



# **Postponements and Adjournments: A New Approach**

Revised August 2007

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## **Executive Summary**

- This paper sets out guidance for valuation tribunals.
- Postponements are viewed as purely administrative actions taken by the clerk on behalf of the President; adjournments are purely judicial. These definitions permit the administration to deal with all straightforward requests in order that customers can receive the highest levels of service and that unnecessary delay and costs are minimised.
- This guidance results from a consultation paper on postponements and adjournments, which was agreed by the Members' Judicial Committee and the Judicial Interface Committee, and approved by the VTS Board. It was circulated on 29 July 2005 to all Presidents of valuation tribunals. The purpose of the consultation paper was to agree nationally consistent standards in the handling of requests for postponement and adjournment and the subsequent best practice for their disposal.
- The guidance has been revised in the light of a review of the efficacy of the Listing after Target Date process, and as part of the focus on active case management.

## A briefing note to staff

### 1. General

1.1 In the absence of any precise legal definitions in the council tax and non-domestic rating appeals regulations, valuation tribunals have adopted the definition of postponement as -  
**an administrative act taken by the clerk on behalf of the President to defer the hearing of an appeal before the commencement of the tribunal.**

1.2 Similarly, valuation tribunals have adopted the definition of adjournment as –  
**a judicial decision taken by the tribunal to defer the hearing of an appeal.**

1.3 VTS staff, when clearing appeals on the computer system, will only use the adjournment code where a tribunal has been convened and has decided to adjourn the appeal. All other deferred cases will be marked as postponed.

1.4 An IT release in December 2005 introduced changes to enhance the functionality of postponements and adjournments, adding a mandatory drop down list of values. Deferral reasons must now be attached.

1.4.1 The list of deferral reasons are:

- DR1 – Defect
- DR2 – Disagreement of facts
- DR3 – Other non-availability
- DR4 – Outstanding higher court case
- DR5 – Further Information Required
- DR6 – Pending Settlement
- DR7 – Tribunal Cancelled
- DR8 – Incorrectly Programmed

1.5 All deferred appeals will be re-listed as soon as practicable and the parties notified accordingly.

1.6 A flowchart illustrating the administrative procedures is shown at Annex 1.

### 2. Postponements

2.1 The VTS recognises that coherence in approach is good customer care and that stakeholders have a reasonable expectation that common procedures are in place across the Service.

2.2 In dealing with requests for postponements, we should recognise that the needs and expectations of stakeholders are different, depending on the category of appeal and whether the parties are represented or not.

## 2.3 Equality of Arms.

2.3.1 It is of fundamental importance that one party should not be disadvantaged by the granting of the postponement. For that reason, wherever possible, requests should usually be made where the parties have discussed the issue and are making the application jointly. Tribunal staff will need to establish whether a request being made by one party has the agreement of the other.

2.3.2 However, on occasions, it will be reasonable for a Clerk to grant a postponement where only one party requests it and the other either disagrees with it or expresses no view.

2.4 Whatever the decision about a postponement request, the parties **must** be notified of it before the hearing. This notification should be given speedily, in writing, with reasons and in line with our customer charter. A printed copy should be kept with the appropriate paperwork.

2.5 Where the postponement request is declined, the party or parties must also be advised to attend the hearing to ask for an adjournment.

## 2.6 Council Tax Requests

2.6.1 Where a request to postpone a CT appeal (valuation or liability) has been made jointly, there should be a presumption to grant the postponement.

2.6.2 This presumption should be subject to exceptional circumstances. Such circumstances would include a previous judicial direction, for example that the appeal will be heard on a certain date.

2.6.3 Where it is not made jointly, the Clerk should establish the reasonableness of the request, recognising the difficulties that lay council taxpayers may encounter in preparing and presenting their own cases.

## 2.7 NDR Requests – unrepresented parties

2.7.1 Where a request to postpone a NDR appeal has been made jointly, there should be a presumption to grant the postponement.

