particular or recklessly makes a statement which is false in a material particular, he shall be liable on summary conviction to imprisonment for a

term not exceeding 3 months or to a fine not exceeding level 3 on the standard scale or to both.

(5A)

(1) If a person on whom a notice is served under paragraph 5 above fails to comply with paragraph 5(2) [or (2A)] within the period of 56 days beginning with the day on which the notice is served, he shall be liable to a penalty of £100.

(2) Where a person becomes liable to a penalty under sub-paragraph (1) above, the valuation officer shall serve on him a notice (a "penalty notice") stating-

(a) that he has failed to comply with paragraph 5(2) above within the period mentioned in sub-paragraph (1) above;

(b) that he is liable to a penalty of £100;

(c) the effect of sub-paragraphs (3) and (4) below; and

(d) that he has a right of appeal under paragraph 5C below.

(3) If the person on whom a penalty notice is served fails to comply with paragraph 5(2) within the period of 21 days beginning with the day on which the notice is served, he shall be liable-

(a) to a further penalty of £100, and

(b) subject to sub-paragraph (4) below, to a further penalty of £20 for each day in respect of which the failure continues after the end of that period.

(4) The amount to which a person shall be liable under this paragraph in respect of a failure to comply with a notice served under paragraph 5 above shall not exceed the greater of-

(a) the rateable value of the hereditament concerned for the day on which the penalty notice is served, and

(b) £500.

(5) For the purposes of sub-paragraph (4)(a) above-

(a) the hereditament concerned is the hereditament in respect of which the notice under paragraph 5 above was served, and

(b) a list compiled under this Part shall be used to find the rateable value of the hereditament for the day concerned.

(5B) A valuation officer may mitigate or remit any penalty imposed under paragraph 5A above.

(5C)

(1) A person may appeal to a valuation tribunal if he is aggrieved by the imposition on him of a penalty under paragraph 5A above;

(2) An appeal under this paragraph must be made before the end of the period of 28 days beginning with the day on which the penalty notice is served;

(3) An appeal under this paragraph shall not prevent liability to any further penalty or penalties arising under paragraph 5A(3) above;

(4) An appeal under this paragraph shall be treated as an appeal against the penalty imposed under paragraph 5A(1) above and any further penalty which may be imposed under paragraph 5A(3) above;

(5) On an appeal under this paragraph the valuation tribunal may mitigate or remit any penalty under paragraph 5A above if it is satisfied on either or both of the grounds specified in sub-paragraph (6) below;

(6) Those grounds are:

(a) that the appellant had a reasonable excuse for not complying with paragraph 5(2) above, or

(b) that the information requested is not in the possession or control of the appellant.

Decision and reasons

16. Although the appellant had submitted that he did not receive the reminder notices, he had contacted the VOA on 6 July 2021 which the panel concluded would have been because he had received a reminder notice.

17. No evidence was presented by the appellant to prove that he had returned the Form of Return back to the VOA within the required timescale.

18. The panel could only allow the appeal on the grounds that the appellant had a reasonable excuse for not complying with the request for information, or that the information requested was not in the possession or control of the appellant.

19. Given all of the above, it was clear to the panel that the information requested was in the possession or control of the appellant. Although he had stated that he was seeking an accountant, no evidence was presented to the panel to show that the information was with the accountant and even if it was, he could have asked the accountant for the information. Furthermore, the appellant had not demonstrated to the panel's satisfaction that he had a reasonable excuse for not complying with the Form of Return and the panel dismissed the appeal.

Date: 14 December 2022

Appeal number: VT00009672

Right of appeal:

Any party who is aggrieved by the Tribunal's decision, and who appeared or was represented at the hearing, has the right of appeal to the Upper Tribunal (Lands Chamber). Any such appeal should be made within four weeks of the date of this decision notice.