



# Council Tax Guidance Manual

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August 2023 revision

# INTRODUCTION TO THE COUNCIL TAX GUIDANCE MANUAL

This guidance manual was first produced by members of the Society of Clerks' Law, Practice and Procedures Committee.

Since 1 April 2004 it has been updated by staff of the Valuation Tribunal Service.

Originally produced for Valuation Tribunal staff, in loose-leaf folder format, the Manual has been found useful by a wider audience. It is reproduced on the website, with the same structure.

The original manual covered the law in both England and Wales which were, at that time, covered by the same regulations. However, since devolution of powers to Wales, the manual has only kept pace with the changes in England.

Lists of the relevant legislation and cases are followed by sections on all aspects of council tax. Each section has the same four-part structure: an introduction; a list of legislation and interpretation of it; case law; and commentary/working practices.

Paragraphs are numbered identifying the section, the part of the section and the point number. An index covers all sections except for references to the legislation itself and the general introductions.

Every attempt has been made to keep this manual up to date with all relevant legislation and case law. Special thanks must be given to Charlotte McAvoy for her big contribution with the 2023 update. If you see any errors or omissions, please report this to us by sending an email to [appeals@valuationtribunal.gov.uk](mailto:appeals@valuationtribunal.gov.uk) identifying the relevant section of this manual and your suggestion for inclusion or change. Please make your email for the attention of the editor, David Mulgrew.

It should be noted that the information and advice contained in this guidance manual is not binding. It does not necessarily represent the views of Valuation Tribunal panels.

The guidance manual should be used as an aid to interpretation only and not as a substitute for the relevant statutes and regulations.

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## COUNCIL TAX

Council tax was introduced with effect from 1 April 1993 by the Local Government Finance Act 1992. The tax is payable on all domestic dwellings with certain exceptions for exempted classes.

The Valuation Office Agency listing officers are responsible for compiling and maintaining the council tax valuation lists. Properties are placed in the lists within one of eight bands reflecting their open market capital value as at 1 April 1991, bearing in mind certain statutory assumptions. The legislation sets out the definition of dwellings to be valued for council tax and the procedures for seeking an alteration to the band. A proposal may, in certain circumstances, be made to listing officer to alter the entry placed into the list for a property, and if this is not settled, an appeal may then be made to the Tribunal.

The billing authorities for each area have the duty to collect the tax. The tax is a mix of a property tax and a personal tax. Generally, where two or more persons reside in a dwelling the full tax is payable. If one person resides in the dwelling then 75% is payable. An empty dwelling attracts only a 50% charge unless the billing authority has made a determination otherwise. Such a determination may include increasing the amount payable by up to 200% of the full tax payable (300% from 1 April 2021).

In most cases liability will fall upon the resident of the dwelling. Where there are no residents in the property, or in certain prescribed categories of occupation, the owner will be liable. The legislation prescribes that certain properties are exempt from liability and sets out the procedure for appealing against a decision of a billing authority with regard to the liability.

In 2013 the Government removed the provision for council tax benefit and replaced this with a requirement for billing authorities to put in place a scheme (called a council tax reduction scheme), setting out the circumstances under which persons on low incomes are entitled to a reduction in the council tax they are liable to pay. In certain circumstances appeals against decisions made under these schemes by billing authorities can be made to the Tribunal.

## TABLE OF LEGISLATION

The main statute for council tax is the **Local Government Finance Act 1992 (LGFA 1992)**. Other relevant statutes include the following:

- General Rate Act 1967 (GRA 1967)
- Local Government Finance Act 1988 (LGFA 1988)
- Local Government Act 2003 (the 2003 Act)
- Local Government Finance Act 2012 (LGFA 2012)
- Caravan Sites and Control of Development Act 1960
- Care Standards Act 2000
- Civil Partnership Act 2004
- Council Tax (New Valuation Lists for England) Act 2006
- Housing Act 1985
- Rating (Caravans and Boats) Act 1996
- Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Act 2018
- Registered Homes Act 1984
- Rent Act 1977
- Rent (Agriculture) Act 1976

The principal statutory instruments are:

- Council Tax (Discount Disregards) Order 1992 SI 1992/548 (as amended)
- Council Tax (Chargeable Dwellings) Order 1992 SI 1992/549 (as amended)
- Council Tax (Situation & Valuation of Dwellings) Regulations 1992 SI 1992/550 (as amended)
- Council Tax (Liability for Owners) Regulations SI 1992/551 (as amended)
- Council Tax (Additional Provisions for Discount Disregards) Regulations 1992 SI 1992/552 (as amended)
- Council Tax (Contents of Valuation Lists) Regulations 1992 SI 1992/553
- Council Tax (Exempt Dwellings) Order 1992 SI 1992/558 (as amended)
- Council Tax (Reductions for Annexes) (England) Regulations 2013 SI 2013/2977
- Council Tax (Reductions for Disabilities) Regulations 1992 SI 1992/554 (as amended)
- Council Tax (Administration and Enforcement) Regulations 1992 SI 1992/613 (as amended)
- Council Tax (Prescribed Classes of Dwellings) (England) Regulations SI 2003/3011 (as amended)
- Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 SI 2009/2269 (as amended)
- Council Tax (Alteration of Lists and Appeals) (England) Regulations 2009 SI 2009/2270 (as amended)
- The Council Tax Reduction Schemes (Prescribed Requirements) (England) Regulations 2012, SI 2012/2885 (as amended)
- The Council Tax Reduction Schemes (Default Scheme) (England) Regulations 2012, SI 2012/2886 (as amended)

- The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013 (SI 2013/501)

## TABLE OF CASES

These cases, referred to in the manual, also appear in the index.

Abbreviations: All ELR = All England Law Reports; CA (also EWCA) = Court of Appeal; HC (also EWHC) = High Court; H of L = House of Lords; LT = Lands Tribunal; R & IT = Rating and Income Tax; RA = Rating Appeals; RVR = Rating and Valuation Reporter; VTE = Valuation Tribunal for England; UKSC = United Kingdom Supreme Court; UKUT (LC) = United Kingdom Upper Tribunal (Lands Chamber)

Where we refer to a VTE decision and give the appeal number, the full decision can be read on our website at <https://www.valuationtribunal.gov.uk/decisions-and-lists/>.

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Arca V Carlisle City Council [VTE, 0915M85513/254C, 29 January 2013]  
Atkinson & Others V Lord (LO) CA [1997] RA 413  
Atkinson (VO) V Foster & Others LT [1996] RA 246  
Aviva Investors v Bunyan (VO) [VTE, CHG100345300, 27 May 2022]  
Aviva Investors Property Developments Ltd and Another V Whitby (VO) And Mills (VO) [2013] UKUT (LC) 0430  
Aylett V O'Hara (VO) LT [2011] UKUT 418 (LC)  
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Bennett v Copeland Borough Council CA [2004] RA 171  
Bogdal v Kingston-upon-Hull City Council HC [RA 1998]  
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Coll (LO) v Walters & Walters [2016] RA 293  
Corkish (Listing Officer) V Berg [2019] EWHC 2521 (Admin)  
Corkish (LO) v Wright and Hart [2014] EWHC 237 (Admin)  
Corkish (VO) v Bigwood [2017] RA 52

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 Cox v London South West Valuation Tribunal HC [1994] RVR 171  
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 Davey (VO) v O'Kelly LT [1999] RA 245  
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 H v City of Bradford Metropolitan District Council [VTE, VT00005807, 28 November 2022]  
 Hardy v Sefton Metropolitan Borough Council [2007] RA 140  
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 Lewis v Christchurch BC HC [1996] RA 229  
 Listing Officer for Cornwall v Dannhauser [2018] EWHC 3162  
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 Morgan v Warwick District Council [VTE, 3725M139915/176C, 11 February 2015]  
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 R (on the application of Hakeem) v VTS and Enfield London Borough Council HC [RVR 2010]  
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 R (on the application of Hardy) v Sandwell Metropolitan Borough Council [2015] EWHC 890 (Admin)  
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 R (on the application of the Listing Officer) v Callear [2012] EWHC 3697 (Admin)  
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 R (on the application of Navabi) v Chester le Street District Council HC [2002] RVR 10  
 R (on the application of Turton) v Sheffield Magistrates' Court and Sheffield City Council CA [2002] RVR 327  
 R (on the application of Williams (LO)) v RNIB & Others HC [2003] RA 158  
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 Verma v London Borough of Ealing [VTE, 5270M103133/084C, 24 February 2014]  
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 Watson v Rhondda Cynon Taff County Council HC [2002] RVR 132  
 Williams v Bristol District VO & Avon VT HC [1995] RA 189  
 Wilson v Coll (LO) [2012] RA 45  
 Wilson v Maidstone Borough Council [2018] EWHC 663  
 Wirral Borough Council v Farthing HC [2008] RA 303  
 Woolway v Mazars [2015] UKSC 53 RA 373  
 Zeynab Adam v Listing Officer [2014] EWHC 1110 (Admin)  
 ZP v Bolton Council [VTE, 4205M137018/254C & 4205M137019/254C, 20 July 2015]  
 ZT v London Borough of Lewisham [VTE, 5690M202173/084C, 1 February 2018]

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## 1. DEFINITION OF DWELLING

### 1.1 INTRODUCTION

#### 1.1.1

A dwelling is any property not included or required to be included in a local or central non-domestic rating list, which would have been a hereditament for the purposes of the General Rate Act 1967. It should be noted that where a dwelling contains more than one self-contained unit each unit shall be treated as a separate dwelling unless it is a care home within the meaning of the Care Standards Act 2000.

#### 1.1.2

The Valuation Office Agency listing officer has discretion to treat multiple properties, occupied as more than one unit of living accommodation, as a single dwelling. Properties used for both domestic and non-domestic purposes (composite properties) are shown in both the council tax valuation list and the non-domestic rating list. Caravans and boats are subject to specific provisions within the legislation and may be entered into the valuation list if they are a person's sole or main residence.

### 1.2 LEGISLATION

#### 1.2.1

General Rate Act 1967 (GRA 1967)  
Local Government Finance Act 1988 (LGFA 1988)  
Local Government Finance Act 1992 (LGFA 1992) - Section 3  
Rating (Caravans and Boats) Act 1996  
Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Act 2018  
The Council Tax (Situation and Valuation of Dwellings) Regulations SI 1992/550  
(amended by SI 1994/1747 and SI 2008/315)  
The Council Tax (Chargeable Dwellings) Order SI 1992/549 (amended by SI 1997/656, SI 2003/3121 and SI 2012/1915)  
The Non Domestic Rating and Council Tax (Definition of Domestic Property and Dwelling) (England) Order 2013 SI 2013/468

#### 1.2.2

Definition of Dwelling

**Section 3 of the LGFA 1992** gives the meaning of the term dwelling.

A dwelling is any hereditament:

- as defined under **section 115(1) of the GRA 1967**;
- not shown or required to be shown in the local or central rating lists; and
- not exempt from non-domestic rating.

The definition of a dwelling is not affected by the rules of Crown exemption. The Secretary of State has the power to amend the definition.

#### 1.2.3

A hereditament is defined under **section 115(1) of the GRA 1967** as a property which is or may become liable to a rate, being a unit of such property which is, or would fall to be, shown as a separate item in the valuation list.

Case law has helped clarify the meaning of hereditament; see section 1.3.1 below.

#### 1.2.4

A property is a dwelling if it is used wholly for the purposes of living accommodation. However, none of the following is a dwelling except in so far as it forms part of a larger property which is a dwelling:

- a yard, garden, outhouse or other appurtenance belonging to or enjoyed with living accommodation;
- a private garage with a floor area of 25 sq. metres or less or is used wholly or mainly for the accommodation of a private motor vehicle;
- private storage premises used wholly or mainly for the storage of articles of domestic use;
- electricity generating equipment (by the source of energy defined in the Climate Change and Sustainable Energy Act 2006, of electricity or heat mainly used by the persons residing in the living accommodation or with a generation output not exceeding 10 kilowatts or 45 kilowatts thermal), situated on a dwelling or in a yard, garden, outhouse or other appurtenance belonging to or enjoyed with living accommodation.

#### 1.2.5

##### Composite Hereditaments

Composite hereditaments are also dwellings for the purposes of council tax. The **Council Tax (Situation & Valuation of Dwellings) Regulations SI 1992/550** states that the value of the dwelling shall be taken to be the portion attributed to domestic use. Domestic use means use in such a manner as to constitute domestic property for the purposes of **section 66 of the LGFA 1988**.

#### 1.2.6

##### Single and Multiple Properties

**The Council Tax (Chargeable Dwellings) Order 1992 SI 1992/549**, as amended, defines single and multiple properties:

- Where subject to Article 3A a single property contains more than one self-contained unit the property shall be treated as comprising as many dwellings as there are such units included in it and each such unit shall be treated as a dwelling. The term “self-contained” means a building or part of a building which has been constructed or adapted for use as separate living accommodation.
- A care home shall be treated as comprising the number of dwellings found by adding one to the number of self-contained units occupied by, or if currently unoccupied, provided for the purpose of accommodating the person registered in respect of it in accordance with **Part 2 of the Care Standards Act 2000**, and each such unit shall be treated as a dwelling.
- Where a multiple property consists of a single self-contained unit or such a unit together with or containing premises constructed or adapted for non-domestic purposes and that unit is occupied as more than one unit of separate living accommodation, the listing officer has discretion to treat the property as one

dwelling. The term “multiple property” means a property which would be two or more dwellings within the meaning of **section 3 of the LGFA 1992**. In exercising his discretion, the listing officer shall have regard to all the circumstances of the case including the extent, if any, to which the parts of the property separately occupied have been structurally altered.

### **1.2.7**

Subject to Article 3A, under Article 3, the listing officer must assess each self-contained unit as a separate dwelling. This is known as disaggregation. However, the listing officer has discretion under Article 4 to aggregate multiple units and treat what is, in effect, a multiple property as a single dwelling. This is otherwise known as aggregation.

Under Article 3A, the number of dwellings in a care home will be the number of self-contained units that are available for occupation by the care provider/registered owner plus one. The remaining units, which are available for persons receiving care or carers/staff, whether they are self-contained or not, will be assessed as a multiple property and banded accordingly. In essence, the registered owner’s accommodation will be disaggregated and the rest of the accommodation will be aggregated.

## **1.3 CASE LAW**

### **1.3.1**

Meaning of hereditament

JOHN LAING & SON LTD v KINGSWOOD A.C., THORNBURY R.D.C AND GLOUCESTERSHIRE C.V.C [1949] KB 344, CA

This judgment established the four ingredients of rateable occupation that need to be met for a hereditament. These are actual occupation, exclusive occupation, beneficial occupation, and the occupation must not be too transient.

WOOLWAY v MAZARS [2015] UKSC 53

In this Supreme Court judgment concerning the rating of offices, Lord Sumption stated the following at paragraph 4:

“‘Hereditament’ is a somewhat archaic conveyancing term which as a matter of ordinary legal terminology refers to any species of real property which would descend upon intestacy to the heirs at law: see section 205(1)(ix) of the Law of Property Act 1925. In a conveyance, there is no problem about its bounds. They will be identified by the deed. But notwithstanding more than four centuries of experience, the question how a hereditament is to be identified for rating purposes remains in important respects unclear. Section 64(1) of the Local Government Finance Act 1988 defines a hereditament as anything which would before the passing of the Act have been a hereditament for the purposes of section 115(1) of the General Rate Act 1967. That means a

“property which is or may become liable to a rate, being a unit of such property which is, or would fall to be, shown as a separate item in the valuation list.”

The result, in the absence of further statutory definition, is that the meaning of ‘hereditament’ is left to be elucidated by the courts in accordance with the principles underlying the rating Acts.”

The Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Act 2018 seeks to reverse the impact of the Supreme Court’s judgment in relation to non-domestic rating. In accordance with the new legislation, two or more contiguous properties, which are either occupied by the same person or, if unoccupied, are owned by the same person, can be treated as a single hereditament.

### **1.3.2**

#### **Dwelling**

LEWIS v CHRISTCHURCH BC HC (RA 1996 229)

Beach huts were assessed for council tax because they were not shown in the non-domestic rating list; they were not exempt; and, they were used wholly for the purposes of living accommodation.

DOYLE, LUCAS, ANDREWS and WEBSTER v ROBERTS (LO) [2020] EWHC 659 (Admin)

The High Court rejected the appellant’s interpretation of section 3(2) of the Local Government Finance Act 1992 (“Dwelling”) and section 115(1) of the General Rate Act 1967 (“hereditament”). The Court held that the appellants’ contention was wrong when they argued that living accommodation can only be a “dwelling” for the purposes of council tax if there is a “business” element. It was held that privately owned houses and flats were dwellings for council tax.

### **1.3.3**

#### **Aggregation under Article 4**

JAMES v WILLIAMS (VO) LT 1973 (RA 1973 305)

Although this was decided at a time when dwellings were subject to domestic rates, its principles are applicable to dwellings now subject to council tax. The Lands Tribunal confirmed that the valuation officer had acted correctly in exercising his discretion to assess the appeal property as four separate flats rather than one dwelling house. The valuation officer had acted correctly by taking the following factors into account:

- (a) degree of sharing common facilities,
- (b) degree of adaptation,
- (c) capability of accurate identification, and
- (d) degree of transience of occupation.

BURTFIELD ESTATES LTD v MRS P DIXON (LO) [VTE, 0655664341/254CAD, 6 June 2016]

Article 4 of the Council Tax (Chargeable Dwellings) Order 1992 gives the Listing Officer the discretion to aggregate separate living accommodation. The Vice President’s judgment confirms that the Valuation Tribunal does not have jurisdiction to consider the use of that discretion where it has already been considered by the Listing Officer.

In this case, the Vice President held that the proposals were invalid under regulation 4(1)(a) of the Council Tax (Alteration of Lists and Appeals) (England) Regulations 2009 because such Listing Officer determinations are excluded.

#### **1.3.4**

##### **Composites**

##### **1.3.4a FOTHERINGHAM v WOOD (VO) LT (RA 1995 315)**

A house partly used as an office was held to be a composite hereditament. Domestic property must be wholly used for the purposes of living accommodation subject to the *de minimis* rule.

##### **1.3.4b TULLY v JORGENSEN (VO) LT (RA 2003 233)**

The Lands Tribunal upheld a ratepayer's appeal that her rear bedroom should not be assessed as an office. The ratepayer worked from home because her disability meant she was unable to travel to work on a daily basis. The room had not been structurally adapted for business use and contained normal domestic furniture. Outside of office hours, the room reverted to normal family use. In addition, nobody visited the ratepayer in connection with her business. If meetings were required, she attended them elsewhere. Consequently the room was part of the ordinary domestic accommodation of the household.

##### **1.3.4c SKOTT v PEPPERELL (VO) LT (RA 1995 243)**

Composite hereditaments are also dwellings for council tax but where part of a property is wholly or mainly used in the course of business for short-stay accommodation, that part falls to be rated as a non-domestic hereditament - see s.66(2) & (2A) LGFA88, amended by SI 1990/162 and 1991/474.

##### **1.3.4d WILLIAMS v BRISTOL DISTRICT VALUATION OFFICER & AVON VALUATION TRIBUNAL HC (RA 1995 189)**

The question of whether a maisonette was capable of separate occupation was immaterial when deciding whether it should be in the valuation list. The list must contain each dwelling and that includes a composite hereditament part of which was used wholly for the purposes of living accommodation.

#### **1.3.5**

##### **Private storage accommodation**

##### **ANDREWS (VO) v LUMB LT (RA 1993 123)**

A warehouse and premises used to house and restore an old bus plus the ratepayer's collection of transport artefacts was held to be rateable as the articles stored were not articles of domestic use.

##### **ALFORD v THOMPSON (VO) LT (1998) (Oral Decision)**

The Lands Tribunal confirmed the decision of Valuation Tribunal that beach huts were not private storage accommodation and that articles stored were used in connection with the beach.



### 1.3.6

Disaggregation under Article 3 (including cases on annexes)

1.3.6a BATTY v BURFOOT; BATTY v MERRIMAN; GILBERT v CHILDS; RODD v RICHINGS HC (RA 1995 299)

It was held that the planning restriction preventing separate sale of the annex and the degree of communal living was not necessarily relevant and that all factors must be taken into consideration when determining a separate unit of accommodation.

1.3.6b BEASLEY (LO) V NATIONAL COUNCIL OF YMCAS HC (RA 2000 429)

Flats each containing a bed-sitting room, with a kitchenette area and an en suite shower room in a YMCA hostel were self-contained and therefore to be treated as separate dwellings. The High Court said that it was necessary to focus upon whether the flats had been constructed for use as separate living accommodation, and found that plainly they had. The use actually made of the building and the fact that a single body controlled the hostel were irrelevant considerations.

1.3.6c McCOLL V SUBACCHI (LO) HC (RA 2001 342)

A house and a flat accessed through the hall, stairs and landing of the house comprised two self-contained units for the purposes of council tax.

1.3.6d JOSEPH ROWNTREE HOUSING TRUST v SPEIGHT (LO) HC (RA 2002 203)

The High Court upheld the North Yorkshire Valuation Tribunal's decision confirming 14 entries in the valuation list for separate self-contained residential units within a care home. The 14 flats were originally constructed as self-contained units. However, following the removal of the cookers and the fridges from the kitchens as a safety precaution for the residents, the appellant had argued that the flats were no longer self-contained. In addition, the electricity supply to the kitchens had been capped and there was a degree of communal living. Nevertheless, the High Court decided that the Tribunal's finding of fact that the 14 flats remained self-contained was correct.

1.3.6e CLEMENT (LO) v BRYANT & OTHERS HC (RA 2003 133)

The listing officer's appeal against the West Wales Valuation Tribunal's decision, that 11 bedsits occupied by elderly people comprised a single property, was upheld by the High Court. The High Court decided that the Valuation Tribunal had erred by placing too much importance on the elderly nature of the residents, the absence of a shower/bath facility and the degree of communal living. Instead, the only factor the Tribunal needed to consider was whether or not the bedsits were self-contained units of accommodation. In this case, it was clear from the facts that the bedsits were constructed or adapted for use as separate living accommodation. The absence of a bath or a shower did not negate the fact that the bedsits were self-contained.

1.3.6f R (ON THE APPLICATION OF WILLIAMS (LO)) v RNIB & OTHERS HC (RA 2003 158)

The High Court quashed the Somerset Valuation Tribunal's decision that four units within a care home for the blind were not self-contained. The Tribunal found that the four units were constructed for use as separate living accommodation. However, instead of finding in favour of the listing officer, as it should have done having

answered the statutory question, it misdirected itself by erroneously taking into account the fact that the owner did not intend to use the accommodation for independent living. The Tribunal also erred by paying too much attention to the fact that the listing officer had determined that the remaining 32 units were not self-contained and it could not discern any notable difference between the 32 that had been aggregated and the four which were under appeal.

#### 1.3.6g R (ON THE APPLICATION OF COLEMAN (LO)) v ROTSZTEIN HC (RA 2003 152)

The Valuation Tribunal's decision that a granny flat should be deleted from the valuation list was quashed because the Tribunal had failed to apply a bricks and mortar test. Instead of concentrating on what had been physically constructed which was a self-contained annexe, the Tribunal took into consideration the owner's intention to build an extension to his home.

#### 1.3.6h JORGENSEN (LO) V GOMPERTS (RA 2006 300)

The High Court upheld the listing officer's appeal against the Valuation Tribunal's decision that a basement, ground and first floor maisonette and a second floor flat should be assessed as a single dwelling because the VT had not applied the correct legal test and had not addressed the correct question. The matter was remitted back to the tribunal with an order that the matter be heard by a differently constituted VT to reconsider the application of **Article 3 of the Council Tax (Chargeable Dwellings) Order 1992** for the following reasons:

- from the authorities referred to, the test was an objective bricks and mortar test. Intention and use, actual or prospective were not relevant;
- the VT had not addressed the question of whether the second floor flat, in terms of its objective physical structure, had been constructed or adapted as separate living accommodation;
- in reaching its conclusion, the VT had referred to the purpose for which the relevant part was constructed or adapted and the historical use of that part;
- the VT needed to consider whether, having regard to the particular circumstances of the case, the physical characteristics of the building constituted a separate living accommodation.

#### 1.3.6i DANIELS (LO) V ARISTIDES 2006 HC

Mr and Mrs Aristides purchased a property in 2000 with the intention of undertaking extensive building works to it. Within the grounds of their property, they built a substantial wooden structure, known as the studio, with a slate roof, which they originally intended to use as a games and tool room. They then occupied the studio on a temporary basis, until the work on their main property was completed. The studio was modified to include a gallery bedroom, with a fixed ladder leading up to it; a kitchen area; kitchen facilities including a sink; and a toilet and shower room. In 2003, Mr and Mrs Aristides removed the cooker and believed that the studio and the main house should be aggregated as a single unit for council tax purposes.

In upholding the listing officer's case, the High Court held that the removal of the cooker had not altered the characteristics of the building. The studio was still a self-contained unit.

1.3.6j R (ON THE APPLICATION OF THE LISTING OFFICER) v CALLEAR [2012] EWHC 3697 (Admin)

The decision was in respect of one of 10 flats in a building; the flat was 30 m<sup>2</sup> and the occupier could sleep, cook and eat in it. There was a full size cooker. There was a shower in the flat, but no toilet. There were communal toilets and a washing machine.

Judge Shaun Spencer thought about holding the appeal property as a dwelling under section 3 of the 1992 Act, but resisted this because it had not been considered by the Valuation Tribunal and the flat was clearly a self-contained unit. But the judge referred back to *Beasley v National Council for YMCAs* and that the correct order was to consider whether it was a dwelling / hereditament before considering the self-contained unit test. He stated the following at paragraph 30:

“I take the view that the only item which might be arguably missing from these premises would be a lavatory or water closet. But I do not think that that absence prevents the room (Flat 4) from qualifying as separate living accommodation or as a self-contained unit.”

1.3.6k CORKISH (LO) v WRIGHT AND HART [2014] EWHC 237 (Admin)

The issue was whether the annex was part of a building which was constructed or adapted for use as separate living accommodation. Popplewell J provided a summary of all of the principles derived from previous cases (which are paraphrased and abbreviated here):

- a) Is the effect of the construction such as to make the part of the building “reasonably suitable for use as separate living accommodation” – preferring “reasonably suitable” to “capable”. What matters is fitness for that purpose by reference to contemporary standards of what is reasonable, not whether it might conceivably be used for such purpose however remote the possibility.
- b) The question in (a) is to be answered by reference to the physical characteristics of the building. This has been called the “bricks and mortar test”, but that fails to capture the wide range of physical characteristics which may be relevant, including services and fixtures.
- c) The test is objective: purpose, intention, circumstances and so on are irrelevant.
- d) It is for the Tribunal as a matter of fact and degree to determine whether the test is met.
- e) Actual use may be relevant, because it might support a conclusion that its physical characteristics make it suitable for such occupation, but it is not the test, and will not usually be a factor of significant weight.
- f) Where part of a building is being considered, regard must be had to the characteristics of the rest of the building, such as access.

In quashing a decision of the Valuation Tribunal for England (VTE) and remitting it back for rehearing by a differently constituted panel, Popplewell J found that the VTE panel had not applied the correct test; it should have concentrated on the physical

characteristics. The decision did not set out the correct test and there was nothing to suggest implicitly that it had been applied; it did not mention two of the three physical characteristics which were being relied on as telling against suitability as separate living accommodation, and it failed to identify what were the elements which would normally deem the building to be a self-contained unit, or to identify any which might point the other way. The only two factors identified as supporting the VTE panel's decision were the actual use to which the annex was being put, and the access arrangements. Popplewell J considered that the first carried no weight, and the second was "incapable of being determinative".

#### 1.3.6l RE A DWELLING IN LONDON N2 [VTE, 5090649355/084CAD, 8 DECEMBER 2014]

The VTE President heard an appeal in respect of a large dwelling in London. The dwelling had an atrium and the issue in dispute concerned whether guest bedrooms on the second floor, which had a kitchen area on the second floor, were self-contained. Having regard to the physical characteristics, the President held that they were not self-contained. He had regard to the second floor kitchen area being used also by those occupying bedrooms on the first floor and also the openness caused by the atrium, stating that it "significantly derogates from any separateness".

#### 1.3.6m RAMDHUN v COLL (LO) [2014] EWHC 946 (Admin)

In dismissing the taxpayer's appeal, the High Court held the absence of a door to the area described as second floor flat was not a determining factor as it would simply be open to householders to remove any doors between flats or self-contained units. The judge found there was no requirement for a door in the legislation. Further, the judge stated that there are many different ways in which separateness (and a sufficient degree of privacy) can be achieved such as to give rise to a rational conclusion that there are two or more self-contained units in a property, for instance by stairs or simply by geographical separation. The judge also found similarities with this case and *Jorgenson (LO) v Gomperts* [2006], where there was a door to second floor flat which was not lockable.

#### 1.3.6n COLL (LO) v MOONEY [2016] EWHC (Admin) 485

The listing officer appealed the VTE decision that the ground floor accommodation was not self-contained and so was not a separate dwelling for council tax purposes.

Mrs Justice Lang stated that the High Court should not interfere with a tribunal's finding of fact unless it is a decision that the tribunal is not entitled to make. A finding of fact may be set aside as an error of law if it is found without any evidence or upon a view of the facts which could not reasonably be entertained. She agreed with Popplewell's approach in *Corkish (LO) v Wright* [2014]. In her judgment the "*physical characteristics of the building*" is a more apt description than the "*bricks and mortar*" test. She held that the VTE did not err in law by taking into account the property's listed building status and the restrictions to the alterations that the owner could do.

It was not impermissible for the VTE to have regard to the fact that the house was in use as a single household whose sole kitchen was on the ground floor and sole laundry on the lower ground floor. The key question was did the panel apply the correct legislative test, namely had the building been "*constructed or adapted for use as separate accommodation*". Mrs Justice Lang determined the panel had.

#### 1.3.6o SALISBURY & ANOR v BUNYAN (LO) [2021] EWHC 3136 (Admin)

The High Court found no error in the VTE panel's decision that the second floor of the house was self-contained. The VTE was entitled to conclude that this was not one of those unusual cases (like *Coll v Mooney*) where actual use would assist in the task. That being the case, there was no need for the VTE to consider actual use and therefore no need to mention it as a factor in its consideration. The VTE panel did not consider the first-floor landing to be a living room even though the appellant's actual use as the electronic/IT hub of the house was ignored; it remained a landing. As to the privacy aspects raised by the appellants, this went to the communal use of the landing, which the Tribunal was entitled to ignore.

### 1.3.7

#### Houseboats

#### 1.3.7a NICHOLLS v WIMBLEDON VALUATION OFFICE HC (RVR 1995 171)

The appellant contended that his houseboat was a chattel. The High Court held that the question to be decided was whether the property fell within the definition of hereditament in section 115 (1) of the GRA 1967. Justice Buxton concluded that the legislation envisaged that boats could be hereditaments.

