Issue 47 January 2018

Valuation Tribunal Service

Valuation in Practice

News in Brief

Sanctions and reliefs

The Upper Tribunal judgment in ***Simpsons Malt Ltd and Others v Jones and Others (VOs)*** was supportive of the Valuation Tribunal's current approach to case management. The UT acknowledged the large number of appeals against the 2010 list that awaited resolution at 31 March 2017 and the fact that statements of case were received for only 22% of the listed 2010 appeals, with only 1.5% of them requiring a VTE decision.

It encouraged the VTE to continue to be robust and rather than focus solely on the appellant's failings, to also make findings of fact regarding whether or not the respondent had complied with what was expected of them, before considering sanctions.

The judgment reinforced the requirement for the parties to discuss their respective cases prior to bringing their dispute before the Tribunal and made clear that compliance with case management directions is essential to the administration of appeals in this area.

Consultations

Business rates in multi-occupied properties –reinstating the practice of the VOA prior to the decision of the Supreme Court in Woolway (VO) v Mazars Closes on 23 February 2018. Proposals and Draft Bill (Non-domestic Rating (Property in Common Occupation) Bill). https://www.gov.uk/government/consultations/business-rates-in-multi-occupied-properties

Reforming the Non-domestic Rates Appeals System in Wales – consultation closed 9 January 2018, registration of appeals, timetable, information provision, backdating, fines. https://consultations.gov.wales/consultations/reforming-non-domestic-rates-appeals-system-wales

Consultation outcome on 100% business rates retention https://www.gov.uk/government/consultations/100-business-rates-retention-further-consultation-on-the-design-of-the-reformed-system

Tower Bridge House, subject of the *Mazars* appeal

Inside this issue:

Consolidated Practice Statement revised from 1 April 2018

The revisions to be introduced from 1 April include new sections on Transitional Relief appeals, Discretionary Reductions in council tax liability appeals and a general section for those appeals the Tribunal receives in low numbers: invalidity notice, penalty notice and drainage rates appeals.

The disclosure process for council tax reduction appeals will, from April, mirror that for other council tax and completion appeal types.

Applications for review must in future be completed on a prescribed form so that they contain all the relevant information.

The NDR appeals section clarifies that disputes over compliance will be decided at the hearing and that failure to comply may result in the appeal being dismissed or evidence being excluded.

We will be publishing a list of well-known case law that need not be reproduced in full. Photographs and plans to assist the panel only need to be brought to the hearing (not form part of the evidence exchange bundle).

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/

Stayed appeal types at the Valuation Tribunal

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 ATM 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	Upper Tribunal 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. Hearing on 19/9/17 and interim decisions issued. Waiting for parties to undertake full valuations and report on figures. VOA appealed interim decision to the Upper Tribunal so all appeals remain stayed
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)
Stables	Stables in proportion to the dwelling; scope of proposal	Stables in Horsham appealed to the Upper Tribunal
VON issued	Appellant disputes validity of the Notice on effective date as no MCC at the date of the Notice; wants the VON quashed	Copart UK Ltd appealed to Upper Tribunal (VT appeal no 343026502814/538N10)
Validity of proposals	Whether a ratepayer can make a second proposal following a VON to alter the list where agreement was reached between the parties on an earlier appeal	Appeal at Upper Tribunal in respect of Thorntons
Hereditaments split by the VO following the decision in *Woolway (VO) v Mazars* [2015] UKSC53	Contiguous properties to be treated as one hereditament	Government proposed a retrospective change to legislation, currently under consultation

Business Rates Information Letters

9/2017 administration of the discretionary rate relief scheme and rate relief schemes for NNDR announced in the Spring Budget.
8/2017 Autumn Budget measures; indexation and provisional multipliers for 2018-19; more frequent revaluations; reinstating previous VOA practice for properties in multi-occupancy buildings; extension of pubs relief scheme; relief schemes in the Spring budget; administration and communication of reliefs; data collection; new burdens funding.
BRILs are available at https://www.gov.uk/government/collections/business-rates-information-letters

Simpsons Malt Ltd, Norton Motorcycles Ltd, First Colour Ltd, Portland Ltd and DP Realty Ltd v Jones and Others (VO) UKUT 460 (LC) RA/7-10/2017 etc

The appeals were against decisions of the VTE not to reinstate 11 appeals which had been struck out on the grounds of alleged failures to comply with procedural directions (contained in Practice Statements from 2010, as amended).

