Issue 45

July 2017

VALUATION TRIBUNAL SERVICE

News in Brief

Consolidated Practice Statement (CPS) revised

The VTE President has issued a revised document, effective from 1 July 2017. It emphasises that the overriding objective of the Tribunal is to deal with cases fairly and justly and that in doing so it will, amongst other things:

- deal with appeals proportionately to the complexity of the issues, the financial implications and the resources of the parties (including the Tribunal)
- avoid unnecessary formality and inflexibility in proceedings
- deal with the parties fairly allowing them to participate as fully as is practical in the proceedings
- use the specialist expertise of the tribunal effectively
- avoid delay, so far as is compatible with proper consideration of the issues.

The CPS emphasises the obligation on parties to conduct each case before the Tribunal in a way that helps the Tribunal to give effect to the overriding objective, complying with all Directions unless permission is given to amend them, and informing the Tribunal of anything that may hinder it in furtherance of the objective.

A failure to comply with any Direction by a party may lead to:

- the appeal being struck out or dismissed
- the party being barred from participating further in the appeal, or,
- a default judgment in the case of a council tax reduction appeal.

The CPS now incorporates a practice statement, standard directions and explanatory notes for 2017 rating list appeals. There are also amendments to other practice statements to take account of these appeals.

PS6 on council tax reduction appeals clarifies that appeals where parties have been awarded the maximum amount under a Scheme or where a recalculation of CTR has led to an 'overpayment' will be treated as outside the Tribunal's jurisdiction and struck out.

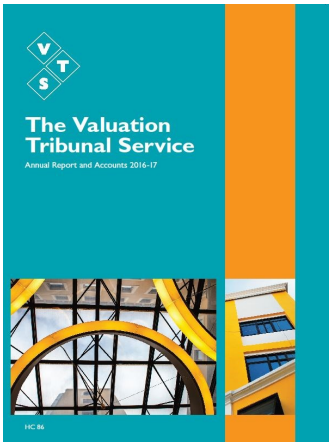
PS11, formerly relating to disclosure in council tax valuation and liability appeals, has now been extended to encompass all appeals against completion notices (both domestic and non-domestic).
Follow this link to see the revised document: https://www.valuationtribunal.gov.uk/preparing-for-the-hearing/practice-statements/

Please remember that you can sign up to receive an alert when any new practice statement or an amendment is published, at: https://www.valuationtribunal.gov.uk/newsletter-signup/

Annual Report & Accounts 2016-17

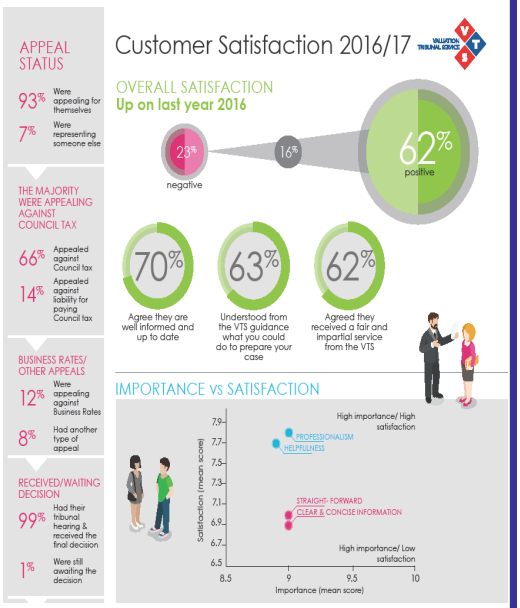
This was laid in Parliament on 28 June and can be found on our website at https://www.valuationtribunal.gov.uk/wp-content/uploads/2017/07/VTS-Annual-Report-2016-2017.pdf

This gives information about our performance against targets we set ourselves, as well as the year's activity, governance and risks, staffing and financial information.



In 2016—17 we listed 162,145 appeals, 40% more than the previous year. We held 1,057 hearing days and issued 3,830 decisions, 95% of them within one month of the hearing date.

