

## STATEMENT OF REASONS

Relative to appeals at the instance of  
Shields Automotives and Vertu Motors plc  
In respect of  
Showrooms,  
Whistleberry Road,  
Hamilton ML3 0EG

These appeals which were in respect of the 2010 Re-valuation, called for hearing at a meeting of a committee of the Lanarkshire Valuation Appeal Panel on 13<sup>th</sup> February, 2013.

Mr Chiesa appeared on behalf of the Appellants and Mr Newton, appeared on behalf of the Assessor.

Mr Newton for the Assessor moved that the appeals be dismissed in terms of Regulation 10 (3) (b) of the Valuation Appeal Committee, etc. (Scotland) Regulations 1995 on the basis that the appellants had failed to comply with the terms of Regulation 10 (2)(b) of said Regulations.

Regulation 10(2) (b) provides that;

(2) Within 14 days of the receipt of such a statement (*that is a statement lodged by the appellants in terms of Regulation 10 (1)*), the assessor-

(b) may serve a notice on the appellant requiring him, by a date specified in the notice (being a date not less than 10 days after the service of the notice), to provide written confirmation to the assessor that he intends to proceed with his appeal.

Mr Chiesa for the appellants had lodged the required statement in terms of Regulation 10(1). This was hand delivered by Mr Chiesa to the Assessor's office on 9<sup>th</sup> January, 2013. In response to this statement, the Assessor, in terms of Regulation 10(2)(b), had issued a notice dated 14<sup>th</sup> January, 2013 to Mr Chiesa requiring him to confirm by no later than 30<sup>th</sup> January, 2013, his intention to proceed with the appeals. The Assessor did not receive this confirmation until a copy of a letter from Mr Chiesa dated 25<sup>th</sup> January 2013 was hand delivered by him to the Assessor's office on 6<sup>th</sup> February, 2013. The Assessor explained that during discussions between Mr Chiesa and Mr Gregor Wilson of the Assessor's office, Mr Chiesa was advised after 30<sup>th</sup> January, 2013 that his confirmation had not been received. Mr Chiesa insisted that it had been sent. Mr Wilson undertook to check within his office. He did so but could not locate any letter. Mr Chiesa had explained that it had been posted by him in a small post box with which there

were known problems at Christmas time. Mr Wilson confirmed that the letter had not been received and Mr Chiesa hand delivered a copy of it. Mr Newton for the Assessor stated that the purpose of the Regulations was to provide the Assessor with fair notice of the appellants' case; and to ensure that, particularly in straitened times, the general body of taxpayers was not prejudiced by the Assessor having to be unduly burdened with the preparation of a case unnecessarily. There were 71 appeals outstanding by the time of the hearing and in 69 of those there had been either full or partial failure to comply. It would be unfair and burdensome for the Assessor to prepare cases in such appeals.

The Assessor referred to three cases which he submitted supported his submission. *Tesco Stores Ltd v The Assessor for Fife* [2010] CSIH 95 and *The Assessor for Lanarkshire Valuation Joint Board against Jane Norman Ltd and others* [2012] CSIH 50, both decisions of the Lands Valuation Appeal Court. In the case of *Tesco Stores Ltd v The Assessor for Fife*; as stated supra, a professional agent on behalf of the appellants had lodged in terms of Regulation 10(5) a list of comparisons of 400 subjects located throughout Scotland and England and of different classifications to those subject of the appeal. He had then not relied upon any of them at the hearing of the appeal. It was said on behalf of the appellants' agent that the lodging of such a comparison list was common practice. Their Lordships were unimpressed and stated that if correct then the practice should cease. In a postscript to the case of *The Assessor for Lanarkshire Valuation Joint Board -v- Jane Norman Ltd and others*, their Lordships noted that the Committee which had heard the original appeal had found that the ratepayers had failed to comply with Regulation 10(1). However, the Committee had refused the Assessor's motion to dismiss and had continued the appeals and ordained the ratepayers to comply with the said Regulation. Their Lordships opined that a failure to comply with the Regulations should not be "readily excused." Latitude might be afforded to a party litigant but not to a professional practitioner.

Mr Newton also referred to a decision of a committee of the Lanarkshire Valuation Appeal Panel in September, 2012 in an appeal at the instance of *Dunnes Stores (UK) Ltd* in respect of subjects at Shop Unit MSU-2, Antonine Shopping Centre, 3A Tryst Road, Cumbernauld. In this appeal, the appellants' professional representative had conceded that he had not lodged the confirmation which had been required of him in a notice served by the Assessor in terms of Regulation 10(2)(b) of the Regulations.

