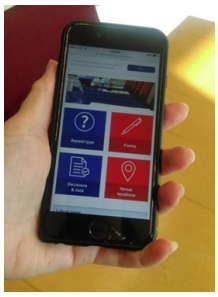
Issue 51 January 2019

Valuation Tribunal Service

Valuation in Practice

Happy New Year to all our readers!

News in Brief



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We are always looking to make improvements and throughout January are running a short survey about our website and how you use it. Your views are important to us.
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New legislation—enacted 1 November 2018

Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Act 2018 - makes provision for two or more hereditaments to be treated as one for the purposes of non-domestic rating, where they are occupied or owned by the same person and meet certain conditions as to contiguity. This has a retrospective effect for the financial years from 1 April 2010.

This Act also allows billing authorities in England to increase the council tax payable in respect of a long-term empty dwelling; the maximum percentage by which council tax may increase is 100% for the financial year beginning 1 April 2019. From 1 April 2020, if a dwelling has been unoccupied for at least five years, the maximum is 200% and from 1 April 2021, if a dwelling has been unoccupied for at least 10 years, 300%.

Non-Domestic Rating (Nursery Grounds) Act 2018 - amends Sch. 5 to the Local Government Finance Act 1988 so that all buildings which are, or form part of, a nursery ground are exempt if used solely in connection with agricultural operations at the nursery ground. The exemption applies retrospectively to 1 April 2015 in England or 1 April 2017 in Wales.

Non-Domestic Rating (Alteration of Lists) and Business Rate Supplements (Transfers to Revenue Accounts etc) (Amendment) (England) Regulations 2018 SI No 1193
These Regulations allow proposals to be made as a consequence of the two Acts shown above, which apply retrospectively.

VTS Council Tax Guidance Manual

With the coming into force of the Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Act 2018, this VTS publication covering law, case law and tribunal practice has again been updated and can be found by clicking here.
It has also been amended regarding adding a party to an appeal.

Consultation

Business rates treatment of self-catering holiday accommodation— runs to 16 January 2019 and seeks views on proposals to strengthen the criteria for holiday lets to be liable for business rates. It can be found at:
https://www.gov.uk/government/consultations/business-rates-treatment-of-self-catering-accommodation

The summaries and any views given in this newsletter are personal and should not be taken as legal opinion

The photographs used here are for illustration purposes only and may not be of the actual properties or people referred to.

Inside this issue:

Business Rates Information Letter (4/2018): the Chancellor's package of business rates measures in the Autumn Budget; the new relief scheme for retail properties with rateable value less than £51,000; the government's intention to legislate so as to give 100% rate relief for standalone public toilets; provisional multipliers for 2019-20.

Business Rates Information Letter (5/2018): the new relief scheme for retail properties with rateable value less than £51,000; the consultation described on page 1 and the two new Acts also itemised on page 1; pubs relief will not extend into 2019-20; continuance of rural rate relief and compensation for billing authorities.

These and earlier letters can be found at:
https://www.gov.uk/government/collections/business-rates-information-letters

MHCLG has also produced guidance for billing authorities administering the retail relief scheme:
https://www.gov.uk/government/publications/business-rates-retail-discount-guidance