We also report on the findings of our regular independent tribunal user survey of unrepresented appellants, summarised here:



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VALUATION TRIBUNAL SERVICE JULY 2017

Valuation in Practice

Stayed appeals -There are a number of appeal types stayed by the VTE at the moment. The main ones are:

Class	Identifier	Reasons
Completion notices		Dispute over the jurisdiction of the Tribunal to decide anything other than the date
Photo booths	Whether occupation of booths is too transient and therefore not capable of rateable occupation	Now stayed as ATMJ decision, in part on a similar point, has been appealed to the Court of Appeal
Religious Exemption of Church of Scientology properties	VOA is dealing with a number of appeals by the Church of Scientology relating to religious exemption on premises around the country	Appeals postponed and not listed awaiting application
ATM machines at sites in England	Whether each ATM is rateable	UT decision appealed to Court of Appeal
Wind farms	Receipts and expenditure, where at the material date the number of renewable energy providers had increased by several thousand	Lead appeals identified and Directions issued but hearing date not yet agreed following earlier postponement
Self-contained storage units within a building	Whether a large warehouse containing 1,890 self-contained storage units should be valued as one or whether each unit is a separate hereditament	Appeals part heard by President in accordance with PS3
McDonalds restaurants	Valuation for Rating (Plant and Machinery) Regs 2000. When and how plant & machinery may be used/are intended to be used in connection with services mainly/exclusively as part of manufacturing operations/trade processes and what constitutes these	Leave sought to appeal to supreme Court in respect of Iceland Foods Ltd v Berry (VO)
Hospital wards with long-term stay patients	Whether domestic or non-domestic	Lead appeal yet to be identified. Appeal to be heard by the President

Telecommunications Infrastructure Bill

This aims to incentivise telecoms operators to invest in the broadband network, by enabling 100% rate relief for operators who install new fibre lines on their networks. The rate would apply for five years and be backdated to 1 April 2017. http://services.parliament.uk/bills/2017-19/telecommunicationsinfrastructurerelieffromnondomesticrates.html

News from the Supreme Court

Iceland, the frozen food chain, has appealed to the Supreme Court. The central issue in the case is whether the air-handling system used by Iceland in its Liverpool store is plant or machinery "used or intended to be used in connection with services mainly or exclusively as part of manufacturing operations or trade processes" within the meaning of the Valuation for Rating (Plant and Machinery) (England) Regulations 2000 and therefore ignored for rating purposes.

The Valuation Tribunal for England (VTE) decided in Iceland's favour in 2012, but the Upper Tribunal (Lands Chamber) ("the UT") reversed that decision in 2015, The Court of Appeal agreed with the UT, but now the Supreme Court has granted Iceland permission to appeal. (*See ViP issue 43 page 3*).

Decision from the Court of Appeal (Civil Division)

UKI (Kingsway) Ltd v Westminster City Council [2017] EWCA Civ 430 C3/2015/3523

The issue was the validity of service of a completion notice. In this case, having sought unsuccessfully to learn the name of the owners from their rating agents, the council delivered a notice by hand to the building, merely addressed to 'The Owner', and handed it to a receptionist employed by the company who managed the building for the owners. The receptionist scanned and emailed a copy of the notice to the owner, who neither had a presence nor carried out business at the property. The managing company had no authority to accept legal documents on behalf of the owner.

The appeal to the VTE against the completion notice was successful and it was found to have not been validly served. A decision of the Upper Tribunal on appeal reversed this. There, the Deputy President found that the notice had served its purpose and that service had occurred when the emailed copy arrived with the appellant owner.

The Court of Appeal allowed the appeal and held that 'service on the owner by the authority' did not include all methods of communication/transmission which eventually resulted in the information or notice arriving in the hands of the owner, via a third party who was not authorised to accept or effect 'service'.

Though the Court did not attempt to lay down a prescriptive formula for 'service', agreeing that para. 8 of Sch 4A was permissive, it was not sufficient for any type of indirect transmission to fulfil the requirements of the legislation. The notice had not been properly served and was not effective in determining the completion date it stated.
(See ViP Issue 38 page 3).

