



# News in Brief

## Council Tax Support - The VTS is moving forward

As the Local Government Finance Bill continues its passage through Parliament, the Valuation Tribunal is busy preparing for its new jurisdiction, council tax support, which is expected to come into being on 1 April 2013.



Tony Masella, the Chief Executive and Chief Operating Officer of the VTS spoke to delegates at the Institute of Revenues, Rat-

ing and Valuation (IRRV) Annual Conference earlier this month and a follow up discussion with representatives of billing authorities (BAs) was held on 22 October to share plans, expectations and concerns, and to explore ways of working together so that the new system will work as efficiently and effectively as possible. Some 20 people attended, along with a representative of DCLG and David Magor of the IRRV.

In a move to share information with BAs and build up new relationships with benefits departments, the VTS has launched a Facebook page, **CTS Tribunal**. BAs/individuals will need to submit a 'friend request'. This will be a closed group and therefore not visible to unauthorised users.

## £100m grant to billing authorities to assist

The Parliamentary Under Secretary of State Baroness Hanham, in a written statement on 16 October, announced a £100million transitional grant for those

councils who design their local schemes to meet certain limitations:

- payments limited to no more than 8.5% of liability for those who would have received 100% support under council tax benefit,
- the taper rate does not increase above 25%, and
- there is no sharp reduction in support for those entering work.

## Non-domestic rates revaluation postponed

The Minister, Brandon Lewis, announced on 18 October that the Government intends to postpone the 2015 revaluation to 2017. This would be achieved through the Growth and Infrastructure Bill, which was laid before Parliament the same day. An aim of this action is tax stability in a time of 'exceptional change' in the property market, which will assist local businesses who would otherwise have seen a sharp rise in their rates bills. However, the Minister reaffirms the Government's commitment to five-yearly revaluations, which will resume after 2017. This news is also announced in **Business Rates Information Letter (BRIL) 9/2012**.

**BRIL 8/2012** covers new burden payments under the Business Rates Deferral Scheme (SI 2012/994).

These Letters are on DCLG's website, at <http://www.communities.gov.uk/localgovernment/localgovernmentfinance/businessrates/busratesinformationletters/>.

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## Practice Statements

All VTE Practice Statements are available to download from our website.

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<http://www.valuationtribunal.gov.uk/email/pract-state.asp?mail=5>

# Decisions from the Upper Tribunal (Lands Chamber)

## Goulborn v Cowell (VO) [2012]

The appeal property was a lock-up shop at 4 Sussex Street, Rhyl, in the 2005 list with a rateable value (RV) of £5,300. This RV was increased by the VO in 2006 to £9,600, because

- a) the RV in the list was inaccurate on the day the list was compiled;
- b) two new shops at Nos 8 and 10-12 Sussex Street had opened following a redevelopment of the Old Market in March 2006. There had been other increases in RV as a consequence of this change and two had been appealed to the VT Wales: the Zone A for No 6-8 had been determined at £255/m<sup>2</sup> and for No 18 (at a further distance) £175/m<sup>2</sup>.

The appellant argued that an alteration because of this change was not warranted, however VT Wales found that the Zone A figure of £255/m<sup>2</sup> was appropriate for the appeal property. Referring to a survey he had conducted of neighbouring retailers and the VOA's Rating Manual guidance on a material change of circumstances (MCC), the appellant said these circumstances did not constitute an MCC as there had been no change in pedestrian flows since the new shops opened and the number of transactions had fallen. He also believed that this alteration should not have been used as a means to correct an error in the list.

The matters to be determined were: whether there was an MCC and whether the VO should correct errors as they become known or wait until a new list is compiled.

A J Trott's view was that the conflation of two reasons for making the alteration caused procedural and valuation difficulties; a single proposal could not cover both grounds here as the effective dates were different. However, the proposal had not been challenged as invalid. He concluded that the redevelopment did constitute an MCC and that the list should be altered from the date of the change, increasing the RV to £6,100; the effective date for the alteration to correct the inaccuracy in the list entry, adjusted to reflect the MCC, should be 25 September 2007 (the date of VT Wales' decision) with the resulting RV being £8,200. The appeal was therefore allowed in part and there was no award of costs.