Stayed appeal types at the Valuation Tribunal

Class	Identifier	Reasons
Photo booths	Whether occupation of booths is too transient and therefore not capable of rateable occupation	Now stayed as ATM decision, in part on a similar point, was appealed to the Court of Appeal. Awaiting decision of Supreme Court on whether VOA can appeal that judgment
Religious exemption of Church of Scientology properties	VOA is dealing with several appeals by the Church of Scientology relating to religious exemption on premises around the country	Appeals postponed and not listed . May have to be resolved on legal arguments under PS3 (Complex cases) of the Consolidated Practice Statement
ATM machines at sites in England	Whether each ATM is rateable	Upper Tribunal decision appealed to Court of Appeal; awaiting decision of Supreme Court on whether VOA can appeal Court of Appeal judgment
Stables	Stables in proportion to the dwelling; scope of proposal	Stables in Horsham appealed to the Upper Tribunal
Council tax— 'up-banding appeals'	'Up-banding' appeals following agreement where the parties wish to rely on evidence after the mistake or error occurred	*Dannhauser v LO* listed in April but adjourned for taxpayer to arrange legal representation
NDR—exemption under para 16, Sch 5 to the LGFA 1988	Amount of evidence to be provided for the 'disabled persons test' when seeking the exemption	Test case identified by parties. Draft Directions with the President
NDR—proposals seeking deletion	Following *Monk v Newbigin* where, at the material day, the property exists	Appeal made to Upper Tribunal as the VTE dismissed these but allowed appeals where reduction to £1 sought.
NDR—proposals seeking deletion/ reduction	Following *Monk v Newbigin* where there is no specifically referred to ongoing scheme of redevelopment, only a strip out, with no firm redevelopment or refurbishment plans in place at the material day	Appeal allowed by VTE but appealed where it is alleged by the respondent that there were no redevelopment plans in place and so it is outside the ratio of *Monk*.
NDR—Museums	Disputes over valuation approach	Appeal made to Upper Tribunal regarding 'contractors test' or receipts and expenditure method to be adopted
NDR—Private and independent schools	Valuation approach where the issue is similar to Canbury School—preliminary decision by VTE President that valuation approach should be based on rental evidence	Appeal to Upper Tribunal
CTL—Student exemption	Position of students on Open University courses who undertake full-time study on a course advertised as part-time	Test case to be heard by VTE President

Decision from the Supreme Court

UKI (Kingsway) Ltd v Westminster City Council [2018] UKSC 67

The issues before the Supreme Court were that:

- a completion notice was not delivered directly to UKI by the council, but passed through the hands of a receptionist employed by the building manager, who was not authorised to accept service on behalf of UKI; and
- it was received by UKI in electronic form rather than on paper.

At the VTE hearing in April 2014, the former VTE President had allowed an appeal on behalf of UKI on the grounds that the completion notice had not been served validly. The Upper Tribunal reversed that decision, on the basis that the notice had ultimately reached the intended recipient and the format was irrelevant to valid service. However, it was reinstated by the Court of Appeal (Court of Appeal decision in Issue 45), taking the view that the legislation literally required "service on the owner by the authority".

Having reviewed the requirements set out in Sch. 4A to the Local Government Finance Act 1988 and case law on the different aspects of the case, the Supreme Court allowed the appeal and restored the order of the Upper Tribunal. It recognised that there was an inherent uncertainty in the legislation. The key factor, where the date of service was critical, was that an authority should choose a statutory method of service which minimised the risk of the notice being invalid; non-statutory methods would carry a risk. However, the risk of prejudice to the owner was limited, because service depended on receipt by the actual recipient and the date of receipt also started the time period in which an appeal could be made.

With reference to the Electronic Communications Act 2000, aimed at facilitating the use of electronic communication, the Supreme Court did not see that the use of a scanned, emailed copy in this case had prevented the notice from being successfully served.

Court of Appeal decision

Cardtronics Europe Ltd and others v Sykes and others (VOs) [2018] EWCA Civ 2472

The decisions of the VTE and Upper Tribunal in the case of ATMs (owned by banks, including Sainsburys, Tesco and Co-op Banks, and by Cardtronics, which operates ATMs in smaller convenience stores) located outside stores were overturned by the Court of Appeal, who concluded that the VOA should not have altered the 2010 rating list to show ATMs as separate hereditaments with their own rateable value.

The Court found that the Upper Tribunal had not erred in determining that items of plant and machinery that were not themselves rateable, could nonetheless be factors in determining the existence of a hereditament. Nor had it erred in applying a 'geographical test' in line with *Woolway (VO) v Mazars LLP*, to identify the hereditament. Where an ATM was not free-standing and capable of being moved to different sites, but was housed on a site designed or adapted for that purpose, the site was generally capable of being a hereditament.