You can sign up to receive email alerts when a new issue of Valuation in Practice is published, and/ or when a VTE Practice Statement is revised or a new one issued, at:

https://www.valuationtribunal.gov.uk/newsletter-signup/

Decisions from the Upper Tribunal (Lands Chamber)

Hughes (VO) v York Museums and Gallery Trust [2017] UKUT 200 (LC) RA/20/2015

This appeal concerned the Castle Museum, the Yorkshire Museum and York Art Gallery and the Heritage Centre, York, all occupied and run by the Trust. The main issue was the appropriate method of valuation for the 2005 and 2010 rating lists. In 2014 the valuation officer (VO) altered the 2010 list to show the Castle Museum shop as a separate entry from the Museum. Another alteration showed the shop at the Yorkshire Museum, the shop and cafe at the Art Gallery and the Hospitium as separate from the Museum and Art Gallery. These entries were deleted in the VTE's decision and the VO was appealing that decision. The Trust also appealed, against the rateable values the VTE determined for the two lists.

In addition to the valuations, the UT determined that, for the purposes of the 2010 list:

- the Yorkshire Museum shop was in the rateable occupation of the Company (a wholly owned subsidiary of the Trust) rather than the Trust, and should be a separate hereditament;
- the Castle Museum shop was not a separate unit of property distinct from the Museum and so should not be a separate entry in the list;
- the Hospitium was not used for a sufficiently different purpose to the Yorkshire Museum that it should be a separate hereditament and that the Trust was in occupation;
- the receipts and expenditure method of valuing the hereditaments was more appropriate.

The decision was wide-ranging, referring to much case law and also touching on scope of proposal and whether the gardens at the Yorkshire Museum were exempt by virtue of being a park within the meaning of the 1988 Act. The appeals were allowed in part.

City of York Council v Sykes (VO) [2017] UKUT 230 (LC) RA 21/2016

The Council consolidated its offices around the city into a single principal hub. This building combined a refurbished Grade II listed building, which was formerly the old railway station and hotel, with a new building replacing demolished 1960's additions to the old building. The resulting offices have won several architectural and design awards. Both parties appealed the VTE decision: the Council because the VTE had made no allowance for quantum, the small number of parking spaces and the additional costs associated with maintaining a listed building; the VO because the VTE had distinguished the unit prices between the old and new parts.

The Upper Tribunal (UT), in noting that an inspection of the property had been a necessary element in coming to decision on these issues, considered the comparable rental evidence. The VO contended that the agreed tone evidence supported a range of values for the building as a whole of £130-£150/m^2; there were no hereditaments in York that had a mix of old and new that would support a differential between the two parts of the building. The UT agreed that the two areas could not be marketed separately as the VTE decision had suggested and that the parts were inextricably linked. From the rental evidence the UT determined that the basic figure should be £145/$m^{2.}$

On parking, it was shown that the policy in the city for some time had been to reduce office parking to encourage sustainable means of transport and that this situation was not uncommon; no allowance was therefore warranted for lack of parking.

No evidence was produced to show that a Grade II listed building incurred increased costs for repair and insurance and there was no evidence of other hereditaments in York receiving allowances for this; no discount was therefore applied by the UT.

The rental evidence was of little assistance on the issue of layout and floor levels and the UT took a view that the disadvantages were real in terms of flow around the building, but not major. An allowance of 7.5% was made. The appeal and cross-appeal were therefore both allowed in part.

Decision from the Upper Tribunal (LC)

Strategic Designs v Thorne (VO) [2017] UKUT 201 (LC) RA/86/2016

Though the parties agreed on the ground floor area of this factory, they disagreed on the GIA of the supported first floor; the valuation officer (VO) included the void over the stairs in his calculation.