2.7.2 This presumption should be subject to exceptional circumstances. Such circumstances would include a previous judicial direction, for example that the appeal will be heard on a certain date.

2.7.3 Where it is not made jointly, the Clerk should establish the reasonableness of the request, recognising the difficulties that lay ratepayers may encounter in presenting their own cases.

## 2.8 NDR Requests from represented parties

2.8.1 Where a request has been made and the appellant is represented by professional agents, tribunal staff (at PTO level or above) should take into account whether the request is reasonable. This recognises the detrimental effect that postponements have on the disposal all appeals within programmes and therefore the effect that postponements have on all stakeholders whether or not they are involved with the particular appeal.

2.8.2 When considering reasonableness a whole range of factors should be taken into account and these might include such issues as:

- \* Whether there has been insufficient forward planning;
- \* Whether the request is made very late, that is within three working days of the hearing date;
- \* Whether the appeal has been listed before;
- \* How much notice was given (including lead-in time for the sub-programme);
- \* The actual reason for the request (for example, disagreement of facts, outstanding superior court decision etc.)
- \* The other party's attitude to the request and their reasons for it.

2.8.3 Where this consideration leads the officer to the view that the request is reasonable then there should be a presumption to grant the request.

2.8.4 Where this consideration leads the officer to the view that the request is unreasonable, then there should be a presumption to refuse the request.

2.8.5 This will necessitate the officer notifying the parties in writing, with reasons for his/her decision to refuse the request. Anyone who remains unhappy with the refusal to grant a postponement may apply to the tribunal for an adjournment.

## 2.9 Relisting

2.9.1 Where a postponement request has been granted, there is a presumption that the appeal will be immediately relisted. Discussions with the parties about the postponement request should include consideration of a suitable date for the hearing. Where this is not possible, arrangements need to be put in place to review at regular intervals the possibility of relisting the appeal.

2.9.2 To increase overall efficiency wherever possible deferred cases should be re-listed onto existing VTs rather than creating bespoke clear-up tribunals. Where there are large numbers of deferred appeals, regular clear-up tribunals will be necessary.

2.9.3 For deferred cases when immediate re-listing is not a viable option, for example where decisions are delayed awaiting the outcome of an appeal to the Lands Tribunal, the suppression function within the database should be

used. It is important that Clerks ensure that monthly suppression reports are run and a system is in place to closely monitor cases to ensure timely re-listing.

2.9.4 With Listing after Target Date, all non-domestic rating appeals fall within the ownership of valuation tribunals at target date and it will be for valuation tribunals to apply appropriate management to such appeals.

2.10 Annex 2 is a flowchart summarising the processes described above.

2.11 The following policy statement on postponements should be used in communications with appellants:

**This statement sets out the way we will deal with each request for a delay in the hearing of an appeal.**

**We aim to provide a high quality service that is efficient, effective and courteous. We are committed to providing good case management of all appeals to avoid delay and unnecessary public expense. However, it is recognised that, exceptionally, there will be circumstances in which a postponement of a hearing is necessary. Any application for a postponement will be treated on its merits by the tribunal administration. Before applying, however, you should attempt to agree jointly with the valuation officer or listing officer that a postponement is required.**

**An application for a postponement should be made in writing (letter, email or fax) to the clerk of the tribunal and at least three working days before the hearing date. The background to and the reasons for the request should be included. The clerk will consider all the circumstances including:**

- **the reasons for the request,**
- **the other party's attitude to the request and their reasons for it,**
- **the length of notice that was given for the hearing (including, in the case of programmed non-domestic rating appeals, the lead-in time for the subprogramme),**
- **whether there has been insufficient forward planning,**
- **the time remaining before the tribunal hearing,**
- **whether the appeal has been listed for hearing before.**

**We will let you know whether or not the request has been granted. If the clerk declines a postponement request, you will be advised to attend the tribunal hearing to seek an adjournment.**

**Adjournments are judicial decisions made by the tribunal members and, as such, policies and other restrictions are inappropriate.**

In the case of non-domestic rating appeals, the following statement should also be included after the list of bullet points.