### Addendum following a further hearing

Following this decision, the VOA applied for permission to appeal to the High Court, or for the Tribunal to set aside its decision. The VOA submitted that it was in the public interest for the issue of the validity of a single proposal contending for different effective dates to be properly argued and determined. The decision was set aside in part (the MCC element was not set aside) and issues were identified on which the parties' views were sought.

The appellant argued that his proposal had been treated as valid throughout; he accepted that the RV should be £6,100 from March 2006, but said that the September 2007 effective date was unlawful because of the statute of limitations.

The respondent submitted that the UT (LC) decision created a problem because the RV in the list between March 2006 and September 2007 was known to be wrong. The correct effective date for the alterations should be, as repeatedly referred to in the proposal, March 2006, when the RV should be £8,200.

AJ Trott, noting that the UT (LC) was limited to the scope of the proposal, considered its contents and the guidance notes that accompany the form. As previously noted by the Tribunal in *O'Brien v Clark (VO)* [2006], use of the proposal form can lead to problems, particularly for lay people. However, having heard the argument, AJ Trott accepted that the VO had not come to an unreasonable conclusion about a single effective date. The appeal was dismissed and the RV determined at £8,200 with effect from 23 March 2006. (No Tribunal fee was charged.)

## Townend (T/A John's Radio) v Gott (VO)

The appeal was against a VTE decision refusing to delete an office building from the rating list for a period during which the appellant contended that building repair work was being carried out. This work included installing a metal fire escape between ground and first floor; the total list of works was estimated by the appellant to be £100,000.

However, there was insufficient evidence presented to show the dates of the works or whether the building could be occupied during them, for the case to succeed. Mr Rose of the UTLC also accepted the VO's evidence that the increase in rateable value of the appeal property was based on analysis of rental evidence and did not reflect an improved specification for the building.

## Appeal by Woolway (VO) RA 24/2010 (Tower Bridge case)

The decision of the UT (LC), reported in Issue 25 of ViP, has been appealed to the Court of Appeal and a hearing is expected in June 2013.

## VTS workload statistics

**In the first half of this financial year the VTS listed 30% more appeals than in the same period last year (69,000 appeals compared with 53,000).**

**The numbers of appeals settled (22,400), struck out (25,600) or postponed (18,200) have all risen compared to the figures for April-September 2011.**

**14,700 Statements of Case were received in the first two quarters, 8,200 from appellants and 6,500 from the VOA.**

**The number of determined appeals fell to 1627; reasoned decisions were issued within one month of the hearing date in 90% of cases.**



# Decision from the High Court

## MacAttram v London Borough of Camden [2012] EWHC 1033

The appellant had leased the appeal property to Camden for three years from June 2003 and it had been used to house homeless people. On expiry of the lease, Camden failed to give up possession as an occupier had not moved out. When the occupier did vacate the property it remained vacant but Camden refused to give up vacant possession and continued to pay the rent. When the parties met on site in 2006, there was a dispute about dilapidations. Camden stopped paying rent in January 2007 and said that they wrote to the appellant by recorded delivery on 5 June, returning the keys and ending the tenancy. The appellant argued that Camden remained tenants until November 2008.

The VTE had earlier considered whether the BA had a material interest (here that is a leasehold interest granted for six months or more) in the property from 5 June 2007; it concluded that the new tenancy created by Camden's continuance to pay rent could only be presumed to be a weekly or monthly tenancy. The panel drew assistance from two cases, which were not referred to or considered at the hearing. However, copies of those cases were sent to the parties after the hearing, inviting their comments. Both parties responded and the VTE panel accepted the appellant's submission that a monthly periodic tenancy arose by implication from the circumstances. The panel further found that this was a leasehold interest for less than six months, which meant that the BA's interest was not material. The VTE therefore found Ms MacAttram liable from 5 June 2007 to 8 November 2008.

The appellant argued that the BA's leasehold interest began when the lease was first granted in 2003 and continued during the periodic tenancy, which she said only arose because of the previous lease. The periodic tenancy, she maintained, should be treated as being annexed to the previous fixed term. However, the Deputy High Court Judge, referring to *Clarke v Grant* [1950] and the 1992 Local Government Finance Act, concluded that the periodic tenancy that arose after the fixed term was a new tenancy or leasehold interest rather than a continuation of the fixed term.