The UT agreed that the RICS Code was confusing on this point but concluded that the VO was correct in including the area. The value of the main space was determined with reference to one rent and four settled appeals on the same estate, which it was agreed set a tone. No allowance was made for quantum. The third area of dispute was the relativity to be adopted for the ground floor reception/entrance and kitchen, and the first floor workshop and office. The UT reduced the relativity for those ground floor parts because of the entrance width and the quality of fit out. The appeal was allowed in part.

Decision of the Information Commissioner

VOA re Complaint. Decision no FS506645886

The Commissioner held that the VOA was correct in refusing a request for information about key properties in a particular postcode, citing section 44(1) of the Freedom of Information Act 2000. This exemption made clear that the VOA could not release any information which would identify or enable the identification of a person if its disclosure was prohibited by or under any enactment. Sections 18(1) and (2) of the Commissioners for Revenue and Customs Act 2005 was such an enactment.

The requested information was not publicly available but it would be possible to identify individuals from that information used alongside address information already in the public domain.

Decision from the High Court (QB)

Jagoo v Bristol City Council [2017] EWHC 926 (Admin) CO/5387/2016

A student on a 4-year part time course, suffering from dyslexia, argued that her studies took her longer than they otherwise would and so she should be entitled to the student exemption from council tax liability. For students who are not disabled, the course requires 20 hours' study over 24 weeks each year, but the appellant pointed out that she had to study at least 25 hours a week. Other allowances and adjustments had been made to assist her at the university.

The High Court noted the focus in the legislation was on the requirements of the course, not the requirements of the individual. Had the legislation been drafted in another way it would require billing authorities to look at each individual's circumstances in deciding whether an award was warranted. This could also favour a slow student and penalise a more able student.

The requirements of the Equality Act were met because the individual characteristics of the student were not part of the criteria of the legislation and the refusal to treat her as a full time student was solely because she was on a part-time course. In addition, the decision was not incompatible with the Convention on Human Rights.

Interesting VTE Decisions

Non-domestic rating—validity

The valuation officer (VO) contended that the proposal was invalid because the information recorded on the proposal indicated that the appeal property was owner occupied. The VO said that this was not the case as his office had received a form of return from the occupier of the property. When asked if he had served notice under reg. 17 (3) of the Procedure Regulations (SI 2009, No 2269) on the ratepayer's representative to rely on this form of return in these proceedings, the VO confirmed that he had not. The clerk advised the panel in open tribunal that any evidence derived from the form of return was inadmissible. This advice was not challenged, though the VO was given the opportunity to do so; he had no other evidence to prove his contention that the property was rented to support his argument that the proposal was invalid. The VO's argument was therefore rejected and the panel determined that the proposal was valid.

Appeal no: 159526959312/537N10 preliminary issue

Council tax—validity

The VTE President determined that a proposal made some six years after the appellant ceased to own the property was nonetheless validly made.

The property was let out from 1997-2001 and then remained empty because of serious structural defects; repairs were carried out in 2007 and the appellant moved in. The billing authority (BA) then billed the appellant for the council tax from 2001 to 2008. The appellant raised questions about this but it was only in 2013 that the BA awarded her class A exemption from 2001-2002 and referred her to the VOA to seek removal of the property from the list from 2002-2007. The appellant contacted and communicated with the VOA from 2013 to 2015 at which time they advised her to make a proposal. The listing officer decided that this was invalid. The President was satisfied there was an arguable case on validity and decided the point as a preliminary issue.

The appellant's case was that, on the day in question, when she sought removal of the dwelling from the list she was the taxpayer and therefore an interested person, entitled to make a proposal. It was an argument that the President upheld. It was the current (and only) valuation list that she considered inaccurate and there were no time limits for making a proposal that an entry be deleted.. The failure to challenge at the correct time was entirely the fault of either the BA or the VOA. It could not have been Parliament's intention that the only challenge was by way of judicial review.