**As non-domestic rating appeals are programmed well in advance, it is expected that parties will reach a settlement by the target date or be prepared to proceed to a tribunal hearing shortly afterward.**

### **3. Adjournments**

3.1.1 Adjournments are judicial decisions taken at the hearing itself by the presiding tribunal and, as such, policies and other restrictions are inappropriate.

3.2 However the following are examples of when adjournments would be necessary:

- An appeal is part heard and breaks down during the hearing for some reason – the appeal will be adjourned.
- A party requests a postponement and another party objects and does not support the request. The clerk, on behalf of the President, does not grant a postponement and the tribunal will consider the request and objection and decide accordingly whether an adjournment will be granted.
- A request for postponement falls outside a tribunal's 'policy' on postponements and again the tribunal will consider the request and decide accordingly whether an adjournment will be granted.
- The parties jointly request a postponement, which is declined by the clerk on behalf of the President. The parties are advised to attend the tribunal to seek an adjournment.

3.3 Decisions of the Social Security Commissioner, though from a different appeals system, may assist clerks in clarifying the issues that need to be considered by the tribunal, particularly where equality of arms is an issue or appellants' representatives are involved.

3.3.1 The following is a quote from Commissioner Jacobs<sup>1</sup> in a case where the tribunal might have adjourned to allow the appellant to collect and present more evidence.

*I detect at least three factors that have contributed to the trend that I have observed. One factor is that the language of natural justice may have become stale to tribunals from over familiarity. A second factor is that the time between an appeal being lodged and being heard is now much shorter than it was. That will often be to the claimant's advantage. However, it is not an advantage if a claimant does not have time to prepare a case. The final factor, for which there is clear evidence across all regions of the Appeals*

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<sup>1</sup> CJSA/5100/2001

*Service, is the concern to avoid adjournments. This has led some tribunals to take an approach to hearings that is robust at the expense of fairness.*

3.3.2 A case about an adjournment not being granted when a representative could not attend led to Commissioner Rowland<sup>2</sup> saying:

*“It is axiomatic that whether or not a hearing should be adjourned is a matter within the discretion of the chairman or the tribunal but that discretion must be exercised judicially. Thus, provided a tribunal’s decision to adjourn or not to adjourn is rational and relevant considerations have been taken into account and irrelevant considerations have not been taken into account, the decision cannot be successfully challenged either on judicial review or on an appeal against the tribunal’s decision on the appeal”.*