The UT considered that the VTE was entitled to automatically strike out an appeal (or bar the respondent) where no statement of case at all had been provided, but that where there had been a "substantial failure" to comply it was inappropriate for the sanction to be an automatic strike out as this required judgment, implying discretion.

The UT made clear that it supported the VTE's continuing efforts to manage its caseload and intended the judgment to provide guidance to assist in this. The decision in *Denton v TH White* [2014] recommended a three-stage approach to applications for relief against sanctions, which the VTE should adopt:

- Assess the seriousness or significance of the breach
- If it is considered to be serious or significant, consider why the failure/default occurred, as explained by the defaulting party (for example circumstances outside of the party's control)
- Consider all the circumstances of the case (which could include the fact that striking out an appeal may leave an uncorrected inaccuracy in the list)

The UT did not agree with some of the appellants that the civil procedure rules (CPR) of courts and tribunals in other fields should not be applied in the world of rating. Guidance given by the Supreme Court in *BPP Holdings v Commissioners for HMRC* [2017] established that all tribunals should follow a similar approach regarding procedural non-compliance and relief against sanctions, even though the CPR do not apply to them.

The UT highlighted that, for fairness, the VTE should provide a statement of reasons, to explain the basis on which a judicial decision had been reached.

The UT also referred to the VTE's 2017 Consolidated Practice Statement and its reference to "exceptional" reasons/circumstances being necessary before the VTE would grant postponements or relief from sanctions. This was considered too high a threshold.

The appeals were allowed and remitted to the VTE for determination of the substantive issues.

The UT underlined a warning from *Denton* that "it is wholly inappropriate for litigants or lawyers to take advantage of mistakes by the opposing party in the hope that relief from sanctions will be denied". From this the UT drew that valuation officers were expected to take "a more principled approach from the outset" and that parties should attempt to resolve appeals wherever possible by consent.

Hammerson UK Properties plc v Gowlett (VO) [2017] UKUT 469 (LC) RA/73/2017

In this case, the Upper Tribunal considered the principles from *BPP Holdings*, ***Denton*** and *Simpsons Malt Ltd* in relation to the application of its own procedural rules.

The appellants had filed a notice of appeal but sought an extension of time of 60 days to provide the required 'statement of case'. The Tribunal's 2010 Practice Directions set out that this statement equates to the grounds of appeal and is not intended to require or permit the detailed setting out of evidence or argument.

In applying the three-stage *Denton* test and allowing the additional time, the UT concluded that the failure to provide the statement could not be considered especially serious. The Registrar had issued a Direction allowing an extension of one month only and failure to meet this new deadline was a more serious breach. However, the appellant had only had five days' notice of the new deadline and had immediately provided an explanation as to why it could not be met. Also, as the appeal was at an early stage, the consequence of that breach was not serious. The VO had supported a further extension of two weeks.

The appellant stated that he sought the extra time to prepare because of the complexities of the case, which implied the statement of case would go beyond the grounds of the appeal; this was not accepted as a good reason.

However, it was noted that the appellant's appreciation of the evidence and argument to be presented may have differed since the case had been before the VTE. In such cases, the UT said, the appellant should make this clear from the outset when filing the notice of appeal and request that the appeal be dealt with under the 'special procedure'. This would probably result in a case management meeting where all considerations, such as the timetable, could be addressed.

Upper Tribunal's Procedural Rules: the statement of case in an appeal is "to enable the issues to be identified…. The expressions 'statement of case' and 'grounds of appeal' are used interchangeably"

Wilkinson (VO) v Edmundson Electrical Ltd [2017] UKUT 39 (LC) RA/75/2016

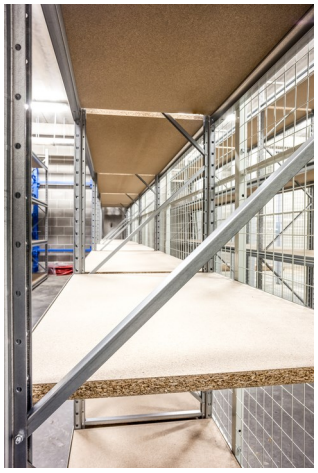
A VTE decision had found that chipboard decking, supported by warehouse racking and accessed by two staircases, was not part of the fabric of the building. It did not constitute a mezzanine floor and was not rateable.