Ms MacAttram's second argument was that each period of the periodic tenancy made up the term granted, so that by summer 2008, the tenancy had been in existence for over six months (a total of 25 months) for the purposes of the Act. With reference to *Gandy v Jubber* [1865], which is the authority on this matter in relation to a year on year tenancy, Robinson J could see no reason not to apply its findings to shorter tenancy periods. This situation could either arise expressly or by implication from conduct of the parties. However, the circumstances of the instant appeal did not satisfy the wording of the Act that refers to "a leasehold interest which was granted for a term of six months or more", implying an initial grant of a term of six months or more

rather than a periodic tenancy that has gone on for more than six months. The conclusion was that the VTE's decision was correct in law.

The VTE panel had also looked at the parties' arguments about the return of the keys and concluded that there was an implied surrender, bringing the leasehold interest to an end when the BA sent a letter with the keys to the appellant on 5 June 2007. Returning keys did not imply anything more than an offer to surrender which the landlord could accept or reject. Here, a letter from the appellant's solicitor suggested that she accepted that the tenancy came to an end then. Again, the High Court found that the VTE was entitled to come to this conclusion.

In dismissing the appeal, Robinson J also found that the Tribunal was entitled to invite the parties to comment on case law that had not been raised at the hearing, and none of the other assertions of 'unfairness' made by the appellant was upheld.

**Council Tax Information Letter 2/2012 from DCLG** is about council tax on empty homes. Following the consultation on Technical Reform of Council Tax, the Government considered the representations and confirms that councils will have discretion over the level of discount they apply in these circumstances. A dwelling that has been unoccupied and substantially unfurnished continuously for at least two years may be subject to council tax at 150%. These letters can be found at <http://www.communities.gov.uk/localgovernment/localgovernmentfinance/counciltax/informationletters/>

## Valuation in Practice issue dates

Our newsletter is published quarterly in January, April, July and October. You can sign up for an email alert telling you when a new issue has been published, at

[www.valuationtribunal.gov.uk/vip\\_newsletter.aspx](http://www.valuationtribunal.gov.uk/vip_newsletter.aspx).



# Interesting VT Decisions

## Non-domestic rating

### Enterprise Zone - warehouse

The warehouse's rateable value (RV) was £97,000 from 1 April 2010. The appellant's representative sought £56,000 RV as the property was in an enterprise zone and he argued that rents in such zones were known to be excessive and so did not meet the rating hypothesis; consequently the VO had over valued the property. The representative provided rental details for an industrial property in a different town and he considered that its devalued rate per m<sup>2</sup> supported his lower RV for the appeal property. He also felt that the RV increase from the 2005 list was excessive compared to the increases of similar properties in the surrounding area, though he accepted that he had no evidence to prove this.

The VO did not consider the property referred to by the representative to be good comparable evidence as it was in a different town, valued under a different scheme and its rent was effective from a time when the economy was much different to that at the AVD. The VO explained that the enterprise zone had ended in 2005 and so rental evidence from after that date was useful. With no rental evidence for the appeal property, he provided evidence from three other properties in the locality with open market rents effective from after the enterprise zone had ended, between January 2007 and June 2008 and which, following adjustments, analysed to rates similar to those of the appeal property. The VO sought an increased RV of £104,000 as land not included in the 2005 list entry had been surfaced and was now used for storage.

The representative questioned the accuracy of the VO's rental analysis, adjustments and application of the quantum matrix. The VO explained how the quantum approach worked and stated that even though some of the rates looked out of step, that was because they included adjustments, but the basic rates were in fact similar.

The VTE panel was satisfied that the evidence in support of the increased RV sought by the VO should be admitted as he had referred to it in his statement of case and because the representative had had sufficient opportunity to consider and respond to the matter. The panel considered that

the land should be valued as it stood and it was not disputed that the land was being used for storage. As no alternative evidence had been provided, the panel found the value adopted by the VO to be reasonable.

The panel attached little weight to the representative's comparable property and was satisfied by the VO's explanation of the quantum approach and how the various rates had been calculated and adjusted. It concluded that his rental evidence supported the existing basic unadjusted rate. The VO's evidence was reliable as it was for open market rents effective from after the enterprise zone ended and sufficiently close to the AVD. The appeal was dismissed and the RV increased to £104,000.