Appeal no: 5690727898/084CAD preliminary issue

Non-domestic rating

Parking spaces—exemption

The offices of an enterprise that supported people with disabilities into work, were held exempt by the Tribunal in accordance with paragraph 16(1)(b) of Schedule 5 to the Local Government Finance Act 1988. The issue now before the President was whether three car parking spaces, a separate hereditament, were also exempt. The individually numbered, adjoining, undistinguished car parking spaces were in a secure car park at the office block. They were used exclusively for those undertaking visits with a customer or employer or for any other requirement exclusively in connection with the organisation's purpose. Evidence of how the spaces were used was not disputed nor was it disputed that employees' quick and economical access to car parking was essential to the appellants' delivery of the service which was wholly focused on the provision of welfare services for the disabled.

The 'office rule' was that anyone in the office all day must park elsewhere and the spaces were to be used exclusively for staff who were deployed on visits and meetings connected with the provision of the welfare services; this arrangement was not in dispute. Other employees required to have a vehicle for their duties were reimbursed their parking charges from the company. Use for personal convenience was not allowed.

Both parties made great play on the words in the Act, 'wholly for the purpose of the provision of welfare services'. The VO considered that any other use by the appellant other than that required for welfare services would mean the appeal failed. In support of this the respondent referred to *Chilcott (VO)* v. *Day* [1995]. There were times when an employee on a visit would undertake office work before or after the visit whilst their car was parked at the appeal hereditament; there were also times when spaces would not be used when staff were either out on visits or didn't have visits to make or times when staff need to pay to park their car elsewhere to undertake visits as there were insufficient spaces. The respondent also referred to the case of *Samaritans of Tyneside* v. *Newcastle Upon Tyne City Council* [1985].

The President found that the test he needed to apply was whether the connection between the car spaces and the provision of the organisation's service was so inextricably joined up to exist wholly as one. The car spaces were only used by employees undertaking visits in accordance with the organisation's service provision (which meets the exemption requirement). There may have been occasions before and after visits where staff would leave their car in one of the three spaces when at the office but he did not see that as a barrier to meeting the 'wholly' requirement, merely an extension of the external visit. He was satisfied that staff could not undertake a visit early in the day and then return to the car space later in the morning and park there all day and that the car spaces served no other purpose for the organisation other than as an essential part of the appellant's delivery of the service.

Even if there were times when all three car spaces were not physically occupied, each space was available for the service provision and over the period of a week was used frequently for that purpose and most importantly it had no other purpose. The hereditament was therefore exempt in accordance with para 16 (1)(b) of Schedule 5 to the Act.

Appeal no: 011625574831/537N10

Donkey sanctuary used for the disabled—exemption

The panel refused to allow exemption in respect of a Donkey Sanctuary Centre, described in the 2010 rating list as 'assisted therapy centre' and which comprised an arena with stables, stores, WCs, an activity room with café/ kitchen, shop and office, a yard with open pens and an exercise yard.

The appellant argued that the property provided facilities for keeping suitably occupied persons who were disabled or who were suffering from illness and so should be exempt from rating under para. 16 of Schedule 5 to the 1988 Act, "property used for the disabled".

Whilst the panel appreciated the objects of the charity and that there was an inherent good cause in providing a worthwhile facility for children with special needs, the appeal had to fail because the exemption could only be allowed if the property was used wholly for that purpose.

In reaching that conclusion the panel had regard to the following:

- The property was used for other purposes: Santa Claus visits, craft stalls, gift shop and café.
- That other events took place at the appeal property, albeit to raise funds, but which included the general public.
- The Rating Manual re-affirmed the necessity for such property (or a clearly identifiable part) to be used wholly for the exempt purpose. It further stated that where property was used for both qualifying and non-qualifying purposes on the same day then such areas would not be exempt. The appeal property was also open to the general public, including walkers and cyclists, who could use facilities such as the café and could also see the donkeys at times when the children with special needs were not in attendance.
- *Chilcott (VO) v Day* [1995], in which the Lands Tribunal held that lettings of holiday chalets to non-disabled persons on a small scale (4.68%) resulted in them not being used wholly for the qualifying purpose.
- That the panel shared the VO's concern that exemption was not appropriate because it failed the qualifying purpose test: 'keeping suitably occupied' was required to be read *ejusdem generis* with 'training'. The training was not being provided for a particular occupation or practice.

