

Neutral Citation Number: [2020] EWHC 2540 (Admin)  
IN THE HIGH COURT OF JUSTICE  
ADMINISTRATIVE COURT AT LEEDS

Case No: CO/838/2020

Courtroom No. 18

The Courthouse  
1 Oxford Row  
Leeds  
LS1 3BG

Tuesday, 11<sup>th</sup> August 2020

Before:  
HIS HONOUR JUDGE DAVIS-WHITE QC  
(SITTING AS A JUDGE OF THE HIGH COURT)

B E T W E E N:

THE QUEEN ON THE APPLICATION OF ANDY MANN LTD

Claimant

-and-

YORK MAGISTRATES COURT

Defendant

-and-

SELBY DISTRICT COUNCIL

Interested Party

MR MICHAEL DOWNES (with permission of the Court) appeared on behalf of the Claimant  
Company

NO APPEARANCE by or on behalf of either the Defendant or the Interested Party

APPROVED JUDGMENT

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## HHJ DAVIS-WHITE QC:

1. This is the substantive hearing of a challenge, brought by way of judicial review proceedings, to a decision of the justices at York Magistrates' Court on 17 December 2019. The decision was to grant a liability order for the non-payment of national non-domestic rates on the complaint of the relevant Local Authority, Selby District Council, whom I will refer to as the "council".
2. The complaint was in respect of the occupation of Unit 3, Smeaton Quarry, Wentedge Road, Kirk Smeaton, Pontefract, West Yorkshire, WF8 3JS, by the applicant in this case Andy Mann Ltd, who I will refer to as the "applicant", for the period 1 May 2018 to 31 December 2018.
3. The total liability for rates during this period was claimed as being £7,732.60. The order created a total liability of £7,822.60. This is comprised of the rates liability I have referred to of £7,732.60 and costs of £90.00. The defendant to the proceedings before me, is York Magistrates' Court, although technically it may be that the better description is the North Yorkshire Magistrates' Court. The council has been joined as interested party. Permission to proceed with Judicial Review was given by His Honour Judge Saffman by order dated 7 May 2020.
4. Before me, the applicant appeared by its director, Mr Michael Downes, whom I have granted permission to represent the applicant, which is his company and of which he is the sole director. Neither the defendant nor the interested party were represented or appeared, although an observer from the council attended this hearing remotely. The hearing was conducted as a remote hearing using Skype for business, with me sitting in open court.
5. In substance the applicant's case is that at the time the applicant was in occupation of the property, the property was not entered on the relevant local non-domestic rating list, which I will refer to as the 'Rating List'.
6. The property was in fact entered onto the Rating List in October 2019. Relying on Sections 42 and 43 of the Local Government Finance Act 1988, 'LGFA 1988', it is said by the applicant that rates cannot be charged to it because on each of the days the relevant 'hereditament'<sup>1</sup> was occupied by the applicant, it was not shown for the day in question in the Rating List. .
7. The defendant has lodged an acknowledgement of service. In that acknowledgement of service, it makes clear that in line with usual practice it adopts a neutral position in regard to the claim. However, it sets out a chronology to assist the court and also makes two observations regarding the matter to which I will refer below.
8. North Yorkshire County Council has lodged a letter on behalf of the council indicating that the council wish to adopt a neutral stance and accordingly it has not filed any acknowledgement of service.

### **The facts**

9. According to a letter from the council to the applicant, dated 13 December 2019, it was advised by the landlord of the property that, from 1 April 2018, the property had been let to the applicant. On checking its records, the council found that the property was not included in the Rating List. The council's property inspector visited the site to examine the position on the ground. In October 2018, the matter was referred to the 'Valuation Office Agency' which I shall refer to as the "VOA". Some time was taken by the VOA to establish the facts.

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<sup>1</sup> "Hereditament" is defined by Section 64 of the LGFA 1988 primarily by reference to the previous definition contained in Section 115 General Rate Act 1961, that is 'hereditament' means property which is or may become liable to a rate, being a unit of such property which is, or would fall to be, shown as a separate item in the valuation list. As I say, this not a complete definition.