#### 1.3.7b STUBBS v HARTNELL (LO) 1997 CA (RVR 2002 90)

The appellant's plot of land, mooring, and the houseboat moored to it, in which he lived, constituted domestic property and a hereditament for council tax purposes. The property had therefore correctly been treated as a dwelling and included in the valuation list.

#### 1.3.7c REEVES (LO) v NORTHROP [2013] EWCA Civ 362

A boat is capable of constituting a dwelling if the four ingredients of rateable occupation are satisfied; in other words there must be actual, beneficial, exclusive and non-transient occupation. The matter of the occupation being not too transient cannot be ignored; the occupation must have the character of permanence. Rateable occupation does not arise for a resident who is only occupying for a matter of days or weeks or even months. The occupier must have put down some roots which tie him to indefinite occupation and make him a settler in the property rather than a wayfarer passing by.

The Court of Appeal held that the Valuation Tribunal panel was wrong to delete the entry in the valuation list; it failed to recognise that the time Mr Northrop and his family were moored up in the estuary was not simply a factor of weight but the crucial, and on the facts of this case, the determinative factor. This family had made their home in their boat moored on the estuary for some two years by the time of the appeal before the Tribunal. The mooring arrangements and the two periods when the vessel was moved were unimportant.

### 1.3.8

#### Appurtenances, etc

#### 1.3.8a MARTIN & OTHERS v HEWITT (VO) LT (RA 2003 275)

The Lands Tribunal held that three boathouses on the shores of Lake Windermere were rateable and not domestic property. The boathouses were non-domestic because their remoteness from the ratepayers' dwellings meant that they could not be treated as outhouses or appurtenances to domestic accommodation. In each case, the boathouse was a substantial distance away from the ratepayer's homes and contained items to be used on the lake rather than in the home.

#### 1.3.8b AYLETT v O'HARA (VO) LT [2011] UKUT 418 (LC)

A riverside garden, with a summer house and a shed containing articles of a domestic nature, which was situated some distance from the appellant's home, was not domestic. An argument advanced that it was used with the living accommodation of the appellant had been rejected by the Valuation Tribunal as its use was entirely separate to this accommodation and this point was not pursued on appeal. Instead, the appellant argued the summer house was living accommodation and supported this by reference to the decision in *Lewis v Christchurch BC* (see above) and that the garden was enjoyed with this accommodation and that the shed was used as private storage premises. These arguments were all rejected by the LT as the summer house's main use was clearly storage, not living accommodation, and that it was part of larger unit of occupation that was for the recreational use of the river garden. Premises used for the storage of articles of a domestic nature (as could be said of the chalet and shed), where this storage is ancillary to the otherwise non-domestic use of the remainder of the hereditament, are not domestic.

#### 1.3.8c SEABROOK v ALEXANDER (VO) [2014] RA 382

The VTE President held that stabling for 20 horses, together with an indoor arena and a 20 by 50 metre manege, all adjoining a farmhouse, were domestic property as they were, individually and as a group, appurtenant to the house.

#### 1.3.8d CORKISH (VO) v BIGWOOD [2017] RA 52

The appellant and her husband were Olympian dressage riders who had a substantial equestrian facility alongside their country home. This included a stable block for 28 horses, a large indoor arena and outdoor facilities used to train their horses. An entry had been made in the non-domestic rating list for the facility. However, the Upper Tribunal's decision was that the non-domestic entry should be deleted as it was an appurtenance belonging to or enjoyed with the house. In reaching that conclusion the Upper Tribunal had regard to a number of factors including that all horses were owned by the appellant and her husband and their staff, there was no fence or barrier between the facility and the house, and the facility could not be lawfully used for commercial purposes. Although the facility was large, it was not out of proportion to the house which was also large. The Upper Tribunal considered that the function was no different from stables attached to a house belonging to any other equestrian enthusiast and used by their family.

### 1.3.9

Chalets not caravans

#### OADES & OADES v EKE (VO) LT (RA 2004 161)

The Lands Tribunal upheld the Lincolnshire Valuation Tribunal's decision that 123 chalets each formed a separate rateable hereditament. As a result, it dismissed the ratepayer's appeal that there should be a single assessment for the Holiday Park

within which they were situated. The reason given was that the chalets were not caravans for the purposes of the NDR (Caravan Sites) Regulations 1990 because they were not capable of being moved.

#### **1.3.10**

Rateability of show homes

WALKER (VO) v IDEAL HOMES CENTRAL LTD LT (RA 1995 347)

This relates to the meaning of a dwelling. Show houses owned by a property company have been held by the Lands Tribunal to be rateable as non-domestic hereditaments.

### **1.4 COMMENTARY**

#### **1.4.1**

Dwellings

A property (hereditament) which is used as living accommodation is a dwelling and will therefore be liable to be assessed for council tax. Property such as a small garage for the storage of a private motor vehicle, while being domestic in nature, will not, of itself, be a dwelling, although where it is part of a larger property used as living accommodation it will form part of that dwelling. For example, a garage at the end of the garden of a house will form part of that dwelling. However, a garage in a separate block which is not within the land occupied by the house will not form part of that dwelling but neither will it be a dwelling in its own right.

Proposals disputing whether or not a property is a dwelling follow the normal appeals route. If the listing officer rejects the proposal as not well founded, the proposer can appeal against the VOA listing officer's decision notice to the Tribunal.

Section 3 of this manual covers dwellings in disrepair where the owner believes that it may have ceased to be of any use.

#### **1.4.2**

Appurtenances to dwellings

In order to be included as part of a dwelling, a yard, garden, outhouse or other appurtenance belonging to or enjoyed with the dwelling, must be used wholly for living accommodation and private storage premises must be used wholly or mainly for the storage of articles of domestic use.

#### **1.4.3**

Composites

In considering the extent of the domestic portion it is the amount of the property which can reasonably be attributed to domestic use.

#### **1.4.4**

Care homes

Care homes within the meaning of the Care Standards Act 2000 are treated as a multiple property/single dwelling for both residents' and staff accommodation and are banded accordingly. Any self-contained accommodation housing the owner continues to be separately assessed. If the owner has one self-contained unit, there will be two entries in the council tax valuation list, one for the multiple property and one for the owner's self-contained unit. If the owner has two self-contained units, there will be three entries in the list. One entry will be for the multiple property and the other two entries will be for the owner's self-contained units.

Care homes that are not registered under the 2000 Act will continue to be treated in accordance with the principles established by *Williams (LO) v RNIB*.

#### **1.4.5**

##### **Listing Officer's discretionary use of Article 4**

This power is often used in relation to houses in multiple occupation. For instance, if a building has 9 dwellings spread over 3 floors, the Listing Officer may with the exercise of his discretion alter the list to show that there are 3 dwelling entries as opposed to 9.

However, in a case where the Listing Officer has altered the list to show that instead of a single property comprising one dwelling, the property now contains two or more dwellings and following representations made by the owner the LO refuses to aggregate under Article 4, the tribunal does have jurisdiction on appeal to consider a challenge against the LO's list alteration. This is because the list alteration to show more dwellings in a single property preceded the LO's Article 4 determination. The tribunal's jurisdiction being restricted to the accuracy of the list alteration not the subsequent article 4 determination.



## **2. VALUATION**

### **2.1 INTRODUCTION**

#### **2.1.1**

The initial valuation exercise for council tax banding purposes was carried out in 1992 by the listing officers of the Valuation Office Agency (VOA) on behalf of the Commissioners of Inland Revenue and took effect from 1 April 1993. Listing officers were required to place each domestic, or part domestic (composite), dwelling in England and Wales in a valuation band. The basis of this exercise was to ascertain the dwelling's open market sale value, bearing in mind statutory assumptions, at 1 April 1991. This date is commonly referred to as the antecedent valuation date (AVD). The majority of work was undertaken using "key" properties, sales close to the valuation date, and roadside inspections.

#### **2.1.2**

The valuation bands and their respective range of values in England are:

- A - Values not exceeding £ 40,000;
- B - Values exceeding £ 40,000 but not exceeding £ 52,000;
- C - Values exceeding £ 52,000 but not exceeding £ 68,000;
- D - Values exceeding £ 68,000 but not exceeding £ 88,000;
- E - Values exceeding £ 88,000 but not exceeding £120,000;
- F - Values exceeding £120,000 but not exceeding £160,000;
- G - Values exceeding £160,000 but not exceeding £320,000; and,
- H - Values exceeding £320,000.

Section 5 (4a) Local Government Finance Act 1992 inserted by the Local Government Act 2003 states that the number of bands can be altered for the next valuation list. A proposed council tax revaluation was due for 1 April 2007, but was postponed pending the outcome of the Lyons review into the future of local government and its funding.

The Council Tax (New Valuation Lists for England) Act 2006 removed the requirement in the LGFA 1992 for there to be a revaluation of domestic properties, in England.

## **2.2 LEGISLATION**

### **2.2.1**

Local Government Finance Act 1992 (LGFA 1992) - Sections 5, 21, 22B and 24

The Council Tax (New Valuation Lists for England) Act 2006

The Council Tax (Situation & Valuation of Dwellings) Regulations SI 1992/550 - Regulations 6 and 7

The Council Tax (Situation & Valuation of Dwellings) (Amendment) Regulations SI 1994/1747 - Regulation 4

The Council Tax (Alteration of Lists and Appeals) Regulations SI 1993/290 - Regulation 4

The Council Tax (Valuation, Alterations of Lists and Appeals) (England) Regulations 2008 SI 2008/315

The Council Tax (Alteration of Lists and Appeals) (England) Regulations SI 2009/2270

The Council Tax (Alteration of Lists and Appeals) (England) Regulations 2013  
SI 2013/467

### 2.2.2

#### Valuation of dwellings

Section 5(2) of the LGFA 1992 provides the valuation bands and their respective ranges for both England and Wales. Section 21(2) of the LGFA 1992 provides the 1 April 1991 as the antecedent valuation date (AVD) and makes reference to assumptions and principles that may be prescribed. Regulation 6 of SI 1992/550 defines the value of a dwelling in terms of the amount it would have realised by sale on the open market at 1 April 1991, bearing in mind a number of assumptions as follows:

- (a) that the sale was with vacant possession;
- (b) that the interest sold was the freehold or, in the case of a flat, a lease for 99 years at a nominal rent;
- (c) that the dwelling was sold free from any rent charge or other incumbrance;
- (d) ... that the size, layout and character of the dwelling, and the physical state of its locality, were the same as at the relevant date;
- (e) that the dwelling was in a state of reasonable repair;
- (f) in the case of a dwelling the owner or occupier of which is entitled to use common parts, that those parts were in a like state of repair and the purchaser would be liable to contribute towards the cost of keeping them in such a state;
- (g) in the case of a dwelling which contains fixtures to which this sub-paragraph applies, that the fixtures were not included in the dwelling;
- (h) that the use of the dwelling would be permanently restricted to use as a private dwelling; and,
- (i) that the dwelling had no development value other than value attributable to permitted development.

### 2.2.3

#### Composite hereditaments

**Regulation 7 of SI 1992/550** deals with the valuation of dwellings which are composite hereditaments. It provides that the value of such a dwelling is the portion of the relevant amount attributed to domestic usage. The relevant amount is the value of the composite hereditament as a whole by reference to the above valuation date and assumptions.

### 2.2.4

#### Material reduction

**Regulation 3 of SI 2009/2270** provides statutory restrictions on the alteration of valuation bands within the council tax valuation list. Of particular relevance is the concept of “material reduction” in value, as defined in **section 24 of the LGFA 1992**. Material reduction is the reduction in value of a dwelling caused in whole or in part by demolition of any part, any change in the physical state of the locality or any adaptation

to make it suitable for use by a physically disabled person. Regulation 4 provides that a valuation band can be altered if there has been a material reduction in value of sufficient magnitude.

However, where a material reduction in the value of a dwelling is caused wholly by the demolition of any part of the dwelling, the valuation band shall not be altered if the works of demolition are part of, or connected with, a building, engineering or other operation carried out, in progress or proposed to be carried out in relation to the dwelling (Reg 3(3) of SI 2009/2270). This might include, for example, the demolition of a garage to the side of a house prior to its replacement by a two storey extension.

### 2.2.5

#### Material increase

**Regulation 3** also provides for an alteration of a band where there has been a “material increase” in the value of a dwelling and a “relevant transaction” has subsequently occurred. “Material increase” is defined in **section 24** in terms of an increase in value caused by building or engineering works at the dwelling whether or not planning permission is obtained. “Relevant transaction” is defined in **section 24** as a sale of the fee simple (freehold interest), grant of lease of seven years or more or a transfer of such a lease by a sale. This does not include a lease granted for the purposes of installation of equipment for the generation of electricity or production of energy as defined in **Regulation 3(2B) of SI 2009/2270 (as amended by SI 2013/467)**.

## 2.3 CASE LAW

### 2.3.1

#### Assumptions

2.3.1a R v EAST SUSSEX VALUATION TRIBUNAL, ex parte SILVERSTONE HC (RVR 1996 203)

The council taxpayer disputed the use of the assumptions found in **regulation 6 of SI 1992/550**. The house in question was divided into two flats one of which was tenanted and could not be sold with vacant possession. The taxpayer also relied upon the state of the property as pointing to an achievable value lower than the range of values of the band into which the property had been placed. In his decision, Justice Carnwath stated: “The assumptions prescribed under the Act expressly make ‘the mandatory’ mandatory. The assumption is by definition a hypothesis which may be adopted whether or not it is in fact, true.”

A further point disputed by the taxpayer was that the demolition of some of the internal walls during the process of conversion gave cause to a material reduction in value. Carnwath J. concluded, “Regulation 4 applies to the alteration of a valuation band shown in a list as applicable to the dwelling. It does not apply here. What we are dealing with here is not the alteration of a valuation band for a dwelling already in the list; we are dealing with the removal of two existing dwellings and the inclusion of a new dwelling, and then the determination of the appropriate valuation band for that new dwelling.” The taxpayer’s application was dismissed on both counts.

2.3.1b Re: THE APPEAL OF GRAMPIAN JOINT BOARD ASSESSOR (2002) (RA 2003 167)

In this case, a planning consent restricted the occupation of a dwelling to farm workers or their dependants. The parties agreed that if the occupancy restriction was to be ignored the dwelling should be assessed in Band G: alternatively, an assessment of Band F was correct. The Valuation Appeal Committee decided the restriction on occupation had to be taken into account in a council tax valuation. As a result, the assessor appealed to the Court of Session. The Court subsequently upheld the Committee's decision. There was nothing within the Regulations which stated or implied that a planning restriction affecting the value of a dwelling was to be ignored.

2.3.1c BURKE v BROOMHEAD (LO) [2009] EWHC 1855 (Admin)

The appellant had argued that his home was incapable of beneficial occupation and that the assumption that the dwelling was in a state of reasonable repair should not apply. The High Court found no error in the Valuation Tribunal's decision that the valuation list entry should be band F. The appellant resided in the dwelling, so it could not be regarded as incapable of beneficial occupation (the accepted point at which a building would no longer be capable of being a hereditament). Therefore, as it remained a dwelling, the reasonable repair assumption had to be applied in determining the appropriate valuation band.

2.3.1d LANARKSHIRE VALUATION JOINT BOARD ASSESSOR (Re: APPEAL) (RVR 2003 6)

The Valuation Committee's decision to reduce the assessment of a dwelling to reflect its defects was quashed, since the defects were capable of being remedied. The dwelling had to be valued upon the assumption that it was in a reasonable state of repair and therefore no reduction in the assessment should have been made.

2.3.1e COLL (LO) v BRANNAN and COLL (LO) v KOZAK & TSURUMAKI [2015] EWHC 920 (ADMIN)

The High Court considered two appeals against Valuation Tribunal decisions in respect of flats owned on a shared ownership basis. One of the appeals concerned a flat in the former Arsenal Football Club stadium, which had been redeveloped into mixture of flats, some owned on conventional long leases and other flats held on a shared ownership basis.

The High Court held that:

- (1) The physical condition of the subject flat could be reflected in the valuation. Thus, differences in the finishes of kitchens or of bathrooms and differences in relation to the specification of the floor or the windows could be reflected.
- (2) For the purpose of council tax, all flats (whether shared ownership or not) had to be valued on the assumption they were let on a conventional long lease of 99 years at a nominal rent and not on a shared ownership lease.
- (3) The assumption above does not refer to the tenure of other flats. Therefore, the tenure of other flats in the same block may be taken into account in so far as that affects the value of the subject flat. It was possible the value of the flat will be greater if all of the flats in the same block are let on conventional long leases

as compared with a case where the other flats in the block, or a significant number of them, are the subject of shared ownership leases and/or short tenancies.

#### **2.3.1f COLL (LO) v WALTERS & WALTERS [2016] EWHC (Admin) 831**

The appeal property was an annex to a house, within its curtilage, on an estate; it had a restrictive covenant on it that did not permit use of the house and annex except as a single private residence. A VTE panel determined that, because of this, the annex, accepted by all as capable of being occupied as a separate dwelling, should be in band A, rather than band C.

The LO contended that the panel had been wrong in law to hold that the restrictive covenant affected the valuation; the covenant was in effect an “incumbrance”, which had to be disregarded under the regulations. She also drew a distinction between a restriction imposed by the state (which might be taken into account) and one imposed by a private individual, as in this case.

The High Court found that the definition of incumbrance did not encompass restrictive covenants and there was no distinction to be made between a state and a private restriction if the person subject to it could do nothing to remove it. Such a covenant, which might be enforced for the benefit of the estate, would affect the value of the house and annex. The panel had therefore been correct in taking the covenant into account and was entitled to come to the decision it did regarding the band.

#### **2.3.2**

##### **Composites**

#### **ATKINSON AND OTHERS v LORD (LO) CA (RA 1997 413)**

The council taxpayers contended that for the purpose of valuing composite hereditaments there was a requirement to determine the portion of the relevant amount. In order to establish that portion it was necessary first of all to establish the relevant amount. This was never done in respect of the taxpayers’ composite farmhouse.

Lord Justice Scheimann dismissed the appeals, concluding: “In my judgment the valuer is indeed required always to have regard to the relevant amount and a failure to consider it would amount to making an error in law. However, the valuer is not invariably required to determine the relevant amount. In certain circumstances it can suffice if he determines that the relevant amount must lie in a certain range or be above or below a certain figure.”

#### **2.3.3**

##### **Material reduction**

#### **TILLY v FELGATE (VO) AND LONDON BOROUGH OF TOWER HAMLETS (1996) HC (Not reported)**

A Valuation Tribunal dismissed a taxpayer’s appeal on the basis that the evidence she presented to support her contention that a material reduction in value had occurred, pre-dated an earlier appeal where the original band of her property entered into the

valuation list, and that of others in the same development, had been reduced. The evidence consisted of, in the main, a report concerning atmospheric pollution.

Justice Jowitt found that the Valuation Tribunal had misdirected itself with regard to the taxpayer's evidence. The Tribunal's error had been to concentrate on the date on which the pollution came to light, i.e. the date the pollution report was compiled. The Tribunal should have concentrated upon the date that the alleged material reduction in value occurred. However, Justice Jowitt dismissed the taxpayer's appeal. He found that the Tribunal's misdirection had not caused substantial wrong to the taxpayer and that the taxpayer had failed to present any direct valuation evidence to the Tribunal.

### **2.3.4**

Material reduction – dispute over validity of proposal

CHILTON–MERRYWEATHER (LO) v HUNT & OTHERS CA 2008 (RA 2008, p357)  
This appeal considered whether the Manchester North VT and the High Court had been correct to allow the owners of four houses that were located next to the M61 motorway, to apply for a reduction of council tax, on the grounds that in recent years traffic noise and pollution had increased. The issue was whether a change in the volume of traffic (noise and pollution) was a 'change in the physical state of the dwelling's locality' as envisaged in section 24 (10) of the Local Government Finance Act 1992.

The Court of Appeal's attention was particularly drawn to the statutory definition of 'material reduction' –

*'in relation to a dwelling, means any reduction which is caused (in whole or in part) by the demolition of any part of the dwelling, any change in the physical state of the dwelling's locality or any adaptation of the dwelling to make it suitable for use by a physically disabled person'.*

Lord Justice Rix accepted the listing officer's interpretation that there was a narrower interpretation of 'physical changes' for council tax than that in the non-domestic rating legislation. Therefore, he rejected the interpretation applied by the VT and the High Court, both of which had accepted that the increase in traffic/pollution was a 'physical change'. He further indicated his belief that these interpretations would be akin to permitting an alteration for a reason which was part of a nationwide trend.

In contrast, he explained that a physical change would be created if a motorway had had another lane fitted or had been altered in some other way. He also envisaged that a 'physical change' could occur if the character of a road changed, for example in cases where a road was re-categorised or a quiet road had become a 'rat-run'.

### **2.3.5**

Tone of the list

DOMBLIDES v HMRC SOLICITORS on behalf of the LISTING OFFICER HC 2008 (RVR 2009 5)

In dismissing the appeal, the Judge noted that a VT was the last arbitrator on value and an appeal to the High Court could only arise on a question of law. He confirmed that:

- the VT had acted entirely rationally concluding that indices were too general in nature and little could have been drawn from the very general statement made by some estate agents, which Mr Domblides had referred to;
- there was established case law in particular *Atkinson and Others v Lord* confirmed that a valuer was not required to give an exact valuation. Judge Bidder believed that individual valuations would only be necessary in borderline cases, and the appeal before him was not such a case;
- the VT's decision to side with settlements/decisions made by previous VTs on similar properties was akin to an accepted method of valuation known as relying on the 'tone of the list';
- the VT was entitled to determine that the schedule presented by the LO was more reliable evidence. This was a matter of judgement for the VT and, in his opinion, was not perverse.

## 2.4 COMMENTARY

### 2.4.1

A useful starting point of the valuation exercise should be the open market sale price of the dwelling concerned, especially if there is one available close to the AVD of 1 April 1991. However, the valuer must consider such a sale with regard to the statutory assumptions found in **regulation 6(2) of SI 1992/550**. The date of completion of the sale must also be considered; the closer it is to the AVD, then the greater the weight that can be attached to the sale.

### 2.4.2

Vacant possession

The first of the assumptions contained in regulation 6 is "*that the sale was with vacant possession.*" The majority of sale transactions in the domestic property market are agreed on a vacant possession basis thereby allowing such sales to be used in the valuation exercise with little or no adjustment.

### 2.4.3

Freehold or leasehold interest

The second assumption refers to the interest being sold as freehold or, for a flat, as having a lease of 99 years with a nominal rent. A sale transaction derived from the sale of a flat with an unexpired lease of less than 99 years, may have to be adjusted to place that sale within the context of the assumption. The rent referred to in the assumption is the ground rent for a leasehold flat; it is the annual rent paid to the owner of the land on which the flat stands.

### 2.4.4

Free from any rent charge or incumbrance

Third in the list of assumptions is a reference to the dwelling being sold free of “rent charge or other incumbrance” (*sic*). A rent charge is an annual sum paid by the owner of freehold land to another person who has no other legal interest in the land. Incumbrances are financial liabilities upon property, such as mortgages or charges.

#### 2.4.5

##### Size, layout and character

The fourth assumption provides that “*the size, layout and character of the dwelling, and the physical state of its locality, were the same as at the relevant date*”. The meaning of “relevant date”, also contained in **regulation 6**, is 1 April 1993 for the purposes of the original valuation exercise. However, the assumption also provides a number of exceptions:

- in the case of a valuation for a proposed material reduction in value;
- where a relevant transaction has revealed that a material increase in value has occurred; and,
- for a valuation carried out to correct an inaccuracy which arose in the course of an alteration of the council tax valuation list.

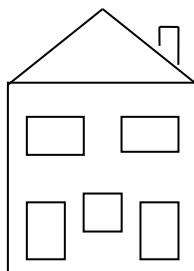
For material reduction and material increase valuations, the physical state of a dwelling’s locality, size, layout and character must be assumed to be the same as on the date that an alteration to the valuation list would have effect from.

The following expands on the material date provisions.

#### 2.4.6

##### General

For valuations for council tax purposes of dwellings that were in existence on 1 April 1993 assume the physical state of the house and the locality to be as at 1 April 1993 – relevant date (reg. 6 SI 1992/550).



Relevant dates:

House - 1 April 1993

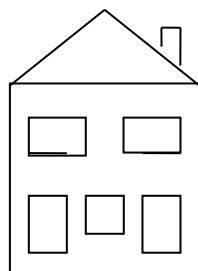
Locality - 1 April 1993



## 2.4.7

### Relevant dates

- to correct an error in the list on the day it was compiled, assume the physical state of the house and the locality to be as at 1 April 1993 (**reg. 6 (5A) (a) SI 1992/550**).



Relevant dates:

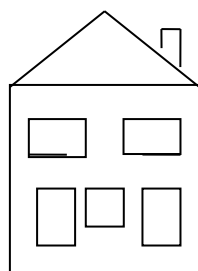
House - 1 April 1993

Locality - 1 April 1993

Effective date if the band is increased - date of list alteration

Effective date if the band is reduced is 1 April 1993

- to alter the list for a material increase coupled with a relevant transaction; the relevant date to consider the dwelling and locality is the date of sale (**reg. 6 (5A) (b) (i)**);



House sold: 1 April 1995

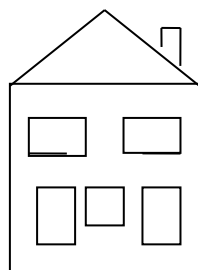
Extension added: 1 April 1994

Relevant dates: date of sale (1 April 1995)

Locality – date of sale (1 April 1995)

Effective date – date of list alteration

- to alter the list to reflect a new composite dwelling or change in the domestic use of an existing composite dwelling or one that has ceased to be composite; the relevant dates are the effective date (**reg. 6 (5A) (b) (ii) SI 1992/550**).



House sold: 1 April 1995

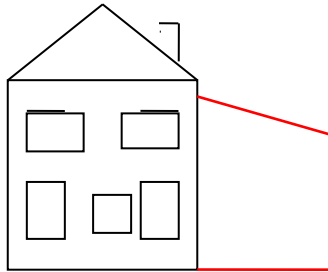
Domestic/non-domestic use changed: 1 April 1994

Relevant dates: House – date of change

Locality – date of change

Effective date – date of change

- to correct an error in the list due to incorrect alteration in any of the above then the relevant dates are the effective date of the previous alteration (**reg. 6 (5A) (c) SI 1992/550**).



House sold: 1 April 1995

Extension added: 1 April 1994

Relevant dates:

House – date used for previous alteration

Locality – date used for previous alteration

Effective date, if correction of an error results in an increase - date of alteration

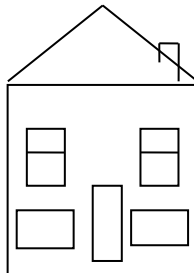
Effective date, if correction of an error results in a decrease - date of previous alteration.

#### 2.4.8

##### Material reductions

Valuations assume the physical state of the locality to be the effective date but where there has been:

- a physical change to the house - the relevant date for the physical state of the house is the date from which the reduction is sought (**reg. 6 (3) (b) (i) SI 1992/550**).

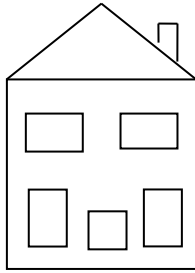


Extension demolished: 1 April 1994

Relevant dates: House - 1 April 1994

Locality - 1 April 1994

- a previous alteration to the list - the relevant date for the physical state of the house is the effective date of that reduction (**reg. 6 (3) (b) (ii) SI 1992/550**).



Extension demolished: 1 April 1994  
 Relevant dates: House - 1 April 1994  
 Locality - 1 April 1995

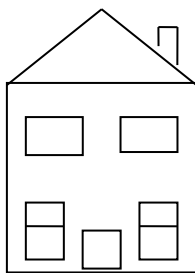
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Motorway opened: 1. 4. 95

Band reduced

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- a relevant transaction not resulting in a banding change - the relevant date for the physical state of the house is the date of that transaction (**reg. 6 (3) (b) (iii) SI 1992/550**).



House sold: 30 September 1994

Extension added: 1 April 1994

Relevant dates: House - 30 September 1994  
 Locality - 1 April 1995

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Motorway opened: 1. 4. 95

No banding change

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- if more than one of the events in the above then the relevant date for the physical state of the house is the latest date; and in any other case the relevant date for the physical state of the house is 1 April 1993.

#### 2.4.9

##### Reasonable state of repair

According to the fifth assumption, the dwelling must be assumed to have been in a state of reasonable repair. The state of repair of a dwelling will usually be reflected in the price it has realised on the open market. The state of repair may also to some extent reflect the character of a dwelling. **Regulation 6(6)** states:

*“In determining what is ‘reasonable repair’ in relation to a dwelling for the purposes of paragraph (2), the age and character of the dwelling and its locality shall be taken into account.”*

Reasonable repair for a new dwelling in a new development may actually translate into something more than reasonable for a much older dwelling located in a long established development. A degree of caution must be exercised when establishing the state of reasonable repair of any particular dwelling. It must also be remembered that repair does not equal improvement and it would be incorrect to assume that an unmodernised house should be envisaged in a modernised state.

#### **2.4.10**

Entitled to use of common parts

Assumption six also refers to state of repair. It provides that any common parts available for use by a dwelling’s owner or occupier must be assumed to be in a state of reasonable repair and that the dwelling’s purchaser would pay a contribution to the costs of their upkeep. Typically, common parts are found within and around blocks of flats e.g. hallways, staircases, entrances, pathways and gardens. Most leases allow landlords to levy upon leaseholders a service charge to cover the costs of the upkeep of the common parts.

#### **2.4.11**

Ignore fixtures for the disabled

Assumption seven states:

*“in the case of a dwelling which contains fixtures to which this sub-paragraph applies, that the fixtures were not included in the dwelling.”*

Paragraph (4) of regulation 6 explains that the “fixtures” in question are those which make the dwelling suitable for occupation by a physically disabled person and which add to the dwelling’s value. An example of such a fixture would be a stair lift.

#### **2.4.12**

Other fixtures

In the normal course of events, fixtures have to be taken into consideration in the valuation exercise. The issue of when a chattel becomes a fixture has a long history of debate within property law. Case law has considered issues such as the degree of attachment and the use/purpose of various items. On balance, items such as fitted kitchens and wardrobes would be considered to form part of the “corporeal hereditament” and should be taken into account in the valuation exercise. However, the value of carpets, curtains and white goods (freestanding fridge’s, freezers and other kitchen appliances) should be disregarded as particulars’ delivered documents, completed by solicitors engaged in “relevant transactions”, have a question asking for details of “any other thing representing money or money’s worth”.

#### **2.4.13**

Restricted to use as a private dwelling

The penultimate assumption is that the dwelling's use must be assumed to be permanently restricted to that of a private dwelling.

#### **2.4.14**

No development value

The final assumption is that the dwelling has no development value other than that for "permitted development"; this is development for which neither planning permission nor an application for planning permission is required.