At the Upper Tribunal the VO argued that the decking was part of the premises or alternatively was a walkway/platform and therefore assumed to be part of the hereditament. He valued the decking as a storage floor and treated the staircases as rateable also.

The parties had agreed that the racking was non-rateable plant. The appellant's representative stated that the decking was only used to gain access to upper tiers of racking; it could not be treated as clear storage space. Vacant and to let, he contended, the non-rateable racking and the decking would be assumed to be absent and have no value. In the absence of the decking the staircases would have no value either.

The key question was whether the decking was part of the hereditament in which the business was carried out, or part of the plant with which it was carried out. As a consequence of the parties agreeing that the racking was plant, the UT was satisfied that the decking formed part of the plant. In valuing the hereditament the effect of this was to assume the racking was not present and if it was not, then the decking supported on the racking must be assumed not to be present either.

The UT rejected the VO's alternative argument that the decking was a walkway/platform as it was a feature of the racking system, not an independent item of plant. The appeal was dismissed.



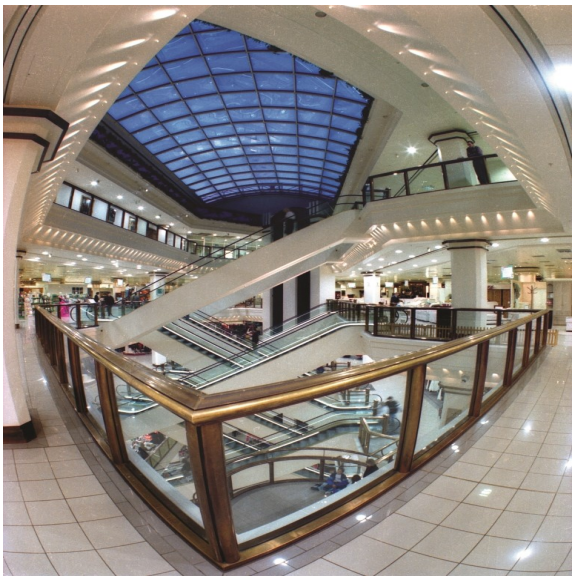
Fabulous Collections Ltd v Smith (VO) [2017] UKUT 452 (LC) RA/29/2017

This appeal concerned the alleged material change of circumstances (MCC) on the Touchwood shopping centre, Solihull, of the opening of 'Resorts World, near the NEC Birmingham. It was contended that this had a detrimental effect on the rental values of retail units in Touchwood. It was noted that at the material day under the MCC proposal, the use of the Resorts World retail units was restricted by planning permission to factory outlet shops and that retail sales could only be by manufacturers selling their branded good at discounted prices (for various reasons).

The VO argued that this meant the two shopping centres were different in character and would attract different hypothetical tenants. However, the VO agreed that the opening of Resorts World could constitute an MCC and the issue was whether an end allowance was applicable.

The appellant's representative sought a 10% allowance. Though he had originally made his argument on the basis of the fall in trade, it became clear that it was the opening of a Pandora jewellery outlet close by the appeal property, just before Resorts World opened, that had "severely affected" the trade figures. No other retailers' trade evidence was presented and the rental evidence was inconclusive. Documents in the public domain, including two reports from CACI (a retail analyst company), were also relied on by the appellant.

The UT dismissed the appeal as the appellant's evidence did not approach the level required to show that the opening of Resorts World had any effect on rental values in Touchwood.



Hussain v Turner (VO) 2017] UKUT 417 (LC)

A VTE panel had dismissed an appeal seeking a split of a retail property, finding that the two proposed units of assessment did not constitute defined hereditaments, being only partially divided by a chimney breast and a rope.

The VO had originally agreed a split and later the assessments had been inspected and re-merged at the request of the billing authority; the inspection showed that a dividing wall which the appellant had agreed to build had never been erected.