10. According to Mr Downes he met with an individual from the VOA sometime towards the end of 2018, probably in about October. He was told informally by the individual that, once assessed, the rateable value would be likely to be in excess of £20,000. Mr Downes considered that the applicant would not be able to afford rates calculated on that rateable value. Accordingly, he gave notice to quit to the landlord and relocated the applicant's business to another unit at the same site. As regards that unit, the rateable value had been published and he considered that the applicant could afford to pay rates by reference to it.
11. The property was placed on the Rating List, which was accordingly altered, on 25 June 2019. This is shown by a printout of the relevant extract of the Rating List. That entry also shows that the alteration took effect from 1 May 2018. The entry in question sets out the rateable value of £24,000. (In oral submission, Mr Downes referred to a rateable value of just under £20,000, but I think he omitted to look over the page setting out the further detail, bringing the total rateable value up to £24,000).
12. The council was advised of the change to the Rating List and issued a rates bill to the applicant on 3 July 2019 for the rates due in respect of the period of occupation commencing on 1 May 2018. That date was taken because that was the date to which the valuation list had been retrospectively altered.
13. On 12 July 2019, Mr Downs telephoned the council to inform them that the applicant had vacated the property at the end of December 2018. A revised rates bill was issued covering the period 1 May 2018 to 31 December 2018.
14. From at least 9 August 2019, as shown by email of that date, Mr Downs challenged the liability of the applicant to rates. His point was, and has consistently been, that a condition of liability, namely that the property appear on the relevant Rating List throughout the relevant period of occupation, did not apply during any period that the applicant was in occupation. The property was only placed on the Rating List some months after the relevant period in respect of which the council has sought to charge the applicant. He asked for the council's legal interpretation if it disagreed with him.
15. The initial response of the council, on 9 September 2019, was that the property was brought into the Rating List in June 2019, but with effect from 1 May 2018, and that therefore the applicant was liable. By further email dated 17 September 2019, the council asserted that the VOA was able to backdate the rateable value in the manner that it had purported to do. Unfortunately, the council did not, as one might think it might do, cite chapter and verse to explain to Mr Downes the basis on which the VOA was able to backdate, I will come on to that shortly.
16. On 17 October 2019, the council laid a complaint in respect of the non-payment of the rates in question. A summons was issued and served returnable on 5 November 2019. On that date the case was adjourned to 17 December 2019. The relevant notice of new hearing gave as the reason for the adjournment that the 'prosecution' had requested it. According to Mr Downes, the context was one where it was recognised that the representative of the council needed better time to prepare and to identify appropriate legislative authority for the position it was taking in the light of the objections raised by Mr Downes.
17. According to Mr Downes, the representative of the council who attended on that date, 5 November 2019, told him that he, Mr Downes, should wait outside the courtroom while the hearing proceeded in his absence and that after the hearing the result would be communicated to him. I have to assume that Mr Downes's version of events is correct; it is not contested. In any event, Mr Downes sought permission to attend the hearing and did so. Any potential procedural defect was therefore cured.
18. The acknowledgement of service of the Magistrates' Court in these proceedings points out that Mr Downes' allegation about all of this is one made against the council, not against the

court or any court staff. However, before me, Mr Downes indicated that his recollection is that a member of court staff said effectively that the representative of the council was 'in charge' and on that basis, initially, he did withdraw from the hearing room. It seems to me lessons can be usefully learned both by the court and by the council in respect of that. Of course, as Mr Downes himself said, any person summoned to appear before the court is entitled to and should be expected to attend before the court as summonsed and not be excluded from the court hearing affecting his, her or its position.