#### **2.4.15**

Comparable evidence

The council tax valuation exercise was undertaken by reference to the sale prices of "key" properties. The sales of key (or beacon) properties were completed on or close to 1 April 1991. The sales were then used as comparable evidence.

Two dwellings are considered to be comparable to one another if they are similar in terms of location, age, size and character. If there are differences in terms of any of these factors then the dwellings concerned may not be comparable. If this is the case, then the use of the sale price of one for the valuation of the other may be wholly inappropriate. Even in the case of comparable dwellings, sale prices may need to be adjusted to reflect the standard of repair i.e. less or more than reasonable.

#### **2.4.16**

The property market is not a perfect one. Differences in sale prices for comparable dwellings sold at approximately the same time could have arisen for a number of reasons:

- One of the properties may have been previously repossessed.
- One of the vendors may have been an executor.
- One of the sales may have been between related parties.
- One of the dwellings may have had a higher standard of fittings or more "extras" included in its sale.
- One of the sales could have been affected by a part-exchange deal.

#### **2.4.17**

Finally, it is important to remember that the legislation requires listing officers to place each dwelling within a council tax band and not place a precise value upon each dwelling. However, when considering a dwelling affected by a material reduction in value, it may be necessary to ascertain the original council tax value of the dwelling prior to the material reduction in value having taken place. The material reduction in value (if any) can then be subtracted from the original value in order to determine if a reduction in banding is applicable.

### **3. VALUATION LISTS**

#### **3.1 INTRODUCTION**

##### **3.1.1**

The Commissioners of Inland Revenue are responsible for carrying out valuations of all dwellings in England and Wales and are required to appoint a listing officer for every billing authority (section 20 of the LGFA 1992). Each listing officer is responsible for the compilation and maintenance of a valuation list for his billing authority. The compilation date for the current lists was 1 April 1993, when council tax came into force.

The Council Tax (New Valuation Lists for England) Act 2006 removed the requirement in the LGFA 1992 for there to be a revaluation of domestic properties, in England, for council tax purposes on 1 April 2007 and then at intervals of not more than 10 years.

##### **3.1.2**

A valuation list must show each dwelling which is situated in the billing authority's area and the valuation band applicable to each dwelling, in addition to other prescribed information.

##### **3.1.3**

A listing officer has statutory powers of entry for the purposes of valuing dwellings and can require a billing authority or an owner or occupier of any dwelling, to provide information which he believes will assist him in carrying out his functions.

##### **3.1.4**

Each listing officer must provide his billing authority with a copy of the valuation list, which the authority is required to deposit at its principal office. Where a listing officer has altered a valuation list he must serve notice on the billing authority (and, in most cases, the taxpayer) to that effect and the authority must then alter its copy of the list. Although a listing officer has a general duty to maintain an accurate list, some restrictions apply in respect of the alteration of valuation bands shown in a list, and in respect of the effective dates of some alterations to a list.

#### **3.2 LEGISLATION**

##### **3.2.1**

Local Government Finance Act 1988 (LGFA 1988) - Schedule 4A

Local Government Finance Act 1992 (LGFA 1992) - Sections 3, 17, 20 – 29

Local Government Act 2003 (LGA 2003) – Section 77-79

The Council Tax (New Valuation Lists for England) Act 2006

The Council Tax (Chargeable Dwellings) Order SI 1992/549 (amended by SI 1997/656)

The Council Tax (Situation and Valuation of Dwellings) Regulations SI 1992/550 (amended by SI 1994/1747)

The Council Tax (Contents of Valuation Lists) Regulations SI 1992/553

The Council Tax (Valuation, Alterations of Lists and Appeals) (England) Regulations 2008 SI 2008/315

The Council Tax (Alteration of Lists and Appeals) Regulations SI 1993/290 (amended by SI 1994/1746 and SI 2006/3395)

The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 SI 2009/2269

The Council Tax (Alteration of Lists and Appeals) (England) Regulations SI 2009/2270

The Council Tax (Alteration of Lists and Appeals) (England) Regulations 2013  
SI 2013/467

### 3.2.2

#### Valuations for lists

According to **sections 20 and 28 of the LGFA 1992**, listing officers had a duty to compile Valuations Lists on the 1 April 1993, when the list came into force. They were required to take all reasonably practicable steps in the time available before that date to ensure that lists were accurately compiled. Each valuation list must be maintained for as long as is necessary for the purposes of Part 1 of the LGFA 1992.

### 3.2.3

Valuations are carried out by reference to the antecedent valuation date of 1 April 1991 and in accordance with principles contained in **SI 1992/550** (see section 2 of this manual). The Commissioners of Inland Revenue may also appoint persons who are not Crown Servants to assist in carrying out valuations, and may disclose to them any survey report obtained for any rating purposes and any information obtained under **section 27 of the LGFA 1992**. If such a person uses or discloses the report or information other than for valuation purposes he shall be liable on conviction to a fine or a term of imprisonment. Listing officers and persons appointed to assist them are paid out of money provided by Parliament.

### 3.2.4

#### Requests for information

Under the provisions of **section 27**, where a listing officer needs information relating to property in order to carry out his functions he may require a billing authority to supply information. He can do this by serving a notice on the authority describing the information required and specifying the form and manner in which the information shall be supplied and at what time. A listing officer has similar powers to request such information that is in the possession or control of a person who is or has been an owner or occupier of any dwelling. A person who fails without reasonable excuse to provide the information requested is, on summary conviction, liable to a fine. A person who knowingly or recklessly makes a statement that is false is liable on conviction to a fine or to a term of imprisonment.

### 3.2.5

A billing authority has a duty to provide the listing officer with any information which arises in connection with the exercise of its functions and which it believes would assist the listing officer in carrying out any of his functions. A listing officer may take into account any information available to him for the purpose of carrying out his duties, irrespective of its source or the manner in which it was obtained.

### 3.2.6

A person may require a listing officer to give him access to information concerning a valuation list if the officer is maintaining the list and it is in force or has been within the preceding five years. The information may be provided in documentary or other form, and the person is entitled to make copies of, or make transcripts of, that information. A person has similar powers in respect of copy lists deposited by billing authorities.

### 3.2.7

#### Right of entry

If the listing officer needs to value a dwelling he or any servant of the Crown authorised by him may enter, survey and value the dwelling, provided that three clear working days' notice of the intention to do so is given and that any authorised servant on request produces proof of his authority.

### 3.2.8

#### Contents of lists

**Section 23 of the LGFA 1992** provides that for each day a list is in force, it must show each dwelling situated in the billing authority's area and the valuation band applicable to each dwelling. A list shall also contain the reference number ascribed to each dwelling by the listing officer; an indication, where applicable, that the dwelling is a composite hereditament and, where the list has been altered, an indication of the effective date of the alteration, or of the period for which it has effect. An indication must also be made in respect of any alteration made following an order of a Valuation Tribunal or the High Court. The omission of any matter from a list does not, however, render the list invalid.

### 3.2.9

#### Alteration of lists

**SI 2009/2270** provides that the valuation band applied to a dwelling may only be altered in certain circumstances. These are that:

- since the valuation band was first shown in the list as applicable to the dwelling:
  - there has been a material increase in the value of the dwelling and a relevant transaction has subsequently taken place in relation to the whole or any part of it; or
  - there has been a material reduction in the value of the dwelling or the dwelling has become or ceased to be a composite hereditament, or is a composite hereditament in respect of which an increase or decrease in its domestic use has taken place; or
- the listing officer is satisfied that he should have determined a different valuation band, or that the band shown in the list is not that which he determined; or
- the Valuation Tribunal for England or the High Court has ordered the alteration.



### 3.2.10

Alteration in respect of well-founded proposals (made before 1 April 2008)

In certain circumstances and periods a billing authority or interested person may make a proposal for the alteration of a valuation list. Where the listing officer is of the opinion that the whole of the proposal is well-founded he is required to serve notice on the proposer (and the current taxpayer if different) that he intends to alter the list accordingly. He must then alter the list within six weeks of the date of that notice.

### 3.2.11

Alteration in respect of agreements

Where the listing officer and other relevant parties to an appeal, made under **Regulation 10 of SI 2009/2270**, have signed an agreement for an alteration of the list, the listing officer must notify the Valuation Tribunal as soon as reasonably practicable and alter the list within six weeks of that agreement.

Listing officers may, where they come to the conclusion that an agreement was reached in error, revise the band placed on the dwelling with that band which he/she is now satisfied should have been determined. Such a change should not be made 'capriciously' and there must be evidence to show that an error was made when the earlier agreement was reached.

### 3.2.12

Alteration in respect of orders

Where the Valuation Tribunal for England has decided an appeal and in consequence has ordered an alteration of a list, the listing officer must comply with that order within a period of two weeks from the date on which it was made. A listing officer must act in accordance with any order made by the High Court in respect of an appeal.

### 3.2.13

Effective date of alteration

**Regulation 11 of SI 2009/2270** provides that an alteration made to show in a list a dwelling which has come into existence since the list was compiled, has effect from "the day on which the circumstances giving rise to the alteration occurred." That day is usually the day on which the property became a dwelling in accordance with the provisions of **section 3 of the LGFA 1992**. The reference to a dwelling coming into existence includes property which was wholly non-domestic becoming a dwelling which is a composite hereditament. It also includes property which was two or more dwellings being treated as one for the purposes of **article 4 of The Council Tax (Chargeable Dwellings) Order 1992 (SI 1992/549)**.

### 3.2.14

#### Completion of new dwellings

A new building which remains incomplete but in respect of which a completion notice has been served is deemed to have come into existence on the “relevant day”. This is defined in **section 17(4) of the LGFA 1992** as:

“For the purposes of subsection (3) above the relevant day in relation to a completion notice is:

- (a) where no appeal against the notice is brought under paragraph 4 of the Schedule, the day stated in the notice; and
- (b) where an appeal against the notice is brought under that paragraph, the day determined under the Schedule as the completion day in relation to the building to which the notice relates.”

### 3.2.15

#### Dwellings ceasing to exist

An alteration to delete from the list any dwelling which has ceased to exist since the list was compiled also has effect from the day on which the circumstances giving rise to the alteration occurred. Any reference to a dwelling ceasing to exist includes property which has become entirely non-domestic, and any property which otherwise ceases to satisfy the requirements of **section 3 of the LGFA 1992**. Where property which was shown as one dwelling is treated as two or more dwellings by virtue of **article 3 of The Council Tax (Chargeable Dwellings) Order**, the effective date is the day on which the alteration is entered in the list.

### 3.2.16

#### Alteration in respect of material increase

An alteration reflecting a material increase in the value of a dwelling, following a relevant transaction, shall have effect from when the list is altered.

### 3.2.17

#### Alteration in respect of material reduction

An alteration reflecting a material reduction in the value of a dwelling has effect from the day on which the circumstances which caused that reduction arose (**regulation 11(3) SI 2009/2270**).

### 3.2.18

#### Alteration in respect of composites

An alteration reflecting an increase or reduction in the domestic use of a dwelling which is, or which consequently becomes or ceases to be, a composite hereditament, has effect from the day on which the circumstances which caused that increase or reduction arose (**regulation 11(4) SI 2009/2270**).

### 3.2.19

Where for the purposes of **regulation 11(3) or 11(4)** the day on which the circumstances arose is not reasonably ascertainable the effective date is the date of alteration of the list, except where the alteration is made in pursuance of a proposal, in which case the effective date is the day on which the proposal was served on the listing officer.

### 3.2.20

Alteration to correct inaccuracies

An alteration to correct an inaccuracy in a compiled list has effect from the date of compilation of the list, except where the alteration is to show a higher band, or to show two or more dwellings by virtue of **article 3 of The Council Tax (Chargeable Dwellings) Order 1992** where one dwelling was previously shown. In such cases the list must be altered with effect from the day on which the alteration is made. Similarly, where a previous alteration gave rise to an inaccuracy in the list and a further alteration is required which will show a higher band or more than one dwelling under article 3 of the above, the effective date is the date of alteration of the list.

An alteration to correct any other inaccuracy which arose in the course of making a previous alteration has effect from the day on which the previous alteration had effect, or, but for the inaccuracy, would have had effect. An alteration made to correct an inaccuracy which is not covered by any of the foregoing provisions of **regulation 11** has effect from the day on which the list became inaccurate.

### 3.2.21

Notification of alteration

**Regulation 12 of SI 2009/2270** provides that within six weeks of altering a list the listing officer must notify the billing authority of the effect of the alteration. The billing authority must alter its copy list as soon as reasonably practicable.

The listing officer must also serve notice within that six week period on the person who then appears to him to be the taxpayer in relation to the dwelling concerned, stating the effect of the alteration and informing him of the application of the regulations, including those concerning appeals against an alteration of the list. No such notice, however, is required to be served on the taxpayer where the alteration is to correct a clerical error or to reflect:

- an agreed alteration, or acceptance of a proposal as well-founded;
- a change of a dwelling's address, or a change in the area of a billing authority;
- a decision of the Valuation Tribunal for England or the High Court in relation to a dwelling.

The listing officer is required to take such steps as are reasonably practicable to ensure that any requisite notice is served on the taxpayer not later than the corresponding notice to be served on the billing authority.

### **3.3 CASE LAW**

#### **3.3.1**

##### Judicial review

R v PADDINGTON (VO) ex parte PEACHEY PROPERTY CORPORATION LTD HC (All ELR 1964 200); R v VALUATION OFFICER ex parte HIGH PARK INVESTMENTS LTD HC (All ELR 1987 84)

Individual entries in a list, as well as the whole list, may be challenged by judicial review. There are remedies to correct errors in law which go to the root of a valuation list. An application to the High Court seeking leave for a judicial review must be made within a reasonable time, and almost certainly within three months of the decision.

#### **3.3.2**

The power of listing officers to correct previous band reductions believed to have been agreed in error

##### **3.3.2a ZEYNAB ADAM V LISTING OFFICER [2014] EWHC 1110 (ADMIN)**

The High Court confirmed the listing officer has power to correct any council tax band that he believes is wrong. The judge held that regulation 3(1)(b) of the Council Tax (Alteration of Lists and Appeals) (England) Regulations 2009 allows a listing officer to amend a valuation band if he is satisfied that a different band should have been determined, but a band could only be increased prospectively and not retrospectively.

##### **3.3.2b LISTING OFFICER FOR CORNWALL V DANNHAUSER [2018] EWHC 3162 (ADMIN)**

The listing officer has a lawful power and a duty to compile and maintain an accurate valuation list and to exercise their power to alter the list under regulation 3(1)(b). In doing this, on any day, if the listing officer needs to correct an earlier error, they can have regard to all of the evidence available to them on the day that they alter the list and are not restricted to the evidence available when the error was made.

#### **3.3.3**

##### Disrepair and dwellings ceasing to exist

##### **3.3.3a BURKE v BROOMHEAD (LO) [2009] EWHC 1855 (Admin)**

In this case, the appellant sought a reduction from band G to band A, based on the poor state of repair of the building. However, the High Court found no error in the Valuation Tribunal's decision that the valuation list entry should be band F. The appellant resided in the dwelling, so it could not be regarded as incapable of beneficial occupation (the accepted point at which a building would no longer be capable of being a hereditament). Therefore, as it remained a dwelling, the reasonable repair assumption had to be applied in determining the appropriate valuation band.

##### **3.3.3b WILSON v COLL (LISTING OFFICER) [2011] EWHC 2824 (Admin)**

In this case, the taxpayer sought deletion of his house from the valuation list on the grounds of disrepair. The High Court approved the listing officer's 'hereditament test'. It rejected the question of whether it would be financially worthwhile to carry out the repairs, the relevant question being whether the property was reasonably capable of

repair without changing its essential character. If a dwelling can be repaired then it has to stay in the valuation list.

### 3.3.3c BRANWELL v VOA [2015] EWHC (Admin) 824

The appeal concerned a flat, within a block of similar flats, which suffered from damp penetration mainly as a result of defective windows in both the subject flat and the flat above. The High Court confirmed that the Valuation Tribunal had, in dismissing the appeal, applied the correct legal test from *Wilson v Coll*. Essentially the flat was capable of repair. (See below at 3.4.4)

### 3.3.3d MONK v NEWBIGIN (VO) [2017] UKSC 14

In respect of an office building's entry in the non-domestic rating list, the Supreme Court held that as the building was under redevelopment, like a building under construction, it was incapable of beneficial occupation. As such, it was not a hereditament.

### 3.3.3e JACKSON (VO) v CANARY WHARF LTD [2019] UKUT 136 (LC)

The appeal property was two floors in a 50-storey office building in Canary Wharf. Because it was a multi-occupied building, the owner could not modernise the whole building. Therefore, as a tenant vacated an unmodernised floor, the policy was to strip it to its concrete shell, which would later be fitted out to a new tenant's requirements.

On the material day the appeal property was fully stripped out in a shell state and incapable of beneficial occupation.

Having regard to *Monk v Newbiggin*, the Upper Tribunal stated at paragraph 35 that the critical question was whether "... before one comes to consider the effect of the repair assumption in the context of a building undergoing redevelopment, the logically prior question is whether the property is capable of beneficial occupation at all, and thus whether it is a hereditament at all"?

If premises are not capable of beneficial occupation they are not a hereditament. The only basis on which they may then be included in the rating list is under the convention that allows property temporarily incapable of occupation to remain in the list at a nominal value as a matter of administrative convenience, rather than deleting the entry and creating a new entry when the property once again becomes capable of beneficial occupation.

### 3.3.3f TEWARI v VIRK (LO) [VTE, M08260676, 15 June 2020]

This appeal concerned the domestic element of a property comprising a public house with living accommodation (the 'flat'); a composite hereditament. A fire had occurred which had badly damaged the whole property (with a repair estimate for the whole building of £180,000). The entry in the rating list for the public house was deleted but the LO refused, mainly by reference to the decision in *Wilson v Coll*, to delete the council tax entry, arguing that the repairs required to make the property habitable were reasonable for the owner to undertake.

The VTE President considered, in some detail, the decision in *Wilson v Coll*. The President found that the current LO's approach of treating a property, which is in a state of disrepair such as to be incapable of occupation, as remaining as a dwelling,

irrespective of the cost of the repair work required, was flawed. It ignores the reality of the situation as it stood at the relevant date and whether it was reasonable for the owner to undertake the necessary work. The LO should not have been influenced by the fact the property was subjected to a programme of works and was eventually re-occupied as a dwelling just over a year after the fire ruined the property. It is the situation at the relevant date which must be considered rather than what that might be at some point in the future.

In this case, at the relevant date it was agreed that the property was incapable of occupation. The President accepted the appellant's evidence that the amount of repair work required to reinstate the property at that date went beyond being reasonable. The dwelling that resulted after the work was completed was of a different character than that which had existed beforehand. The layout was altered and the interior was completely different.

The correct test is to establish if you have a hereditament to start with. If so, the statutory assumption of reasonable repair is then applied. If no hereditament exists, you cannot assume what is not there is in a reasonable state of repair.

### 3.3.3g HERBERT v BUNYAN (LO) [VTE, VT00003973, 23 July 2021]

Having regard to the Supreme Court's judgment in *Monk* and the VTE President's decision in *Tewari*, a VTE Vice President decided to delete a detached house from the valuation list. An invasive survey inspection report in respect of the 1950s built property had highlighted the following:

- The property was dangerous, riddled with asbestos, suffering from significant damp and mould, with dated and dangerous electrics.
- There were certain areas of the property at risk of imminent collapse due to significant decay to flat roof/ceiling structures and large untoughened and unprotected glazed areas.
- The cost of repairs to make the property habitable, safe and fit for occupation would be extensive to such an extent that this could prove financially unviable.

### 3.3.3h AVIVA INVESTORS v BUNYAN (VO) [VTE, CHG100345300, 27 May 2022]

The VTE President dismissed an appeal in respect of a warehouse where a deletion from the rating list was sought. The stripping back of a kitchenette and toilet facilities in order to install more modern fittings was something that could happen in an occupied property and was generally of short duration. All of the other work to the building itself was found to be repair work.

### 3.3.3i BUNYAN (LO) v PATEL [2022] EWHC 1143 (ADMIN)

The High Court endorsed the Valuation Office Agency's council tax manual regarding deletion of dwellings from the valuation list and found that the VTE had not applied the test set out in *Wilson v Coll*. The judge reversed the VTE's decision and remitted it back to the VTE for re-determination by a freshly constituted panel.

### 3.3.3j PATEL v BUNYAN (LO) [VTE, VT00003935, 14 JULY 2022]

Following the appeal being remitted back to the VTE, the VTE President dismissed the appeal as the property was capable of beneficial occupation as at the relevant date. The property was occupied by resident tenants until evicted one day before the relevant date. It was therefore difficult to see what had changed within 24 hours which meant it ceased to be a hereditament. The President was not convinced that the issues highlighted in the survey report had gone beyond what could be deemed to be a reasonable amount of repair works being required to render the property habitable as envisaged by Mr Justice Singh in *Wilson v Coll*.

### 3.3.4

#### Merger of dwellings

When two or more dwellings are merged and therefore cease to exist as separate dwellings, the listing officer is empowered to alter the list with effect from the date when the new combined dwelling came into existence. When the dwellings involved are the main house and an annexe, if the list is altered to reflect that there is one property which comprises only one dwelling, the Listing Officer is also empowered, if he sees fit, to increase the band entry.

#### 3.3.4a R (ON THE APPLICATION OF KELDERMAN) v VOA [2014] HC RVR 323

In order to reduce her council tax liability, the appellant decided to merge the separately banded annexe (previously entered into the valuation list at band A) with the house (which was in band C). The listing officer sought to alter the valuation list to show a single band E entry as a result of the changes, relying on regulation 11 of the **Council Tax (Alteration of Lists and Appeals) (England) Regulations 2009**, particularly paragraphs (1) and (10) which referred to the effective date being the date the dwelling came into existence or ceased to exist. In this case, two separate former dwellings became one new dwelling. Therefore this was not the alteration of the band for the house in its old form as a dwelling separate from the annexe, but a distinctive deletion and a new entry for the combined dwelling.

The High Court held that if a property is aggregated (merged) following physical alterations, the property must be valued on the basis that it is a new entry in the valuation list. Therefore, it is not a material increase; it is being valued as if it is a new property coming into the list for the first time.

#### 3.3.4b CORKISH (LISTING OFFICER) V BERG [2019] EWHC 2521 (ADMIN)

This case concerned a semi-detached house on a large plot within which was a separate garage. The occupier had made substantial alterations to the property, including adding a side extension which was fitted out to be a self-contained unit. This was occupied by a separate taxpayer. The tribunal hearing the case found that, following these alterations, there were two hereditaments in existence which each required banding. This was not disputed by the taxpayer.

What was disputed by the taxpayer was the decision by the LO to increase the band on the main house. The panel found that the hereditament that was the main house had remained, albeit now having been extended, and therefore agreed with the appellant that no alteration to the band of this dwelling could be made. The High Court

found that the tribunal had erred in law as, the court found, the listed dwelling (as was prior to the addition of the annexe) had included the main house, the gardens and the outbuildings and this formed “the geographical unit of domestic occupation”. The creation of the annexe into a separate dwelling within this unit of domestic occupation therefore changed the unit of occupation such that both the main house and the annexe became separate and new dwellings. Both therefore had to be assessed as they stood at the date of the division, with effect from that date.

The High Court judge gave a hypothetical example of where a single house was split into two smaller houses. In such a case the occupier would expect a band reduction, but on the face of it such an alteration does not fall within the meaning of “material reduction”. Applying this principle to the present case, the judge was satisfied that the LO was entitled to enter two new council tax bands into the valuation list.

### **3.4 WORKING PRACTICES**

#### **3.4.1**

##### Valuation lists

There are no statutory requirements concerning the layout of the contents of valuation lists, but listing officers have ordered their lists alphabetically, by postal towns, then by streets within each town. Within each street numbered addresses are shown first, and then named-only addresses in alphabetical order. Addresses which cannot be allocated to any street are shown at the end of the list of addresses in each postal town under the heading “within billing authority area”. Addresses not allocated to a postal town are shown at the end of the list.

During preparation for the introduction of council tax, each billing authority provided its listing officer with reference numbers for each property address in its area, and continues to do so in respect of newly identified addresses.

#### **3.4.2**

##### Alteration of lists

In the case of two or more dwellings being treated as one under **article 4 of SI 1992/549**, listing officers initially regarded the “day on which the circumstances giving rise to the alteration occurred” as 1 April 1993 (or a later date if the physical circumstances of occupation of the property changed after 1 April 1993 so as to render article 4 applicable). Listing officers now appear to accept that, in addition to physical circumstances concerning a property and the nature of its occupation, the requirement for a listing officer to “think it fit” to treat it as one dwelling is one of the circumstances giving rise to the alteration. For practical purposes listing officers now use the date of alteration of the list as the effective date in such cases.

Listing officers notify billing authorities of alterations to valuation lists on a regular basis.

Where the valuation list alteration results in a reduction in council tax band, there is nothing to prevent this being backdated for more than six years. Potentially, the reduction could go all the way back to 1 April 1993 if the band was wrong on that date;



see *MH, WP and CP v CITY OF BRADFORD MDC* [VTE, 4705M141113/254C, 22 June 2015] at paragraph 10.3.7b of this Manual.

### 3.4.3

The power of listing officers to correct previous band reductions believed to have been agreed in error

There have been a number of appeals made when listing officers have increased bands to correct errors in the valuation list, where reductions in bands have been previously agreed some years earlier. It is clear from *Zeynab Adam v Listing Officer* that the listing officer can overturn an earlier agreement and alter the list, if they believe that the earlier entry was agreed in error. However, the effective date of the increase is restricted to the date of alteration.

It is now clear from the later judgment in *Listing Officer for Cornwall v Dannhauser*, that such an alteration may be based on evidence available at the time of the alteration, even if such evidence was not available to the parties at the date when the original agreement was reached. (This judgment overturned the decision of a VTE President in *Ward v Coll (LO)* [VTE, 5180706009/084CAD, 28 July 2015]).

### 3.4.4

Disrepair and dwellings ceasing to exist

The Supreme Court made a landmark judgment in *Monk v Newbigin (VO)* [2017], holding that an office building under redevelopment ceased to be a hereditament because it was incapable of beneficial occupation. As the definition of dwelling is intrinsically linked to hereditament, then the same principle must apply to domestic property being redeveloped.

## 4. PROPOSALS

### 4.1 INTRODUCTION

#### 4.1.1

Where it is considered that the council tax valuation list is inaccurate a proposal may be served on the listing officer seeking an alteration. The regulations set out the circumstances and periods in which a proposal may be made and the manner of making a proposal. The listing officer is required to acknowledge receipt of the proposal. The regulations set out the procedure where a proposal is deemed to be invalid and describe the procedures for the agreement as to the proposed change, the withdrawal of the proposal and what happens where there remains a disagreement.

### 4.2 LEGISLATION

#### 4.2.1

General Rate Act 1967 (GRA 1967)

Local Government Finance Act 1988 (LGFA 1988) - Sections 64 & 66

Local Government Finance Act 1992 (LGFA 1992) - Section 24

The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 SI 2009/2269

The Council Tax (Alteration of Lists and Appeals) (England) Regulations 2009 SI 2009/2270

The Council Tax (Alteration of Lists and Appeals) (England) Regulations 2013 SI 2013/467

#### 4.2.2

Circumstances where proposals can be made

According to **regulation 4 of SI 2009/2270**, a proposal may be made by a billing authority or an interested person if either is of the opinion that the list is inaccurate because:

- it shows a dwelling which ought not to be shown in the list, including a self-contained unit deemed to be dwelling under article 3 of SI 1992/549, or
- it fails to show a dwelling which ought to be shown in the list, or
- the listing officer has determined the wrong valuation band, or
- since the band first entered the list:
  - there has been a material increase in the value of the dwelling and a relevant transaction, or
  - there has been a material reduction in the value of the dwelling, or
  - the dwelling has become or ceased to be a composite hereditament, or
  - there has been an increase or reduction in the domestic use of a composite hereditament, or
- account has not been taken of a relevant decision of a Valuation Tribunal or the High Court.

### 4.2.3

#### Interested person

An interested person is defined in **regulation 2 of SI 2009/2270** as:

- the owner,
- the occupier where the owner resides elsewhere,
- the liable person (exempt dwellings),
- any other taxpayer who is liable on the day in respect of the dwelling.

### 4.2.4

#### The proposer

A proposal means a proposal for the alteration of the valuation list. A proposer is the person making a proposal, i.e. the interested person or billing authority.

### 4.2.5

#### Composite hereditaments

**Section 64 (9) of the LGFA 1988** states that a hereditament is composite if part only consists of domestic property. Domestic property has previously been examined in this manual (see section 1 of this manual) and can be found in **section 66 of the LGFA 1988**.

### 4.2.6

#### Periods in which proposals can be made

A proposal submitted on the grounds that there has been a relevant Valuation Tribunal or High Court decision must be made before the expiry of the period of six months, beginning on the day on which the decision in question was made.

A new taxpayer in relation to a dwelling may make a proposal within a period of six months from the date that he/she became the new taxpayer. However, no such proposal may be made where a proposal to alter the same list in relation to the same dwelling and arising from the same facts has already been considered and determined by the Valuation Tribunal or High Court.

Furthermore, no proposal may be made if the new taxpayer is a company which is a subsidiary of the immediately preceding taxpayer, or the immediately preceding taxpayer is a company which is a subsidiary of the new taxpayer or both the new and immediately preceding taxpayers are companies which are subsidiaries of the same company, or the change of taxpayer has occurred solely by reason of the formation of a new partnership in relation to which any of the partners is a partner in the previous partnership.

There are **no** time limits on making a proposal where a billing authority or interested person believes the list is inaccurate because:

- it shows a dwelling which ought not to be shown. This includes property shown as one dwelling which contains more than one self-contained unit and therefore should be disaggregated under **article 3 of the Council Tax**

**(Chargeable Dwellings Order) SI 1992/549.** However, it does not include a multiple property, such as a house in multiple occupation (HMO), which the listing officer has treated as a single dwelling under article 4 of that Order.

- it fails to show a dwelling which ought to be shown;
- there has been a material increase in the value of a dwelling and a subsequent relevant transaction;
- there has been a material reduction in the value of a dwelling;
- a dwelling has become or ceased to be a composite hereditament;
- a dwelling is a composite hereditament and there has been an increase or reduction in its domestic use.

#### **4.2.7**

Proposal in respect of a listing officer's notice

If the listing officer alters the valuation list, a proposal may be served within six months of the date of the listing officer's notice in respect of that dwelling. The proposal may seek the restoration of the list to its previous state or seek a further alteration in respect of that dwelling.

No proposal may be made where the listing officer's notice to alter the valuation list was to insert or alter a reference number, alter an address, correct a clerical error or to insert a new effective date as determined by a completion notice served under **schedule 4A of the LGFA 1988**. Nor may a proposal be made where the listing officer's notice relates to a change in the area of the billing authority or to a decision of a Valuation Tribunal or the High Court in respect of the dwelling concerned.