The Upper Tribunal had distinguished external ATMs ('holes in the wall') as being separate hereditaments, because of the broader potential customer base and the physical separation from facilities within the store.

However, the Court of Appeal rejected this as being inconsistent with the authority set out in *Westminster Council v Southern Railway*. In the case of both external and internal ATMs, 'general control' remained with the retailers as 'owner', as they had sufficient control over the ATM site to be regarded as being in rateable occupation.

(VTE decision summary in ViP Issue 40, p3; UT decision summary in ViP Issue 44, p3. Click here to see back issues)

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High Court decision

Listing Officer for Cornwall v Dannhauser [2018] EWHC 3162

The former VTE President's judgment in *Ward v Coll (LO)* [2015] (*ViP Issue 38, p5*) in relation to the LO's power to correct previous band alterations believed to have been agreed in error, was overturned by this decision.

There was no dispute that the LO has a duty to correct any apparent mistake in the valuation list, on any day, in accordance with the reg. 3(12)(b)(i) of the Council Tax (Alteration of Lists and Appeals) Regulations 2009 and from *Adam v Listing Officer* [2014]. The issue was whether the LO is entitled to use all the evidence available at the time of making the alteration, or only evidence that was available at the time the alleged error was made.

The High Court held that Parliament must have intended the accuracy of the list to be the principal concern, without restriction on the LO's ability to carry out this duty. The LO was therefore able to take into account any evidence that assisted in showing what the accurate valuation of a dwelling was.

The case was remitted to the VTE for determination of the correct valuation band for the dwelling.

Milton Keynes Council v Alexander (VO) [2018] UKUT 366 RA/88/2017 /

The Council contended that its coach park was not rateable as it was highway land, used for highway purposes. The VOA did not participate in the Upper Tribunal (UT) hearing and so no contrary argument was put.

The VTE had determined that the property was rateable as it was separated from the highway and the four tests of rateability were met. It was also distinguishable from *Dorset CC v Reeves (VO)* (the 'Wareham decision', *ViP Issue 35*).

The UT disagreed and held that it was reasonable to view the property was part of the adopted highway and that its use as an on-street area for coaches was a 'highway purpose'. While a Traffic Regulation Order prohibited other vehicles from parking there, the public – even as car drivers – could pass over it.

The UT also found that the Council was not in rateable occupation of the coach park. As in the Wareham decision, "the appellant has no power to exclude the public from the land" and, as no parking charges were levied, "possession was of no benefit to the appellant for the purposes of being liable to rates".

The appeal was allowed and the property was to be deleted from the list.

Upper Tribunal: Lands Chamber decisions

Patel v Jackson (VO) [2018] UKUT 420 RA/37/2018

The proposal, completed by a rating professional, stated clearly that there had been a material change of circumstances (MCC) at the subject property (a hotel), "comprising the loss of one bedroom to provide staff accommodation". However, the alteration sought by the appellant in his statement of case was on the grounds of an MCC in that the physical change was due to a kitchen breakfast room being extended resulting in the loss of a bedroom and additional floor space being lost from a second bedroom. This had involved the relocation of a partition wall.

Both the VTE and the Upper Tribunal were limited in their jurisdiction to considering the scope of the proposal. Here, the reason stated in the proposal was quite different was that put forward at the hearing, so the Tribunal did not have jurisdiction to consider the correct rateable value. The appeal was therefore dismissed.

Appeal by Ricketts (VO) [2018] UKUT 331 RA/98/2017

The appeal was against the VTE decision to give a 20% end allowance to the valuation of an office, because of planning restrictions. The property was used as a learning and events centre and had planning permission for class D1 use (non-residential institutions). The VTE had taken account of a similar allowance made for the British School of Osteopathy. However, the valuation officer and the UT gave this comparison little weight because it was a much older building, at some distance from the appeal property in a predominantly office location and valued on an office tone, "which justified a discount for the restricted D1 use".