19. Following the hearing on 5 November 2019, the council sent the letter I referred to above, which set out the facts from the council's perspective. As regards the substantive legal point raised by Mr Downes at the hearing on 5 November, the letter set out the council's position that, as regards sections 42 and 43 of the LGFA 1988:

'the property does not have to be shown in the list at the time you were in occupation as the Valuation Office Agency have entered it into the list in July 2019 back to May 2018 and their regulations allow them to do this'.

As I have said, unfortunately the identity of the regulations and the relevant provisions under them were not further identified, had they been it might have saved a lot of time and cost.

#### **Hearing on 17 December 2019**

20. The adjourned hearing resumed on 17 December 2019. Mr Downes pointed out that although on the previous occasion the hearing had been adjourned on the basis that the council needed to take time to produce better arguments and material, in fact nothing had changed. As it happened, the Magistrates made the liability order.

21. Two further matters are complained of by Mr Downes. First, he says the assistant clerk (or the legal adviser) to the magistrates apparently consulted another colleague, another Assistant Clerk or legal adviser, in the course of the hearing. He says that he does not know what the conversation was and he says that that gave an impression of an outsider influencing the case. Secondly, the assistant clerk retired with the Magistrates, although the advice then given does seem to have been repeated in public.

22. As regard these two matters there is, in my judgment, no ground for complaint. The matter is covered by the Criminal Procedure Rules 2015 ("CPR") and Practice Directions ("PD").

23. PD 24A sets out the duties of a clerk to the justices and an assistant clerk (or legal adviser) to the magistrates. Paragraph 24A.3A provides:

24A.3 Where a person other than the justices' clerk (a justices' legal adviser), who is authorised to do so, performs any of the functions referred to in this direction, he or she will have the same duties, powers and responsibilities as the justices' clerk. The justices' legal adviser may consult the justices' clerk, or other person authorised by the justices' clerk for that purpose, before tendering advice to the bench....."

24. There was accordingly nothing improper in the legal adviser speaking to another legal adviser or member of staff for the purposes of obtaining assistance in their role in a particular case. Mr Mark Daley, Legal Lead Team Manager for North Yorkshire Local Justice area, has explained the position of the legal adviser and the person that he consulted as follows:

'there is nothing unusual or inappropriate about taking advice from more senior colleagues and this is often done by email or over the phone if that other colleague is not in the same building. I would not be concerned Mr Pringle', I pause there to say that that appears to be the gentleman who was the legal adviser on the day in question, 'took advice from a colleague not present in the room. What matters is that any subsequent legal advice should be given in public. I gather from your letter that the legal advice given was nothing more than "it's a matter of interpretation". Is that correct?'

I agree with that broad summary about the circumstances in which a legal adviser can correctly take advice from other members of staff.

25. As I pointed out to Mr Downes, a key point though, as indeed Mr Daley identified, is that it is quite clear to everyone in court the advice that is being given to the Magistrates, because they are the finders of fact and law.
26. As regards the giving of advice and the decision reached, Mr Downes now asserts that no statement was made as to the legal advice given to the Magistrates and that they gave no reasons for their decision. In his original email dated 19 December 2019, written two days after the hearing on 17 December, Mr Downes said that the clerk announced in court that the issue raised by Mr Downes was a matter of interpretation of the law and that he would advise the magistrates accordingly.
27. The position of the legal adviser is set out in an email dated 10 February 2020, from Mr Daley to Mr Downes,