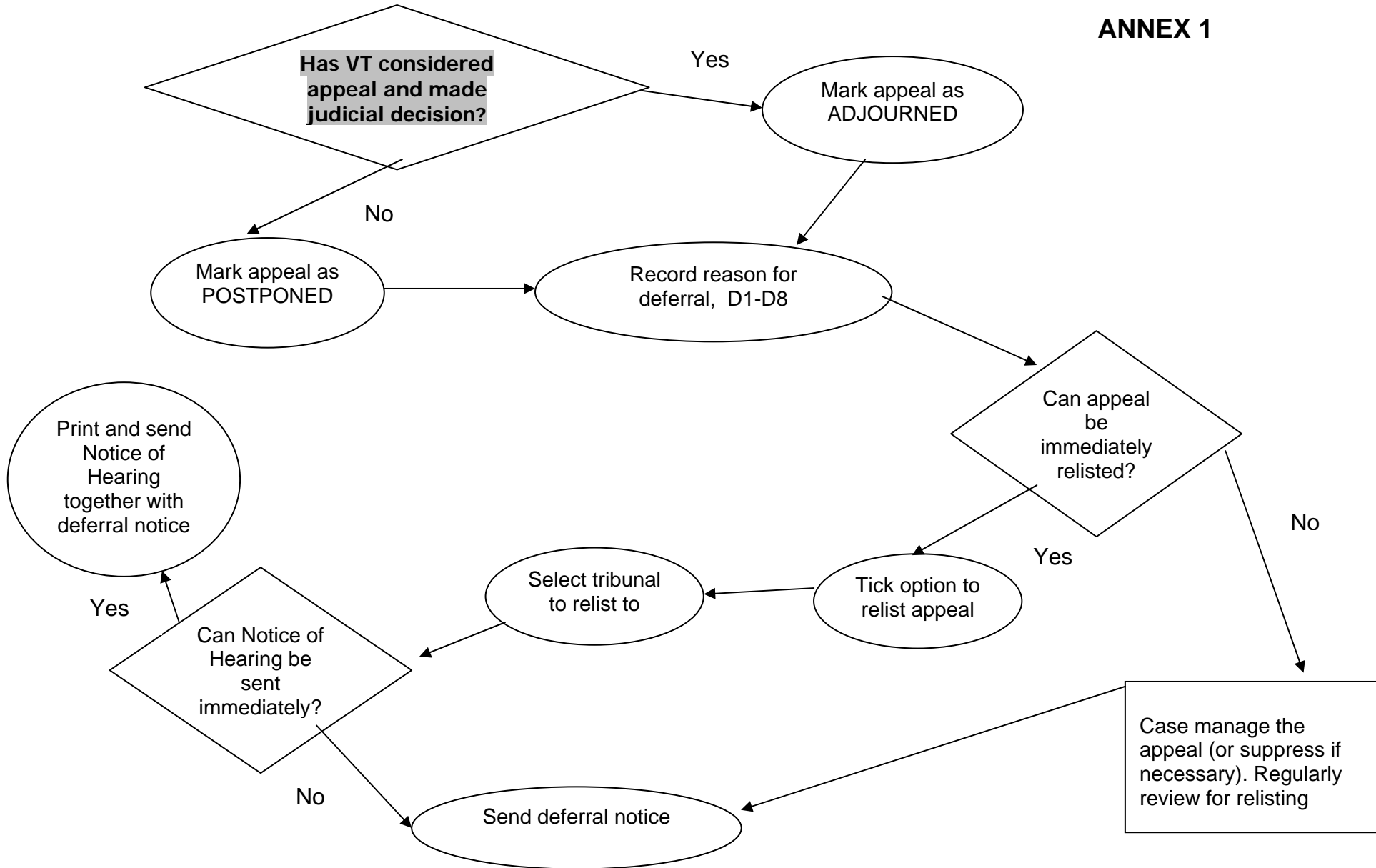
- 3.4 Pre-hearing reviews. The need for, or a request for a pre-hearing review may arise whilst a tribunal is hearing submissions for an adjournment from the parties at a hearing. Not less than four weeks notice of a pre-hearing review must be given to the parties. Please refer to the Pre-hearing review guidance.
- 3.5 Directional hearings. While probing the reasons why parties are attending a hearing on an adjournment application, a tribunal may decide to use that opportunity to also issue ‘directions’ to them. This may be more expedient than taking the formal pre-hearing review route (which requires notice to be served and another meeting convened) but, like that process, would aim to focus the parties on particular matters within a prescribed timetable.
- 3.6 Relisting. Where an adjournment has been granted, there is a presumption that the appeal will be immediately relisted, and the parties possibly consulted on and notified of the date at the adjournment hearing. (There is no statutory requirement for four weeks’ notice). Where immediate relisting is not possible, arrangements need to be put in place to review the possibility of relisting the appeal at regular intervals.