#### **4.2.8**

Manner of making a proposal

**Regulation 5 of SI 2009/2270** provides that a proposal shall be made by notice in writing served on the listing officer and shall:

- include the name and address of the proposer and the capacity in which he makes the proposal;
- identify the dwelling to which it relates;
- identify how it is proposed the list should be altered, and include:
  - a statement of the reasons for believing the list to be inaccurate, and
  - a statement of the reasons for believing that:
    - there has been a material increase in the value of the dwelling and a relevant transaction, or
    - there has been a material reduction in the value of the dwelling, or
    - the dwelling has become or ceased to be a composite hereditament, or

- there has been an increase or reduction in the domestic use of the property;
  - the date on which the event occurred should also be included.
- If the proposal is made as a result of a Valuation Tribunal or the High Court decision the proposal must include a statement identifying the property to which the decision in question relates, the date of that decision and that the decision was of either a Valuation Tribunal or the High Court.
  - If the proposer is a new taxpayer the proposal must include a statement of the day on which the proposer became the taxpayer.
  - If the proposer disputes the accuracy of an alteration made by the listing officer, the proposal must include a statement of the day on which the listing officer served his notice.
  - If the proposal disputes the date on which an alteration should have effect the proposal should include a statement of the day proposed in its place.

#### 4.2.9

##### Multiple assessments

A proposal may deal with more than one property where the list shows a dwelling that ought not to be shown as one dwelling, or where the proposer makes a proposal in the same capacity as regards each dwelling and each of the dwellings is within the same building, or where any of them is not within a building it is within the curtilage of the other.

#### 4.2.10

##### Acknowledgement by listing officer

On receipt of the proposal the listing officer shall serve an acknowledgment of its receipt within 28 days. No acknowledgment is required if a notice is served under **regulation 7 of SI 2009/2270**, where the proposal has been treated as invalid (see section 5 of this Manual). The notice of acknowledgment shall specify the date of receipt and shall be accompanied by a statement setting out the procedures subsequent to the making of a proposal.

### 4.3 CASE LAW

*Some of these decisions relate to proposals in respect of rating (both domestic and non-domestic) but the principles, in so far as they apply to the particular circumstance, are likely to hold for council tax proposals.*

#### **4.3.1**

##### **Effective date**

#### **4.3.1a COURTNEY PLC v MURPHY (VO) LT (RA 1998 77)**

The Lands Tribunal had no jurisdiction to order an effective date for an alteration to the list earlier than the date of the material change of circumstances stated in the proposal.

#### **4.3.1b McKENZIE (LO) v MARSHALL HC (RA 2008 269)**

The High Court upheld the listing officer's appeal against the Norfolk Valuation Tribunal's decision to reduce the council tax band of a taxpayer's house from band C to B, with effect from 17 May 2005. The VT's decision was quashed and set aside and the matter remitted back to the VT for a further consideration for the following reasons:

- The VT had erred in law by reducing the band with effect from 17 May 2005. If the council taxpayer's appeal was to be allowed, the effective date should have been 1 January 2004, being the date when it had been entered in the list and the effective date contended for by the appellant, in the proposal.
- The VT failed to ask itself all of the right questions and it was unclear why the VT came to the conclusion that it did.
- As the VT was the fact finding tribunal, the HC was of the opinion that the VT, properly advised of its powers, should re-consider the case and decide, with appropriate reasons, what the correct level of assessment should be, with effect from 1 January 2004.

#### **4.3.2**

##### **Grounds of proposal**

#### **4.3.2a R.G.HESTON v ISLEWORTH RATING AUTHORITY ex parte CONTI HC (All ELR 1941 116)**

It was established that the person making the proposal need not specify the exact correction they desired and that it was sufficient if the nature of the amendment could be gathered from the grounds upon which the proposal was made.

#### **4.3.2b R v WINCHESTER AREA ASSESSMENT COMMITTEE ex parte WRIGHT HC (R & IT 1948 348)**

A proposal was made by the Rating Authority in respect of two hereditaments. The Authority was aggrieved by the unfairness of the valuations of each hereditament. The amounts of the existing and of the proposed assessments were given. The grounds were that the assessments should be revised. On appeal it was held that the proposal must give sufficient information to enable the Assessment Committee to know:

- whether an increase or decrease was asked for;
- to which of the valuations in the list the proposal related;
- what was the ground of complaint; and
- it was sufficient to state "incorrect or unfair" unless there was some unusual ground, in which case, it ought to be specified.

#### **4.3.2c MAINSTREAM VENTURES v WOOLWAY (VO) LT (RA 395/2000)**

A proposal made by a person who, at the date of proposal, was no longer in occupation of the property was declared invalid.

#### 4.3.2d DAVEY (VO) v O'KELLY LT (RA245/1999)

Jurisdiction limited by the grounds of the originating proposal. The Lands Tribunal could not have regard to extrinsic material contained within a covering letter.

#### 4.3.2e Interested Person

BAIYELO v CORKISH (LO) [VTE, 5690727898/084CAD, 15 May 2017]

The Listing Officer had argued that the previous owner of a dwelling was no longer the “interested person” and could not make a proposal to delete the dwelling’s entry in the council tax valuation list. However, the VTE President held that an owner can make a proposal to seek a deletion of a dwelling from the council tax valuation list after they have sold their property. The President noted there were no time limits on proposals seeking deletions, and that the previous owner was clearly the taxpayer for the dwelling on “the day” she considered the list inaccurate.

### 4.4 COMMENTARY

#### 4.4.1

##### Contention of the appellant

It should be noted that where a proposal seeks a reduction in banding the Tribunal could in theory, in exceptional circumstances, increase the banding level. Under the provisions of **section 75(5) of the GRA 1967** jurisdiction of the Tribunal was limited to the contention of the appellant. No such provision is brought forward in the new legislation. The role of the Tribunal in such an appeal is to determine the correct council tax band for the dwelling and theoretically this could be higher.

**Section 24 of the LGFA 1992** is now the enabling provision for the making of a proposal. Where there is a disagreement about the accuracy of the list an appeal may be made to the Valuation Tribunal. Under **regulation 38(3) of SI 2009/2269**, if the Tribunal in deciding an appeal sets a band higher than that shown in the list and higher than that contended for in the proposal, the effective date is the date of the decision.

It could be inferred from the above that following the introduction of the **LGFA 1992** the Tribunal is no longer bound by the contention of the appellant.

#### 4.4.2

##### Notice of invalidity

Where the listing officer is of the opinion that a proposal has not been validly made he may serve a notice of invalidity on the proposer (see **section 5** of this manual). However, under the provisions of **regulation 7(10) of SI 2009/2270** any party to an appeal may challenge validity of proposal at an ordinary hearing even if the listing officer has not served an invalidity notice.

## **5. INVALID PROPOSALS**

### **5.1 INTRODUCTION**

#### **5.1.1**

Where the listing officer is of the opinion that a proposal has not been validly made he may serve a notice of invalidity on the proposer. The regulations set out the procedure for such notices.

### **5.2 LEGISLATION**

#### **5.2.1**

The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 SI 2009/2269

The Valuation Tribunal for England, Non-Domestic Rating and Council Tax (England) (Amendment) Regulations 2011 SI 2011/434

The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) (Amendment) Regulations 2013 SI 2013/465

The Council Tax (Alteration of Lists and Appeals) (England) Regulations 2009 SI 2009/2270

The Council Tax (Alteration of Lists and Appeals) (England) Regulations 2013 SI 2013/467

#### **5.2.2**

Proposals treated as invalid

**Regulation 7 of SI 2009/2270** states that, where the listing officer is of the opinion that a proposal is invalid, he may within four weeks of its service on him serve an invalidity notice on the proposer advising that the proposal has been treated as invalid and the subsequent procedure.

#### **5.2.3**

Withdrawal of invalidity notice

The listing officer may withdraw the invalidity notice at any time by notice in writing. Where the invalidity notice is withdrawn, any appeal against the notice shall also be treated as withdrawn. Unless the invalidity notice has been withdrawn, the person on whom it has been served may, within four weeks, appeal against the notice to the Valuation Tribunal. Alternatively, within four weeks, a further proposal could be made in relation to the same dwelling unless the original proposal was treated as invalid due to being outside of the statutory time limits. Where a further proposal is made, the original proposal in respect of which the invalidity notice was served shall be treated as withdrawn.

#### **5.2.4**

Appeal to the Valuation Tribunal

An appeal against an invalidity notice shall be made by the proposer serving on the valuation tribunal the following:

- a copy of the invalidity notice
- the address of the dwelling that the proposal relates to.



- the proposer's reasons for appealing against the invalidity notice.
- the names and addresses of the proposer and listing officer.

Appeals can be lodged direct from the Valuation Tribunal website, [www.valuationtribunal.gov.uk](http://www.valuationtribunal.gov.uk). Appeal forms can be downloaded from the website or by calling 0303 445 8100.

### 5.2.5

#### Statutory procedure

Where the listing officer withdraws an invalidity notice after an appeal against it has been made, the listing officer shall inform the Tribunal of the withdrawal.

Unless it is decided that the original proposal was validly made, the procedure subsequent to making a proposal will not apply. Where it is finally decided that the proposal was validly made, the regulations setting out the procedure subsequent to the making of the proposal shall have effect as if the proposal had been served on the date of that decision.

### 5.2.6

#### Final decision

For the purposes of the regulations a final decision is made:

- where the invalidity notice is withdrawn - on the day of the withdrawal;
- in any other case, on the day of the expiry of the period within which an appeal may be made to the High Court as a result of the Tribunal decision; or
- when the High Court determines the appeal.

### 5.2.7

Notwithstanding the failure of the listing officer to serve an invalidity notice, **Regulation 7(10) of SI 2009/2270** allows any party to an appeal arising under **regulation 10** (banding/valuation) appeal to contend that the appeal proposal was not validly made.

## 5.3 CASE LAW

### 5.3.1

ESAU BROTHERS LTD v RODD (VO) LT (RA 1992 257)

A proposal served on 1 October 1990 to alter the rating list which was compiled on 1 April 1990 was invalid as it did not comply with the time limit contained in **regulation 9(2) of The Non-Domestic Rating (Alteration of Lists & Appeals) Regulations 1990 SI 1990/582** which stated that "where an interested person is aggrieved by the values shown in the list .... he may within six months beginning on the day on which the list is compiled serve a proposal for the alteration of the list ..."

### 5.3.2

HODKINSON v HUMPHREY-JONES (VO) LT (RA 1994 69)

A letter written to the valuation officer (VO) was held as not a valid proposal because it was insufficient for what was intended to be a request for a reduction in the

assessment to have been largely a matter of implication without any positive indication of the reason why a reduction was sought. In response to the letter, the VO supplied the standard proposal form which was returned completed by the ratepayer and accepted as valid.

### **5.3.3**

**CANNING (VO) v CORBY POWER LTD LT; DOWNING (VO) v CORBY POWER LTD LT (RA 1997 60)**

A proposal to alter an entry in the rating list relating to the formula assessment of a power station in Northamptonshire was held invalid because there was no causal link between the reasons given for the making of the proposal, namely a decision of the Valuation Tribunal relating to a shop in Gwent, and the opinion of the proposer that the existing entry was incorrect.

### **5.3.4**

**BROADWAY, RE THE APPEAL OF LT (RA 1998 71)**

A proposal was held invalid because it did not specify the nature of the material change of circumstances which was the grounds for the proposal, nor did it specify the date on which it was said to have occurred, nor did it specify the reason why a Valuation Tribunal decision the proposal referred to was relevant to the appeal property. Also, there was no indication in the Valuation Tribunal's written decision that these facts had been provided at the hearing.

### **5.3.5**

**MAINSTREAM VENTURES LTD v WOOLWAY (VO) (RA 395/2000)**

A proposal made by a person who, at the date of proposal, was no longer in occupation of the property was declared invalid.

### **5.3.6**

**IMPERIAL TOBACCO GROUP LTD v ALEXANDER (VO) [VTE, 306018810109/511N05, 29 February 2012] RA 218**

In a non-domestic rating case, the VTE President examined whether it was fair that the valuation officer could accept a proposal as valid, having not served an invalidity notice within four weeks of receiving it, then when it is listed for hearing argue that it was invalid on a technicality. A number of issues were considered in the VTE President's decision, in which he found that:

- Not every error or omission will render a proposal invalid.
- Even an invalid proposal may in some circumstances found a valid appeal.
- The valuation officer has a discretion, which must be properly exercised, to disregard the invalidity and treat the proposal as valid.
- But if he wishes to take the invalidity point, he must (subject to the next point) do so within the statutory framework of issuing a notice within four weeks, which notice may be appealed against.
- There will be some circumstances which will justify the valuation officer in asserting invalidity of the hearing of the substantive appeal, but these are circumscribed special exceptions to the general requirement of issuing a notice;

- there is no general discretion giving him the option of either issuing a notice within four weeks or raising the issue at the hearing.

### 5.3.7

KENDRICK (VO) v MAYDAY OPTICAL CO LTD [2013] UKUT 0548 (LC)

The Upper Tribunal (Lands Chamber) distinguished this case from Mayday Optical because the material error in the proposal came to light after the period in which a notice of invalidity could be served and accordingly the valuation officer was entitled to assert the invalidity at the hearing.

### 5.3.8

CHILTON –MERRYWEATHER (LO) v HUNT & OTHERS CA 2008 (RA 2008, p357)

See 2.3.7 of this manual for the summary of the Court of Appeal's judgment concerning what was meant by a "material reduction" for council tax purposes.

### 5.3.9

BAIYELO v CORKISH (LO) [VTE, 5690727898/084CAD, 15 May 2017]

The Listing Officer had argued that the previous owner of a dwelling was no longer the "interested person" and could not make a proposal to delete the dwelling's entry in the council tax valuation list. However, the VTE President held that an owner can make a proposal to seek a deletion of a dwelling from the council tax valuation list after they have sold their property. The President noted there were no time limits on proposals seeking deletions, and that the previous owner was clearly the taxpayer for the dwelling on "the day" she considered the list inaccurate.

### 5.3.10

KERBEY v CORKISH (LO) [VTE, M0853419, 22 SEPTEMBER 2020]

The VTE president allowed the appeal. The invalidity notice was a nullity as it was issued outside of the twenty-eight-day deadline and in the absence of any statutory authority, there was no discretion to extend this time.

### 5.3.11

LW v MOORE (LO) [VTE, VT00012428, 20 MARCH 2023]

The Vice President found that a decision made by one of the predecessor tribunals did not invalidate a proposal under regulation 4(5)(b) of the Council Tax (Alterations of Lists and Appeals) (England) Regulations 2009. Regulation 4(5)(b) provides '*(b) a proposal to alter the same list in relation to the same dwelling and arising from the same facts has been considered and **determined by the VTE** otherwise than as mentioned in regulation 32 of the VTE Procedure Regulations (hearing in a party's absence) or by the High Court;*' On the plain and ordinary meaning of regulation 4(5)(b), interpreted in accordance with regulation 2 which provides the definition of VTE, only a decision of the VTE (unless heard in the absence of a party) or the High Court on a proposal will invalidate a subsequent proposal on the same facts.

## 5.4 COMMENTARY

### 5.4.1

In the main council tax invalidity appeals are caused by the taxpayer being unaware of the statutory time limits. Invalidity appeals normally arise at the beginning of each financial year as taxpayers receive their new council tax demands. At this time they query the banding with the listing officer.

#### **5.4.2**

Although the President of the Valuation Tribunal has the power to authorise an extension of the time limit for making an appeal, providing he is satisfied that the failure of the appellant was caused by reasons outside of their control, the President has no power to extend the time period when proposals can be made.

#### **5.4.3**

A further problem arises when a taxpayer inspects the valuation list so as to find a relevant Tribunal decision. Whilst the regulations require the listing officer to mark the list to the effect that the banding has been amended following a Tribunal decision, there is no requirement for the date of the decision to be shown. Whilst a taxpayer may find a relevant decision he is then required to further investigate when the decision was made. Often the taxpayer's six months' proposal submission time limit will already have expired by this time.

#### **5.4.4**

##### **Preparing for a Tribunal hearing**

In this type of appeal there is an expectation that the parties have fully exchanged evidence and argument before the appeal was lodged, therefore there is no disclosure process. However, all evidence and argument which a party has not shared with the other party must be exchanged prior to the hearing. When the Tribunal notifies the parties of the date of the hearing, it also provides a general direction to those involved in the appeal setting out the Tribunal's expectations on both parties to the appeal.

The VTE has no jurisdiction to determine any valuation issues arising from the proposal. Where appeals are successful at Tribunal, the matter is referred back to the Listing Officer who must then consider the merits of the proposal.

## **6. PROCEDURE SUBSEQUENT TO THE MAKING OF A PROPOSAL**

### **6.1 INTRODUCTION**

#### **6.1.1**

When a proposal has been validly made and acknowledged, the regulations specify the subsequent procedures for the agreement of the proposed change, the withdrawal of the proposal and the agreement of alterations.

### **6.2 LEGISLATION**

#### **6.2.1**

The Council Tax (Contents of Valuation Lists) Regulations SI 1992/553 – Regulation 2

The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 SI 2009/2269

The Valuation Tribunal for England, Non-Domestic Rating and Council Tax (England) (Amendment) Regulations 2011 SI 2011/434

The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) (Amendment) Regulations 2013 SI 2013/465

The Council Tax (Alteration of Lists and Appeals) (England) Regulations 2009 SI 2009/2270

The Council Tax (Alteration of Lists and Appeals) (England) Regulations 2013 SI 2013/467

#### **6.2.2**

Procedure subsequent to the making of proposals

**Regulation 8 of SI 2009/2270** provides that within six weeks of receipt of the proposal the listing officer will serve a copy on any person who appears to him to be the taxpayer for any dwelling to which the proposal relates. The listing officer must also serve a copy on the billing authority where that authority has served notice on the listing officer that it wishes to receive a copy of a class or classes of proposals and the proposal falls within any such class. (Each copy of a proposal shall be accompanied by a statement of the effect of regulations 9 – 12.)

In the main, a billing authority will only request a copy of any proposal where, for example, the taxpayer seeks an amendment by more than one band or requests that the property be removed from the valuation list.

A listing officer shall, within four months beginning on the date on which a proposal was served on him, make a determination in respect of it.

#### **6.2.3**

Proposals determined by the listing officer

If the listing officer decides that the whole of the proposal is well founded, he will issue a notice and alter the list accordingly within six weeks of the date on which the notice was served on the proposer.

If the listing officer is of the opinion that only part of the proposal is well founded, he may reach agreement with the proposer regarding the alteration of the list, and will issue a notice. If no agreement is reached, he will issue a decision notice and decide whether or not to alter the list in relation to any dwelling to which the proposal relates.

If the listing officer is of the opinion that the whole of the proposal is not well founded, he may nevertheless reach an agreement with the proposer regarding the alteration of the list on different terms from those contained in the proposal and will issue a notice. If no agreement is reached, he will issue a decision notice and decide whether or not to alter the list in relation to any dwelling to which the proposal relates.

#### **6.2.3a**

##### Interested persons

In addition to serving a notice of his decision on the proposer, the listing officer is required to serve a notice on the following:

- (a) Any other person who is the council taxpayer for the dwelling to which the proposal relates;
- (b) Any other competent person who at the date of the decision notice would have been entitled to make the proposal.

#### **6.2.3b**

##### Agreed alterations following proposals

As soon as reasonably practicable after reaching an agreement with the proposer, the listing officer shall serve a written notice, detailing the agreement reached, on the following:

- (a) The proposer
- (b) Any other person who is the council taxpayer for the dwelling to which the proposal relates;
- (c) Any other competent person who at the date of the decision notice would have been entitled to make the proposal.

The listing officer shall, within the period of six weeks beginning on the date when agreement was reached with the proposer, alter the list in accordance with the terms of their agreement.

#### **6.2.4**

##### Day from which alterations to the List have effect (regulation 11 SI 2009/2270)

An alteration to the list so as to show a dwelling that has not previously been shown or to delete a dwelling, shall have effect from the day on which the circumstances giving rise to the alteration occurred. However, an alteration to correct an inaccuracy which was to show one dwelling which should have been two or more under article 3 of SI 1992/549 (self-contained units) shall have effect from the day the list is altered.

An alteration reflecting a material increase in value, following a relevant transaction shall have effect from the date that the list is altered by the listing officer.

An alteration reflecting a reduction in value shall have effect from the day on which the circumstances that caused the reduction arose.

An alteration reflecting an increase or reduction in the domestic use of a dwelling which is or becomes or ceases to be a composite hereditament shall have effect from the day on which the circumstances which caused the increase or reduction arose.

Where the date of the material reduction or change in composite use is not reasonably ascertainable and an alteration is made in pursuance of a proposal, the alteration shall have effect from the day on which the proposal was served on the listing officer. In any other case the alteration shall have effect from the day on which it is entered in the list.

### **6.2.5**

#### Notification of alteration

**Regulation 12 of SI 2009/2270** provides that the listing officer must serve notice on the billing authority stating the effect of any alteration within six weeks and the billing authority shall, as soon as reasonably practicable, alter the copy of the list deposited in its principal office. Furthermore, the listing officer shall serve notice on the person who then appears to him to be the taxpayer as regards any dwelling to which the alteration relates stating the effect of the alteration. The notice shall be served within six weeks.

No notice shall be served where the alteration is to correct a clerical error, or for reflecting a decision of:

- the listing officer that the whole of a proposal was well-founded, or
- that an agreement had been reached in accordance with regulation 9, in relation to a proposal made after 1 April 2008, or
- a change in the address of the dwelling concerned, or
- a change in the area of the billing authority, or
- a Valuation Tribunal or High Court in relation to the dwelling concerned.

Therefore, the listing officer will only serve notice on the taxpayer where an agreement has been reached in respect of the proposed alteration.

## **6.3 CASE LAW**

### **6.3.1**

Effective date (following a change to the regulations in 1994)

**SIMMONDS v HEXTER and OTHERS (1996) HC (Not Reported)**

Justice Jowitt ruled that a Valuation Tribunal had been wrong to agree with six taxpayers that the amended provisions of regulation 14(6) of SI 1993/290 (i.e. regulation 2 of SI 1994/1746) could be applied retrospectively. Retrospective application had the effect of bringing forward the effective date of the listing officer's increase in band of incorrect original entries in the valuation list. The taxpayers had argued that because the regulation had been amended before the date of the Tribunal hearing, the listing officer's increase should be effective from the date the

list was altered (in April 1994) and not 1 April 1993. Justice Jowitt pointed out that the amended regulation was not in force at the date that the listing officer altered the list and that for this reason the increase should be effective from 1 April 1993.

Simmonds v Hexter and Others has been retained in this council tax manual for completeness and in the event of further unforeseen legislation changes in the future, but this particular issue was unique to the years in question in this case.



## **7. RECEIPT OF COUNCIL TAX VALUATION LIST APPEALS**

### **7.1 INTRODUCTION**

#### **7.1.1**

##### **Making an appeal**

A proposer or a competent person may make an appeal to the Valuation Tribunal against the listing officer's notice of decision. A competent person is somebody who would have been entitled to make the proposal at the time when the listing officer served his decision notice. An appeal is initiated by the appellant serving on the Valuation Tribunal a copy of the listing officer's decision notice together with a written statement containing their reasons for appealing against the listing officer's decision. An appeal form is available on the Valuation Tribunal website: [www.valuationtribunal.gov.uk](http://www.valuationtribunal.gov.uk) or by telephoning 0303 445 8100. Appeals can also be lodged direct to the Tribunal from the website.

Any appeal to the Tribunal should be made within three months of the date when the listing officer's decision notice was served. The President of the Valuation Tribunal does, however, have a discretionary power to authorise an appeal to be entertained outside of the three month statutory time period, if extenuating circumstances beyond the appellant's control delayed the making of the appeal.

### **7.2 LEGISLATION**

The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 SI 2009/2269

The Valuation Tribunal for England, Non-Domestic Rating and Council Tax (England) (Amendment) Regulations 2011 SI 2011/434

The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) (Amendment) Regulations 2013 SI 2013/465

The Council Tax (Alteration of Lists and Appeals) (England) Regulations 2009 SI 2009/2270

The Council Tax (Alteration of Lists and Appeals) (England) Regulations 2013 SI 2013/467

#### **7.2.1**

##### **Tribunal's duty following receipt of an appeal**

Following receipt of an appeal, the Valuation Tribunal shall within two weeks of receiving it, serve on the appellant a formal notice acknowledging the appeal's receipt. A copy of the appellant's written statement (appeal) will also be served on the listing officer and on any other person who appears or is known to be an interested person.

#### **7.2.2**

##### **Procedure where there is more than one appeal against the same decision notice.**

In cases where an appellant is not the proposer and the proposer also appeals against the same decision notice, the appeal that proceeds will be the one made by the

proposer. Where two or more appellants, none of whom is the proposer, appeal against the same decision notice, the first appeal that was received by the Tribunal will proceed.

### **7.2.3**

#### Arrangements for appeals

**Regulation 5 of SI 2009/2269** provides that it is the duty of the President of the Tribunal to secure that arrangements are made for appeals to be determined. He shall ensure that:

- a Tribunal shall not hear an appeal with regard to substantive issues until any appeal regarding validity in respect of the same proposal has been determined, and
- where two or more appeals relate to the same dwelling and are referred as substantive appeals, that the order in which the appeals are to be dealt with is the order in which the alterations in question would have taken effect.

### **7.2.4**

#### Withdrawal of an appeal against a listing officer's decision notice

Where the Tribunal receives a notice of withdrawal from an appellant, prior to the commencement of a hearing or before consideration is given to written submissions, the Tribunal shall notify the other parties to the appeal and ask whether or not they are prepared to give their consent to the appeal being withdrawn. If no response is received by the date specified, the Tribunal is entitled to assume that the party has given their consent to the withdrawal.

Providing every other party consents to the withdrawal or has been deemed to consent to the withdrawal, in the event of a non-response, the Tribunal will be in a position to treat the appeal as having been withdrawn. It will then serve a notice on the appellant and every other party that the appeal is withdrawn.

### **7.2.5**

#### New appellant's appeal

In cases where a party does not consent to the appeal being withdrawn, that party may serve a written notice on the Tribunal, in the form of a statement, to the effect that he wishes to appeal against the same decision notice. In some cases, this may be an appellant whose appeal did not originally proceed because the proposer appealed against the same notice and the latter took precedence.

In other cases, the new appellant may not yet have appealed against the decision notice but was deemed to be an interested person/competent party. This being the case, the new appellant will need to provide the Tribunal with a statement containing their reasons for the new appeal.

Within two weeks of receiving the new appellant's appeal, the Tribunal will notify the withdrawing party and every other party to the withdrawing party's appeal that their appeal is withdrawn and that the new appellant's appeal is proceeding. The Tribunal will provide the other parties with the new appellant's reasons for appealing and

request every party (apart from the listing officer and the withdrawing party) to notify it if they wish to be a party to the proceedings.

Upon receipt of a notice from a party, who wishes to participate in the proceedings, the Tribunal will within a period of two weeks acknowledge its receipt and serve a copy of it on the listing officer.

### **7.3 CASE LAW**

#### **7.3.1**

There is no relevant case law at present.

### **7.4 COMMENTARY**

#### **7.4.1**

When an appeal is received, the Tribunal must ensure that all of the required paperwork is provided including a copy of the VOA listing officer's notice of decision, before the appeal can be accepted and processed. Information relating to the proposal that gave rise to the decision notice can be obtained from the listing officer.

#### **7.4.2**

It is the duty of the President to make arrangements to receive appeals although this will normally be delegated to staff employed by the Valuation Tribunal Service (VTS). The VTS will ensure that, where there is more than one appeal in respect of a dwelling, they are listed and heard in the order which the alterations contended for by the appellant(s) would take effect.

#### **7.4.3**

In practice, the Valuation Tribunal does not need to seek the listing officer's consent whenever a party notifies it of their intention to withdraw an appeal. The Valuation Office Agency has in effect opted out of the process, having notified the VTS that it can assume that the relevant listing officer consents to any withdrawal.

#### **7.4.4**

Preparing for a Tribunal hearing

There should be no surprises for anyone attending the hearing and all evidence to be relied upon by either party should be disclosed to the other party in advance. When the Tribunal notifies the parties of the date, time and place of the hearing, it also provides standard directions to those involved in the appeal. The standard directions require each party to exchange their case before the hearing date; the detail is set out in the Annex to this Manual, Consolidated Practice Statement PS 11 Disclosure in all council tax and completion notice appeals.

## 8. THE LIABLE PERSON

### 8.1 INTRODUCTION

#### 8.1.1

Liability to pay council tax is determined on a daily basis with a hierarchy of liability ranging from the resident freeholder through to the owner of the dwelling. Where any persons are at the same status as one another within the hierarchy for the same dwelling, then they are jointly and severally liable to the tax.

#### 8.1.2

There are special provisions for caravans and boats and the Secretary of State has prescribed classes of dwelling where the owner is liable to pay the tax.

### 8.2 LEGISLATION

#### 8.2.1

The Local Government Finance Act 1992 (LGFA 1992) – Sections 6 to 9

The Local Government Act 2003 (LGA 2003) – Sections 74 to 76

The Local Government Finance Act 2012 (LGFA 2012) – Section 13

The Rent Act 1977

The Rent (Agriculture) Act 1976

The Housing Act 1985 – Part 4

The Caravan Sites and Control of Development Act 1960

The Registered Homes Act 1984

The Council Tax (Liability for Owners) Regulations SI 1992/551, as amended by SI 1993/151, SI 1995/620, SI 1997/74, SI 2000/537 (England), SI 2003/3125 (England), SI 2012/1915 and SI 2015/643

The Council Tax (Discount Disregards) Order 1992 SI 1992/548, as amended by SI 1994/543, SI 1995/619, SI 1996/636, SI 1996/3143, SI 1997/656, SI 1998/291 and SI 2003/3125 (England)

Civil Partnership Act 2004 – s133 and paragraph 140, Schedule 27

Council Tax (Civil Partners) (England) Regulations 2005

#### 8.2.2

Persons liable to pay council tax

**Section 6 of the LGFA 1992** provides that liability to pay council tax on a chargeable dwelling on any day falls to the person first named in the following list (the hierarchy of liability):

- a resident of the dwelling with a freehold interest;
- a resident of the dwelling with a leasehold interest not inferior to any other held by any other resident;
- a statutory, secure or introductory tenant who is a resident;
- a resident with a contractual licence;
- a resident;
- the owner of the dwelling.

A “resident” is an individual who has attained the age of eighteen years and has his sole or main residence in the dwelling. There is no definition of “sole or main

residence” in statute law but summaries of case law can be found in section 8.3.1 of this manual.