On the basis of settlement evidence and the assessments of the premises of the Social Genetic and Developmental Psychiatry Centre, which also had class D1 use, the UT held that the main space rate of the appeal property was adequately supported. The circumstances of the allowance made for the British School of Osteopathy could be distinguished from the appeal property and the VTE should not have used this as a precedent.

Click here for back issues of Valuation in Practice

Merlin Group Entertainments v Cox (VO) [2018] UKUT 0406 RA/24/2018 - Alton Towers

The assessment of Alton Towers theme park was the subject of a proposal for a reduction on the grounds that a crash on the Smiler ride in 2015 resulted in a material change of circumstances (MCC). It was contended that the attitude of members of the public to thrill rides after the crash, particularly at Alton Towers, was a matter that was physically manifest in the hereditament's locality at the material day.

Alton Towers was said to be the major generator of traffic movement in the locality and there had been an average drop in traffic volume between 2014 and 2016 of 27.5%. There had been an impact on local businesses and queue times for rides had also reduced by 26%. While weather and pricing strategies could also affect visitor numbers, the appellant's representative could not show that either of these was unusual during the period. Merlin would have undertaken more marketing but for the crash.

By reference to case law, the Upper Tribunal (UT) noted that rateable value represents the annual market value of the hereditament to the hypothetical tenant and so specific circumstances which are personal to the actual occupier are to be disregarded. From *Dawkins v Ash* [1969], the valuer must have regard to the "essential" or "intrinsic" qualities or characteristics of the hereditament and to disregard factors which are non-essential or "accidental" to that property. For a given property, the rateable value is the same whether the actual occupier runs a flourishing business or trades at a loss.

The UT noted that para. 2(7) of Sch. 6 to the Local Government Finance act 1988 fell into two parts: sub-paragraphs (a) to (cc) dealing with the hereditament; sub-paragraphs (d) to (e) dealing with the locality. Sub-paragraph (a) is to do with the physical state of the hereditament itself or its use. Sub-paragraph (d) has two strands: "matters affecting the physical state of the locality" and "matters which (i) do not affect the physical state of the locality but which (ii) are nonetheless physically manifest there".

The appellant accepted that the crash itself did not in fact fall within para. 2(7) and at the UT relied on the alleged "result" of the crash as a matter falling within para. 2(7)(d).

The Tribunal decided that the proposal was not concerned with any intrinsic or essential characteristic of the hereditament or locality. This alone would be sufficient to dismiss the appeal. However, the UT went on to decide other matters.

The Tribunal determined that paras. 2(7)(a) and 2(7)(d) in Sch. 6 are mutually exclusive.

As the appellant's proposal was to do with the hereditament rather than the locality, the UT decided that the appeal failed because the appellant could not demonstrate a material change of circumstances in a matter falling within 2(7)(a).

The UT rejected the appellant's assumption that the proper construction of para. 2(7)(d) includes any economic or intangible matter, if it has an effect which is physically manifest in the locality. The matter itself must be physically manifest there.
In any event, the change which was argued to have been physically manifest was the fall in visitor numbers. However, the data showed that there had been decreases in other years due, for example, to competing attractions. The UT concluded that there was not sufficient evidence presented to show that the reduction in numbers was attributable to the crash.

Having dismissed the appeal, the UT offered the following guidance to surveyors and tribunals where the issue of applicability of 2(7) is not straightforward:

1 – "Does the matter concern an intrinsic characteristic of the hereditament or of the locality, or is it an extraneous matter, for example, something to do with the personal attributes of the actual occupier or the way in which a party conducts its business? If the latter, then generally it will not fall within para. 2(7)".

2 –"Does the matter concern a characteristic of the hereditament? If so the issue is whether it falls within para. 2(7)(a) or (b) (or either (c) or (cc) in the case of minerals or waste deposit hereditaments)".

3 – "If the matter does not concern a characteristic of the hereditament, does it concern a characteristic of the locality in which the hereditament is situated? If so, does it fall within para. 2(7)(d) or (e)?"