Appeal no: 4720240055135/539N10

Stables and equestrian facilities

The ratepayer sought deletion of the entry in the list from 1 April 2014 as, "The property is an appurtenance to the dwelling. There is no commercial use here and it is and has always been enjoyed with the dwelling. It should therefore be treated domestic and included within the banding for the dwelling".

All parties accepted as the starting point the decision of the past President of this Tribunal in Seabrook v. Alexander (VO). The case law, as expounded there introduced the concept of the "curtilage" of the house for determining the scope of s. 66(1) (b) of the Local Government Finance Act 1988: "it is a yard, garden, outhouse or other appurtenance belonging to or enjoyed with the property….".

The respondent set out four tests from the case law which the President examined as follows:

Non-domestic rating

Stables *continued*

- There was separate access to the equestrian facilities, particularly those some distance from the house.
- That there was no historic connection between the house and the facilities built many years later did not disprove the appellant's case.
- Their size seemingly outweighed those that might be expected with a house and estate of this size, but this was not the sole test.
- From maps and photographs, the President concluded that the natural curtilage of the house fell just to the most northern wall of the L-shaped boxes and tack/storage room. This would also take in the lunge ring and horse walker. He found that all those items were domestic and therefore fell within the definition of s. 66 (1) (b) and were clearly employed for the family's enjoyment of their equestrian hobbies. This provided a good vehicular flow from the house and a natural cut-off point from the other equestrian facilities and also reflected access from those domestic stables to the paddocks and parkland.

Appeal no: 394025630613/537N10 as interim decision

Asbestos

The subject property was a vacant vehicle repair workshop. It was not disputed that the property had been empty for several years and planning approval had been granted for its demolition and a redevelopment of the site. An issue had arisen however, over the presence of asbestos and the consequential cost of demolition. It was argued that this meant that the property could not be let even though it was still standing.

The issue was whether the property should be rated having regard to its physical condition on 1 April 2010 or whether paragraph 2(1) (b) of Schedule 6 to the Local Government Finance Act 1988, as amended by the Rating (Valuation) Act 1999, required the VO to assume the property was in reasonable repair it its previous state as vehicle repair workshop and premises.

The VO argued that there was no evidence to suggest that the property was incapable of beneficial occupation and the presence of asbestos, in itself, did not prevent a building from being occupied. Under the statutory repairing liability, the property must be assumed to be in a state of reasonable repair.

The appellant's representative contended that, following *Newbigin v Monk*, the property should be regarded as a 'building awaiting demolition'. The panel however, found the facts in the present case were significantly different from those found by the Upper Tribunal and considered by the Supreme Court. In *Newbigin* it had been established that the property had been stripped out beyond reasonable repair and the building was being reconfigured.

Whilst the appeal property here may have been awaiting demolition the panel found this to be materially different from a 'building undergoing reconstruction'. Photographs taken in 2012 and 2016, showed a building seemingly wind and watertight and clear of any sign of internal dereliction or major disrepair. No works had begun and the appellant's representative failed to provide any evidence in the form of a structural survey or the like, to support his assertion that the property was incapable of economic repair. The nature of the disrepair and the cost of rectifying these defects were not provided.

The panel found no evidence to suggest that the property was incapable of beneficial occupation. The presence of asbestos and the cost of demolition were apparently behind the decision not to demolish the property but these were not grounds to delete the assessment. There was no evidence to demonstrate that the property was beyond reasonable repair and the appeal was dismissed.

Appeal no: 232525453339/134N10

Inflammable cladding

The appeal property was a food processing factory and the appellant sought a 10% allowance given the flammable nature of cladding panels on easy-clean internal walls. The cladding, also known as composite insulated panels (CIP), comprised a sandwich of 50% polystyrene and 40% polyisocyanurate, both of which are flammable. The remainder consisted of inert Rockwool.