The **LGFA 2012** amended the hierarchy of liability in England to allow a future Statutory Instrument to be made which would ultimately make mortgagees in possession liable for dwellings with no residents (i.e. financial institutions would be responsible for council tax in respect of repossessed properties). However, no Statutory Instrument has been made, so the amendment is currently not in force (see **section 13(1) LGFA 2012**).

### 8.2.3

#### Joint and several liability

If two or more persons are at the same status in the hierarchy of liability, then they are jointly and severally liable to the tax except if they are students or severely mentally impaired. Students and the severely mentally impaired who hold the same interest in a dwelling as another person became exempt from joint and several liability with effect from 1 April 2004 (**section 74, LGA 2003**).

### 8.2.4

#### Statutory definitions

The following terms are defined in the legislation:

- “Statutory tenant” is defined as a tenancy under the Rent Act 1977 or the Rent (Agriculture) Act 1976.
- “Secure tenant” is defined as a tenancy under Part 4 of the Housing Act 1985.
- “Introductory tenant” means a tenant under an introductory tenancy within the meaning of Chapter I of Part V of the Housing Act 1996.
- “Owner” is the person holding a “material interest” in the whole or any part of the dwelling, and at least part of the dwelling or, as the case may be, of the part concerned is not subject to a material interest inferior to his interest.
- “Material interest” means a freehold interest or a leasehold interest which was granted for a term of six months or more.

### 8.2.5

#### Liability in respect of caravans and boats

Caravans and boats are generally held to be chattels and are therefore not liable to council tax. However, liability may arise in respect of the land on which a caravan stands or the mooring occupied by a boat. The hierarchy of liability under **section 6 of the LGFA 1992** does not apply to dwellings consisting of a pitch occupied by a caravan or a mooring occupied by a boat. Under the provisions of **section 7** of the LGFA 1992 where the owner is not resident in the caravan or boat but some other person is, that other person is liable to pay the council tax. In other cases the owner is liable. Joint and several liability also applies in the cases of caravans and boats, subject to the exclusion for students and severely mentally impaired people.

“Caravan” is defined in accordance with Part 1 of the Caravan Sites and Control of Development Act 1960.

“Owner” of a caravan or boat means:

- where there is a hire purchase agreement, the person in possession under the agreement; and,
- where there is a bill of sale or a mortgage, the person entitled to the property in the caravan or boat apart from the bill or mortgage.

### 8.2.6

#### Liability in prescribed classes

Under **section 8(1) of the LGFA 1992**, the owner of a dwelling of a particular class is liable to pay the tax instead of the person who would otherwise be liable in accordance with the hierarchy of liability. Any joint owners are jointly and severally liable under this provision but again subject to the exception for persons who are students or severally mentally impaired.

### 8.2.7

#### Liability for owners

The circumstances when an owner is liable are prescribed in **The Council Tax (Liability for Owners) Regulations 1992 SI 1992/551** (as amended by **SI 1993/151**, **SI 1995/620**, **SI 1997/74**, **SI 2000/537**, **SI 2003/3125**, **SI 2012/1915** and **SI 2015/643**). The classes of dwelling are as follows:

### 8.2.8

#### Class A – Care homes, independent hospitals and hostels

An owner is liable in respect of:

- (a) a care home within the meaning of the Care Standards Act 2000 where persons are registered under Part 1 of the Health and Social Care Act 2008; or
- (b) a building or part of a building in which residential accommodation is provided under section 21 of the National Assistance Act 1948 or accommodation provided under sections 18 or 19 of the Care Act 2014; or
- (c) a hostel within the meaning given by **paragraph 7 of Schedule 1 to the LGFA 1992**.

“Hostel” within the above meaning is defined in **The Council Tax (Discount Disregards) Order 1992 SI 1992/548 (as substituted by SI 2003/3121)** as

- (a) premises approved under section 9(1) of the Criminal Justice and Court Services Act 2000 or
- (b) a building or part of a building –
  - which is solely or mainly used for the provision of residential accommodation in other than separate and self-contained sets of premises, together with personal care, for persons who require such personal care by reason of old age, disablement, past or present alcohol or drug dependence or past or present mental disorder, and
  - which is not a care home or independent hospital.

The residents of properties falling within Class A of the Liability for Owners Regulations are disregarded for council tax discount purposes under **paragraph 7 of Schedule 1 to the LGFA 1992**.

#### **8.2.9**

##### **Class B - Religious communities**

A religious community is one whose principal occupation consists of prayer, contemplation, education, the relief of suffering, or any combination of these.

#### **8.2.10**

##### **Class C - Houses in multiple occupation (HMO)**

A HMO is any dwelling which:

- was originally constructed or subsequently adapted for occupation by persons who do not constitute a single household; or,
- is inhabited by a person who, or two or more persons each of whom is either:
  - the tenant of, or has a licence to occupy, part only of the dwelling; or
  - has a licence to occupy, but is not liable (whether alone or jointly with other persons) to pay rent or a licence fee in respect of the dwelling as a whole.

In relation to a dwelling within Class C, “owner” means:

- a person who has a relevant material interest which is not subject to a relevant material interest inferior to it; or, if there is no such person;
- the person who has a freehold interest in the whole or any part of the dwelling.

“Relevant material interest” means, a freehold or leasehold interest in the whole of the dwelling.

#### **8.2.11**

##### **Class D - Residential staff**

A dwelling:

- in which at least one of the residents is employed in domestic service and resides in the dwelling wholly or mainly for the purposes of his employment;
- in which any other resident is either so employed or is a member of the family of a resident so employed;
- which is from time to time occupied by the employer of that person.

#### **8.2.12**

##### **Class E - Ministers of religion**

A dwelling inhabited by a minister of any religious denomination, is expressed as a class of property in respect of which liability falls upon the owner, so long as the dwelling is used as a minister’s residence and as a place from which the minister performs the duties of his office.

Where a minister of the Church of England is the owner of the dwelling and is in receipt of a stipend, the owner, for the purposes of section 8(3) of the 1992 Act, is taken to be the Diocesan Board of Finance of the diocese in which the dwelling is situated.

### **8.2.13**

Class F – Asylum seekers

Regulations came into force on 3 April 2000. Council tax liability for any accommodation provided under **Section 95 of the Immigration and Asylum Act 1999** falls on the owner of the accommodation, not the resident asylum seeker.

### **8.2.14**

Discretionary powers

There is power under section 8(2) of the LGFA 1992 for the Secretary of State to prescribe a class of chargeable dwelling where the owner is liable provided the Billing Authority so resolves. However, this power has not yet been exercised and no discretion lies with the Billing Authority.

### **8.2.15**

Liability of spouses and civil partners

Under **section 9 of the LGFA 1992, as amended by the Civil Partnership Act 2004**, spouses and civil partners of liable persons are jointly and severally liable for the tax if they are resident and are either married to (or are civil partners of) one another, or they are living together as if they were married or civil partners.

Students and persons who are severely mentally impaired, who would otherwise be liable for council tax through their marriage or civil partnership, are excluded from joint and several liability by **section 9(2)**. However, see the case law in section 8.3.8 of this manual.

## **8.3 CASE LAW**

### **8.3.1**

Sole or main residence

#### **8.3.1a FROST (INSPECTOR OF TAXES) v FELTHAM (1981) HC**

This was a mortgage tax relief case in which Mr and Mrs Feltham, who were tenants of a public house in Essex, visited their house in Wales for short periods each month. It was held that Mr and Mrs Feltham had no security of tenure at the public house and that their main residence was the house in Wales of which they owned the freehold.

#### **8.3.1b CITY OF BRADFORD METROPOLITAN BOROUGH COUNCIL v NEIL ANDERTON HC (RA 1991 45)**

A merchant seaman's sole or main residence was held to be his house in Bradford on the basis that: it was where his home was; it was his settled or usual abode which he left only when the exigencies of his occupation compelled him to do so for absences of long or short duration; it was where his wife and family lived; and, he had no security of



tenure on his ship. A merchant ship plying the high seas cannot in law constitute a person's residence.

8.3.1c WARD v KINGSTON-UPON-HULL CITY COUNCIL HC (RA 1993 71)

Mr Ward spent only six to nine weeks in the United Kingdom and his wife was considering joining him in Saudi Arabia. The High Court held that Mr Ward had greater security of tenure at his dwelling in the United Kingdom, as opposed to that at his employment-related accommodation in Saudi Arabia, and that on this basis Mr Ward and his wife had their sole or main residence in the United Kingdom.

8.3.1d CODNER v WILTSHIRE VALUATION AND COMMUNITY CHARGE TRIBUNAL HC (RVR 1994 169)

The High Court confirmed the principle that time was not the only factor to be considered in determining sole or main residence.

8.3.1e COX v LONDON SOUTH WEST VALUATION TRIBUNAL HC (RVR 1994 171)

The taxpayer spent time at two dwellings. The High Court concluded that the sole or main residence was the home where the wife and family resided.

8.3.1f MULLANEY v WATFORD BOROUGH COUNCIL AND HERTFORDSHIRE VALUATION TRIBUNAL and CLAYTON v SAME HC (RA 1997 p 225)

Established that evidence gathered through housing benefit fraud investigation was admissible in Valuation Tribunal proceedings.

8.3.1g DONCASTER BOROUGH COUNCIL v STARK HC (RVR 1998 80)

A serviceman was held to have his sole or main residence at his matrimonial home, together with his partner, notwithstanding the payment of Ministry of Defence deductions for council tax in respect of forces' accommodation at which he was required to be present from time to time and as part of his terms of employment.

8.3.1h R (ON THE APPLICATION OF WRIGHT) v LIVERPOOL CITY COUNCIL HC (RA 2002 73)

The High Court dismissed an appeal against a Valuation Tribunal's decision that Mr Wright was resident at a property he owned in Liverpool. The property was let to tenants and Mr Wright's employment as a joiner and as a comedian took him all over the country, leading him to claim that he was resident nowhere. The High Court noted that the Tribunal had heard from the appellant himself and had seen documentary evidence supporting the billing authority's contention that Mr Wright was resident at the property (along with the tenants). The Court held that there was sufficient evidence before the Tribunal to enable it to come to the decision that it did.

8.3.1i R (ON THE APPLICATION OF NAVABI) v CHESTER LE STREET DISTRICT COUNCIL HC (RVR 2002 10)

The High Court found that a Valuation Tribunal had not erred in law in finding that Mr Navabi was liable for council tax in respect of a flat in which he held a long leasehold interest. The flat remained his sole or main residence during his five and a half months' absence in the USA because it was available for him on his return, even if it meant initially that before his residence would be comfortable he would have to put back the furniture that he had taken out.

It should be noted that the High Court decision in *Navabi* pre-dates a number of Court of Appeal judgments which have subsequently provided greater clarity in this area of law.

8.3.1j *R (ON THE APPLICATION OF WILLIAMS) v HORSHAM DISTRICT COUNCIL* HC (RVR 2003 298) CA (RA 2004 49)

Mr Williams, a schoolmaster, resided in college accommodation with his wife. He also owned another property nearby, Pump Cottage, but neither he nor his wife actually stayed there during the four and a half year period that was in dispute. The billing authority deemed that the property he owned was his main residence because he had security of tenure and there was an intention to reside there at some future date. The Valuation Tribunal decided in favour of the billing authority.

Mr Williams successfully appealed to the High Court, which held that the Tribunal had erred by placing too much emphasis on the fact that Mr Williams had security of tenure at Pump Cottage and that he intended to reside there at some future date, and had given insufficient regard to other factors.

The billing authority then appealed to the Court of Appeal, which upheld the High Court's decision. The Court of Appeal held that a reasonable onlooker when looking at the facts would view the college accommodation as Mr Williams's main residence. One important factor was that neither Mr Williams nor his wife had spent any time at Pump Cottage, despite its proximity to the college. In addition, when Mr Williams's contract of employment ceased with the college, both he and his wife continued to reside in the college accommodation for almost a year, at their own expense.

8.3.1k *SUMEGHOVA v McMAHON* (2002) CA (RVR 2003 8)

This judgment does not concern council tax; it was in respect of a landlord's appeal under the Protection from Eviction Act. The Court of Appeal held that a place where a person slept was of the uppermost importance in determining whether it was his main residence. In some cases, the place where a person slept may not prove decisive but nevertheless it was a factor which was likely to influence a court very considerably.

8.3.1l *BENNETT v COPELAND BOROUGH COUNCIL* CA (RA 2004 p 171)

The High Court had upheld the Valuation Tribunal's decision that the appellant was resident in a property for council tax purposes even though he had never lived there. Other factors confirmed that it was his sole or main residence.

The appellant successfully appealed to the Court of Appeal where it was held that a person could not be deemed to be a resident in a property, if he had never lived there. The Court of Appeal's judgment in Bennett's case reinforced its earlier judgment, in respect of *Williams v Horsham District Council*.

8.3.1m *PARRY v DERBYSHIRE DALES DISTRICT COUNCIL* HC 2006 (RA 2006 252)

A man who lived, worked and paid income tax in Spain for two years did not have his sole or main residence at the cottage he owned in England when his tenant vacated it. It became his sole or main residence only when he returned to live in it. Following the

judgment in respect of *Williams v Horsham DC*, the High Court ruled that he could not have had his sole or his main residence there while he was resident in Spain.

8.3.1n *VERMA v LONDON BOROUGH OF EALING* [VTE, 5270M103133/084C, 24 February 2014]

The billing authority had relied on credit check reports to justify its decision. However, the VTE Vice President held that although they were evidence of financial association with a property they were not evidence of residence. At paragraph 13, the Vice President stated: "Overall, I have treated such records with caution. They can as easily show the unauthorised activities of persons taking advantage of a connection with an address as they can suggest actual residence there."

### 8.3.2

Unoccupied property discount

*R (ON THE APPLICATION OF DANIELS) v LONDON BOROUGH OF BARNET* HC 2007 (RVR 300)

The High Court upheld the VT decision that the billing authority (BA) was entitled to rescind the unoccupied property discount that it had awarded since October 2003, based on the information provided at that time by Mr Daniels. Following a change in the legislation, the BA had resolved to reduce the level of discount on second homes with effect from 1 April 2006 and gave notice to Mr Daniels of the impending change in his council tax liability. In response, Mr Daniels had informed the BA that the appeal property was his 'main home' and as such he should be entitled to a 25% discount as the sole resident. The BA then rescinded the previous discount of 50% and reinstated the 25% discount throughout. The VT had determined that:

- Mr Daniels had been the sole resident of the appeal property.
- The appeal property had never been a second home, so Mr Daniels should have never received a reduction of 50%.
- The BA had acted correctly based on the information.

The High Court confirmed that in the case before it, the BA did have the power to correct the rate of discount that it had previously allowed.

### 8.3.3

No error of law in valuation tribunal's decision based on finding of facts

8.3.3a *MAYER v EPSOM & EWELL BOROUGH COUNCIL* HC 2008 (RVR 2009 90)

The VT had upheld the billing authority's decision to hold Mr Mayer liable for the council tax on the appeal property as the only resident. Whilst his mother owned the appeal property, it was held that her main residence was no longer there, given that she had lived in two residential care homes since approximately June 2004. Mr Mayer contended that his mother's place of residence was the appeal property. His alternative argument was that one of the care homes had become her place of residence in January 2005 or January 2006.

The High Court judgment said that unless the conclusion made by the VT was totally irrational, and there was no evidence to support that it was, or it took account of an irrelevant consideration, the parties and the High Court were bound by a VT's findings of fact. The issue the VT had been asked to determine related to the liability to pay

council tax on the appeal property from 1 April 2006, which post-dated the alternative dates Mr Mayer had put forward as to when his mother may have been considered to have resided in a care home.

#### 8.3.3b R (ON THE APPLICATION OF HAKEEM) v VTS AND ENFIELD LONDON BOROUGH COUNCIL HC 2010 (RVR 2010 164)

The High Court found that the panel made no error in law when deciding the appellant owner was:

- not liable to pay the council tax from 1 August, 2002 until 30 August, 2003 because the dwelling was occupied by a tenant; and
- liable to pay the tax from 31 August, 2003 to 17 January, 2008 when there was no evidence the property was occupied.

In his reasoning, Cox J found that the Tribunal panel had not ignored or misdirected itself when considering the tenancy's clause for automatic renewal. Further, there was no error of law in the panel's treatment of the tenancy agreement or residency issues. The questions posed by the Tribunal in its approach were the essential questions for determining the case.

Cox J also acknowledged the correctness of the Tribunal panel in identifying the limitation of its jurisdiction when the owner claimed the billing authority had incorrectly served its notices in breach of **regulations 18-20 of the Council Tax (Administration and Enforcement) Regulations 1992**. Applying the rules outlined in *Hardy v Sefton MBC* [2007] (see section 8.3.10 of this manual), the court found there was no error in law and that the magistrates' court held jurisdiction in such matters.

#### 8.3.4

Caravans and boats

##### ATKINSON (VO) v FOSTER AND OTHERS LT (RA 1996 246)

The Caravan and Boat Act 1996 was passed as a consequence of this Lands Tribunal decision, which would have had the effect of making all caravans (not just those which were someone's sole or main residence) domestic properties and therefore liable to council tax.

#### 8.3.5

Houses in multiple occupation – constructed or adapted

##### 8.3.5a HAYES v HUMBERSIDE VALUATION TRIBUNAL AND KINGSTON-UPON-HULL CITY COUNCIL CA (RA 1998 37)

The High Court found that the phrase "constructed or adapted" did not require that a determination as to the intended use of the premises was required. Further, the presence of internal locks on doors in the premises was an adaptation making the dwelling suitable for occupation by more than one household. The taxpayer appealed to the Court of Appeal; his appeal was dismissed.

##### 8.3.5b PEARSON v LONDON BOROUGH OF HARINGEY HC (RVR 1998 252)

The High Court disagreed with the decision of a Valuation Tribunal that the dwelling in question was correctly designated a HMO. Justice Collins stated "the fact that

rooms have keys seems to me to be nothing to the point. Many houses, perhaps most, have bedrooms which can be locked.”

However, there are two important matters to note with this decision:

1. The billing authority sent no submission to the High Court and did not attend the hearing.
2. The judge failed to make any reference to the Court of Appeal’s judgment in *Hayes v Humberside*.

### **8.3.6**

Houses in multiple occupation – tenancies and rent liabilities

#### **8.3.6a UHU PROPERTY TRUST v LINCOLN CITY COUNCIL HC (RA 2000 419)**

The High Court found that houses let by a trust to homeless, usually unemployed, people fell within Class C. Although under the terms of the tenancy agreements each tenant was jointly liable for the whole of the rent, in practice rents were paid in respect of particular rooms as, when a vacancy occurred, the remaining tenants had not been asked to pay increased amounts to make up the shortfall. The High Court found this to be an exceptional case and held that the valuation tribunal was not bound simply to look only at the tenancy agreements and that it was entitled to conclude on the factual evidence before it that occupation of the premises fell within class C (b) (ii).

#### **8.3.6b NORRIS AND ANOTHER V BIRMINGHAM CITY COUNCIL CA [2000] RVR 89**

The appellant owned a house which he let on separate agreements to two friends who occupied the property at the same time. The agreements provided exclusive occupation of one bedroom each with shared use of the rest of the house including the bedroom to which the other occupier, it was argued, had exclusive use. The tribunal found that as the agreement did not in fact provide exclusive occupation of any part certain within the house it was not a tenancy, instead being a license. As each of the agreements referred to a set amount of the rent each occupier had to pay these licensees meant neither of the occupiers was liable for rent in respect of the whole property. The High Court confirmed the Tribunal’s decision that it was HMO.

#### **8.3.6c WATTS v PRESTON CITY COUNCIL 2009 HC (RA 2009 334)**

Commenting on the tenancy agreements, Mr Justice Langstaff stated at paragraph 12: “In my view, where the parties set out liability for rental payment in a written agreement which is not a sham, it would be an exceptional case that those liabilities should not be the liabilities recognised by a Tribunal. That there may be such exceptional circumstances is demonstrated by the facts of the *UHU* case. The *UHU* case, however, was, as Sullivan J accepted, truly an exceptional one.”

#### **8.3.6d GOREMSANDU v HARROW LONDON BOROUGH COUNCIL [2010] RA 469**

The High Court decided that the Valuation Tribunal had erred by applying the wrong test in concluding that individual rent charges gave rise to “multiple occupation”. The statutory test was whether the rent charges gave rise to a licence whereby the tenants occupied or paid for part only of the dwelling. The Administrative Court found that the individual rent charges still allowed each tenant to occupy the whole property.

Although the tenants had agreed to allow the owner to store her furniture in the locked conservatory, they remained tenants of the conservatory; their rent had not been reduced and they could have asked for keys to gain access to this area if they wished.

#### 8.3.6e NAZ v REDBRIDGE LONDON BOROUGH COUNCIL [2013] EWHC (Admin) 1268

The appeal was against a Valuation Tribunal for England (VTE) decision that the appellant, as the owner, was the liable person for a house in multiple occupation. On appeal to the High Court, the appellant contended that the VTE should have adjourned the hearing to allow one of the tenants, who was ill, to attend and that it failed to consider that witness's written evidence. He also maintained that the tribunal failed to give due weight to tenancy agreements he presented.

The High Court held that there was a clear error of law on the part of the Tribunal on this latter ground, which related to the imposition of a tax. For that reason, the decision had to be quashed and the matter remitted back to the Tribunal. In appeals of this nature, it was necessary for the Tribunal to properly investigate the terms of the tenancy agreements entered into by the parties to see whether or not each occupier was liable to pay a share of the rent for the whole property. The Tribunal's decision and its reasoning was flawed because it relied on a statement from a housing benefit claimant unbeknown to the appellant, the billing authority's inspector's report, a tenant's statement and the results of the billing authority's Experian search. The High Court's earlier judgment in *Preston v Watts* outlined the standard of reasoning which is to be expected when a tribunal relies on factual circumstances to contradict the terms of tenancies entered into by the parties.

However, the High Court did not agree with the first two grounds for appeal, noting that the appellant had not drawn the tribunal's attention to the inability of the witness to give evidence because of her illness and there was nothing in the decision that showed the tribunal had failed to take her written evidence into account, although there was no specific reference to that evidence.

#### 8.3.6f SOOR AND BHOGAL v LONDON BOROUGH OF REDBRIDGE [2013] EWHC 1239 (Admin)

The High Court noted that the VTE panel had considered the tenancy agreements as a starting point and found no error in law when it decided it should consider the genuineness of those agreements. The Court was satisfied that the VTE panel was entitled to conclude that it was not satisfied that the agreements were genuine in the face of the evidence. This included statements from tenants and three different versions of a tenancy agreement for the same period of time, which the High Court found supported the VTE decision that the dwelling was a HMO.

#### 8.3.6g OKON v LONDON BOROUGH OF LEWISHAM [2017] 1933 EWHC (Admin)

Another case where the High Court found no error in the VTE's decision that properties were HMOs. The appellant in this case had not responded to the billing authority's requests for information and had chosen not to provide oral evidence in the VT proceedings.

### **8.3.7**

House in multiple occupation – owner

JACKSON v CAMBRIDGE CITY COUNCIL 2008 HC (RA 2009 21)

The High Court upheld a VT's decision to confirm that Mr Jackson had been correctly held liable to pay council tax as the 'owner' of a HMO because:

- A periodic tenancy had arisen by the fact that Mr Jackson had continued to pay the rent after the lease had expired and the landlord had continued to accept these payments.
- Mr Jackson had provided conflicting information about the terms under which he had sublet rooms in the appeal property. There was evidence showing that the subtenants were paying their rents by BACs to the landlord's agent under Mr Jackson's name and at least one of the tenants believed that Mr Jackson was the owner of the appeal property's freehold interest.
- Mr Jackson had made applications for taxi licences from this address long after his 6 month tenancy had expired and had signed legal statements of truth giving the appeal property as his home address.

### **8.3.8**

Joint and several liability

8.3.8a GARDINER v SWINDON BOROUGH COUNCIL HC (RVR 2003 242)

The High Court upheld the Valuation Tribunal's determination that two people were living together as husband and wife. The Tribunal based its decision on the facts as presented before it and the High Court found no error of law. As a result, the appellant's contention that the lady was his housekeeper was rejected.

8.3.8b E v SANDWELL METROPOLITAN BOROUGH COUNCIL [VTE, 4620M103793/176C, 19 August 2013]

A Vice President of the Valuation Tribunal held that the appellant, who was a student, was jointly and severally liable with his wife for the payment of council tax. The appellant was the freehold owner of the property but his wife was not. As they did not share the same legal interest, the exception for students in section 6(4) of the LGFA 1992 did not apply. They were therefore jointly and severally liable under section 9(1) of the LGFA 1992 by virtue of their marriage and shared residency of the dwelling.

### **8.3.9**

Refusal to pay

R (ON THE APPLICATION OF TURTON) v SHEFFIELD MAGISTRATES' COURT and SHEFFIELD CITY COUNCIL CA (RVR 2002 p 327)

The Court of Appeal held that whatever grievances a council taxpayer may have against his billing authority, he was not entitled to withhold payment of council tax.

### 8.3.10

Jurisdiction of the tribunal – service of demand notices

HARDY V SEFTON METROPOLITAN BOROUGH COUNCIL (RA 2007 140)

The High Court held that a valuation tribunal had no jurisdiction to investigate whether or not a billing authority had failed to serve a demand notice as soon as practicable and therefore in breach of **Regulations 18 and 19 of the Council Tax (Administration and Enforcement) Regulations 1992**. Instead, jurisdiction lay with the magistrates' court.

### 8.3.11

"Material Interest" and disputes over whether the landlord or tenant is the owner for council tax under section 6 of the LGFA 1992

There are a number of important judgments concerning the meaning of 'material interest' under section 6 of the LGFA 1992 for the purpose of determining the liable person in respect of unoccupied dwellings.

8.3.11a MACATTRAM v CAMDEN LBC [2012] EWHC 1033 (Admin)

The High Court had considered the operation of section 6(5) in a case where the Council had rented a house from Mrs Macattram so that it could provide accommodation for homeless families. The original lease was granted for three years and at the end of that term the Council continued to pay rent on a monthly basis. The Court held that the old fixed term tenancy had been replaced by a new periodic monthly tenancy on the same terms and conditions. It held that a monthly periodic tenancy was not granted for a term of six months or more and was not a 'material interest' within the meaning of section 6(6). Therefore, Mrs Macattram was liable to pay the council tax despite the fact that she had a tenant paying rent on a monthly basis.

8.3.11b TRUSTEES OF THE BERWICK SETTLEMENT v SHROPSHIRE COUNCIL [VTE 3245M131738/176C, 17 June 2014]

It was established by the Valuation Tribunal that in applying the judgment of *Macattram v Camden* to other cases, close attention should be given to the terms of the tenancy before deciding whether a new tenancy arose on the expiry of the fixed term or whether the existing tenancy continued.

In this case, the terms granted included a fixed term of 12 months, but in the tenancy agreement there was express provision that thereafter it would *continue* as a contractual periodic tenancy. The panel held that the tenant was liable because no new tenancy arose after the end of the fixed term.

8.3.11c LEEDS CITY COUNCIL v BROADLEY [2016] EWCA Civ 1213

The High Court had dismissed an appeal against a VTE decision that the tenant, rather than the landlord, was liable for council tax as the tenancy agreement continued beyond six months as a contractual periodic monthly tenancy. The tenant therefore remained liable as the owner, with a material interest inferior to the landlord's, even though they had vacated the property as the tenancy was still ongoing.



The Council's argument was that it was not possible to have a 'continuation tenancy' – a single property interest comprising both a fixed and periodic term – and that, if that was the intention, it could not be a tenancy at all but must be a contractual licence. In that case the tenant would be liable only during his residence, under s6(2)(d).

Reviewing the provisions of the legislation and the relevance of the case law, the Court of Appeal concluded that the arrangement at issue pointed to a single grant formed of a fixed term followed by a periodic term, and that these leases were a "commercial reality" and were "well known to the common law", without their validity having been raised. The appeal was therefore dismissed.

### **8.3.12**

Lack of proof - disputes over the liable person under section 6 – landlords and tenants

#### **8.3.12a WILSON v MAIDSTONE BOROUGH COUNCIL [2018] EWHC 663**

The High Court decided that the appellant landlord had identified no error in the reasoning of the VT. The VT had decided that the appellant was liable as owner because although she had provided passports and driving licences of various people, she had not provided any tenancy agreements, proof of rent payments, copies of rent books or details of the renter's deposit scheme. There was thus no proof that those people whose passports had been produced had actually resided in the property.

#### **8.3.12b GILL v FENLAND DISTRICT COUNCIL [2018] EWHC 3105 (Admin)**

This case concerned an owner trying to argue that there was a tenancy on an unoccupied fire damaged dwelling for one year and that the tenant should be liable for council tax. The VTE was not satisfied on the evidence presented that there was a valid tenancy and the High Court found no error of law in its decision. The judgment included the following;

"3 In accordance with ordinary principles where there is a challenge on a question of law, it is for the appellant to show that the tribunal made an error of law on the material before it. This court is not looking at the evidence to make a fresh decision, and no fresh material may be placed before the court in an attempt to undermine findings of fact by the tribunal.

4 It is not strictly right to assert, as it is in the respondent's skeleton argument, that there can be no appeal against findings of fact. But on such a challenge the appellant must show that no reasonable tribunal could have come to that conclusion on the evidence before it. Only if this hurdle is surmounted can the decision be challenged as an error of law."

## **8.4 COMMENTARY**

### **8.4.1**

Hierarchy of liability

**Section 2 of the LGFA 1992** provides that liability shall be calculated daily and that the situation at the end of the day is assumed to have subsisted for the whole of the day. The hierarchy of liability gives a list of people with the highest on the list being liable to the tax. When residence is disputed, the principles established in case law

should be used to determine liability.

#### **8.4.2**

##### **Caravans and boats**

The hierarchy of liability referred to above does not apply to caravan pitches occupied by caravans or moorings occupied by boats. When a pitch or mooring is a dwelling and is occupied by a person who is not the owner then that resident is liable, in any other case the owner is liable.

#### **8.4.3**

A dwelling consisting of a pitch or mooring which is not occupied by a caravan or boat is an exempt dwelling (Class R).

#### **8.4.4**

##### **Ministers of religion**

The Department has given guidance to billing authorities on the kind of duties which it believes might be carried out by a minister of religion. Duties should include some of the following:

- conducting religious worship;
- providing pastoral care, especially to those who are sick, distressed or needy;
- conducting weddings, funerals or baptisms (or their equivalent);
- providing leadership to local members of his denomination;
- overseeing the ministry of others who perform these functions; and,
- providing them with support and pastoral care.

#### **8.4.5**

##### **Houses in multiple occupation**

Class C was intended to cover various types of multiply-occupied dwellings, and that the person liable will normally be the person with the most inferior lease covering the whole dwelling, or if there is no lease, the freeholder.