Finally – "If the matter concerns a characteristic of the locality, but does not affect the physical state of the locality or concern the use or occupation of other premises there, does it nonetheless fall within the second limb of para. 2(7)(d)? Under that limb the question is whether the matter is itself physically manifest in the locality".

Appeal by Moore (VO) [2018] UKUT 0324, RA/5/2018

Does the risk of flooding constitute a material change in circumstances (MCC), on which a valid proposal could be made?

The appeal property was a car supermarket on the banks of the Humber, which was extensively flooded in 2013 when about 800 cars had to be written off. The Environment Agency had placed the property in a Zone 3 area (most prone to flooding) and, as a result, the property could no longer be insured against this risk. The rent was reduced by 25% at this time.

The validity of the proposal was raised by the VO at the VTE hearing as a preliminary matter, because on the material day (date of proposal) there was no flood and therefore, in his opinion, no MCC. The VTE held that an MCC had occurred because the hereditament had been blighted by the incident and the risk of further flooding. The locality was designated as being 'most prone to flooding'. The impact of the flood risk was reflected in the rent reduction and the fact that the property was uninsurable. The VTE, had therefore held that the proposal was valid.

At the Upper Tribunal (UT), the VO contended that periodic flooding would be reflected in the rental evidence. Floods were transient events, lasting a few days and, after receding, were not 'physically manifest'.

The UT referred to its recent judgment in *Merlin Entertainments Group v Cox* (see p5), which sets out that in Sch.6 to the Local Government Finance Act 1988, para 2(7)(a), "matters affecting the physical state of the hereditament", and para 2(7)(d), "matters affecting the physical state of the locality", are mutually exclusive: the locality is beyond and does not include the hereditament, and gives guidance on what falls within para 2(7).

The UT determined that the rent reduction was not physically manifest, nor was the insurers' decision to decline cover for flooding. There was no evidence that the categorisation of Zone 3 affected the state of the locality or was physically manifest at the material day. The proposal was therefore held to be invalid.

Giraffe Concepts Ltd v Jackson (VO) [2018] UKUT 0344 RA/34/2018

Despite a VTE panel having allowed an appeal on a premises in Kings Cross station and reducing the rateable value significantly, the appellant was dissatisfied and their agent lodged an appeal to the Upper Tribunal (UT).

However, the application for permission to appeal, filed in May 2018, was not accompanied by a statement of case, as required by the Tribunal's rules. A 60-day extension was sought and granted "to allow for instruction of the necessary counsel and statement of case". At the eventual oral hearing at the UT, the rating agent admitted that no steps had ever been taken in either respect.

The hearing followed a further extension to September, which should not have been granted as a matter of course, the application being on the grounds that the agent was in negotiation with the valuation officer to resolve the appeal by agreement. The appeal was not settled and the agents requested a postponement of the oral hearing to consider the request for an extension to November.

The Tribunal's order was that the appellant must show why the appeal should not be struck out for failure to comply with the rules. There had been no rectification of the failure (by lodging a statement of case) and no explanation as to why this had not been done.

It did not appear that this was a complex case and it was evident that the agent preferred to continue to negotiate with the VO rather than comply with the Tribunal's rules and order.

The UT had been unable to hear the appeal, but had instead spent resource on administering a series of applications for extension of time.

The appeal was therefore struck out.

Interesting VTE Decisions

Council tax valuation - invalidity notice

The Notice was served in response to a proposal the appellant made in May 2018, on the grounds of having become the tax payer within the preceding six months. However, according to information the appellant had provided elsewhere in the proposal, he had become the taxpayer for this dwelling in January 2006.

At the hearing the appellant, who had been in extensive correspondence with the listing officer (LO) before making this proposal seeking sales evidence from nearby dwellings, argued that the Invalidity Notice had been served outside of the 4-week period prescribed in para. (1) of Reg. 7 of the Council Tax (Alteration of Lists and Appeals) (England) Regulations 2009. He therefore argued that the LO should be required to deal with the proposal as having been validly made and provide the sales evidence he sought.