The property had been occupied at the 2008 AVD but was unoccupied by the material day. The appellant's case was that a number of fires had occurred in premises with this or a similar type of cladding. Insurance was difficult to obtain, often with a loading of 300% above the normal rate; cover was near impossible when the property was unoccupied as these were sometimes targeted by arsonists. A number of first responding fire fighters had lost their lives since the early 1980s and a recent report by West Yorkshire Fire and Rescue Service provided strong guidance to its fire fighters when facing such a fire. The policy of another county-based Fire Service was to only enter internally clad buildings when it was known there was danger to life otherwise it would fight the fire defensively.

The valuation officer defended his decision to resist the grant of an allowance. He argued the appellant had provided no evidence to show that cladding had materially affected rental values when considered against factory rents without internal wall cladding.

The panel found in favour of the appellant's claim for an allowance. Strictly addressing the information available to the hypothetical parties at the 2010 material day and avoiding thoughts of the Grenfell Tower tragedy that occurred just days earlier, the panel found there was sufficient information available in the public domain at April 2010 in respect of flammable internal cladding to ensure the tenant's rental bid would have been lower for a building with internal cladding than for one without. The panel found the issue of insurance cover costs was a financial matter and not a relevant consideration. Nor could the fact that the property was unoccupied be relevant as rateable values do not increase if a factory becomes vacant.

Appeal no. 250525424419/538N10

Interesting VTE Decisions—Council tax

Council tax liability

Class U exemption

The appellant was aggrieved that the council would not grant the exemption on a property he owned and let to tenants, all of whom were severely mentally impaired (SMI). The council contended that as the property was a HMO (it was not disputed by the appellant that the tenants each had an individual tenancy agreement), none of the SMI persons resident there was liable to pay the tax so this exemption could not apply.

In the regulations, Class U is applicable when it is

(1) a dwelling occupied only—
(a) by one or more severely mentally impaired persons, where, but for this Order, either such a person, or a relevant person, would be liable to pay the council tax;

The appellant argued that, as the property was exempt by virtue of being occupied only by SMI persons, there was, effectively, no question about liability to pay the tax. However, the panel concluded that the relevant test in sub-paragraph (1)(a) was who would be liable if the Exempt Dwelling Order did not exist. On this basis the panel found liability would fall on the owner, as the property was a HMO. As the SMI persons occupying the property would not therefore be liable for the payment of the tax in those circumstances, Class U did not apply and so the appeal was dismissed.

Appeal number: 4605M195256/176C

The appellant had been granted Class U exemption from the date he was certified as being a severely mentally impaired person. The assessment was carried out some time after the appellant had a heart attack, causing a fall in which he suffered a serious head injury that resulted in this impairment. The panel decided the exemption should be granted from the date of the occurrence of this injury as this was an identifiable event and date.

The appellant had been receiving a care package while living alone at his house. He then had to vacate the dwelling while essential repair work was done to the property and he moved in with the person who represented him at the hearing.

Although the council had granted a discount while he was away from his property, this had expired and he was being held liable to pay council tax. The panel concluded that his move to reside with his representative enabled him to continue to receive the personal care he required because of his mental disorder. The panel decided this qualified the appeal property for a further exemption under Class I (an unoccupied dwelling where the former resident owner or tenant has his sole or main residence in another place for the purpose of receiving personal care).

The appellant has since moved into a care home/hospital which the council accepted rendered the appeal property exempt.

Appeal number: 4605M199453/176C

Bona vacantia

The appellant had appealed against the billing authority's (BA's) determination that he was liable for the council tax for the period 1 December 2014 to 2 May 2016, on the basis that he was the owner with a freehold interest. Throughout the period in dispute, the appeal dwelling was unoccupied. The leasehold interest in the flat was owned by another person, who had been declared bankrupt.