The definition of owner for Class C dwellings differs from the usual definition of owner under the hierarchy of liability in **section 6 of the LGFA 1992**; for Class C dwellings there is no requirement as there is in section 6 for the lease to have been granted for six months or more.

The definition of a house in multiple occupation (HMO) under Class C differs for that used for other purposes, including those relating to housing law, where the same acronym is used.

## **9. EXEMPT DWELLINGS**

### **9.1 INTRODUCTION**

#### **9.1.1**

Dwellings which are exempt from council tax are not chargeable dwellings. A dwelling is an exempt dwelling if it falls within a class prescribed by the Secretary of State. It may fall within one of the classes because:

- it has a particular physical characteristic, for example it is unoccupied;
- it may be unoccupied or occupied for prescribed purposes, for example it is owned or managed by a charity;
- it may be occupied or owned by someone of a prescribed description, for example a member of a visiting armed force.

#### **9.1.2**

In England, there are currently 21 prescribed classes; most relate to empty dwellings.

#### **9.1.3**

Classes A to Q were effective from 1 April 1993, whereas classes R to W became effective in later years.

#### **9.1.4**

From 1 April 2013, Classes A and C were revoked in England. Instead, English billing authorities have the power to determine local discounts from zero to 100% in respect of those dwellings which would have qualified for exemption under these two classes (see section 10 of this manual). Billing authorities also have the power to apply a long-term empty council tax premium (see section 10.2.5 of this manual).

#### **9.1.5**

SI 2022/439 amended the legislation with effect from 12 April 2022 to include the definition of “relevant Ukrainian person”. Section 3A of article 2 provides that for the purposes of Classes B, D, E, F, H, I, J, K, L, Q and T of article 3, in considering whether a dwelling is unoccupied, any occupation by a relevant Ukrainian person is to be disregarded. There were also changes made to the criteria of classes N, S and U as provided under the relevant sections below.

“Relevant Ukrainian Person” means a person who holds permission to enter or to stay in the United Kingdom granted under the Homes for Ukraine Sponsorship Scheme route in Appendix Ukraine Scheme of the Immigration Rules.

## **9.2 LEGISLATION**

### **9.2.1**

Local Government Finance Act 1992 (LGFA 1992): Section 4; Schedule 1  
The Council Tax (Exempt Dwellings) Order 1992 SI 1992/558, amended by SI 1992/2941, SI 1993/150, SI 1994/539, SI 1995/619, SI 1997/656, SI 1998/291, SI 1999/536, SI 1999/1522, SI 2000/424 (England), SI 2003/3121, SI 2005/ 2865 (England), SI 2006/2318, SI 2011/2581 and SI 2012/2965 (England).  
The Council Tax (Administration and Enforcement) Regulations 1992 SI 1992/613, Part III, amended by SI 1992/3008 and SI 2012/3086 (England).  
The Housing Act 1996 (Consequential Amendments) Order SI 1997/1997

### 9.2.2

#### Class A (revoked from 1 April 2013)

With effect from 1 April 2013, Class A was revoked by the Council Tax (Exempt Dwellings) (England) (Amendment) Order 2012 (SI 2012/2965). However, billing authorities can determine discounts under the same prescribed criteria (see the Class D discount in section 10.2.4.4 of this manual). Therefore, **the following text is only relevant in respect of exemptions before 1 April 2013.**

Class A was applicable in respect of a vacant dwelling which required or underwent major repair work to render it habitable or which was undergoing structural alteration, or where those works had been substantially completed less than six months previously (definition in **SI 1993/150** substituted by that in **SI 2000/424**). From 1 April 2000, Class A exemption had a maximum duration of one year; any dwelling which had already been exempt for one year or more at 1 April 2000 ceased to be exempt on that date.

### 9.2.3

#### Class B

An unoccupied dwelling owned by a charity, last used in furtherance of the objects of the charity and unoccupied for a period of less than six months (**SI 1992/558** amended by **SI 1994/539**).

### 9.2.4

#### Class C

With effect from 1 April 2013, Class C was revoked by the Council Tax (Exempt Dwellings) (England) (Amendment) Order 2012 (SI 2012/2965). However, billing authorities can determine discounts under the same prescribed criteria (see the Class C discount in section 10.2.4.4 of this manual). Therefore, **the following text is only relevant in respect of exemptions before 1 April 2013.** Class C was applicable in respect of a vacant dwelling which had been so for less than six months (**SI 1992/558** substituted by **SI 1993/150** and **SI 1994/539**). For a newly-completed dwelling, on which a completion notice had been served, the six month exemption period ran from the date it was deemed to have been completed.

### 9.2.5

#### Class D

An unoccupied dwelling, where the former resident - as the freeholder, leaseholder, tenant or licensee and/or as the liable person - is detained in a prison, hospital or other place of detention, as defined in **Schedule 1, paragraph 1 of the LGFA 1992 (SI 1992/558** amended by **SI 1993/150** and **SI 1994/539**).

### 9.2.6

#### Class E

An unoccupied dwelling, where the former resident - as the freeholder, leaseholder, tenant or licensee and/or as the liable person - has become a long-term patient in a hospital or care home as defined in **schedule 1 paragraphs 6, 7 and 8 of the LGFA**

**1992 (SI 1992/558 amended by SI 1994/539, SI 2005/2865 and SI 2011/2581).**

#### **9.2.7**

##### **Class F**

An unoccupied dwelling which has been unoccupied since the death of the person who was formerly liable. Provided the dwelling remains unoccupied, the exemption continues for six months after the grant of probate or letters of administration (**SI 1992/558** substituted by **SI 1993/150**, substituted by **SI 1994/539**).

#### **9.2.8**

##### **Class G**

An unoccupied dwelling—

(a) the occupation of which is restricted by a condition which—

(i) prevents occupancy, and

(ii) is imposed by any planning permission granted or deemed to be granted under Part 3 of the Town and Country Planning Act 1990; or

(b) the occupation of which is otherwise prohibited by law; or

(c) which is kept unoccupied by reason of other action taken under powers conferred by or under any Act of Parliament, with a view to prohibiting its occupation or to acquiring it; (**SI 2006/2318**).

The criteria in Class G was widened in 2006 to allow exemption in a case where a planning permission condition prevents occupancy.

#### **9.2.9**

##### **Class H**

An unoccupied dwelling, waiting to be occupied by a minister of religion (**SI 1992/558**).

#### **9.2.10**

##### **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 (not in a hospital or care home as for Class E), (**SI 1992/558** as amended by **SI 1994/539** and **SI 2003/3121** and **SI 2011/2581**).

#### **9.2.11**

##### **Class J**

An unoccupied dwelling where the former resident (as the freeholder, leaseholder, tenant or licensee and/or as the liable person) is providing personal care elsewhere. This person need not qualify as a careworker under **Schedule 1, paragraph 9** of the LGFA 1992 (**SI 1992/558** amended by **SI 1994/539**).

#### **9.2.12**

##### **Class K**

An unoccupied dwelling left empty by students or those who become students within six weeks of leaving (**SI 1992/558** substituted by **SI 1993/150**).

#### **9.2.13**

##### **Class L**

An unoccupied dwelling where a mortgagee is in possession under the mortgage (**SI 1992/558**).

#### **9.2.14**

##### **Class M**

Halls of residence provided predominantly for the accommodation of students (**SI 1992/558** amended by **SI 1993/150** and **SI 1994/539**).

#### **9.2.15**

##### **Class N**

A dwelling occupied only by students and school or college-leavers (**SI 1992/558** substituted by **SI 1993/150** amended by **SI 1995/619** and **SI 2005/2865**)

The exemption is still allowed if the dwelling is also occupied by a relevant Ukrainian person (**SI 2022/439**) or the student's spouse or civil partner or dependant, provided that person is not a British citizen and he or she is prevented, by the terms of their leave to enter or remain in the United Kingdom, from taking paid employment or from claiming benefits.

#### **9.2.16**

##### **Class O**

UK Armed forces' accommodation owned by the Secretary of State for Defence (**SI 1992/558** amended by **SI 1992/2941**).

#### **9.2.17**

##### **Class P**

Visiting forces' accommodation; occupied by someone with a relevant association with a visiting force, including spouse / dependants but not British citizens (**SI 1992/2941**).

#### **9.2.18**

##### **Class Q**

Where the person who would be liable to council tax in respect of an unoccupied dwelling is a trustee in bankruptcy, the dwelling is exempt. (**SI 1993/150**).

#### **9.2.19**

##### **Class R (effective from 1 April 1994)**

A pitch or mooring not occupied by a caravan or boat (**SI 1994/539**).

### 9.2.20

Class S (effective from 1 April 1995)

A dwelling occupied only by under-18s (**SI 1995/619**). The exemption is still allowed if the dwelling is also occupied by a relevant Ukrainian person (**SI 2022/439**).

### 9.2.21

Class T (effective from 1 April 1995)

An unoccupied dwelling which is an annex to or is in the grounds of another dwelling and which may not be let separately from the other dwelling without a breach of planning control (**SI 1995/619**).

### 9.2.22

Class U (effective from 1 April 1995)

A dwelling occupied only by severely mentally impaired person(s) who would otherwise be liable. **Schedule 1 paragraph 2 of the LGFA 1992** defines this state. **SI 1995/619** was amended by **SI 1999/536** with the effect that if a dwelling is occupied by a mixture of both severely mentally impaired person(s) and student(s) and relevant Ukrainian person (**SI 2022/439**), the Class U exemption is applicable.

### 9.2.23

Class V (effective from 1 April 1997)

The main residence of at least one person on whom privileges and immunities are conferred and who is not a permanent resident of the UK or a British citizen / subject / protected person. Privileges and immunities are conferred by the Diplomatic Privileges Act 1964, Commonwealth Secretariat Act 1966, Consular Relations Act 1968, International Organisations Act 1968, Commonwealth Countries and Republic of Ireland (Immunities and Privileges) Order 1985, and the Hong Kong Economic Trade Act 1996 (**SI 1997/656**).

The exemption does not apply where there is another resident with a superior interest in the dwelling, in terms of the hierarchy of liability.

### 9.2.24

Class W (effective from 1 April 1997)

An annex or self-contained part of a property which is occupied by a dependant relative of the residents of the adjoining dwelling (**SI 1997/656** amended by **SI 1998/291**). The dependant relative must be aged 65 or more, or be severely mentally impaired, or substantially and permanently disabled.

### 9.2.25

Exempt dwellings continue to appear in the valuation list.

### 9.2.26

Duty to take reasonable steps and duty to inform

Billing authorities are under a duty each financial year to take reasonable steps to ascertain whether dwellings are exempt and must notify the person who would

otherwise be liable that a particular dwelling is exempt (except where a dwelling is in Class O – UK armed forces' accommodation). Similarly, there is a duty on those so notified to inform the billing authority if the dwelling should no longer be classed as exempt. (See **regulations 8, 10 and 11 of the Council Tax (Administration and Enforcement) Regulations 1992 (SI 1992/613).**)

## 9.3 CASE LAW

### 9.3.1

#### Granny annexes

Prior to **SI 1997/656**, which clarified the position with regard to what had become known as the “granny annex” issue, there were several appeals heard before the High Court (*Coleman v Shelton and Berkshire VT*; *Benjamin v Eldridge and East Sussex VT*; *Bonds v Gorst*).

### 9.3.2

Class A - Major repair works (abolished with effect from 1 April 2013)

DUFFY v JONES AND CEREDIGION COUNTY COUNCIL HC (Unreported case)  
Decided that “major” qualifies “repair works” and not “structural repair works” (in Class A exemptions).

Class A exemption was revoked on 1 April 2013 and replaced by Class D discount; see further case law at section 10.3.8b of this manual.

### 9.3.3

#### Class B – Unoccupied charity dwellings

A2 DOMINION HOUSING GROUP LTD v LONDON BOROUGH OF HAMMERSMITH & FULHAM; KENSINGTON & CHELSEA; and EALING [2015]  
The High Court held that the VTE President had correctly identified four conditions or requirements for exemption under Class B:

- the dwelling must be owned by the body in question;
- that body must be established for charitable purposes only;
- the dwelling must have been unoccupied for less than six months; and
- the last occupation must have been in furtherance of the objects of the charity.

The VTE President had decided that in respect of (i) and (iii) the appellant must produce satisfactory evidence. However, under (ii) and (iv) he decided that it is for the billing authority to show that the applicant was engaged in a manifestly non charitable activity. The High Court overturned the VTE President's decision and held that he fell into error in holding that there is a presumption that conditions (ii) and (iv) were satisfied, as the VTE President had wrongly reversed the normal burden of proof.



### **9.3.4**

#### **Class C – Vacant dwellings (abolished with effect from 1 April 2013)**

The following two cases concerned only an issue that arose on 1 April 2013 when the exemption class was ended.

#### **9.3.4a JC v SHROPSHIRE COUNCIL [VTE, 3245M126393/176C, 30 April 2014]**

This appeal arose when Class C exemption was abolished on 1 April 2013. From that date, the billing authority allowed a new discount of 25% to vacant dwellings. The VTE President held that a Class C exemption in force prior to 31 March 2013 had to end on 1 April 2013 even if the six-month maximum period had not been reached. The President stated that entitlement to exemptions had to be calculated on a daily basis and as an exemption was not in force after 31 March 2013 it could not be allowed.

#### **9.3.4b RQ v LONDON BOROUGH OF BROMLEY [VTE, 5180M113254/084C, 30 April 2014]**

This was similar to the case above, except that when Class C exemption was abolished the billing authority did not allow any discount from 1 April 2013. The VTE President stated: "... the exemption is not granted for a defined period but for each qualifying day up to a maximum of six months. However, 31 March 2013 was the last qualifying day, since the exemption was then abolished and thereafter there was no statutory exemption for which to qualify."

### **9.3.5**

#### **Class E and 'relevant absentee'**

#### **GREEN v MANCHESTER CITY COUNCIL [VTE, 4215M120173/254C, 1 September 2014]**

The taxpayer had moved into a flat in sheltered accommodation because she could no longer manage the stairs in her house. When the taxpayer eventually went into a care home, it was argued that exemption should be allowed in respect of her house under Class E.

The Vice-President of the Tribunal held that Class E was not applicable because she had not been a 'relevant absentee' for the whole period since the appeal dwelling last ceased to be her sole or main residence. The sheltered accommodation, where she had lived for seven years, was not a care home, independent hospital or hostel within the meaning of paragraph 7 of Schedule 1 of the 1992 Act.

### **9.3.6**

#### **Class F – Unoccupied dwelling following death of the liable person**

#### **9.3.6a HP v LONDON BROUGH OF BRENT [VTE, 5150M159293/084C, 27 April 2016]**

The billing authority had allowed a Class F exemption by mistake, as the property had always been jointly owned by the deceased person and the appellant, who lived elsewhere. The billing authority had discovered the error in 2014 and backdated the council tax liability to 2006.

At the VTE hearing, the Tribunal's Vice-President referred the billing authority to regulations 8 and 9 of the Council Tax (Administration and Enforcement) Regulations

1992, which places a duty on the billing authority to take reasonable steps to ascertain exemption entitlement. The billing authority accepted the appellant could not be blamed for the continued award of exemption as the annual review form did not correctly set out the legislation for Class F, nor did it ask the correct questions. The review form simply asked if the dwelling continued to be empty following the death of the “occupant”. As it did, the appellant had answered each year in the affirmative.

The Tribunal’s Vice-President was not satisfied that the billing authority had taken reasonable steps and re-instated the exemption up to 31 March 2014.

9.3.6b ZT v LONDON BOROUGH OF LEWISHAM [VTE, 5690M202173/084C, 1 February 2018]

The appellant’s late father was the sole owner of the property, and since he had not made a will, he had died intestate. Letters of administration had not been sought and in reality, the property had been left in limbo for a lengthy period of time.

The billing authority would not allow exemption because the appellant was potentially the sole beneficiary to the dwelling (as his father had no other children). In such cases, inheritance law confirmed that the appellant would be likely to inherit the estate including the house once his father passed away.

The issue for the VTE President to determine was whether the appellant was a “qualifying person”; this is a person who would be liable to pay the council tax. As there was no resident in the dwelling, under the hierarchy of liability in section 6(2) of the LGFA 1992 the owner would be liable. However, a person could only be an owner if they held a material interest, defined under section 6(6) as being a freehold interest or a leasehold interest which was granted for a term of six months or more.

The President acknowledged that the appellant would have a freehold interest in the dwelling when he inherited it, but he did not have any material interest for the disputed period of time. At best he had a beneficial interest. It did not matter that the appellant had helped his father financially to buy the house, as the only person on the Land Registry entry was his father. Therefore, following the appellant’s father’s death, there was no qualifying person in respect of the dwelling. On that basis the exemption was reinstated.

9.3.6c H v CITY OF BRADFORD METROPOLITAN DISTRICT COUNCIL [VTE, VT00005807, 28 November 2022]

The main difference between this case and *Lewisham* was that in this case there was a will. In *Lewisham* the deceased person died intestate. The appellant in this case was appointed as the executor to administer the estate for which he was due to become the main beneficiary, once the liabilities to the estate were discharged.

However, the billing authority determined that the appellant held an equitable interest in the freehold estate and had exercised a proprietary right in his capacity as beneficiary (namely, he had engaged architects to submit a planning application) which meant he was a qualifying person who was liable for council tax as the owner. Consequently, in its opinion, Class F was not applicable.

The VTE President rejected the billing authority's argument and allowed the Class F exemption because throughout the period in dispute legal title remained with the estate. Further, the likelihood that, in due course, the appellant stood to inherit the legal title was not sufficient to disqualify the dwelling from Class F exemption since such a theoretical approach may not have accorded with what ultimately came to pass when probate was finalised and the deceased's assets were distributed.

### 9.3.7

#### Class G - Occupation prohibited by law

WATSON v RHONNDA CYNON TAFF COUNTY COUNCIL 2001 HC (RVR 2002, p 132)

The council served statutory notice requiring the appellant's property to be put into good repair and made fit for habitation. The appellant failed to comply fully with the notice and kept the property unoccupied. The High Court concluded that the actions of the council were not taken under powers with a view to prohibiting occupation of the property or to acquiring it, and exemption under class G did not apply. The Court held that the notices served by the authority were issued with a view to having the property put in a state of good repair. Gibb J, in dismissing the taxpayer's appeal, said that the fact that the property was unoccupied was not a consequence of action taken by the council with a view to prohibiting occupation, but was a consequence of the owner's failure to comply with the repairs notices and his own decision to keep the house unoccupied.

*Please note that the above case was decided on the pre-2006 legislation.*

MOORE v GREAT YARMOUTH BOROUGH COUNCIL [VTE, VT00003541, 1 February 2021]

This appeal concerned a claim for a Class G exemption from council tax during the first coronavirus lockdown, 26 March 2020 to 3 July 2020. It was heard by a tribunal panel that included the VTE President.

The appeal property was a holiday chalet on a holiday site that was closed throughout the lockdown period in accordance with regulation 5(3) of the Health Protection (Coronavirus Restrictions) (England) Regulations 2020. The park did not qualify for any of the exceptions which would allow it to stay open under regulation 5(4); for example, where someone's accommodation at the site was their main home or where a person was unable to return to their main home.

The appeal property was not occupied for that period of time. The appellant had his main residence elsewhere.

The panel rejected the appellant's first argument, namely that he was not permitted to travel or stay overnight there. This was because Class G exemption referred to the dwelling and not the personal circumstances of the owner. An exemption under Class G would only be applicable if the unoccupied dwelling could not be occupied by any person by law. The appeal property could have possibly been occupied by another person, or even by the appellant during the daytime (after travel restrictions were lifted).

However, the panel decided that the appeal property qualified for Class G exemption because the owner of the holiday park was obliged by the regulations to close the site and it remained closed until the coronavirus restrictions were lifted.

**PRATT v ROCHDALE BOROUGH COUNCIL [VTE, VT00004392, 17 March 2021]**

The VTE President also chaired a panel in respect of this appeal. The appellant argued he could not let his four flats during the first coronavirus lockdown period and contended he should be allowed a class G exemption. The appellant and his wife were vulnerable people shielding from the virus, so they did not visit the flats with either tradesmen (who were engaged to refurbish the dwellings) or potential tenants.

The panel noted that the coronavirus regulations included a long list of businesses subject to restrictions or closure but that they did not include empty domestic hereditaments which could be let. And while there were restrictions on travel, travel was permitted for those people moving home.

While the panel recognised that the coronavirus restrictions had disrupted the appellant's usual way of working, it was stated that the appellant could have instructed a letting agent to act on his behalf. The panel also stated that the dwellings could have lawfully been occupied by the appellant or his family. Further, the refurbishment work could have been undertaken by tradesmen without the appellant being present. Ultimately, the panel found that the appellant's arguments related to his personal circumstances and not any actual prohibition by law.

### **9.3.8**

**Class L - Mortgagee in possession**

**HYETT v WAKEFIELD COUNCIL [2018] EWHC 337**

The appellant contended that the appointment of receivers in 2008 by Paragon, the mortgagee of his 'buy-to-let' property, was a sham and that in reality Paragon was in possession of the property and liable for the council tax. Paragon had first attempted to appoint a subsidiary of Paragon as receiver, but under the Law and Property Act 1925, a company cannot be a receiver. Two individuals were then appointed as receivers. At face value, the documentation was valid and neither the council nor the VTE could have concluded otherwise, nor could the council have acted on any theories it might have had about the situation; only the appellant could do that. The receivers, rather than Paragon, were in possession of the property. Mr Hyett had been made liable from the date a tenant was said to have handed in keys and moved out. There was no evidence of any notice given or the landlord's acceptance of surrender. The Court concluded on the balance of probabilities that the appellant's liability should commence 28 days after the date the tenant left. Mr Hyett argued that, since 2008, he had no access to the property. The Court explained that the receivers in relation to the property were to act as agents for Mr Hyett and he could insist on access. While sympathising with the appellant and recognising that a receivership continuing for nine years was "most unusual", the Court concluded that the VTE's decision, confirming Mr Hyett's liability for the council tax, was correct.

### 9.3.9

#### Class M – Student halls of residence

9.3.9a STOWE SCHOOL LTD v AYLESBURY VALE DISTRICT COUNCIL [VTE, 0405M64150/165C, 24 January 2012]

The VTE panel, which included the VTE President, held that Class M exemption did not embrace school boarding houses. The school pupils were not students within the statutory meaning for council tax purposes. Further, the expression “halls of residence”, although not defined in the council tax legislation, was limited in all dictionaries to universities or similar institutions.

9.3.9b STUDENT UNION LETTINGS LTD V LEICESTER CITY COUNCIL [VTE, 2465M197400/037C, 6 September 2017]

The VTE panel, which included a VTE Vice-President, held that Class M exemption was not appropriate in respect of self-contained flats (containing their own bathroom and kitchen) for students situated in a building which included other student flats with shared kitchen facilities. The panel noted that student accommodation had clearly improved since the council tax legislation had been drafted. While the panel accepted that the self-contained flats were occupied by students, Class M could not be allowed because each of those flats could not be considered “a dwelling comprising a hall of residence”. If the dwelling in question had been the whole building (in other words, if the units had been aggregated in the valuation list by the Listing Officer to form a single dwelling), the panel would have taken the opposite view since the site bore the features of a university campus.

### 9.3.10

#### Class N - Students

9.3.10a R (on the application of FELLER) v CAMBRIDGE CITY COUNCIL [2011] EWHC 1252 (Admin)

The High Court allowed Dr Feller’s appeal. Although not required to attend at a particular place, he was still attending a full time course of education for the purpose of the legislation. When he was researching and studying in the library and at home, he was subject to a degree of supervision and in contact with the academic authority. The legislative definition of student was formerly expanded after this judgment (see section 10 of this manual).

This judgment reached a different conclusion to an earlier High Court judgment in *R (on the application of Fayad) v London (SE) VT* [2009] RA 157.

9.3.10b HARROW LBC v AYIKU (2012) EWHC 1200 (Admin)

The issue in dispute was whether or not a dwelling was exempt under Class N. All of the residents were student except for one who was a student’s non-British spouse; she was not entitled to claim benefits but she was entitled to get a job.

The High Court confirmed advice from the Government department which meant that the exemption could apply to foreign student spouses who could seek work in addition to those that were not permitted to do so.

#### 9.3.10c EARL v WINCHESTER CITY COUNCIL [2014] RVR 298

The appellant had argued that he was enrolled on a full time course of education because he enrolled on it in 2010 and was permitted to continue it and retake modules he had failed. The High Court held that he was not a student because his combined hours of attendance and study were below the minimum hours per week. However, a person retaking modules could potentially qualify as a student if they satisfied the requirements of paragraph 4 (1) (b) (ii).

*Note:* There is further case law concerning the meaning of “student” in section 10.3.3 of this manual and commentary in 10.4.3.

#### 9.3.10d JAGOO v BRISTOL CITY COUNCIL [2019] EWCA Civ 19

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 had to study at least 25 hours a week in order to keep up. The university provided her, at its own expense, additional support which was not provided to students without her disability. That support consisted of one hour per week of study skills in addition to the standard hours of study for her programme; and she also received assistance with proof reading, amounting to 30 hours per year. If either or both are counted, she would satisfy the requirement in paragraph (b) (ii) which states:

“which together amount in each such academic or calendar year to an average of at least 21 hours a week”.

The Court of Appeal in overturning the High Court judgment held that this additional time spent on study skills and proof reading should have been taken into account. The Court of Appeal found that, firstly, the certificate issued by the university of this part time course was not a statutory certificate for council tax purposes and secondly, the additional study time the appellant required was formally documented by the university. The appeal was therefore remitted back to the VTE to find facts and re-determine the appeal. In the event, Bristol City Council allowed the Class N exemption, so the appeal did not need to be re-heard.

#### 9.3.10e VILLIGRAN-SOUTO v LONDON BOROUGH OF KINGSTON UPON THAMES [VTE, 5630M237894/281C, 21 March 2019]

The tribunal panel, which included the VTE President, heard this case where the appellant was enrolled on an open university course to become a Bachelor of Law (Honours). Normally, as these are part time courses, which can be completed at one module every year over six years, they would not qualify the person undertaking the course to be treated as a full time student. However, in this case the appellant was enrolled to take two modules a year which increased her required study time from around 16-18 hours a week to between 32 and 36 hours. The panel therefore found that she did qualify to be treated as a full time student.

The panel observed that the only distinction between the appellant and someone studying the same course full-time at a ‘red brick’ university was the method of study, with the appellant undertaking distance learning. If the appellant was not treated the

same as a 'red brick' university student, then it would appear to the panel to undermine Parliament's intention for the legislative change in 2011.

### **9.3.11**

#### **Class Q Trustee in bankruptcy**

**APPELLANT v IPSWICH BOROUGH COUNCIL [VTE, 3515M140454/037C, 8 May 2015]**

The billing authority would not allow a Class Q exemption, arguing that the trustee in bankruptcy was not in possession of the property. After checking with HM Land Registry the billing authority stated that the appellant was still registered as the owner. However, the billing authority accepted that a Bankruptcy Restriction under section 86(4) of the Land Registration Act 2002 had been entered. This protected the interest of the trustee in bankruptcy (the Official Receiver) in the property of the appellant until the trustee was registered as proprietor. The billing authority also argued that the Insolvency Service policy was not to take possession of a bankrupt's property for sale if there was no equity in it.

The appeal was considered by a VTE Vice-President who stated that unlike Class L, which provides exemption where the qualifying person is a mortgagee in possession, Class Q makes no reference to a requirement for a trustee in bankruptcy to be in possession. The Vice-President noted that the bankruptcy order makes the bankrupt person's estate vest in the trustee immediately, without any conveyance, assignment or transfer (section 306 of the Insolvency Act 1986).

For the purposes of section 6 of the LGFA 1992, the owner was the trustee, which meant the trustee was the qualifying person for the purposes of Class Q. Here, the Official Receiver had control of the estate and the appellant was not entitled to income from the house if he had let it. The owner of the freehold interest was the trustee in bankruptcy in which that freehold interest had vested until it was later transferred. Class Q exemption was therefore allowed.

### **9.3.12**

#### **Class U – severely mentally impaired**

See **BROWN v HAMBLETON DISTRICT COUNCIL [2021] EWHC 1 (Admin)** in section 10.3.3b of this manual.

### **9.3.13**

#### **Toll bridge**

**TAYLOR v HEREFORDSHIRE COUNCIL [VTE, 1850M840731/221C, 11 Sept 2013]**

The VTE President held that a cottage at a toll bridge, which benefited under 18<sup>th</sup> Century legislation exempting it from income tax, sale tax (VAT), local taxes and capital taxes, was not exempt from council tax. Although non-domestic rates were not levied on the toll bridge itself, the President found that the exemption provision did not extend to the domestic cottage.

### 9.3.14

Valuation Tribunal decisions remain binding on parties unless there is a material change of circumstances

#### IK v LONDON BOROUGH OF HARROW [2013] RA 266

In considering a preliminary matter, a VTE panel, which included the President and a Vice-President, held that a billing authority must accept an earlier VTE decision with regard to Class N exemption because there had been no material change of circumstances. At a hearing on 6 November 2009, the taxpayer had been successful in his appeal that his wife qualified as a relevant person, being a non-British spouse of a student. When he started a new full-time course of education, the billing authority refused to allow Class N exemption, arguing once again that his wife was not a relevant person for the purposes of exemption. This preliminary point on the second appeal was considered on 27 September and 8 November 2010, with the VTE panel pointing out that the billing authority should have appealed the first appeal to the High Court if it considered it to be wrong. At paragraph 15, the VTE panel stated:

“In our view, the correct principle – based on common sense and the interests of justice – unless displaced by clear statutory provisions, is that a decision on an issue in dispute between an individual and a public body once determined according to law by a judicial body of competent jurisdiction continues to govern the relationship between those parties unless there is a material change of circumstances. Absent statutory provisions to the contrary, we are satisfied that this principle applies here and conduces to a just and fair outcome. Any number of theoretical explanations could be offered in support of this principle – such as estoppel, legitimate expectation or abuse of process – but we are content to leave its conceptual foundations to be furnished by a higher court should our view be challenged.”

## 9.4 COMMENTARY

### 9.4.1

The following definitions are relevant to this area:

- An “unoccupied” dwelling is one in which no-one lives.
- For the now revoked Classes A and C, a “vacant” dwelling is one which is unoccupied and substantially unfurnished; “vacant” in relation to a pitch or mooring applies when the caravan or boat is unoccupied.
- For the former Class A, “major repair work” was defined as including “structural repair work”. The term “major” was not further defined. Departmental practice notes suggest that the cost, extent and time of the works required to make a property habitable should be examined. (See also 9.3.2).
- For Class W, a “relative” of a person can be the spouse, civil partner, parent, child, grandparent, grandchild, brother, sister, uncle, aunt, nephew, niece, great-grandparent, great-grandchild, great-aunt, great-uncle, great-nephew, great-niece (or great-great variations from 1 April 1998). A relationship by marriage is treated as a relationship by blood and a stepchild is treated as a child; a man and woman living as husband and wife are treated as being married. Persons of



the same sex who are living together as civil partners are treated as being civil partners.