The panel noted that the provisions of this regulation, particularly 7(10), meant contention of the proposal's validity might still be considered. The panel concluded that, irrespective of the late service of the Notice, the appellant's rights to make a valid proposal to replace the one deemed invalid, had not been usurped or harmed. It was therefore permissible to still consider, and determine, the issue of the validity of the proposal.

The panel was satisfied that, as no evidence or submission was advanced to show that the appellant had not become the taxpayer in respect of this dwelling in 2006, the proposal, on the grounds on which it had been made, had to be found to be invalid.

Interesting VTE decisions—non-domestic rating

Agricultural buildings - exemption

The appellant sought deletion of the property from the rating list. The issue in dispute was whether the property was exempt from non-domestic rates in accordance with para. 1 ,Sch.5 to the Local Government Finance Act 1988, as an agricultural building.

Senova is a plant breeder and a member of the British Society of Plant Breeders. The hereditament comprises a warehouse and offices with labs and stores, and includes 1.6 hectares of arable land.
The appellant distinguished three categories of land involved in the plant breeding:
(1) Trialling land, which others under contract to Senova use to grow seed which is then returned to Senova for testing or certification.
(2) Multiplication land, which is used to grow more of the seed that has been tested, for sale.
(3) The agricultural land adjacent to the subject property.

The argument proffered was that, as Senova had paramount control, it was in rateable occupation of all three types of land, this being on all fours with the case of *Hilleshog Sugar Beet Breeding Co Ltd v Wilkes (VO)* [1971]. The agricultural land attached to the building was owned by Senova and, whether or not it was used for seed-breeding, it did not cease to be agricultural land when it lay fallow.

The valuation officer (VO) contended that Senova was not in rateable occupation of the trialling and multiplication plots and that the land adjacent to the appeal property was small and had been lying fallow for a number of years. As Senova did not employ any agricultural workers or have agricultural machinery, no agricultural operations were taking place on the adjacent land; it could not be described as agricultural land and even if it could, the land and building did not form a single agricultural unit as required in *Farmer (VO) and another v Buxted Poultry* [1993].

The panel agreed that, although Senova was a seed breeder, it was not itself performing an agricultural operation. The trial plots were used under contract and the contract did not make the appellant the occupier of this land. In respect of multiplication land, a contract was used between the seed merchant and a 'grower', which required the grower to grow seed on specified land, eradicate weeds, apply fertiliser and harvest the crop. It permitted the seed merchant to enter the land to inspect these activities. The panel considered that this clause was necessary precisely because it was the grower, not Senova, who was in occupation of the multiplication land.

The adjacent land was lying fallow at the time of the inspection. While Senova did occupy this grassland on the material days, there was no evidence that it was being kept in good agricultural condition and environmentally attractive so as to fall within the VOA's policy regarding land set-aside to fallow. The panel considered that there was a lack of evidence about how this land was said to be used for seed breeding and no evidence that it was used for trials or multiplication or for some other purpose which had not been explained.

The panel further noted that, even if the land was agricultural land on the material days, it was not sufficient to show that the building was exempt. The subject building was an agricultural building only if it was occupied together with agricultural land and used solely in connection with agricultural operations on that or other agricultural land. The panel considered, on the evidence as a whole, the appellant had not shown that the land and the building formed a single agricultural unit. The appeals were dismissed.

Click here for the full decision
This decision has been appealed to the Upper Tribunal

Interesting VTE decisions— council tax reduction (CTR)

Burden of proof

The appellant was adamant that he had provided the authority with all the financial information about his income for them to calculate his CTR claim, including bank statements from his personal and business accounts and his renewed Working Tax Credit application. The appellant had been self-employed since March 2014 and consistently declared that he had made no income from his business; therefore the billing authority (BA) had previously assessed his entitlement to CTR on the basis of this nil income.