Appeal no 441017953198/257N10

### Self Catering Holiday Unit

The unit comprised five two-bedroom cottages with RV £11,500 from 1 April 2010. The proposal sought an RV of £5,800 but at the hearing, the appellant, an unrepresented ratepayer, sought a lower RV as there had been an error in his calculations.

Due to a lack of rental evidence the appeal property's 1995, 2000 and 2005 assessments had been based on the receipts and expenditure method but for the 2010 list, the VO had used a different approach based on single bed space rates, a change which had been agreed with letting agents and FoNSCA, the professional body for the self catering industry. As a result, the appeal property's 2010 assessment was based on a scheme, rather than being valued individually. In compiling the scheme, the VO had analysed the profit and loss accounts of many self catering units. From around 2,500 forms of return and looking at price changes and location, he identified increases in gross income between 2005 and 2010 and came to an average level of gross receipts, from which he calculated what he considered to be a fair and equitable scheme based on single bed rates. There were around 3,200 self

catering premises in North Yorkshire and all had been valued using the new scheme. Of 45 appeals, all had been settled in line with the scheme. He contended that this established the tone and, as the appeal property had been valued on the same basis, then its existing assessment was correct, as it was in line with the tone.

The appellant disagreed with this new approach as it was not one of the recognised methods of valuation in the VOA's Rating Manual for Holiday Accommodation, which stated "values should be derived from the analysis of accounts and receipts of commercially run self catering hereditaments", which he considered the appeal property to be. Consequently, he contended that the receipts and expenditure method was more appropriate and, using this in conjunction with the VOA's Rating Manual, calculated an RV of £5,073. In case the panel agreed with the bed space rate approach, the appellant had also calculated a rate by comparison with three similar properties. After adjustments for differences in size, location, weekly rents and facilities provided, he had arrived at £5,200 RV and asked for a revised RV of around £5,000.

The VTE panel was not persuaded that the VO's approach was the most appropriate method of valuation in this case and just because other assessments had been valued and settled in line with that scheme it did not automatically follow that it was the most appropriate method in all cases. On the evidence provided, the panel preferred to value the appeal property on an individual basis rather than by reference to a scheme. The panel found that the appellant had shown the assessment to be excessive and, being satisfied that his calculations were correct and finding no evidence to reliably suggest that a different RV was more appropriate, it decided to allow the appeal and determined RV £5,000. Though this was lower than that given in the appellant's proposal the panel considered that, as he was an unrepresented ratepayer, and the figure stated in the proposal was as a result of an error he should not be disadvantaged by it and neither should the panel be constrained by it.

Appeal no 273016915760/539N10

Where we show an appeal number, this can be used to view the full decision on our website. Click on the Listings & Decisions tab and use the appeal number to search Decisions.

## Interesting VT decisions continued

### Land used for hand car wash

The issue in dispute was the level of value to be placed on the appeal property, which was situated in a residential area of Southport, about one mile from the town centre. The land was valued at £12.60 per m<sup>2</sup>, and the offices/waiting area valued at £35 per m<sup>2</sup>.

In consideration of the proposal, the VO had offered a reduction to £6,500 RV (based on a land value of £11 per m<sup>2</sup> and a waiting area of £30 per m<sup>2</sup>); however this was rejected by the appellant, who sought £4,500 RV.

In support of his valuation, the VO referred to four pieces of rental evidence. The rents analysed at between £16.76 and £24.15 per m<sup>2</sup>. However these properties were in Maghull and Ormskirk, and the rent closest to the AVD was 15 August 2009. The VO also presented a number of assessments from Merseyside and Cheshire, which he contended supported the level of values adopted for this class of property. The VTE panel was surprised at the lack of evidence presented from Southport, especially as the appellant confirmed there was competition in the area. The VO said that land value depended on size, location and other physical factors.