- A “qualifying person” means a person who would, but for the provisions of the exempt dwellings order, be liable for the council tax in respect of a dwelling on a particular day as the owner.
- A “relevant absentee” means a person who is detained elsewhere (as in Class D), or who has his sole or main residence elsewhere either to receive or provide personal care (as in Classes E, I or J).

#### **9.4.2**

##### **Substantially unfurnished**

The term is not defined. Guidance from the relevant government department’s practice notes suggests that minor furnishings, which give the illusion of occupation for security purposes, may be disregarded.

#### **9.4.3**

##### **Reference to definitions elsewhere**

Often the hearing of an appeal on the grounds of refusal of exemption can turn on the description of the person in occupation, for example what qualifies a person to be designated as a “student”. Reference must be made to the definitions of such terms in the discount disregards legislation and in particular **Schedule 1 to the LGFA 1992** and **SI 1992/548** as amended.

#### **9.4.4**

##### **Temporary occupation of unoccupied dwellings**

For Classes B and F (and also the revoked Classes A and C), any one period of occupation lasting less than six weeks is disregarded.

#### **9.4.5**

##### **Revoked Classes A and C**

From 1 April 2013, Classes A and C were revoked by the Council Tax (Exempt Dwellings) (England) (Amendment) Order 2012 (SI 2012/2965). However, billing authorities continue to have discretionary powers to allow discounts under the same criteria (see section 10 of this manual).

#### **9.4.6**

##### **Class F Dwellings**

The President’s decision in the case of *ZT v Lewisham* supports a view that, until the beneficiary of an estate actually acquires the freehold interest or a leasehold interest of at least six months in the subject dwelling then there can be no qualifying person in respect of the dwelling and it remains exempt.

In that case, the President considered it irrelevant that the dwelling had been empty for such a long period of time, due to the inactivity of the appellant. He stated:

“It is clear that the Class F exemption has no statutory time limit and therefore absent any other intervening matter such as residence or subletting it seems to me that as long as the property remains empty and unused then it can benefit from the exemption until such times as probate is granted. This to my mind is unsatisfactory, however, I have to apply the law as it is not as it maybe should be, that is a matter for Parliament.”

#### **9.4.7**

##### **Class G dwellings**

Class G deals with any dwelling where planning permission or the law deems that it must be unoccupied. However, if the dwelling is occupied illegally, for example by squatters, it is not exempt and the residents are liable.

#### **9.4.8**

##### **Crown Property**

Crown property is not necessarily exempt. Armed forces' barracks and married quarters are exempt, whether occupied or not, and a contribution in lieu of council tax is paid by the Ministry of Defence. Crown-owned dwellings, where there is a resident in the normal way, are chargeable dwellings. However, where liability would fall on a non-resident owner, the Crown pays a contribution in lieu of council tax. Crown exemption does not apply to dwellings managed by local authorities for the police or other Crown purposes; local authorities are liable as the non-resident owner in the normal way where there is no one who has his sole or main residence in the dwelling.

#### **9.4.9**

##### **Diplomatic Premises**

Council tax cannot be collected from a foreign state in respect of premises used as part of a diplomatic mission, including the residence of the head of the mission. The amount due is written-off as irrecoverable.

#### **9.4.10**

##### **Students**

The Court of Appeal judgment in *Jagoo v Bristol* does not require the BA to look beyond the student certificate in every case. In this case there was documentary evidence supporting the appellant's argument regarding her particular needs for additional study time. That will not be the case in most instances where it is the ability or otherwise of the particular student which determines the number of hours of study they, as an individual needs to undertake. The decision of the President in *Villigran-Souto v London Borough of Kingston Upon Thames* follows on from the principle in *Jagoo* that it is not necessary to draw an absolute distinction between required and recommended periods of study where there is actual demonstratable evidence that the needs of an individual student are such that the periods of study during the year met the relevant threshold.

## **10. AMOUNTS OF COUNCIL TAX PAYABLE**

### **10.1 INTRODUCTION**

#### **10.1.1**

The daily amount of council tax that must be paid in relation to a dwelling may be reduced by the application of an appropriate discount. Discounts can be awarded under a number of circumstances, each of which has been defined in legislation. They are related to the nature and number of the persons, if any, who are resident in the dwellings concerned. There are certain types of residents which, according to the legislation, may be “disregarded” for the purposes of determining whether or not a discount can be awarded at a particular dwelling.

### **10.2 LEGISLATION**

#### **10.2.1**

Local Government Finance Act 1988 (LGFA 1988)

Local Government Finance Act 1992 (LGFA 1992) - Sections 10, 11, 12 and 13 (amounts of tax payable); Schedule 1 (persons disregarded for purposes of discount), paragraphs 1 to 11: persons in detention; the severely mentally impaired; persons in respect of whom child benefit is payable; students etc; hospital patients in homes in England and Wales; patients in homes in Scotland; care workers; residents of certain dwellings; persons of other descriptions.

Local Government Act 2003 (the 2003 Act) – Sections 75 and 76

The Local Government Finance Act 2012 (LGFA 2012) – Sections 11 and 12

The Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Act 2018

The Council Tax (Discount Disregards) Order 1992 SI 1992/548, and amendments: SI 1994/543, SI 1995/619, SI 1996/636, SI 1996/3143, SI 1997/656, SI 1998/291, SI 2003/3121, SI 2004/1771, SI 2006/3396, SI 2009/2054, SI 2011/948, SI 2012/956, SI 2015/971 and SI 2018/1386

The Council Tax (Additional Provisions for Discount Disregards) Regulations 1992 SI 1992/552, and amendments: SI 1992/2942, SI 1993/149, SI 1994/540, SI 1995/620, SI 1996/637, SI 1997/657, SI 1998/294, SI 2005/2866, SI 2006/3395 and 2013/725

The Council Tax (Reductions for Disabilities) Regulations 1992, SI 1992/554, as amended by SI 1993/195 and SI 1999/1004

The Council Tax (Prescribed Classes of Dwellings) (England) Regulations SI 2003/3011, as amended by SI 2004/926, SI 2005/416, SI 2012/2964 and SI 2019/1458

Council Tax (Reductions for Annexes) (England) Regulations 2013, SI 2013/2977, as amended by SI 2019/1458

#### **10.2.2**

Basic amounts payable

**Section 10 of the LGFA 1992** provides a formula for the calculation of the amount of council tax to be paid by a liable person in respect of a chargeable dwelling ( $A/D$ , where  $A$  is the charge set for the band into which the dwelling has been placed and  $D$  is the number of days in the financial year).

### 10.2.3

#### Discounts

**Section 11** introduces the concept of the “appropriate percentage”. This is the discount that can be applied where there is only one resident in a dwelling and they are not to be disregarded for the purposes of the determination of a discount, or, where there is more than one resident but every other resident except one is disregarded for discount purposes. The section states that the appropriate percentage is to be 25% (or other amount if the Secretary of State so orders). The appropriate percentage is doubled (i.e. 50%) where the dwelling has no residents (but see below) or where each and every resident is disregarded. There is a reference to **LGFA 1992 Schedule 1** which lists the types of persons to be disregarded for discount purposes.

### 10.2.4

#### Billing authorities' power to vary discounts

10.2.4.1 **Section 11A Local Government Finance Act 1992** (inserted by 2003 Act) provides that billing authorities may by determination in any financial year alter the level of discount for dwellings falling within defined conditions set out in classes prescribed in the Council Tax (Prescribed Classes of Dwellings) (England) Regulations 2003 (as amended). A billing authority which makes a determination under this section shall publish a notice of it in at least one newspaper circulating in its area within 21 days of its determination. Any determination of the billing authority under section 11A of the Act will apply in respect of all the dwellings of that class in the whole, or only in a part of its area, as the authority may specify.

10.2.4.2 From 1 April 2004, billing authorities were able to determine different levels of discount (instead of 50%) for dwellings falling within three classes: A, B and C. Initially, the discount in Classes A and B had to be between 10% and 50% (under section 11A(3)), and the discount in Class C could be removed entirely (section 11A(4)).

10.2.4.3 From 1 April 2013, there were substantial changes to the **Council Tax (Prescribed Classes of Dwellings) (England) Regulations 2003** when it was amended by **SI 2012/2964**. Classes A and B are now prescribed for the purposes of Section 11A(4) of the LGFA 1992, which provides that no discount or a discount below 50% will apply as may be specified.

- Class A – furnished dwellings, which are not a person's sole or main residence, where occupation is restricted by a planning condition preventing occupancy for at least 28 days per annum.
- Class B – furnished dwellings, which are not a person's sole or main residence, where occupation is not restricted by a planning condition preventing occupancy for at least 28 days per annum.

Exceptions – Classes A and B do not include the following:

- Any dwelling which consists of a pitch occupied by a caravan, or a mooring occupied by a boat.
- Any dwelling where the qualifying person is also a qualifying person in relation to job related accommodation (that being accommodation necessary for that person's proper performance of their employment duties or better performance of their duties where it is customary for employers to provide a dwelling to its employee or where it is necessary for the employee to reside because of a special security threat.
- Job related accommodation where the qualifying person is also a qualifying person for another dwelling.

10.2.4.4 Classes C and D are prescribed for the purposes of Section 11A(4A) of the LGFA 1992 which provides that a discount of between nil and 100% may be determined.

- Class C – a dwelling which is unoccupied and substantially unfurnished. There is no time period for the discount provided by the legislation, so billing authorities must also determine the time period as well as the level of discount.
- Class D - vacant dwellings which, for a period of twelve months or less, require or are undergoing major repair work to render it habitable or which are undergoing structural alteration, or dwellings which have undergone such major repair work and have remained vacant for a continuous period up to six months since those works were substantially complete. [A vacant dwelling is one that is unoccupied and substantially unfurnished. In determining whether a dwelling has been vacant for a period any period not exceeding six weeks during which it was not vacant shall be disregarded].

## 10.2.5

Billing authorities' power to charge a premium for long term empty dwellings

**Section 11B of the 1992 Act** (inserted by the LGFA 2012) provides that billing authorities may, by determination in any financial year provide that for a long-term empty dwelling no discount shall apply and that the amount of council tax payable shall be increased to no more than 150% of the full tax payable, as it may specify. A long-term empty dwelling is one that has, for a continuous period of not less than two years, been unoccupied and substantially unfurnished. In determining this period no account shall be taken of any period of not more than six weeks during which the dwelling has not been either unoccupied or substantially unfurnished. A billing authority which makes a determination under this section shall publish a notice of it in at least one newspaper circulating in its area within 21 days of its determination.

Following the enactment of the Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Act 2018 on 1 November 2018, billing authorities can increase the level of premium from 50 to 100% for the financial year beginning 1 April 2019. This means twice the normal full rate of council tax will be payable.

From 1 April 2020, if a dwelling has been unoccupied for at least five years, the premium can be increased to 200%. This means that three times the normal full rate of council tax will be payable.

From 1 April 2021, if a dwelling has been unoccupied for at least 10 years, the premium can be increased to 300%. This means that four times the normal full rate of council tax will be payable.

From 1 April 2013, Classes E and F are prescribed for the purposes of Section 11B(2) of the LGFA 1992, which provides that for dwellings falling within these classes no determination may be made by a billing authority under Section 11B of the 1992 Act.

- Class E – a dwelling which is the sole or main residence of an individual who is a qualifying person in relation to another dwelling provided by the Secretary of State for Defence as armed forces accommodation and which for that person is job related, or which would be that person's sole or main residence were he not a qualifying person in relation to such another dwelling.
- Class F – a chargeable dwelling forming part of a single property which includes at least one other dwelling and is being used by a resident of the other (or one of the other) dwelling(s) as part of their sole or main residence. A single property is one would be one dwelling under Section 3 of the LGFA 1992 but for the provisions of the Council Tax (Chargeable Dwellings) Order 1992 SI 1992/549.

#### 10.2.6

##### Reduced amounts

**Section 13** provides that the Secretary of State can make regulations allowing persons fulfilling prescribed conditions to pay reduced amounts of council tax. It allows the Secretary of State, in determining the prescribed conditions, to take into account matters relating to the persons concerned e.g. a disabled person having his/her sole or main residence in the dwelling under consideration; the circumstances and other matters relating to the person; and, the physical characteristics of the person's dwelling.

**Section 13A Local Government Finance Act 1992** (inserted by 2003 Act) gives billing authorities the power to mitigate or remit in particular cases by determination, and also on a case by case basis. This is known as discretionary relief and is covered in section 17 of this manual.

In addition, from 1 April 2013, section 13A (substituted by the LGFA 2012) allows billing authorities to make their own council tax reduction scheme for persons in financial need. This is also covered in section 16 of this manual.

### 10.2.7

#### Transitional relief

**Section 13B Local Government Finance Act 1992** (inserted by 2003 Act) allows the Secretary of State to introduce a Transitional Relief Scheme to ensure the smooth change in council tax liability following the introduction of the new valuation list.

### 10.2.8

#### Discount disregards

**Schedule 1 to the LGFA 1992** provides a list of classes of persons who can be disregarded for the purposes of the determination of a discount (see above).

The **Council Tax (Discount Disregards) Order 1992, SI 1992/548** as amended, amplified the requirements for a number of the classes of disregarded persons. In particular, **Schedule 1 to SI 1992/548** defines the terms “apprentices”, “students”, “student nurses” and “youth training trainees”. **Schedule 2** defines the “prescribed educational establishments” for students and student nurses. Later amendments altered the requirements for inclusion in a number of classes.

As well as “apprentices”, “students”, “student nurses” and “youth training trainees”, there are a number of other classes of persons who are disregarded for purposes of discount, and they include:

- Persons in detention;
- Severely mentally impaired;
- Persons in respect of whom child benefit is payable;
- Hospital patients;
- Patients in homes;
- Care Workers and,
- Residents of hostels for the homeless or night shelter.

### 10.2.9

#### Additional provisions for discount disregards

The **Council Tax (Additional Provisions for Discount Disregards) Regulations 1992** as amended provided additional provisions for “care workers”. Amendments also provided for classes of persons to be included in the final paragraph of **Schedule 1 to the LGFA 1992**, “persons of other descriptions”. SI 2022/439 inserted class G with effect from 12 April 2022:

- Class A - members of international headquarters and defence organisations;
- Class B - members of religious communities;
- Class C - school and college leavers;
- Class D - members of visiting forces;
- Class E – certain, non-British spouses or civil partners or dependants of students;
- Class F – Non-British diplomats and others;

- Class G- a person who holds permission to enter or to stay in the United Kingdom granted under the Homes for Ukraine Sponsorship Scheme route in Appendix Ukraine Scheme of the Immigration Rules.

Changes to the rules on child benefit means that in certain circumstances it is now payable in respect of 19 year olds. The DCLG Council Tax Information Letter 2/2006 stated, *“It is our view that, under Schedule 7 to the Local Government Finance Act 1992, (these) 19 year olds will fall to be disregarded for CT purposes”*.

#### 10.2.10

##### Disability reduction scheme

The **Council Tax (Reductions for Disabilities) Regulations 1992, SI 1992/554**, as amended, provides for a “qualifying individual”, with a sole or main residence fulfilling one of three criteria, to apply for a reduction in the amount of council tax payable for his/her dwelling. The reduced council tax bill is calculated using a lower council tax band than would ordinarily be applicable to the dwelling. A “qualifying individual” is defined as, *“a person who is substantially and permanently disabled (whether by illness, injury, congenital deformity or otherwise)”*. The three criteria are that the dwelling must have:

- a room predominantly used by and required for meeting the needs of the qualifying individual, but not a bathroom, kitchen or lavatory; or,
- an additional bathroom or kitchen required for meeting the needs of the qualifying individual; or,
- sufficient floor space for the use of a wheelchair required for meeting the needs of the qualifying individual.

The phrase “required for meeting the needs of”, as used in the regulations, is defined as “being essential or of major importance to his well-being by reason of the nature and extent of his disability”.

The reduction is equal to being charged one band lower than the band which is shown in the valuation list. Initially, no reduction was available in respect of dwellings falling in band A. However, from 1 April 2000, the scheme was extended to band A dwellings. The standard qualifying criteria apply. The reduction for a qualifying band A dwelling is 1/9<sup>th</sup> of the band D charge; this is equivalent to the reduction for qualifying dwellings in bands B, C and D (SI 1999/1004).

#### 10.2.11

##### Reduction for annexes

The **Council Tax (Reductions for Annexes) (England) Regulations 2013, SI 2013/2977** provides for a discount of 50% to be applied in the council tax payable in respect of a self-contained unit comprising a separate dwelling within a single property (see Section 1 above and the Council Tax (Chargeable Dwellings) Order 1992), where that self-contained unit is in use by the main property’s owner as part of his/her sole or



main residence or where a relative of that person, who is not a dependant is living in the unit.

### **10.3 CASE LAW**

#### **10.3.1**

##### Single person discount

##### **10.3.1a MULLANEY v WATFORD BOROUGH COUNCIL AND HERTFORDSHIRE VALUATION TRIBUNAL and CLAYTON v SAME HC (RA 1997 225)**

The taxpayers, Miss Mullaney and Mr Clayton, each received a 25% single resident discount in respect of two separate dwellings. The billing authority removed Mr Clayton's single resident discount and Miss Mullaney was awarded a 50% no resident discount for her dwelling on the basis that it was no person's sole or main residence. The Valuation Tribunal upheld the billing authority's decision.

The High Court considered the evidence presented at the Tribunal hearing about which of the two dwellings was Miss Mullaney's main residence, including: early morning surveillance reports; benefit investigation officer's meetings with Mr Clayton; and, the location of Miss Mullaney's possessions. The High Court dismissed the appeals.

##### **10.3.1b DONCASTER BOROUGH COUNCIL v STARK HC (RVR 1998 80)**

A Valuation Tribunal decided that the wife of a serving member of the RAF, Corporal Stark, was entitled to a 25% single person discount at the marital home.

Accommodation was provided for Corporal Stark at his RAF base; he was forbidden from commuting between the base and the marital home. The appeal concerned "sole or main residence". The High Court allowed the council's appeal, concluding that Corporal Stark's sole or main residence was the marital home, not his RAF accommodation.

See section 8.3 of this manual for further case law concerning the meaning of 'sole or main residence'.

#### **10.3.2**

##### 50% no-resident discount

##### **10.3.2a BOGDAL v KINGSTON UPON HULL CITY COUNCIL HC (RA 1998 45)**

The High Court agreed with a Valuation Tribunal that the appeal dwelling was not a residential care home and that the residents could not be disregarded for the purposes of council tax discount. On this basis, a 50% discount was not applicable.

Under the legislation, registration was not required in respect of a small home if only persons receiving board and personal care there were persons "carrying on the home", employed there or their relatives. A small home was defined as an establishment where fewer than four people received board and personal care.

Mr Bogdal contended that the dwelling was a small home that did not have to be registered and that the occupants (himself, his mother and another elderly lady) should be disregarded for discount purposes, thereby qualifying for a 50% discount.

Justice Moses agreed with the Tribunal's findings that the dwelling was not a small home but an ordinary domestic dwelling. Evidence was placed before the Tribunal that neither Mr Bogdal's mother nor the other elderly lady was receiving personal care. Justice Moses also concluded that there was no evidence to support the notion that the dwelling was an "establishment".

The appellant subsequently appealed to the Court of Appeal which held that it was not an establishment as there was no element of organisation in the way it was run.

10.3.2b R (on the application of DANIELS) v BARNET LBC 2007 HC (RVR 300)  
The High Court upheld the VT decision that the billing authority (BA) was entitled to rescind the unoccupied property discount that it had awarded since October 2003, based on the information provided at that time by Mr Daniels. Following a change in the legislation, the BA had resolved to reduce the level of discount on second homes with effect from 1 April 2006 and gave notice to Mr Daniels of the impending change in his council tax liability. In response, Mr Daniels had informed the BA that the appeal property was his 'main home' and as such he should be entitled to a 25% discount as the sole resident. The BA then rescinded the previous discount of 50% and reinstated the 25% discount throughout. The VT had determined that:

- Mr Daniels had been the sole resident of the appeal property;
- the appeal property had never been a second home, so Mr Daniels should have never received a reduction of 50%;
- the BA had acted correctly based on the information.

The High Court confirmed that in the case before it, the BA did have the power to correct the rate of discount that it had previously allowed.

### 10.3.3

#### Student disregard discount

10.3.3a R (ON THE APPLICATION OF CARMARTHENSHIRE COUNTY COUNCIL) v WEST WALES VT & EVANS (RVR 2004 138)

The VT's decision was quashed because it had erred in its finding that Mrs Evans was a full time student doing a qualifying course. Mrs Evans was undertaking an All Wales Part Time Occupational Therapy Course at the University of Wales. The High Court decided that Mrs. Evans's course did not meet the qualifying criteria for the **Council Tax (Discounts Disregards) Order 1992** because she was not required to attend the college for 24 weeks or more in an academic year.

10.3.3b WIRRAL BOROUGH COUNCIL v FARTHING HC 2008 (RA 2008 303)

This appeal challenged the decision made by the Merseyside Valuation Tribunal (VT) to award a student discount to Mr Farthing, who had been enrolled on a mathematics enhancement course condensed to a period of 26 weeks of around 40 hours. The dispute centred on whether Mr Farthing met the requirements of **paragraph 4 (1) (a) of Part II of Schedule 1 to the Disregard Order**, to allow him to receive a 25% discount. Under these regulations a 'full-time course' is defined as one that subsists for 'at least one academic year', or in the case of an educational establishment that does

not have academic years, for 'at least one calendar year', and with attendance normally for at least 24 weeks in each academic or calendar year with at least 21 hours a week on study, tuition or work experience.

The VT had allowed the appeal, given its belief that many full-time courses were being condensed into shorter periods, to allow the educational establishments to offer more courses in the same academic year. The High Court allowed the billing authority's appeal finding it impossible to reconcile the VT's decision with the requirements set out in paragraph 4. If it had been the intention of Parliament to have had regard to condensed courses, then they would have provided for that situation. However desirable it might be for the VT to adopt a pragmatic view, it had to remain within the boundaries of the legislation enacted by Parliament.

*Note:* There is further case law concerning the meaning of "student" in section 9.3.7 of this manual.

### **10.3.3c**

Severely mentally impaired discount disregard

BROWN v HAMBLETON DISTRICT COUNCIL [2021] EWHC 1 (Admin)

The billing authority had allowed a 25% discount disregard from the date attendance allowance in respect of the appellant's wife was in payment. The appellant wanted it from the date his wife's Alzheimer's Disease was first diagnosed which was several months earlier. The High Court upheld the Valuation Tribunal's decision that entitlement to a benefit was dependent on a claim under section 1 of the Social Security Administration Act 1992. The appeal was therefore dismissed.

### **10.3.4**

Reduction for disabilities

10.3.4a HOWELL-WILLIAMS v WIRRAL BOROUGH COUNCIL CA 1981 (RA 1981, p189)

The Court of Appeal considered the case of a disabled person who had arthritis and had claimed relief in respect of a living room, which contained a night storage heater. The heater was required due to the appellant's disability. It was held that although the heater was of major importance, the room itself was not. It was further considered that the room was required by the appellant in the way that anyone, disabled or not, would require a living room as part of ordinary life.

10.3.4b LUTON BOROUGH COUNCIL v BALL HC 2001 (RVR 198)

The taxpayer had applied for a reduction on the basis that the bathroom had been converted into a shower room. However, the taxpayer lost the case at the High Court because the shower room was not an 'additional room' to the main bathroom. Important distinctions were drawn between a bathroom, shower room and downstairs toilet. The dictionary definition of 'bathroom' was also considered: a room containing a bath; and a bath was defined as: a large container for water in which one sat to wash all over.

#### 10.3.4c SANDWELL MBC v PERKS (HC) (RVR 2003 p 317)

The West Midlands (West) Valuation Tribunal's decision to allow the council taxpayer a disabled person's discount was set aside because it had failed to establish a causative link between the disabled person and her need for a room. In this case, the disabled person was unable to climb the stairs in the family home and resided in the living room.

The High Court's judgment followed the Court of Appeal's judgment in *Howell-Williams*, where it was decided that a disabled person needed a living room like anyone else, not because she was disabled.

#### 10.3.4d R (ON THE APPLICATION OF HANSON) v MIDDLESBROUGH BOROUGH COUNCIL (HC) 2006 (RA 2006 320)

The High Court allowed the council taxpayer's appeal and overturned the valuation tribunal's decision not to allow disabled relief for an additional en-suite bathroom. It determined that the Valuation Tribunal had misdirected itself on three counts:

- it reformulated the statutory test of being "essential or of major importance" into what he judged to be a more stringent requirement of being "physically or extremely difficult";
- it erroneously concluded that the additional en-suite bathroom was not essential or of major importance to the disabled person because, even without it, she could still occupy the property;
- it erred in importing a further test into the equation: would a future purchaser be able to detect that the property had been altered to meet the needs of a disabled person?

The Deputy Judge determined that the en-suite bathroom was of major importance to the disabled person because it reduced the risk of her getting injured whilst bathing. The tribunal should have applied the statutory language not misapply or fail to apply the test of being "essential or of major importance."

#### 10.3.4e SOUTH GLOUCESTERSHIRE COUNCIL V TITLEY: SAME V CLOTHIER (RA 2007 27)

Mr Titley was profoundly deaf and resided alone in a two bedroom house. His living room was equipped with a hearing loop to enable him to watch television, listen to his radio and receive visitors. The High Court held that Mr Titley's case was indistinguishable from that in *Howell-Williams*. Mr Titley used his living room as any other normal person would do. It was the hearing loop system not the living room in which it was placed that was essential to his well-being.

Mr Clothier had a daughter aged 33 and a son aged 20, both of whom suffered from Down's syndrome. Each of them had their own bedroom where they spent the majority of the day alone. Medical evidence was provided to support the fact that both children needed their own bedroom which provided a safe environment to allow them to enter their own private world. There were no physical adaptations made to either bedroom. Again, the High Court held that no relief was applicable. Even if the children had no disability but were still living with their parents at that age, they were likely to have their

own bedroom(s) anyway. Neither bedroom was an “additional” feature, which had been created to meet the needs of a disabled person.

#### 10.3.4f CLERKIN v HAMBLETON DISTRICT COUNCIL [VTE, 2710M130673/254C, 8 September 2014]

A VTE Vice-President allowed an appeal from a blind lady who kept specialist electronic and computerised equipment connected with her disability in a separate room, which had been a third bedroom. This enabled her to read audio books, send and receive audio emails, audio type, access audio games, listen to newspapers and magazines, stream audio podcasts and lectures, continue with her social science research, super-enlarge documents and scan photographs on her linked 40 inch television monitor. The room also contained an exercise bicycle. She was able to use the equipment in the room without causing disruption to her husband.

Noting the billing authority’s argument that the equipment could be moved, the Vice-President found that it would impractical to do this as the equipment was expensive and sensitive. It was also important for her health and safety that she knew where it was. The Vice-President held that it was the room that was of major importance to her well-being; without this room she would have a significantly reduced quality of life with reduced facility for mental or physical stimulation at home.

#### 10.3.5

Job related second home discount

#### LEVER v SOUTHWARK LBC 2009 HC (RVR 2009 137)

In this case the High Court (HC) agreed with the decision reached by the London South East Valuation Tribunal (VT) that the appellant was not entitled to receive the 50% second home discount that was appropriate for someone who had to reside elsewhere in a ‘job related’ property. The subject property in this case was a flat, owned by an investment company of which the appellant and his daughter were directors. Para 1 (a) of the CT (Prescribed Classes of Dwellings) (England) Regulations 2003 referred to a dwelling provided to an employee where it was necessary for the proper performance of the duties of their employment that the employee should reside in that dwelling.

The HC agreed with the VT that there must be a link between the duties of the employment and the place where the person had to live, and not just be a matter of personal choice. The HC also concluded that the appellant did not actually reside in the dwelling, since residency connoted a situation of some permanency, as opposed to where someone may stay occasionally twice a month or twice a year.

#### 10.3.6

Service of demand notices

#### REGENTFORD v THANET DISTRICT COUNCIL (HC) (RA 2004 p 113)

The High Court dismissed the appellant company's argument that the billing authority (BA) had not served demand notices as soon as practicable. Consequently, the BA was entitled to recover the outstanding council tax liability going back six years.

### **10.3.7**

Backdating of reductions, discounts and refunds

#### **10.3.7a ARCA v CARLISLE CITY COUNCIL [VTE, 0915M85513/254C, 29 Jan 2013]**

The billing authority had allowed a reduction under the Council Tax (Reductions for Disabilities) Regulations 1992 from the beginning of the financial year in which the application was made. On appeal, the Tribunal's President held that a reduction could be backdated for six years before the taxpayer first applied for it.

#### **10.3.7b MH, WP and CP v CITY OF BRADFORD MDC [VTE, 4705M141113/254C, 22 June 2015]**

The listing officer had re-banded three properties to a lower council tax band and, in each case, the appellants sought a refund back to the date when they first became liable for council tax. The billing authority (BA) was willing to refund only six years of the overpaid council tax.

The VTE President held that the BA must refund the overpaid council tax back to the date when each appellant became liable to pay the council tax on the appeal dwelling. Acknowledging the Limitation Act 1980, the VTE President stated that the only question in these appeals was whether the appellants had brought the proceedings within six years of the date on which the cause of action accrued. He held that the cause of action accrued when the BA issued a new council tax bill to reflect the revised band and had declined to give the full refund requested.

#### **10.3.7c S v LEICESTER CITY COUNCIL [VTE 2465M142876/037C, 11 August 2015]**

The appellant's argument that he was entitled to a refund of overpaid council tax dating back to 1996 was upheld by the VTE President. The appellant had applied to the billing authority (BA) on 3 December 2012 for a discount disregard for being a carer. The BA accepted his eligibility for a discount but argued that it was only obliged to refund six years having regard to section 9 of the Limitation Act 1980.

In this case, the BA had failed to take reasonable steps to establish if the appellant was entitled to a discount as required by regulation 14 of the Council Tax (Administration and Enforcement) Regulations 1992. The appellant had made an application for a discount once he became aware of his potential entitlement to it in December 2012. Therefore, for the purposes of s.9 of the Limitation Act, the cause of action accrued on 3 December 2012. The appellant was entitled to claim the amount of council tax overpaid since 1996 providing he made a claim before December 2018.

This case and the Bradford case contrast with *Arca v Carlisle City Council*, where the onus was on the council taxpayer to make a claim for each financial year. The cause of action was the initial claim which meant that any retrospective relief was limited to a maximum of six years.

#### 10.3.7d LONE V LONDON BOROUGH OF HOUNSLOW [2019] EWCA civ 2206

The Court of Appeal held that the County Court had no jurisdiction to entertain a claim for repayment of allegedly overpaid council tax. The matter was within the jurisdiction of the Valuation Tribunal for England, which could order recalculation of liability. Additionally, repayment could be ordered by the Tribunal as an “ancillary” matter under regulation 38(10) of SI 2009 No.2269.