As the appellant's earlier CTR appeal to the tribunal had been conceded, the BA awarding him CTR on the basis of nil income for the period 22 May 2017 to 8 October 2017, the appellant questioned why the BA believed that there had been a change of circumstances for his benefits to be curtailed then, when his entitlement was reviewed. The BA admitted there had been no change of circumstances that it was aware of, but considered it unreasonable to believe the appellant's claim that he continued to live on no income and understand how he financed his business. The appellant stated that his credit card balance increased month by month. Some of the entries on his personal bank account statements had been redacted; the appellant contended these entries were irrelevant.

The BA had rejected his claim because of his failure to provide requested information, in connection with his ongoing entitlement, within a month. The claim therefore failed, having regard to the requirement for information as set out in the BA's CTR scheme.

The panel decided that it was reasonable for the BA to seek further information. The appellant clearly had access to information that he could provide to the BA, but refused to provide it. Case law showed that the onus was on the applicant to provide the BA with the information that it required so as to calculate his entitlement. Where an applicant was not prepared to play ball with the authority, the authority was entitled to reject the claim. The appeal was dismissed.

Interesting VTE decisions— council tax liability

Liability on the last day of a tenancy agreement

The appellant was the owner of the subject property which was let to tenants. He was made liable for payment of the council tax on the last day of the tenancy for tenant A, who vacated on that day, prior to a new tenant, with a new tenancy agreement, taking up occupation the next day.

The respondent's argument was that under s.2 of the Local Government Finance Act 1992 it is circumstances as they exist "at the end of the day" which must be assumed in determining liability. As the appeal property was unoccupied on the last day of tenant A's tenancy, then the landlord was liable for the council tax. In effect, the tenancy must be deemed to have ended just before midnight on its last day. The appellant had confirmed that there was no end time explicitly stated in the tenancy agreements. The panel therefore concluded that the tenancy existed on the last day of its term until "the end of the day".

The panel accepted that the property was unoccupied at the end of the last day of tenant A's tenancy and therefore liability for that day fell on the 'owner' as defined s.6 (5) of the Act. However, there was no evidence that the council had considered whether the appellant was the owner under this definition.

In the absence of evidence from either party of the actual tenancy agreements the panel concluded that they were most likely to have been assured shorthold tenancy agreements of six months or more. On that basis, and in the absence of any evidence from the respondent to show otherwise, the panel concluded that on the last day of this tenancy, tenant A must be deemed to have had the material interest in the dwelling and that this continued to exist until "the end of the day". The appellant was not therefore the owner for council tax purposes on that day and the appeal was allowed.
Click here for the full decision

Retrospective liability in excess of 6 years

The billing authority (BA) had determined in February 2017 that the appellant was liable for the council tax on the appeal dwelling from 4 April 2005. The appellant became the freehold owner of the dwelling in 2002, when the property was transferred to him. The appellant did not dispute that he was the liable person for the council tax under s. 6(2)(a) of the Local Government Finance Act 1992.

Prior to February 2017, the BA's records showed that the appellant's mother was the liable person and it served bills on her for the financial years 2005-6 onwards, which according to the appellant, were paid by direct debit through her bank account. Because the BA understood that she was the owner, his mother was in receipt of council tax benefit then council tax reduction until she vacated the property. The BA was aware that the appellant resided with his mother but he was treated as a non-dependant in calculating her benefit entitlement. It was not until his mother went into a care home that the BA became aware that the appellant was the owner. This led the BA to believe that his mother's entitlements had been calculated on the basis of false statements. Although the council tax bills had been paid for the 12 financial years, they were significantly reduced by the benefit entitlements.

It was common ground that the BA would not be able to recover the council tax after 6 years from the day it became due. However, there was a difference in opinion over when the cause of action accrued which would determine when the limitation period began. The appellant's barrister argued that the council tax became due when the demand notices for the relevant financial years were served in respect of the appeal dwelling and the amount requested was paid. Therefore for 2005-6, the earlier demand notice was issued in April 2005 and the cause of action began then. However, although the council tax had been paid for the previous financial years, demand notices were served in the appellant's mother's name.