The appellant was aggrieved that the VO had changed their mind. At the UT it was shown that there were separate leases on the two parts, though neither contained a plan or description on the unit, apart from saying "half the showroom". There were several interpretations given of where the dividing line should be. The leases were made in the names of the appellant for one unit and his wife for the other unit and that they traded separately, albeit in similar products. The appellant claimed he had made these changes to be more affordable to prospective tenants and denied he had made them so that small business rate relief (SBRR) would be applicable to both parts. He also denied that he had ever claimed SBRR for any of his properties, but it was later found that he had in fact made application for SBRR.

The UT found that there was no clear boundary delineated between the two areas; the only permanent structure being the chimney breast. Internal signage and the positioning of a row of chairs was insufficient demarcation. The two halves amounted to one unit of property in one rateable occupation and the appeal was dismissed.

Court of Appeal

Telereal Trillium v Hewitt (VO) [2018] EWCA Civ 26; Case No: C3/2016/3392

This appeal was brought against the Upper Tribunal's (UT's) decision to allow the VO's appeal in 2016.

The VTE heard the case in 2014 and allowed Telereal Trillium's appeal, determining the rateable value at the nominal figure of £1. The reason the VTE gave was that the large 1970s office block, previously occupied by government departments, had been on the market to let for five years with no demand for it and the panel saw evidence that VOs had placed nominal values on other large offices where there was no demand.

At the UT, the VO accepted that at the antecedent valuation date (avd), in the real world, there was no-one who would bid for this tenancy on the statutory basis; there was no demand for such a large office property from the private sector and the public sector demand was fully met elsewhere. During the course of the UT proceedings, the parties produced an agreed position paper, asking the UT to determine the case on a point of law. If the correct approach under the rating hypothesis was that the valuer had to consider whether anyone would have paid a positive rental to occupy the property at the avd, which the parties agreed was not the case, then the VTE decision should be confirmed and the RV confirmed as £1. Conversely, if the correct approach required the assumption of a hypothetical tenant and that the RV should be assessed by reference to general demand for other similar properties, then the appeal should succeed and the RV be determined at £370,000.

The UT, in allowing the appeal, found that the hereditament was capable of use as offices and so it could meet any demand not met elsewhere. The occupation would be of value to the hypothetical tenant and therefore there could not be a nominal RV, which was only permissible where the hereditament was incapable of use or the responsibilities of the tenancy would be burdensome rather than beneficial.

Appealing to the Court of Appeal, Telereal Trillium identified the key issue as being, where it is accepted that there is no demand to occupy a hereditament on the statutory terms and conditions at a positive rent, does the rating hypothesis require the valuer to assume demand that in reality does not exist.

Citing the judgment in *Hoare v National Trust* [1998] and its "principle of reality", the case in *Tomlinson v Plymouth Argyle Football Club Ltd* [1960] and the decision in *Ladies Hosiery and Underwear Ltd v West Middlesex Assessment Committee* [1932], the Court of Appeal allowed the appeal. It found that the only relevant assumption in the rating hypothesis was that an agreement is reached between a notional landlord and notional tenant; this agreement could be at a nominal rent. There was no surplus public sector demand and no evidence of potential tenants; to assume a demand that did not exist, in the words of Schiemann LJ in *Hoare*, meant the valuer was departing "from the real world further than the hypothesis compels".

The Court of Appeal also commented on the UT agreeing to deal with the case only on a point of law as set out in the parties' agreed position paper. Tribunals had a duty to ratepayers in general and the parties "to reach the correct conclusion" and this would usually mean exercising their fact-finding role and any lines of enquiry they wished to follow.

Interesting VTE decisions—non-domestic rating

Squash and racketball club

The property was a purpose built 4-court squash club including changing room and club facilities. It had never been used as anything else. It was located adjacent to a purpose built trading/industrial estate.

It was argued that the property should be valued within its own mode and category, as a squash club. The property was built as D2 use class and, given that it was more than 150 m2, a change to D1 use would require planning permission. In accordance with established principles and, as stated in *Fir Mill Ltd v Royton UDC and Jones (VO)* [1960], 'The mode or category of occupation by the hypothetical tenant must be conceived as the same mode or category as that of the actual occupier.' Valued on a rentals basis, with fair reflection of the receipts, by comparison with squash clubs in nearby cities and towns, the appellant's representative adopted a rate of £30 pm^2 on the lounge area, with adjustments for ancillary areas and £2000 per court.