‘Mr Pringle advises me that the advice he gave in open court was as follows: “Mr Downes is submitting the requirements under Section 43(i) should be interpreted to mean the property must already be on the rateable value list at the point when the property becomes in occupation and because it was not given a rateable value until some point in the future, Selby District Council have not satisfied the requirements under Section 43.1 and therefore the Liability Order should not be granted as Mr Downes is not liable for the Council Tax on the basis that the property did not have a veritable value. SDC [that is Selby District Council] are submitting the law requires them to enter the effective date of liability as the date on which Mr Downes becomes in occupation of the property regardless of when the property was assigned a rateable value and once the property was given a rateable value, Section 43(1) makes the occupier liable between the dates in occupation of the property. I advised the magistrates on the wording of section 43(1) and stated it is a matter of interpretation of those words as Mr Downes is stating the wording would require something different than SDC have done, i.e., entering the rateable value on the list in June 2019 but backdating the effective date to 1 May 2018 when Mr Downes became in occupation.” ‘
28. As regards the reasons for the magistrates’ decision, in the same email Mr Daley says that ‘Mr Pringle advises me that the reasons for the decision were as follows, “the magistrates considered the wording and decided Mr Downes was liable because he was clearly in occupation of the property and the property was given an appropriate rateable value. The wording does not prevent ‘backdating’ and does specify that sums are liable from the date of occupation.’
29. Normally, legal advice tendered to the magistrates must be transparent and recorded in court. Similarly, it is a fundamental requirement that reasons are given for judgments, although as is well known, the intensity or fullness of the reasons required can vary slightly depending on the precise circumstances.
30. The position regarding the giving of advice is also covered by CPR Part 24:

“24.15  
(1):

A justices’ legal adviser must attend the court and carry out the duties listed in this rule, as applicable, unless the court-

  - (a) includes a District Judge (Magistrates’ Courts) and
  - (b) otherwise directs

(2) a justices' legal adviser must-

(a)...

(b) whenever necessary, give the court legal advice and-

(i) if necessary, attend the members of court outside the courtroom to give such advice, but

(ii) inform the parties (if present) of any such advice given outside the courtroom'.

31. This is supplemented by the following part of Practice Direction 24A, in the next part of paragraph 24A.3 that I have already cited earlier. The relevant words are:

'If the justices' clerk or that person gives any advice directly to the bench, he or she should give the parties or their advocates an opportunity of repeating any relevant submissions, prior to the advice being given'.

32. Also relevant are Paragraphs 24A.14 and 24A.15 of PD 24A which provide:

"24A.14 When advising the justices, the justices' clerk or legal adviser, whether or not previously in court, should (a) ensure that he is aware of the relevant facts; and (b) provide the parties with an opportunity to respond to any advice given'.

"24A.15 At any time, justices are entitled to receive advice to assist them in discharging their responsibilities. If they are in any doubt as to the evidence that has been given, they should seek the aid of their legal adviser, referring to his notes as appropriate. This should ordinarily be done in open court. Where the Justices request their advisor to join them in the retiring room, this request should be made in the presence of the parties in court. Any legal advice given to the justices other than in open court should be clearly stated to be provisional; and the adviser should subsequently repeat the substance of the advice in open court and give the parties the opportunity to make any representations they wish on that provisional advice. The legal adviser should then state in open court whether the provisional advice is confirmed or, if it is varied, the nature of the variation.'

33. I have not heard argument as to the applicability of these provisions to civil proceedings of the type in question in this case, but in my view consider the relevant provisions reflect the requirements of a fair trial and Article 6 of the European Convention on Human Rights.

34. I am satisfied that on the facts of this case, the advice given to the Magistrates was clear and I am also satisfied that Mr Downes was able to make all the points that he wished to; as his grounds in support of his claim say, he had put in a lengthy and detailed submission.

35. Nevertheless, points of procedure like this are absolutely crucial, the Rule of Law depends upon parties feeling that they have had a fair hearing in court. Mr Downes has pointed me to the result of a complaint which he initiated with the court which resulted in a report back to him, again by I think a Mrs Jodie Morris of Leeds Magistrates' Court, I am not quite clear whether the email was sent on 24 April 2020, it appears to be, or whether that is part of the reference to the complaint; but after an apology for the delay caused by the current COVID-19 crisis the letter says as follows:

'I have spoken to Mr Pringle about your complaint and also consulted the presiding justice sitting in the court that day. Mr Pringle has informed me that the advice he gave was in public as I have already advised you, the presiding magistrate informs me that at the time he was relatively new to taking the chair in court so he was in the habit of inviting the legal adviser to join the bench on most of the occasions that they retired and is likely to have done so in this case. His recollection has it that nothing was said in private that was not also said in public and nothing untoward or not in accordance

with standard practice happened that day.’