The BA argued that the cause of action only accrued on 30 January 2017, when it was advised that the appellant was the owner. As the authority had checked the veracity of the information received and served a retrospective council tax demand on the person, who was correctly liable for the council tax within 15 days, it argued that its actions were reasonable.

The appellant was aware from correspondence with the BA, that it was treating him as a non-dependant for the purposes of his mother's claims. He never corrected this mistaken view. The panel therefore upheld the BA's argument that the appellant was liable for the council tax retrospectively to April 2005, on the basis that the cause of action accrued on 30 January 2017.
Click here for the full decision

Interesting VTE decisions— council tax liability

Class F exemption and the Human Rights Act 1998

The panel decided that, on a literal interpretation of the Council Tax (Exempt Dwellings) Order 1992, the billing authority (BA) was correct to refuse Class F exemption from council tax from the date of death of the sole occupier. This was because the person who died had not been the sole owner at that date, as he had jointly owned the dwelling with trustees, as tenants in common. As the trustees were "qualifying persons" exemption was not permitted.

The trustees contended that BA had failed to recognise that executors and trustees have limited title and are subject to restrictions imposed by law and circumstances, which fettered their ability to act in the same manner as someone with unfettered legal and beneficial ownership. The trustees considered this unfair because probate had not been granted, yet the BA had made the executors jointly liable with the trustees to pay the council tax. The trustees claimed discrimination had occurred and relied on the Human Rights Act 1998 (HRA) to remedy the situation.

The case raised a procedural issue because the BA argued that the appellant would need to go to the High Court to seek a declaration of incompatibility.

The clerk advised the parties and panel of recent Upper Tribunal judgment, *Shirley v Park (VO)* [2018], which involved non-domestic rates and the interaction with the HRA. This referred to a Court of Appeal judgment in *Secretary of State for Work and Pensions v Carmichael* [2018] EWCA which concerned housing benefit regulations, disabled people and the impact of the spare room subsidy (bedroom tax).

Referring to those judgments, the panel reached the conclusion that its task, first and foremost, was to consider the literal interpretation of the legislation as it had been written by Parliament. It could not rewrite legislation to make it compatible with the HRA 1998; this had been the mistake of the First-tier Tribunal in *Carmichael*. However, the VTE could potentially make a finding that a BA had acted unlawfully if it was satisfied the council tax legislation was incompatible with a person's Convention rights, but if a person had suffered a loss as a consequence of the incompatibility, that person's remedy lay elsewhere in the civil courts in accordance with s. 8 (2) of the HRA.

The panel went onto consider the arguments from the trustees but was not persuaded that Class F exemption, as written, was incompatible with a person's Convention rights. The panel had been mindful that the trust had been set up with the aim of minimising inheritance tax liability and it had been established by individuals with their eyes open (one of the trustees was a solicitor). The trustees were now trying to manoeuvre the property ownership position to qualify for council tax exemption. Effectively, the trustees wanted the best of both tax regimes and the most beneficial status in terms of property ownership. The panel observed that this exemption was in force before the trust had been created. The panel held that the request to treat a 'material interest' as an 'unfettered freehold interest' could not be justified. This was because it was the trustees themselves who had impeded the interest in the dwelling through the property transfer a year before the date of death, where the dwelling was now held as tenants in common by the deceased's executors and the trustees.

Click here for the full decision

Class N exemption

The appellant was a council tenant who was initially in receipt of Class N exemption as the billing authority (BA) was aware from the initial application that he was the sole occupier. The appellant stated that he had informed the BA that his non-student sister had moved in to the property with him, halfway through the period in question, but that the BA had taken no action on this information until some seven months later, after she had moved out.

The BA removed the exemption as the property was no longer solely occupied by students, and applied a 25% discount. The appellant disputed liability for the period his sister was in occupation as he was not liable due to his status as a student.

The panel found that, as tenant, he was higher in the hierarchy of liability than his sister (as a resident) and she could not be held jointly and severally liable; he therefore remained liable for the period. The delay by the BA in taking action could not be taken into account and the appeal was dismissed.

Click here for the full decision

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