The appellant contended that the valuation should be lower as a result of the disadvantages of the appeal property. It was in a back street location, surrounded by speed humps and planning permission was restricted to car washing and petrol sales (having been occupied previously as a petrol station). The VO agreed that these factors had persuaded him to offer the reduced RV based on a value for the land of £11 per m<sup>2</sup>, a reduction of about 12.5%. The panel considered that the reduction was fair and reasonable, but the same reduction should apply to the buildings on the site, as they had the same disadvantages. The panel therefore decided that it was more appropriate to apply an end allowance to the valuation, which resulted in an RV of £6,250 and the appeal was allowed to that extent.

Appeal no 432016939534/134N10



### Italian restaurant (1)

The VO had assessed a Keswick restaurant and pizzeria on an overall price per m<sup>2</sup> basis, but the appellant had based his valuation on turnover. He argued that a hypothetical tenant would not be influenced by local rental evidence because of the appeal property's location, situated 200m away from the main tourist footfall for the town. The accounts reflected the effects of the location. Additionally, VOA Practice Note 1, Section 875, allowed some restaurants to be valued on turnover under the Rating Lists 2010 Valuation of Public Houses 'Approved Guide'. It states:

*"Licensed restaurants that are physically similar or trade in the nature to a public house / public house restaurant, or where potential occupiers of the property are likely to be brewers, pubcos, their tenants or free traders, should be given the same special category code as for public houses."*

The VTE panel believed that the RV arrived at should represent the figure at which both the hypothetical landlord and tenant would arrive as a result of bargaining and that they would agree a rent having regard to the rents passing for other local restaurants. This would then be adjusted to take account of the location. The panel recognised that it was appropriate to use the 'Approved Guide' for pubs because there was a shortage of reliable open market

rental evidence for them but that it was not appropriate to use it in situations where there was good local rental evidence, as in this case. Here there were two rents close to the antecedent valuation date, albeit in more central locations.

The panel noted that the appeal property did not look like a typical pub, nor did it have public house planning permission. Also the wet trade represented only 20% of overall trade, with food sales accounting for 80%.

The panel however allowed the appeal in part, reducing the price per m<sup>2</sup> used in the valuation, to reflect the location as it was reasonable to expect a fall in values. But this was not to the extent proposed, as the property still enjoyed a prominent position visible from two of the three main roads into Keswick.

Appeal no 090518415483/124N10

### Italian restaurant (2)

Amongst a number of appeals on licensed restaurants in the Preston area, a VTE panel considered one on an iconic, three-storey Italian restaurant, that had been in the city centre for 30 years. Firstly, the panel had to determine the effect, if any, of the failure of the Tithebarn development plan. The council had withheld a series of development initiatives in anticipation of approving a project that would almost entirely revamp the city centre's retail centre, leisure facilities and bus terminus. This had not come to fruition; meanwhile, large parts of the east end (Continued on page 6)

## Interesting VT decisions continued

(Continued from page 5)

of the city centre had barely survived the years of under investment; many businesses had closed or moved expecting their premises to be demolished. Although the appeal property was not destined to be bulldozed, its neighbouring bars and clubs had closed and many of the potential clientele had moved on to revamped areas of the city centre.

The second issue for the panel was to decide whether the forced 'sale and lease back' of the property to the appellant by his bank had impacted on the rating hypothesis. Although no independent expert evidence was submitted, the VO said the new lease was 'agreed' at open market value.



Through his representative, the appellant argued that rental values for restaurants in the locality had fallen between the 2005 and 2010 revaluations (though the VO had increased the RV at revaluation) and that the leaseback had a rent the appellant could not refuse if he wanted to keep his 30-year old business.

The panel's decision ultimately came down to 'tone of the list'. It found that the leaseback was not recognised by the statutory terms whatever rent it purported to deliver. Secondly, the panel held the tone for such a high-quality restaurant was £130m<sup>2</sup> and not the £100m<sup>2</sup> contended by the appellant, nor the £145m<sup>2</sup> sought by the respondent in lieu of the previous £150m<sup>2</sup> in the compiled list. Despite its reasonable proximity to other

established restaurants and bars, the panel held that the rating hypothesis for the appeal property and any other in its street would have been affected, by the blight, but not to the degree contended for by the appellant.

Appeal no 234517782792/538N10

### Council tax valuation

The appellant, as the new taxpayer, was seeking band D from band E for the 1955-built home. Originally entered in the valuation list at band D with effect from 1 April 1993, the property had been extended by the previous occupier.