Although the leasehold interest was disclaimed by the trustee for the bankrupt's estate, the lease was not extinguished by this, it merely passed to the Crown and was deemed *bona vacantia*. No evidence was presented by the BA to show that the Crown had also disclaimed the lease; the leasehold interest was ultimately sold on behalf of the Crown to another individual, which was a clear indication to the contrary. To all intents and purposes, the lease continued to exist but as the property was *bona vacantia*, the policy of the Crown was not to accept liability for any of the leaseholder's liabilities.

In view of this, the appellant was not the liable person for the council tax under section 6 (2) (f) of the Local Government Finance Act 1992. Although his possession of the freehold interest meant that he satisfied the statutory definition of an "owner", he was not liable for the council tax because the appeal dwelling was subject to a material interest that was inferior to his interest, in this case the leasehold interest. The appeal was therefore allowed.

Appeal no: 2935M192734/254C

Single person discount (SPD)

The appeal was against the decision of the council not to apply the discount in respect of a dwelling from 1 March 2015 to 5 November 2016. The appellant had been solely liable at this address from 2009, in receipt of the SPD. In October 2016, the council received an anonymous call saying that another adult had been living in the property with the appellant. The account was reviewed and an Experian search was carried out, which confirmed that the appellant's partner had links to the appeal dwelling. One credit application showed that he claimed to have lived at the appeal property for 16 months and the council had therefore deemed 1 March 2015, as a reasonable date to set up a new joint council tax account.

Written evidence was presented from the appellant's partner's mother, stating that he had lived with her as a temporary arrangement whilst he looked for accommodation of his own, though she claimed he stayed with her until November 2016; she did not want her son to use her address for post or finance and so he used the appellant's property as a c/o address. It was not disputed that in the relevant period the appellant's partner had spent most weekends and other times with the appellant at the subject dwelling, but it was stated he did not fully move in until November 2016. The appellant accepted that she gave her partner permission to use her property as a c/o address, but was not fully aware of how it was being used.

From an extrapolation of all of the available evidence the appellant failed to satisfy the panel that the charge for the appeal dwelling was wholly incorrect. The panel held that, whilst there was no obligation for a person to have a main residence and be registered for council tax purposes, the evidence in this case clearly linked him to the appeal address to a degree that, on balance, meant that this property was his main residence and, with or without security of tenure, a place to which he could expect to return. The panel paid particular attention to the documentary evidence provided by the respondent. He had used the appellant's address not only in order to obtain credit but also for his correspondence, bank statements, P60 and payroll, among other things and the weight of evidence clearly showed that the appellant's partner was linked to the appeal dwelling from 1 July 2015 rather than the earlier date calculated by the council.

The panel therefore held that no SPD was applicable from 1 July 2015.

Appeal no: 0114M202833/176C

Sailboat and mooring—and the consequences of non-attendance at a hearing

The appellant did not contact the valuation tribunal in relation to this hearing or attend the tribunal hearing. The issue for the panel was whether or not the appellant was liable for council tax at the subject property. The appellant's case was that he believed he was not liable for council tax for the following reasons:

- his mooring was not permanent,
- his boat was a yacht and not a house boat,
- his mooring was non-exclusive,
- he will move in the future,
- he received no council services.

The appellant had confirmed in correspondence that he did live on the sailboat.

All the relevant legislation concerning liability in respect of caravans and boats had been sent to the appellant. An officer from the billing authority had visited the site and was of the opinion that the site was permanent as all utility services were available.

In considering whether to adjourn or strike out the appeal, the panel had regard to the case papers. In the panel's opinion, there was no reasonable prospect that this appeal would be successful because it appeared that the yacht was the appellant's main residence, and the temporary and non-exclusive nature of the mooring did not exempt it from council tax liability. The panel decided therefore that it was not in the interests of justice to adjourn this appeal to another date. The appeal was therefore struck out on the basis of the appellant's non-attendance and his failure to comply with the tribunal's general direction.

The panel also took the view that a further adjournment would be unfair on the billing authority. This was the appellant's appeal and if he wished to pursue it, he should have made every effort to attend or be represented.

Appeal no: 3505M189653/037C

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