36. She then goes on, ‘Whilst I appreciate that everyone’s recollection will inevitably differ, I am unable to conclude from this that Mr Pringle has conducted himself dishonestly and am not able to take the matter any further’. She also confirms that other aspects of the complaint have been taken back to the public area team of the court for future awareness.
37. As I have said, the lessons from this case are that the provisions of the Practice Direction and Criminal Procedure Rules that I have read out regarding retirement, are ones that should be drawn to magistrates’ attention and to which legal advisers should be well conversant with.
38. Whatever any procedural failings in this case, Mr Downes has confirmed to me that today he is not concerned to have the matter remitted back to the magistrates for re-hearing on the grounds of procedural defects in the original hearing in December. His position is that he really wants the court to rule on the point of law that he has been seeking to get clarification on since August of last year; namely whether or not the magistrates, in effect, were right or wrong to rule that his company was liable for rates, given the terms of sections 42 and 43 of the Local Government Finance Act 1992 and given the facts of this case whereby the valuation list was changed with, apparently, retrospective effect.

**After the hearing in December 2017**

39. After the hearing, Mr Downs wrote to the court complaining about the hearing on 17 December 2019 and among other matters, seeking information about appeals. By email dated 23 December 2019, he was advised by Mr Richardson, an Administrative Officer and Digital You Activity Lead at York Magistrates’ Court, that as regards an appeal, the usual position is that there is a 21-day period to appeal. That advice was correct.
  40. By email dated 15 January 2020, Mr Richardson pointed Mr Downes to Judicial Review and suggested that there was no other route of appeal. In this respect, section 111 of the Magistrates’ Court Act 1980, dealing with appeals by way of case stated, unfortunately seems to have been overlooked. Again, I pointed out to Mr Downes that usually the court is not in the business of giving legal advice for very good reasons. The natural attempt of court staff to assist litigants can sometimes cause problems if the advice is not full or accurate and again, lessons may need to be learned to make clear that the court in expressing a view is seeking simply to assist but that the litigant should always seek their own legal advice or carry out their own legal research. The courts cannot give advice to litigants as to appropriate matters of procedure. The court makes rulings by way of judgments on the appropriate procedure. It does not, through staff, proffer procedural advice.
  41. Following the sending of a pre-action protocol letter, judicial review proceedings were commenced by claim form issued on 2 March 2020. On 7 May 2020, His Honour Judge Saffman granted permission to proceed with judicial review, as I have already said. He gave an opportunity for the defendant and interested party, the council, to contest the claim or support it on additional grounds and to lodge further evidence. Somewhat unfortunately, perhaps, that facility was not taken up by the council.
  42. I say unfortunately because the council has sought to enforce the rates liability, has obtained a liability order, having attended court on two occasions to do so, but has now failed to assist the court here in the challenge to the decision that it obtained. As I say, I find that somewhat surprising.
- The procedure in this case.**
43. The first issue that I have to deal with is whether or not these proceedings by way of judicial review are ill-founded on the basis that there was an alternative remedy which was eminently more suitable. That is, of course, the procedure of appeal by way of case stated.

This matter has been addressed in the context of liability orders for non-domestic rates in the well-known case of *R (on the application of) Brighton and Hove City Council v Brighton and Hove Justices* [2004] EWHC 1800 (Admin). I refer to Paragraphs 22-25 of that judgment which clearly set out the position.

44. As Burnton J said at Paragraph 23 of his judgement...

[23]...this is the normal procedure [that is appeal by way of case stated] for challenging errors of law stated by Justices. It has a number of advantages, not the least of which is that the discipline of a case stated normally ensures that the High Court has before it a statement by the justices of the issues that they had to decide, the evidence before them, their findings of fact and the reasons for their decision. If the case stated is defective (because, for example, the justices' statement of their findings of fact is ambiguous), it may be remitted to them for amendment: see the Practice Direction to Part 52, at 52 paragraph 76. The reasons of the justices in the present case are relatively informal and do not include what I expect to see, the case stated. Furthermore in an appeal by the way of case stated this court is able to make any order that the lower court might have made: see CPR Part 52.10(1). The powers of this court on judicial review are more limited; it can quash the lower court's order and order it to make another order only if that other order is the only one properly open to it'.