The VO contended that the property was a 'hybrid' industrial property on a modern industrial estate and that it was similar in terms of construction to the other units on the estate. Vacant and to let, an occupant could add internal fittings suitable for their business. He referred to a schedule of the basic rates adopted for many of the warehouse units on the estate, which his adopted rate of £44 pm^2 for the appeal property was in line with; he suggested this could be seen as £30 pm^2 plus a fit out cost. He argued that a hypothetical landlord would not accept a lower rental bid from someone wishing to occupy it as a squash and racketball centre.

The panel found this approach to be fundamentally flawed. Quite apart from the fact that the appeal property was physically different and distinct from a typical warehouse/industrial property, (it had an external balcony, not a typical feature of a warehouse, and did not have a roller shutter door as is typically used), the VO had failed to reflect its mode and category of use. For rating purposes, the principle of *rebus sic stantibus* is fundamental and a hereditament is valued on its current use. Any change, such as demolition of the brick walls of the courts, installation of roller shutters and demolition of the bar and changing rooms would offend rebus. The panel found these principles, as considered in *Fir Mill* and *Scottish and Newcastle Ltd v Williams (VO)*, to be well established; there was no support for the approach adopted by the VO.

Having found that the property should be valued as a squash club, the panel had regard to the comparables submitted by the appellant. In the absence of any other squash clubs' details, the evidence of the appellant was determinative and the panel determined the rateable value at the level he proposed.

Appeal no: 242028110671/537N10

Short stay lettings – Preliminary decision

The properties under appeal were let as serviced apartments located in Wardrobe Place, London and Printing House Square, Guildford.

The President determined that "short periods", in s. 66(2B) of the Local Government Finance Act 1988, means 28 days or fewer.
S. 66 (2B) A building or self-contained part of a building is not domestic property if—

(a) the relevant person intends that, in the year beginning with the end of the day in relation to which the question is being considered, the whole of the building or self-contained part will be available for letting commercially, as self-catering accommodation, for short periods totalling 140 days or more.

The President also concluded that it was the intention of the owner in letting the accommodation that had to be the focus rather than the actual use over a period.

(For the full decision see https://www.valuationtribunal.gov.uk/about-us/vte-publications/vte-decisions/ selecting the heading 'Preliminary issue decisions')

"Short periods"

for lettings means

28 days or fewer

Trago Mill retail and leisure centre site

Various changes had occurred to the property during the life of the 2010 rating list which resulted in amendments being made to the assessments. Towards the end of the life of the list the appellant's agent had made proposals in respect of each of these alterations. However in 2014, the VO had come to the conclusion that two ATMs which had been treated as forming part of the appeal property should not have been included as part of the hereditament. The VO then deleted the entries in the list and made new the entries with effect from 1 April 2010. These replicated the entries against which the proposals had been lodged: there was no difference to the name, details, description, size or rateable value of the subject hereditaments in the list but they had new reference numbers. No proposals had been made against these.

The parties had agreed values and effective dates on the proposals which had been made. However, the VO was of the view that, as these agreements related to proposals in respect of entries in the list for the hereditament which included the ATMs, the values agreed could not be given any practical effect. The agreements were therefore meaningless, as the entries in the list since 1 April 2010 and subject to charging could not now be altered. The appellants argued that the Tribunal had the power under reg. 38 of the VTE Procedure Regulations to make an order giving effect to these agreements for the entries now in the list for the hereditament.

The panel had no doubt that the circumstances surrounding these appeals made the situation confusing for any ratepayer, even one with professional support. It found that, in the specific circumstances of these appeals, there was a wider issue: the extent to which it was reasonable that "a public authority should use a technical error or oversight, created by considerable changes undertaken by that authority and resulting confusion for a ratepayer, to deprive that ratepayer of an agreed amendment to the rating list to which they would otherwise, absent such technical error, have been entitled."

The panel concluded that, in the interests of natural justice, where the subject property, the details and RV entered into the list have remained in all material aspects precisely the same, except for the reference number allocated by the VO, the appellant ratepayer must succeed. The panel decided that to find otherwise would be Wednesbury unreasonable, elevating as it would a reference number over the actuality of the estate or property in question.