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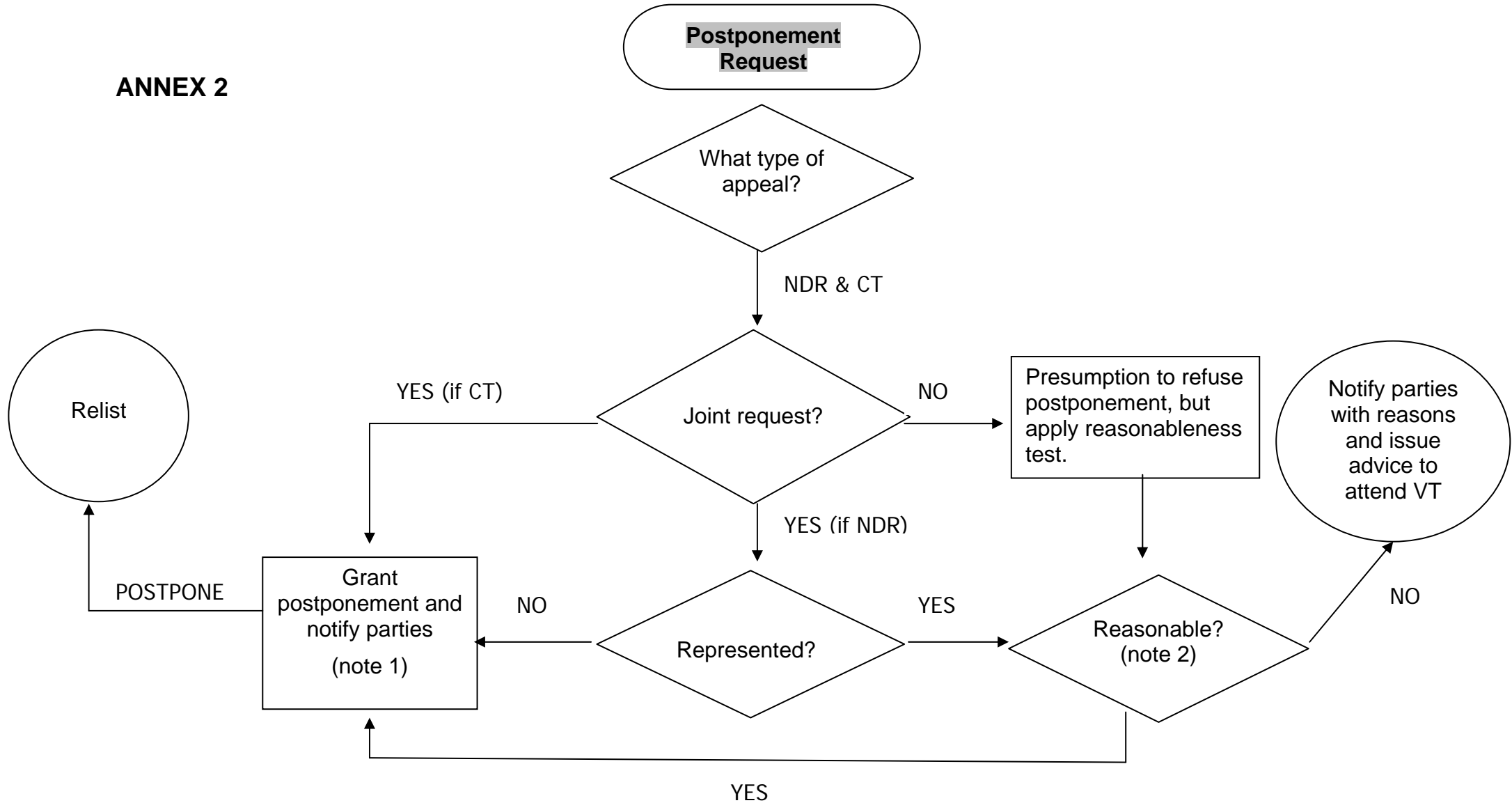
<sup>2</sup> CIB/1009/2004

Postponements and Adjournments - Administrative Procedures

ANNEX 1



**ANNEX 2**



Note1. Subject to any exceptional circumstances e.g. a previous judicial direction to hear on a certain date.

Note 2. When considering reasonableness, consider all circumstances positive and negative – e.g. last minute? Insufficient forward planning? Disagreement of facts, illness or bereavement, number of previous listings – outstanding superior court decision etc.