[24] However this court retains power in the exercise of its judicial review jurisdiction to quash a decision of justices that is unlawful. Judicial review proceedings are most appropriate where it is alleged that there has been a procedural impropriety on the part of the Justices, see the classic explanation of Lord Bingham LCJ, in *R (Rowlands) v Hereford Magistrates Courts* [1998] QB 110. This is not such a case despite the magistrates' court apparent misconception. The High Court may refuse relief in judicial review proceedings on the ground proceedings by way of case stated where appropriate, but the bar is discretionary, not mandatory.'

In that case, Burnton J decided as a matter of discretion to permit the claim to proceed by way of judicial review, even though the challenge should have been by way of appeal by case stated. In this particular case, I take a similar course. First, no objection has been raised to the procedure and it is difficult to identify any prejudice to the parties caused by the form of the proceedings. Secondly, Mr Downes seemed to have been positively advised by the magistrates' court that judicial review was the only remedy. Magistrates' courts, as I have said, must be careful in the advice they proffer. Thirdly, His Honour Judge Saffman in this case gave permission to proceed and did not raise the issue of the appropriate procedure. Finally, and a reason that I gratefully adopt given by Burnton J, 'unless prejudice is caused to any party or there is some other good reason to refuse to permit a party to proceed by way of judicial review... in my judgment the court should be reluctant to cause a good claim to be defeated by an error as to the form of the proceedings.'

#### **The alleged error of law**

45. The substance of the point raised by Mr Downes on behalf of the claimant company is quite simple. As I have said, it is that the magistrates' erred in law in deciding that a hereditament can be added to the Rating List with retrospective effect so that section 43 LGFA 1998 is operated on the basis that the hereditament was on the list during a period when in fact it was not. Sections 42 and 43 LGFA 1988 provide as follows.

"42. Contents of Local Lists.



(1) A local non-domestic rating list must show, for each day in each chargeable financial year for which it is in force, each hereditament which fulfils the following conditions on the day concerned.

[There are then a number of conditions set out].

(2) For each day on which a hereditament is shown in the local list, it must also show whether the hereditament...

[Then there is a further list of conditions .]

(3) For each day on which a hereditament is shown in the local list, it must also show whether any part of the hereditament is exempt from local non-domestic rating.

(4) For each day on which a hereditament is shown on the list, it must also show the rateable value of the hereditament.

[I do not set out sub-paragraph (5)]

#### 43. Occupied Hereditaments Liability

(1) A person (the ratepayer) shall as regards a hereditament be subject to a non-domestic rate in respect of a chargeable financial year if the following conditions are fulfilled in respect of any day in the year-

(a) on the day the ratepayer is in occupation of all or part of the hereditament, and

(b) the hereditament is shown for the day in a local non-domestic rating list in force for the year.

46. Mr Downes, as I have said, simply says that in this case the property was not at any relevant stage while the applicant was in occupation, shown for the day in the relevant rating list in force.

47. This, however, is to fail to take account of the Non-domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (as amended) the “Regulations”. That is Statutory Instrument 2009 No. 2268.

48. The Regulations provide for alterations to be made to the Rating List. Amendments may be proposed by “interested persons”, which include the occupier of the property, among others. The grounds for amendment are wide under regulation 4. They include among others, 4.1(b) the rateable value shown in the list for hereditament is inaccurate by reason of a material change of circumstances which occurred on or after the day on which the list was compiled and 4.1(g) a hereditament not shown on the list ought to be shown in that list.