The Assessor also made reference to *Armour on Valuation for Rating* at paragraph 5-16. He conceded that there may be circumstances in which failure to comply with the Regulations might be excused. Reference in this paragraph was made to the case of *National Commercial Bank of Scotland Ltd v Assessor for Fife* in which Lord Patrick observed of compliance with the Regulations; "I regard these provisions as being directory and regulative of procedure, literal compliance with which is not to be demanded if the effect would be to perpetrate manifest injustice....I do not suggest that such provisions are to be lightly disregarded; but where the

failure to comply has been caused by excusable mistake or by some cause over which he who failed had no control, I hold that the Valuation Committee and this Court, have a discretion to disregard the failure provided always that no substantial prejudice has been caused to the opposite party." However, Mr Newton argued that the Assessor would suffer prejudice if the appeal was allowed to proceed as there were in excess of 7000 appeals to be disposed of and there are around 600 appeals being cited for each hearing. The process of efficiently disposing of all appeals would grind to a halt if failure to comply with the Regulations was tolerated. He argued that it could not be said that the failure to comply was due to an excusable mistake or due to circumstances over which Mr Chiesa had no control. Mr Chiesa was a professional who was aware of the difficulty with the post box used by him. He ought not to have used it. He ought to have hand delivered his letter to ensure that it was received by the Assessor timeously.

Mr Chiesa opposed the motion made by the Assessor. He stated that he had complied fully. He had posted his letter confirming his intention to proceed with the appeals on 25<sup>th</sup> January, 2013. He was aware that there had been problems with this post box at Christmas time and this might explain why it had not been received by the Assessor. He submitted that it was possible that the letter had been received in the Assessor's office and perhaps misfiled. He had not become aware that it had not been received until after 30<sup>th</sup> January, 2013 when Mr Wilson advised him of this. He had insisted that he had sent his letter of confirmation. Mr Wilson had agreed to check. When Mr Wilson confirmed that this had not been received then Mr Chiesa had hand delivered a copy of it to the Assessor's office.

The Committee, after giving careful consideration to all of the submissions made, accepted that Mr Chiesa had posted his letter of confirmation on 25<sup>th</sup> January, 2013 and that it was reasonable for him to expect that it would be delivered by Royal Mail to the Assessor by 30<sup>th</sup> January, 2013. It was conceded by the Assessor that he had otherwise complied and as soon as he was made aware that his letter had not been received by the Assessor he had hand delivered a copy of it on 6<sup>th</sup> February, 2013 which was one week before the date of the hearing. The Committee were of the view that the cases referred to by the Assessor were distinguishable from the facts in the present appeal and therefore did not, as suggested by the Assessor, support his submission. In *Tesco Stores Ltd v The Assessor for Fife* [2010] CSIH 95 and *The Assessor for Lanarkshire Valuation Joint Board -v- Jane Norman Ltd and others*, there had been attempts to comply which when scrutinised were found to be deficient. In the *Tesco Stores* case the court had been concerned with a failure to comply with Regulation 10 (5) of the Regulations but not in that there had been a failure to lodge a list of comparisons but rather that the nature of the list of comparisons which had been lodged was such that it was held by the court that it did not comply with the relevant regulation. The agent in that case had lodged

an extensive list of over 400 comparisons which he had then not referred to during the hearing of the appeal.

The case of The Assessor for Lanarkshire Valuation Joint Board -v- Jane Norman Ltd and others, dealt with a failure to comply with Regulation 10 (1) in that the written statement lodged by a professional agent did not adequately specify (a) its grounds of appeal and (b) the valuation that it considered should be entered in the Roll and the grounds on which that valuation had been arrived at. Finally, in the appeal at the instance of Dunnes Stores (UK) Ltd, whilst this case did consider an alleged failure to comply with Regulation 10 (2), it was conceded by the appellants' professional agent that he had not attempted to respond to the notice issued to him by the Assessor. That was not the case in the present appeal. Mr Chiesa had cleared intended to comply having sent a letter dated 25<sup>th</sup> January which was sufficient in terms to comply with the regulation had it been received timeously.

Having regard to paragraph 5-16 of Armour on Valuation for Rating and the observations therein of Lord Patrick in the case of National Commercial Bank of Scotland Ltd v Assessor for Fife; the committee were of the view that the failure to comply with the Regulation was due to a cause over which Mr Chiesa had no control. Once he had posted his letter, it was reasonable for him to assume that it would be delivered timeously. Mr Chiesa had acted swiftly in an attempt to remedy the situation when he became aware that his letter had not been received by the Assessor. Accordingly, the Assessor had a week's notice that Mr Chiesa intended to proceed with these appeals. Given that no other appeals cited for hearing were proceeding, the Assessor could have prepared his case. The committee was not satisfied that a substantial prejudice was caused to the Assessor. The Committee determined to excuse the failure to timeously intimate the intention to proceed with these appeals. The Assessor's motion for dismissal was refused and the appeals were continued to a mutually date to hereafter determined.