At the hearing the listing officer (LO) contended that the relevant date for valuation of the subject property was the date of sale to the appellant, 30 September 2011, which meant that the property was valued including the extension. During the course of the hearing the LO declared that the property without the extension would fall within the range of values encompassed by band D.

After the hearing, the clerk's advice to the panel in the absence of the parties was that the relevant valuation date for this appeal was 1 April 1993, before the property had been extended. The parties were notified of the panel's intention to reconvene the hearing so that advice could be given in open tribunal. In the interim, the LO received advice from the VOA network and accepted that the clerk's advice was accurate. He agreed that the relevant date by which the appeal dwelling fell to be valued was 1 April 1993. Consequently it had not been necessary for the tribunal hearing to be reconvened.

In view of all this, the panel allowed the appeal and amended the existing assessment to band D with effect from 1 April 1993.

The listing officer expressed his intention to value the extended subject property, following the sale to the appellant and, as a result of his review, might amend the banding. The appellant would be entitled to lodge a proposal against any future amendment list entry.

Appeal no 4720606678/244CAD

### Council tax liability

#### 25% single person discount, sole or main residence

The appellant had previously made an appeal on the same grounds for an earlier period. This had been dismissed by the Tribunal. The billing authority's (BA's) contention was that there had been no change in the appellant's circumstances since that period had ended and so the same decisions was the logical outcome. It was the BA's view that it would be difficult or at least uncomfortable for anyone to live at the appeal property, long-term. The parties were agreed that the property was in a poor state of repair and that there had been little change since the last hearing.

The appellant travelled a lot in his work and alleged that he sometimes stayed with his mother but that his sole or main residence was the appeal property. In support of this, he presented utility bills, photos, a list of furniture and other contents, and he exhibited actual items used in daily life.

Despite the quantities of material produced as evidence, the VTE panel found that, while the appellant undoubtedly stayed at the property on occasions, it was not persuaded that it was his sole or main residence for council tax purposes for this period. An extensive flow of faxed correspondence sent to the council from the appellant at his mother's home at all times of the day and night helped the panel reach this view. The panel therefore dismissed the appeal.

This case has been excluded from our website and has been appealed to the Administrative Court

#### Can a property be allowed two Class A exemptions?

This was the question posed to a VTE panel; their decision was that it could. The property was originally in local authority ownership and was being used by the housing services as a hostel for homeless people. The authority decided to sell the property to Mr A. He wanted to re-work the  
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## Interesting VT decisions continued

(Continued from page 6)

property so that it could be used as a domestic property and therefore a schedule of works was carried out and Mr A was granted a Class A exemption on the grounds that structural works were being undertaken and that the property was vacant for the period 27 March 2008 to 26 March 2009.

Once the property was complete the Class A exemption ended but the property remained vacant. Furniture was moved into the property in May 2010 as Mr A decided to sell the property.

It was sold to Mr B on 17 December 2010. Mr B did not want the same layout and reworked the property again between February and September 2011. It meant that there were more structural alterations and that the property was vacant. Mr B applied for a Class A exemption but the BA refused on the grounds that the property had benefited from a Class A exemption and it had not been occupied for more than 6 weeks.

The panel decided that the Class A exemption could be awarded because the initial works for which it was given had been completed and the property was habitable when it was purchased by the appellant. The works carried out by the appellant were different structural works and the dwelling was vacant.

The BA asked for the case to be reviewed on the grounds that the panel had not taken into consideration part 2(2)(b) of the Order which states:

*in considering whether a dwelling has been vacant, any period not exceeding six weeks during which it was not vacant shall be disregarded.*

The Vice President rejected the request for a review as she was satisfied that the provision was not applicable in this case. Evidence had been provided to the panel that furniture had been placed in the property and therefore it was not vacant.

Appeal number 5510M74490/053C.

### Class F exemption

The issue of this appeal was whether the appeal dwelling met the criteria of Class F and was an unoccupied dwelling which had remained so since the date of death.

The owner of the property had moved into a care home on 2 July 2008 and died there on 31 October 2008. Class E exemption had been granted for the period when she vacated the appeal property to the date a tenant moved in (1 October 2008). The tenant had then become liable for the council tax.