Interesting VTE decisions—council tax liability

Class L exemption

As there was no resident in the appeal property, liability for the council tax fell upon the appellant owner. The appellant did not dispute that he had a legal interest in the property but argued that as he was not entitled to possession due to defaulting on his mortgage, the appeal dwelling was not a chargeable dwelling and qualified for Class L exemption.

The appellant argued that although a Law of Property Act (LPA) receiver had been appointed to manage the property he considered that the arrangement was a 'sham' by the bank for an 'ulterior purpose'; he believed that in truth the property was in the legal possession of the bank. The appellant was advised that this was not a matter which could be considered by the Tribunal as it was beyond its' jurisdiction. The matter should have been referred to a financial regulator.

In any event, the panel's understanding of the relationship between the borrower and the LPA receiver was akin to principal and agent respectively. The LPA receiver is only obliged to protect the mortgagee's interests.

The billing authority's (BA's) representative argued that, although the appeal property was under the control of an LPA receiver, the appellant remained the freeholder during the period in dispute. The panel agreed that when the dwelling was empty, the appellant held the freehold interest in the appeal property and so he was the "owner" in accordance with the Local Government Finance Act 1992, s.6(2)(f).

In this case the panel was satisfied that, instead of the mortgage company repossessing the property, an LPA receiver had been appointed to manage the property and that whilst the appellant did not have possession of the property he was nevertheless the legal owner. The panel was therefore satisfied that the BA had applied the law correctly and the property was not exempt under Class L. The appellant, as owner, was liable for the council tax for any periods when the property was unoccupied or untenanted. Consequently the appeal was dismissed.

The appellant was not satisfied with the decision of the Tribunal and went on to appeal to the High Court. The matter was heard before HHJ Belcher on 9 January 2018 and the Court found that the receivers were properly appointed and therefore the appellant was liable for council tax when there was no tenant in the property. He was ordered to pay £4,000 in costs to the BA.

The Tribunal decision can be read in full on our website.

Appeal no: 4725M206474/254C

Where we show an appeal number, you can use it to see the full decision on our website, www.valuationtribunal.gov.uk.

Click on the 'Decisions & lists' tab, select the correct appeal type and use the appeal number to search 'Decisions'.

Class M - Student Union Lettings Ltd v Leicester City Council

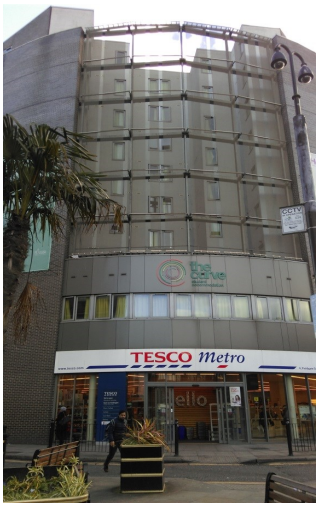
The appeal revolved around whether self-contained flats for individuals or couples who are students could be termed 'halls of residence' for the purposes of the Class M exemption. Each unit had its own kitchen and bathroom, but shared facilities included a gym, a study area and shops, within the same development area. The properties were separate entries in the valuation list, each band A.

The appellant contended that administering the accommodation under Class N exemption (a dwelling occupied by one or more residents all of whom are relevant persons [students or their spouses/partners/dependants] or occupied only by one or more relevant persons as term-time accommodation) was very difficult, because of the changes in occupation over the course of an academic year, for various reasons. He argued that each of the flats could be considered a hall of residence, there being no technical definition of this term.

The billing authority (BA) argued that, despite the lack of such a definition, its ordinary meaning required a degree of communal living and a self-contained flat did not meet this requirement. That the administration of the council tax for these properties was an "administrative nightmare" was not a matter to be dealt with by interpretation of the council tax regime; there were other administrative solutions that could be put in place.

The VTE panel agreed with the BA that the fact that the management of the accommodation satisfied part of the criteria for Class M, the other part, the words "a dwelling comprising a hall of residence", could not be ignored. Looking at dictionary definitions, the panels view on balance was to support the BA's contention and that "a dwelling comprising a hall of residence" implied something more than a single self-contained flat. If not, then the logical extension would be that any university could have an arrangement with any individual for a property in the private sector and call it a hall of residence; this could not have been Parliament's intention and the reason why Class N exists as the alternative. The appeal was dismissed.