49. Regulation 14 provides for the effect of alterations. Some of them are permitted to take effect with retrospective effect. The relevant wording is that the alteration has effect from the day in question, which, as I say, can be a date prior to the making either of any application by way of proposal to the valuation officer for a change or the decision of the valuation officer.

50. Regulation 16 provides:

“16. Effective Date to be shown in the list

Where an alteration is made, the list shall show the date from which the alteration is to have effect’.

I pause to note that in this case that is what the register shows, and a date of 1 May 2018 is given. Although there may be grounds to think that that date should have been an earlier date, when Mr Downes’ company went into occupation, on the face of it that date has not been shown and his company is clearly not prejudiced by a later date having been chosen.

51. In this particular case, I do not have chapter and verse as to the particular underlying basis for the alteration nor the basis on upon which the alteration was backdated, not all alterations are capable of being backdated. However, that was not the challenge before the magistrates nor is it the challenge before me. In both cases the challenge was simply said to be that section 43 did not permit backdating. In my judgment there is nothing in section 43

- which prevents backdating and the Regulations specifically provide for it. There was no case before the Magistrates nor before me that the Regulations are *ultra vires*.
52. One point raised by Mr Downes is that backdating cannot be permitted by the Act, because he says, otherwise it would not be possible for an occupant in the situation of the claimant in this case to know about a potential rates liability when it entered into occupation if at that point, as in this case, the relevant property had not been included in the relevant rating list.
53. The short answer to that is twofold. First, occupiers must be taken to know the law, however unrealistic that may be, and therefore in the postulated circumstances the risk of later amendment with retrospective effect is something they should know about. Secondly, and perhaps more practically, it is open to occupiers or prospective occupiers to check the register, see especially regulations 4(a) onwards to the 2009 Regulations, which may trigger an amendment by the valuation officer and thereby, in any event, alert the valuation officer to the fact that there are premises in respect of which there is a possibility that rates ought to be payable and that the rating list should be altered.
54. Mr Downes, understandably, is disappointed that in this case the Regulations were not brought to his attention until, I think, the Clerk of the Administrative Court sent them to him in their original form, a matter of a week or so ago, having looked at the correspondence and identified that the 2009 Regulations I have referred to are probably, or maybe, the regulations that the council were implicitly referring to.
55. Mr Downes says, understandably, that he expected the council to make its case and put forward the detail to show why it was possible, retrospectively, to alter the list in the way that the magistrates' court decided it could be altered. As regards that, the difficulty that Mr Downes faces is that under the relevant enforcement regulations, that is the Non-Domestic Rating (Collection Enforcement) (Local List) Regulations 1989, in proceedings before the Magistrates' Court, there are provisions for extracts, in effect, for extracts from the register to be relied upon as evidence of any fact stated in it of which direct oral evidence would be admissible.
56. It seems to me, therefore, that on the facts of this case the magistrates were entitled to rely upon the extract from the rating register which was in evidence before me and that it would have been for Mr Downes, had he wished to, to raise a point to knock down, as it were, the *prima facie* evidential position, and say notwithstanding what the valuation list showed, on the facts of this case, it was not possible, retrospectively, to alter the list.
57. Before me, he does not seek to suggest that the list was wrongly altered with retrospective effect, what he says is, understandably, that had the Regulations and the position been explained to him at an earlier stage then it may be that this litigation would have been unnecessary and that the time and expense both undertaken by him and his company and no doubt by the council and the court staff, would not have been necessary.
58. As I said, it seems to me that there may be lessons to be learned on all sides here, but in any event, on the narrow point raised before me which is whether the magistrates erred in law, in my judgment they did not err in law and it is possible under section 43 of the Local Government and Finance Act, to retrospectively alter the register under the authority given by the 2009 Alterations of List and Appeals Regulations that I have referred to. In those circumstances, I have to dismiss the claim and I so do.

### **End of Judgment**

Ubiquis hereby certify that the above is an accurate and complete record of the proceedings  
or part thereof

This transcript has been approved by the judge.