The appellant had appealed against the BA's decision not to award a Class F exemption under the Council Tax (Exempt Dwellings) Order 1992, as amended, for the period in dispute - the date the tenant left the property (1 December 2009) up to the date it was sold (15 December 2011). Probate had not been granted until 7 November 2011.

The BA's representative advised the panel that Class C exemption had been given for the period 1 December 2009 to 31 May 2010, then a 50% charge had been applied until the property was sold.

It was contended that as the appeal property had not remained unoccupied since the date of death, the criteria for Class F were not met and no exemption could be given.

The appellant's representative argued that if the property had remained unoccupied since the date of death there would be no council tax charge on the property. The liability only arose because there was a tenant in the property for a period of time, which had resulted in the council benefitting from 15 months of council tax. As the tenant had a tenancy agreement, she had a legal right to remain in the property and the executor was unable to take possession of the property.

The appellant's representative contended that there had been no grant of representation and the property was not continuously occupied. In respect of further matters he raised on the delay of the sale caused by the estate agent; the pre-

existing claim under proprietary estoppel; and the lack of NHS funding towards the care home costs, these were all outside the remit of the panel and it was therefore unable to comment on those matters.

The panel considered the legislation concerning Class F exemption, which referred to an unoccupied dwelling, which had remained so since the date of death and states that one of the following conditions must be satisfied:

*(a) the deceased had, at the date of his death, a freehold interest in the dwelling, or a leasehold interest in the dwelling which was granted for a term of six months or more, and*

*(i) no person is a qualifying person in respect of the dwelling; or*



*(ii) a person is a qualifying person in respect of the dwelling acting in his capacity as executor or administrator, and no person is a qualifying person in any other capacity; Or*

*(b) the deceased was a tenant of the dwelling at the date of his death, and an executor or administrator acting in his capacity as such is liable for rent or, as the case may be, a licence fee, for the day;*

*(3) sub-paragraphs (a)(ii) and (b) of paragraph (2) above shall only apply, in a case where a grant of probate or letters of administration has been made, if less than six months have elapsed since the date of the grant.*

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## Interesting VT decisions continued



in June 2012, the appellant remained the legal owner. This was evidenced by the Lands Registry entry.

Throughout the period in dispute, the appellant was registered as the legal owner of the appeal property and there was no record of his ex wife having had any registered material interest in the dwelling.

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The panel made a finding of fact that the appeal dwelling had been occupied by a tenant at the date of the owner's death and only became unoccupied on 1 December 2009, 13 months after the owner had died.

The panel was of the opinion that the circumstances surrounding the occupation of the appeal property did not meet the criteria of Class F and it was satisfied that the BA had granted all the exemptions and discounts applicable. Based on the evidence before it, the panel found that the BA had correctly interpreted the regulations and that Class F exemption was not appropriate in this case. The appeal was dismissed

Appeal no 4515M83373/257C

### Hierarchy of liability

The appeal property was inherited by the appellant from his parents in November 2004 but he was unable to occupy it. In November 2011, the property was subject to a Court Order, whose effect was to transfer the possession of the appeal property to the appellant's ex wife to cover maintenance costs. In effect, possession, not ownership (legal title), was transferred to the ex wife, so that her solicitors could manage the sale of the property to ensure that she received what she was entitled to, following the divorce settlement.

The VTE panel made a finding of fact that until the appeal property was sold

Section 6 (2) of the Local Government Finance Act 1992 outlines the hierarchy of council tax liability. Where there is no resident at a dwelling, the liable person is the owner and Section 6(5) defines 'owner' in relation to any dwelling, as the person as regards whom the following conditions are fulfilled:

*He has a material interest in the whole or any part of the dwelling; and*

*at least part of the dwelling or, as the case may be, of the part concerned, is not subject to a material interest inferior to his interest;*

Section 6(6) defines 'material interest' as

*a freehold interest or a leasehold interest which was granted for a term of six months or more;*

In view of this, the panel determined that the appellant was liable for the council tax, as he remained the owner of the unoccupied appeal dwelling, throughout the period in dispute. As his ex wife did not have a relevant material interest in the property, she could not be legitimately held liable for the council tax. Accordingly, the appeal failed and was dismissed.

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