Appeal no: 2465M197400/037C



Class T exemption

The appeal property was a flat over a pub which was in the rating list. Previously awarded, the Class T exemption had been removed from the property by the billing authority (BA).

The BA had revoked the liquor licence for the pub and following this the tenant moved out. The appellant was then made liable for the pub and the flat, which remained empty and unoccupied.

However, the criteria for Class T include that it must be an unoccupied dwelling which "forms part of a single property which includes another dwelling". As the pub was not a dwelling, but non-domestic, Class T exemption could not be awarded and the appeal was dismissed.

Appeal no: 3535M213474/037C

Bankrupt

In a case involving Bury Metropolitan Borough Council, a tribunal panel recently decided that a person could not appeal a decision that he was liable to pay council tax. This was because the person was an undischarged bankrupt and he did not have permission to appeal from the trustee in bankruptcy.

The billing authority relied on the Insolvency Act 1986 and the Court of Appeal judgment in *Heath v Tang and another*; *Stevens v Peacock and others* [1993], as well as a number of other decisions including *Re GP Aviation Group International Ltd (In Liquidation)* [2013].

The tribunal panel was provided with an email from the trustee in bankruptcy which stated that the appellant no longer held the right to make this type of claim because the right was now vested in the trustee. The appellant had to first convince the trustee that an appeal should be made and had not done so. The appeal was struck out because the appellant did not have *locus standii* to pursue the matter.

Appeal no: 4210M214053/254C

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VALUATION TRIBUNAL SERVICE

Administering council tax and business rates appeals for the Valuation Tribunal for England

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Council tax reduction—adverse inference

The appellant, a widower, had held a 50% share in a second property from which he had drawn a regular income. The appellant had been ill prior to his wife's death and had transferred his share of the legal estate in this property into their son's name. His health improved but his wife had died soon afterwards and her share of the property also transferred to their son. Despite a number of requests, no paperwork particularly in respect of the transfer of his own interest had been provided to the billing authority (BA). This was held to be relevant because it was by no means certain that the appellant's illness would be fatal and that the transfer would be permanent.

The BA had wanted to know who now received the property's rent and whether the appellant had purposefully disposed of his interest so he could receive CTR; he had earlier been denied council tax benefit because of the second property's value. The BA also had information derived from a credit reference agency that showed hire purchase agreements in the appellant's name and had unanswered questions about which bank account he used to make payments to the lenders and utility companies.

In offering to overcome the deadlock, the BA had arranged a home visit to enable the appellant to provide the necessary information. The appellant had cancelled the visit at the last moment and had refused to provide the information since.

The appellant admitted to the Tribunal that he had continued to use his deceased wife's bank account details of which, unsurprisingly, the BA had not requested. He said his son had, unbeknown to him, taken out at least one hire purchase loan in his name and also the son had since re-mortgaged the second home – something he argued his son could not do if he did not own 100% of that property's legal estate.

In dismissing the appeal, the panel agreed with the BA that it remained unclear why the appellant had disposed of his legal interest in the property; a 50% share of its capital value far outweighed the residual mortgage to be paid. Nor was it clear who received the rent from that property.

The panel held that the BA was correct to find the appellant's CTR claim to be defective and found that the appellant had not provided the corroborative evidence reasonably requested of him. A document submitted on the day of the hearing proved that the son had re-mortgaged the property but it did not show nor reassure the panel that the appellant's transfer of his interest was justifiable or unconditional. There remained a number of unanswered questions in respect of his capital and income; for example, his continued use of his deceased wife's bank account was, at best, unorthodox and possibly illegal; it did nothing but weaken the authority of his argument.

The panel noted a judgment of the Housing and Council Tax Commissioner in *R(H) 3/05*, an authority submitted by the BA. This relied in part on the opinion of Baroness Hale, expressed in *Kerr v Department for Social Development* [2004], when she adopted the approach in CIS/5321/1998

"[A] claimant must to the best of his or her ability give such information to the [adjudication officer] as he reasonably can, in default of which a contrary inference can always be drawn".

Accordingly, the panel upheld the BA defence of its own adverse inference finding and dismissed the appeal.

(We do not publish CTR decisions on our website)