#### 10.3.7e A v ROYAL BOROUGH OF KINGSTON UPON THAMES [VTE, VT00004681, 21 April 2021]

The VTE President considered a case where the billing authority had discovered in December 2019 that it should never have allowed the appellant a reduction under the Council Tax (Reductions for Disabilities) Regulations 1992. Consequently, the billing authority had clawed back the reduction to 2013.

The President found that the appellant had no reason to believe he had been allowed a reduction incorrectly and that the reduction had been given in error by the billing authority. The President decided that the reduction must be reinstated from 2013 up to 31 March 2019.

### 10.3.8

Prescribed class of dwelling

#### 10.3.8a K v PORTSMOUTH CITY COUNCIL AND HOUSELET DIRECT v LONDON BOROUGH OF NEWHAM [VTE, 1775M111173/176C and 5750M114953/084C, 30 April 2014]

The issue in both appeals arose from the abolition of Class C exemption from 1 April 2013. From that date, both billing authorities gave 100% discount; one gave it for one month and the other allowed it for 28 days. The issue in dispute was whether a dwelling qualified for 100% discount if it was vacant for more than one month/28 days before 1 April 2013?

It was held by the VTE President that the appellant in Newham should not be denied a discount as the billing authority had no published policy or scheme; it could only rely on the billing authority minutes, which introduced a 28 day discount. The council's minutes simply stated that the discount could be allowed for 28 days; it did not state from what date it should commence and was open to interpretation.

However, the appellant in Portsmouth was not entitled to any discount as the published scheme made it clear that a discount of one month began from when the dwelling was last occupied.

#### 10.3.8b EDEM v BASINGSTOKE & DEAN BC [2013] EWCA civ 854

The Court of Appeal confirmed that the requirement in the former Class A exemption (which is now Class D discount) is that the dwelling is vacant and is undergoing structural alteration or requires, or is undergoing, major repair work to render it habitable. The Valuation Tribunal drew a distinction between considerations of whether the property was not marketable and considerations of whether the property was not habitable which the judge found it was entitled to do. So dwellings needing work done before they can be let or marketed to tenants do not necessarily satisfy the criteria for Class A exemption (now Class D discount).

For Class D discount, see also 9.3.2 of this manual which shows case law in respect of the revoked Class A exemption.

### 10.3.9

Premium for long term empty dwellings

K v WOLVERHAMPTON CITY COUNCIL, F v WYCHAVON DISTRICT COUNCIL and J v SOUTH STAFFORDSHIRE COUNCIL [VTE, 4635M121095/176C, 1840M127193/176C, 3430M119853/176C, 23 April 2014]

The appeals concerned the premium for empty properties. With effect from 1 April 2013, the Government gave billing authorities the discretion to charge a 50% premium on top of the full council tax in respect of dwellings which had been unoccupied and unfurnished for two or more years. The Government provided guidance to billing authorities in a number of documents stating that it did not want to penalise owners of dwellings which were genuinely on the market for sale or letting. However, it had not legislated to distinguish such properties in order to exempt them from the premium.

All three appellants were trying to sell their properties and each one had reduced the asking price. The VTE President held that all three appeals constituted a challenge to their billing authority's determination, as distinct from its application to the appellant and their particular circumstances. Consequently, the matters could not be questioned in the Valuation Tribunal (see section 66 of the 1992 Act). The appellants were left with three options: apply for judicial review in the High Court; apply to the billing authority for discretionary relief (from which they may then appeal to the Valuation Tribunal); or complain to the Local Government Ombudsman.

### 10.3.10

Discretionary reductions under section 13A of the 1992 Act

SC and CW v EAST RIDING OF YORKSHIRE COUNCIL [VTE, 2001M113393/CTR and 2001M117503/CTR, 27 May 2014]

The VTE President held the Tribunal had jurisdiction to consider appeals arising from the billing authority's refusal to allow discretionary relief under section 13A(1)(c). Please see section 17 of this manual where this case is covered in some detail.

## 10.4 COMMENTARY

### 10.4.1

Sole or main residence

As can be noted from the legislation referred to at the beginning of this section, council tax discounts are related to the number and nature of residents in a dwelling.

"Resident" in relation to any dwelling is defined in **section 6 of the LGFA 1992** as: "an individual who has attained the age of 18 years and has his sole or main residence in the dwelling." The concept of "sole or main residence" was introduced in the LGFA 1988, the primary legislation that created the Community Charge. However, no definition of "sole or main residence" was included and it was left to the High Court, by way of appeals against decisions of tribunals, to interpret the meaning of the phrase.



The factors which the High Court considered important for interpretation were examined in the later cases in respect of council tax liability appeals (see 8.3).

#### 10.4.2

##### Discount disregards

**Schedule 1 of the LGFA 1992** lists classes of persons who are residents of a dwelling but can be “disregarded” for council tax discount determination purposes. The requirements for inclusion in the classes were amplified by **SI 1992/548** and **SI 1992/552**; these have been amended by various other orders and regulations issued since that time.

#### 10.4.3

##### Students

Perhaps the largest group of discount disregards is found within **paragraph 4 of Schedule 1**: “Students etc”. The paragraph provides that a person is disregarded if they are a “student, student nurse, apprentice or youth training trainee”. These terms are defined in **Schedule 1 of SI 1992/548** (as amended). The largest of the three sub-groups is that covered by the term “student”, defined as:

- a foreign language assistant.....
- a person undertaking a full-time course of education.....
- a person undertaking a qualifying course of education.....”

Sub-paragraph (b) above is itself defined in terms of somebody “undertaking” a course at a “prescribed educational establishment”. There are therefore three questions that need to be answered in the affirmative before this type of student can be designated a discount disregard:

- is the person enrolled at a prescribed education establishment?
- is the person required to undertake a course at the establishment?
- is the course full-time?

**SI 1992/548** (as amended) provides all the requirements needed to answer these questions. It lists the prescribed educational establishments (universities, etc) and defines what is meant by “full-time”. **SI 2011/948** modernised the definition to include establishments in EU Member States and those undertaking distance learning courses. Prior to that Statutory Instrument, there had been a requirement to “attend” the establishment.

**SI 2018/1386** tidies up the definition of educational establishment following Britain’s departure from the European Union, but it still includes establishments in the EU.

Full-time courses of education are those which have a duration of at least one academic year (or one calendar year for those institutions not having academic years) during which a person is normally required to undertake periods, an average, of at least 21 hours a week of study, tuition or work experience, at the establishment or elsewhere in each academic or calendar year..

However, if the total hours of the work experience element exceeds that of the study and/or tuition, then the course concerned cannot be deemed to be a full-time course of education (the exception to this being the course for the initial training of teachers in schools).

A qualifying student should be provided with, upon request, a certificate from the educational establishment at which he/she is following the course of education (**paragraph 5 of Schedule 1 of the LGFA 1992**). The certificate should then be passed to the relevant billing authority in order that the authority can recognise the qualifying student as a discount disregard.

#### **10.4.4**

##### Disability reduction scheme

According to the Department for Communities and Local Government, the disabled band reduction scheme seeks to ensure that disabled people do not pay more council tax because they live in a larger property than they would have needed if they were not disabled. To qualify for a reduction, an extra room need not have been specially built, but can be an existing room provided the link between its use and the person's disability is sufficiently strong.

A tribunal panel hearing an appeal in relation to **SI 1992/554**, having established that the person is a qualifying individual, must consider first whether the room is essential or of major importance, and secondly whether a causative link has been shown between the disability and the requirement of the use of the room.

#### **10.4.5**

##### Job-related accommodation

A dwelling is job related if it is provided by an employer for the person concerned in cases where, because of the nature of the employment, the employee is required to live in that dwelling for the proper or better performance of his duties. An example could be a schoolmaster who is required to live within the school premises, during term time. It may also apply if the dwelling is provided as a part of a special security arrangement to protect that employee's safety.

#### **10.4.6**

##### Local authority discretionary powers

Kirklees Council in West Yorkshire was the first to introduce a council tax reduction scheme for those aged 65 and over, using the provisions set out in **Section 13A of the Local Government Finance Act 2003** allowing billing authorities the right to set their own discounts. Under the Kirklees scheme, people received a 3% discount in their council tax bill if: one of the tax payers was aged 65 or more on 1 April 2007; the property in the Kirklees area was their main home; and they were not claiming any council tax benefit.

#### **10.4.7**

Billing authorities' power to vary discounts and charge a premium for long term empty dwellings

In 2003, the Government changed the legislation to give billing authorities the power to reduce the standard 50% discount for classes of unoccupied dwellings. This followed representations from authorities with high numbers of second homes in their areas, which caused them a substantial loss in revenue because at that time such property qualified for 50% discount.

In 2013, the Government abolished two classes of exemption; one in respect of vacant dwellings and the other for dwellings in need of repair or undergoing structural alteration (see section 9 of this manual). Using the prescribed classes of discount, each billing authority can instead determine the percentage and period of time of the discount (if any) it gives to those former exemption classes. Each authority should have a published scheme making it clear how much discount is allowed and for how long.

## **11. PENALTIES**

### **11.1 INTRODUCTION**

#### **11.1.1**

Where a person fails to supply certain information when requested by a billing authority, or knowingly supplies inaccurate information in purported compliance with such a request, the authority may impose a penalty of £70 on them.

#### **11.1.2**

Where a penalty has been imposed and a further request to supply the same information is made and again is not properly complied with, the authority may impose a further penalty of £280, and may do so each time it repeats the request and the person concerned does not properly comply with it.

#### **11.1.3**

In addition, where a person is required by **Schedule 2 to the LGFA 1992** to correct an assumption made by a billing authority concerning a discount or an exemption of a dwelling and he fails to do so without reasonable excuse, the authority may impose a penalty of £70 on them.

#### **11.1.4**

With effect from 1 April 2013, billing authorities are allowed to issue penalties in respect of matters connected with council tax reduction (CTR) (also known as council tax support).

### **11.2 LEGISLATION**

#### **11.2.1**

Local Government Finance Act 1992 (LGFA 1992) – Section 14(2) and 14A to 14D, Schedules 2 & 3 [14A to 14D were inserted by section 14 of the Local Government Finance Act 2012]

The Council Tax (Administration and Enforcement) Regulations 1992 SI 1992/613 – Regulations 2, 3, 11, 12, 16 & 29

The Local Government Finance (England) (Substitution of Penalties) Order 2008 SI 2008/981

The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 SI 2009/2269

The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013 (SI 2013/501)

#### **11.2.2**

Supply of information to a billing authority

A person who appears to a billing authority to be a resident, owner or managing agent of a dwelling must, on written request, supply certain information to the authority. It must be supplied if it is in the person's possession or control and the authority has requested it in order to identify the person who is, or would be, liable for a specified period in relation to the dwelling, including persons jointly and severally liable. The information must be provided within 21 days of the authority's written request and in any form which is specified (regulation 3 of SI 1992/613).

A billing authority possesses similar powers in respect of dwellings which appear to it to be exempt and in respect of which it requires the resident, owner or managing agent to provide information for the purposes of identifying the liable person or persons for any specified period, or the person or persons who would be liable if the dwelling had not been exempt for that period.

### **11.2.3**

#### Time period

Where a person fails to provide the information referred to in the above paragraph within the period of 21 days from the date of the written request, or where he knowingly supplies information which is materially inaccurate, the billing authority may impose a penalty of £70 on him (**Schedule 3 to the LGFA 1992**).

### **11.2.4**

#### Further penalty

Where a billing authority has imposed a penalty and a further request for the same information is made to that person and is again not properly complied with, the authority may impose a further penalty of £280. A penalty of £280 may be imposed each time the authority repeats the request and the person does not fulfil his statutory obligations (**Schedule 3 to the LGFA 1992**).

### **11.2.5**

#### Exemptions and discounts

Where a billing authority has assumed that a dwelling is exempt, or that the chargeable amount in respect of it is subject to a discount (or premium), and it has informed the liable person (or the person who would be liable if a dwelling were not exempt) of that assumption, that person must inform the authority within 21 days of his having reason to believe that any time before the end of the financial year following the year in respect of which the assumption as to exemption or discount (or premium) was made, the assumption did not apply or will not apply. This includes cases where a discount should not apply, or a smaller discount should be made, and where a dwelling is not exempt or is exempt for a shorter period than assumed by the authority. A billing authority may impose a penalty of £70 on a person who fails without reasonable excuse to notify it of such information.

### **11.2.6**

#### Council tax reduction (CTR) matters (also known as Council Tax Support)

For CTR matters, there are different reasons why a billing authority may impose a penalty:

- (a) Where a claimant accepts a penalty equal to 50% of the excess reduction incorrectly awarded as an alternative to prosecution (the penalty may be a minimum of £100 and maximum of £1,000).

- (b) A £70 penalty where a claimant negligently makes an incorrect statement or representation, or negligently gives incorrect information or evidence.
- (c) A £70 penalty where a claimant without reasonable excuse, fails to give a prompt notification of a relevant change of circumstances.

#### **11.2.7**

##### **Penalty demand**

A penalty must be paid to the billing authority that imposed it. It may be collected as part of a person's ordinary council tax liability or may be demanded by notice served on the person requiring payment within a specified period (not being less than 14 days). A billing authority may quash a penalty that it has imposed.

#### **11.2.8**

##### **Appeals**

A person may appeal to the Valuation Tribunal for England if he is aggrieved by the imposition on him of a penalty.

The appeal must be initiated by serving on the Tribunal a written notice of appeal containing the grounds on which the appeal is made and the date of service of written notice of the imposition of the penalty. An appeal form is available on the Valuation Tribunal website: [www.valuationtribunal.gov.uk](http://www.valuationtribunal.gov.uk) or by telephoning 0303 445 8100.

An appeal shall be dismissed if it is not initiated within two months of the date of service of the penalty notice, unless the President of the Tribunal is satisfied the delay was caused by circumstances outside the appellant's control and authorises the appeal to be entertained.

Where a penalty has been imposed as an alternative to prosecution for a CTR related matter, an appeal may only be made to the Valuation Tribunal for England if the person alleges that there is no power in the case concerned to impose a penalty.

For other CTR penalties, appeals may be made in the way described above.

### **11.3 CASE LAW**

#### **11.3.1**

There is no relevant case law at present.

### **11.4 COMMENTARY**

#### **11.4.1**

Historically, billing authorities found the issuing of a penalty to be of little assistance and very few were issued. As a result there were very few appeals against penalties. However, there is a growing number of billing authorities now using their statutory powers to request information and to penalise taxpayers who fail to promptly report changes of circumstances.

### 11.4.2

Points to note:

- There is no formal procedure requiring a taxpayer to appeal to the billing authority regarding the imposition of a penalty, prior to taking the matter up with the Valuation Tribunal.
- The Valuation Tribunal can only quash a penalty; it has no power to amend the amount.
- A billing authority is prevented from collecting a penalty whilst there is an appeal in respect of the penalty outstanding (**regulation 29(2) of SI 1992/613**).

### 11.4.3

Preparing for a Tribunal hearing

In this type of appeal there is an expectation that the parties have fully exchanged evidence and argument before the appeal was lodged, therefore there is no disclosure process. However all evidence and argument which a party has not shared with the other party must be exchanged prior to the hearing. When the Tribunal notifies the parties of the date, time and place of the hearing, it also provides a general direction to those involved in the appeal.

## **12. INITIATION OF LIABILITY APPEALS**

### **12.1 INTRODUCTION**

#### **12.1.1**

A person may appeal to the Valuation Tribunal if he or she disagrees with a billing authority (local council) in respect of the following council tax 'liability' matters:

- (a) a decision of the billing authority that a dwelling is a chargeable dwelling rather than an exempt dwelling;
- (b) a decision of the billing authority that he or she is liable to pay council tax; and
- (c) a calculation made by the billing authority as to the amount that he or she is liable to pay as to council tax. This comprises of matters regarding entitlement to discount and reductions under the disability reduction scheme. It also includes council tax reduction (CTR) disputes and discretionary reductions under section 13A of the LGFA 1992, but those matters are covered separately in sections 16 and 17 of this manual.

#### **12.1.2**

No appeal may be made to the Tribunal, however, unless the aggrieved person has first made representations in writing to the billing authority.

#### **12.1.3**

The manner of making a liability appeal and relevant time limits are prescribed in regulations.

#### **12.1.4**

Appeals may also be made against other council tax matters involving billing authorities, such as completion notices for newly built dwellings and penalties imposed by the authority. Those types of appeal are not regarded as "liability" appeals and the legislation provides a different appeals process and rules; see sections 11 and 13 of this manual for further information.

## **12.2 LEGISLATION**

### **12.2.1**

Local Government Finance Act 1992 (LGFA 1992) – Section 16

The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 SI 2009/2269, amended by SI 2011/434 and SI 2013/465

### **12.2.2**

Jurisdiction

The above legislation sets out the jurisdiction of the Valuation Tribunal in respect of council tax liability appeals.



### 12.2.3

#### Rights of appeal

**Sections 16(1) and 16(2)** provide that a person may make an appeal if he is aggrieved by:

- any decision of a billing authority that a dwelling is a chargeable dwelling, or that he is liable to pay council tax in respect of such a dwelling; or
- any calculation (or estimate) made by such an authority of an amount which he is liable to pay to the authority in respect of council tax.

### 12.2.4

#### Conditions

Before an aggrieved person may make an appeal certain conditions must have been met. The aggrieved person must have served a written notice on the billing authority concerned, giving details of his grievance. The billing authority must consider the matter and any written reply it makes must set out the steps it has taken to deal with the grievance, or the reasons why it believes the grievance is not well founded. Where the aggrieved person receives a reply that does not satisfy him, or has not received a reply within two months of serving his notice on the authority, he may appeal to the Valuation Tribunal.

### 12.2.5

#### Time limits

An appeal must be made within two months of the date of service of the billing authority's notice, or in a case where no such notice is received from the Authority, within four months of the date of service of the aggrieved person's notice. Any appeal made outside the above time limits must be dismissed, unless the President of the Tribunal is satisfied that the failure to make the appeal in time arose due to circumstances beyond the appellant's control and the President authorises the appeal to be entertained (**regulation 21(6) of SI 2009/2269**).

### 12.2.6

#### Notice of appeal

An appeal is initiated by serving a written notice on the Tribunal. The notice must contain:

- (a) the name and address of the appellant;
- (b) the address of the dwelling to which the dispute relates and the name of the billing authority involved;
- (c) The ground on which the appeal is made and brief reasons why the appellant believes the decision or the calculation of the authority is incorrect;
- (d) the date on which the appellant served his notice of grievance on the billing authority; and,
- (e) the date of the billing authority's reply, if any.
- (f) If the appeal concerned a CTR matter (see section 16 of this manual), the appellant is required to notify the Tribunal if he or she has also made a separate housing benefit appeal on common issues of fact.

An appeal form is available on the Valuation Tribunal website: [www.valuationtribunal.gov.uk](http://www.valuationtribunal.gov.uk) or by telephoning 0303 445 8100.

Before we register your appeal, we may need further information from you, in the event that the billing authority has not responded to your aggrieved person's notice. We may ask you to provide a copy of your aggrieved person's notice/letter you sent to the council and some evidence to show how it was sent to them.

#### **12.2.7**

##### **Receipt of appeal**

Within two weeks of receiving the notice of appeal, the Tribunal must notify the appellant of its receipt and serve a copy of it on the billing authority.

#### **12.2.8**

##### **Adding interested parties to the proceedings**

While **regulation 11(2) of SI 2009/2269** allows the VTE to direct that a person may be added to the proceedings as a party, the Tribunal will not routinely or ordinarily seek to add parties at its own initiative.

Where billing authorities have relied on the evidence of a person who would otherwise be held liable for council tax, in making the appellant liable (such as in the case of an HMO), the authority should arrange for that person to produce a witness statement and ideally attend the hearing to answer any questions.

### **12.3 CASE LAW**

#### **12.3.1**

When a section 16 liability appeal can be made to the Valuation Tribunal

MM v MEDWAY COUNCIL (BA) [VTE, 9 March 2016]

At paragraph 38 of this judgment, the VTE Vice-President stated that:

“... it is now plain enough that an application for a discretionary reduction in council tax takes effect as a notice under section 16(4) of the 1992 Act because, in seeking that reduction, the applicant is aggrieved at the calculation of council tax he has otherwise been found liable to pay. That application, by way of notice, must comply with sections 16(5) and (6). Then, if the billing authority does not give notification of its decision, in accordance with section 16(7)(a) or (b), within two months the aggrieved person, or appellant, may appeal to the Tribunal in accordance with section 16(4) and (7)(c). ...”

This decision is also referred to in section 17 of this manual.

## 12.4 COMMENTARY

### 12.4.1

#### Exempt dwellings

Any person may appeal against a decision of a billing authority that a dwelling is not an exempt dwelling, (**section 16(1) (a)**), provided he is aggrieved by the decision. If, however, an aggrieved person believes that a property is not a dwelling at all, he should seek its deletion from the valuation list via a proposal served on the listing officer, as no appeal may be made under **section 16** in these circumstances.

### 12.4.2

#### Appeal by liable person

An appeal against being treated as the liable person, (**section 16(1) (a)**), or concerning the calculation of the amount of council tax for which a person is held liable, (**section 16(1) (b)**), may only be made by the person held liable, including any person who is jointly and severally liable under **sections 6, 7, 8 or 9 of the LGFA 1992**. An appeal against a billing authority's calculation of the amount of council tax payable may concern whether or not a discount should be granted, based on the numbers of persons treated as resident (sole or main residence) or whether a resident should or should not be disregarded for discount purposes.

### 12.4.3

#### Disability reduction appeal

An appeal against a billing authority's refusal to grant a reduction for disability under **SI 1992/554** may also be made under **section 16(1) (b)**.

### 12.4.4

#### Council tax reduction

From 1 April 2013, council tax benefit was replaced by council tax reduction (also known as CTR and sometimes 'council tax support'). Whereas the Valuation Tribunal had no jurisdiction for council tax benefit appeals, under section 16 of the Local Government Finance Act 1992, appeals against calculations for council tax reduction may be made to the Valuation Tribunal. Section 16 of this manual provides more information.

### 12.4.5

#### Judicial review

**Section 66 of LGFA 1992** sets out other matters which may be challenged only by application for judicial review. These include the specification by the Secretary of State of classes of exempt dwelling; any decision by him with regard to allocation of grant or capping of expenditure; the decisions of a billing authority in setting the amount of council tax or a substituted amount for a financial year any determination made in

accordance with section 11A (4) reduced discounts or 11B premium or a council tax reduction scheme, or that of a precepting authority with regard to the issue of a precept, or a substituted precept.

#### **12.4.6**

When a section 16 liability appeal can be made to the Valuation Tribunal

*MM v Medway Council* establishes that the Tribunal's involvement in an appeal can be earlier than anticipated by the billing authority. A communication from an aggrieved taxpayer can constitute an aggrieved person's notice, even if it is not titled as such, providing what the matter he or she is aggrieved by and the decision sought from the billing authority is clear. If the taxpayer serves an aggrieved person's notice on the billing authority against the calculation of his or her council tax liability (in that case a discretionary reduction was sought), a person can then appeal to the Valuation Tribunal within two months of the billing authority's decision, or in a case where the billing authority fails to make a decision within two months, within four months of his or her aggrieved person's notice.

#### **12.4.7**

Preparing for a Tribunal hearing

There should be no surprises for anyone attending the hearing and all evidence to be relied upon by either party should be disclosed to the other party in advance. When the Tribunal notifies the parties of the date of the hearing, it also provides standard directions to those involved in the appeal. The standard directions require each party to exchange their case before the hearing date; the detail is set out in the Annex to this Manual, Consolidated Practice Statement PS 11 Disclosure in all council tax and completion notice appeals.

## **13. COMPLETION NOTICES**

### **13.1 INTRODUCTION**

#### **13.1.1**

The completion day for a new building for council tax purposes falls to be determined under the provisions of section 17 of the LGFA 1992 and in accordance with Schedule 4A of the LGFA 1988. (Schedule 4A also applies in respect of completion of new buildings for the purposes of non-domestic rating). The completion notice serves the purpose of establishing the commencement date of the dwelling's entry in the valuation list and also the date on which it becomes a 'chargeable dwelling'. However, some billing authorities use their discretionary powers to give discounts of up to 100%, for a period of time up to six months (see section 10 of this manual, prescribed discount class C).

#### **13.1.2**

A completion notice must be served by a billing authority on the owner of any building in relation to which the remaining works appears to it to be reasonably capable of completion within three months, providing it has already reached the stage of substantial completion. An authority may also serve a notice in respect of a new dwelling which it finds to have been completed but having regard to the legislative wording of paragraph 2 (3) of Schedule 4A the completion day specified cannot precede the date when the completion notice is served. A dispute regarding the validity of a completion notice may arise if the billing authority has specified a completion day that pre-dates the date when the completion notice was served.

If a person disagrees with the completion day stated in a notice he may seek to agree a different completion day with the billing authority, and/or may appeal to the Valuation Tribunal.

#### **13.1.3**

The completion day stated in the notice is the day on which a new dwelling is deemed to have come into existence, unless a different day is determined following agreement between the owner and the billing authority, or following an appeal, in which case that other day shall apply.

## **13.2 LEGISLATION**

### **13.2.1**

Local Government Finance Act 1988 (LGFA 1988) - Schedule 4A (inserted with retrospective effect by the Local Government and Housing Act 1989, section 139, Schedule 5, paragraphs 36, 79(3))

Local Government Finance Act 1992 (LGFA 1992) - Section 17

Local Government Act 2003, section 127(1), Schedule 7, paragraphs 40 and 43(1)(b)  
The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 SI 2009/2269, in particular– Regulations 17, 21, 28, 37, 40(1)(5)(f) and 43.

### **13.2.2**

#### Completion of new dwellings

**Section 17(1) of the LGFA 1992** provides that **Schedule 4A to LGFA 1988** shall apply for council tax purposes, with the exception of paragraph 6 of the schedule.

### **13.2.3**

#### New buildings (completion days)

**Schedule 4A** requires a billing authority to serve a notice on the owner of any building on which the work remaining to be done can reasonably be expected to be completed within three months unless the listing officer directs otherwise in writing. "Owner" is defined as the person entitled to possession of the building.

The notice must be served as soon as is reasonably practicable and must specify the building to which it relates and the day proposed as the completion day, which may not be later than three months from the day on which the notice is served. **Paragraph 8** of the schedule contains provisions concerning the mode of service of notices.

### **13.2.4**

#### Completion notice

If a billing authority becomes aware that a new building has been completed, it has the discretion to serve a completion notice on the owner, again subject to the Listing Officer's written veto. If the authority does serve the notice, the specified completion day must be the same as the day on which the notice is served.

### **13.2.5**

#### Withdrawal of completion notice

A billing authority may withdraw a completion notice by serving a subsequent completion notice on the owner. If the owner has appealed against the earlier notice, however, the authority may only withdraw that notice with the written consent of the owner. No withdrawal may be made if the completion day has already been determined under **Schedule 4A**, for example where an appeal against the day stated in the notice has been decided, or where no appeal has been made within the statutory time limits.

### **13.2.6**

#### Agreement in writing

A person on whom a completion notice is served may agree in writing with the authority concerned that a different completion day shall apply, in which case the completion notice is deemed to have been withdrawn.

### **13.2.7**

#### Appeal against completion notice

A person on whom a completion notice is served may appeal to the Valuation Tribunal on the grounds that the building has not been, or cannot reasonably be expected to be

completed by the day stated in the notice. If the appeal is not withdrawn or struck out, the completion day is the day determined by the Tribunal.

Where an appeal is made to the Valuation Tribunal, the owner's notice of appeal must be accompanied by a copy of the completion notice and a statement of the grounds on which the appeal is made. A form is available on the Valuation Tribunal website: [www.valuationtribunal.gov.uk](http://www.valuationtribunal.gov.uk) or by telephoning 0303 445 8100.

**Regulation 21(5) of SI 2009/2269**, provides that an appeal against a completion notice shall be dismissed if it is initiated later than four weeks after the notice was served, although **Regulation 21(6)** allows the President of the Tribunal to authorise an appeal to be considered if he is satisfied that the delay was caused by circumstances outside the appellant's control. (See the VTE Practice Statement PS1 'Extensions of time for making appeals', also available on the Tribunal website).

### 13.2.8

Notification to the listing officer

A billing authority is required to supply to the listing officer a copy of every completion notice which it serves, and must notify the listing officer if it withdraws a notice or agrees a different date in writing with the person on whom the notice was served.

Additionally, where an appeal has been made, the Valuation Tribunal is required to send a copy of the notice of decision to the listing officer, even though they are not a party to the appeal (**Regulation 37(2) of SI 2009/2269**).

### 13.2.9

Completion day

**Paragraph 9 of Schedule 4A** provides that the completion day stated in a notice served on the owner of a building which is substantially complete, must allow a reasonable time for full completion of the works outstanding. Billing Authority's often err by falling into the trap of serving a completion notice before the stage of substantial completion has been reached.

### 13.2.10

Structural alterations

**Sections 17(5), 17(6) and 17(7) of LGFA 1992** make provision for when a completion day is determined under the **Schedule 4A** where structural alterations have taken place, by virtue of which part or the whole of an existing dwelling or dwellings (or other building) becomes, or becomes part of, one or more different dwellings. In such circumstances the existing dwelling or dwellings are deemed to have ceased to exist - and the different dwelling or dwellings are deemed to have come into existence - on the completion day so determined.

### 13.3 CASE LAW

#### 13.3.1

Most of the following cases relate to non-domestic rating, but remain relevant for council tax purposes.

#### 13.3.2

Completion date

##### 13.3.2a RAVENSEFT PROPERTIES LTD v LONDON BOROUGH OF NEWHAM CA (RA 1975 410)

The Court of Appeal held that a newly-erected building is a completed building for the purpose of a completion notice only when it is ready for occupation. It rejected the authority's argument that it was at the point of structural completion. Thus, a 14 storey office block under construction was not completed where the vast floors had no partitions installed and other work remained outstanding.

##### 13.3.2b POST OFFICE v NOTTINGHAM CITY COUNCIL CA (RA 1976 49)

A newly-erected building is completed for the purpose of a completion notice for the unoccupied rate when it is ready for occupation in the sense that as a building it is ready for occupation for the purpose for which it was intended (as a house, shop, office, factory etc) and not only when the furniture and equipment necessary for its actual occupation are installed, when occupation will have commenced (leaving no scope for the unoccupied rate on a newly erected building). A county court judge was held to have applied the right test and to have been fully justified in finding that a telephone exchange building would be completed when as a building it was ready for occupation as a telephone exchange although it could not be used as a telephone exchange until further telephone equipment had been installed.

##### 13.3.2c JGL INVESTMENTS LTD v SANDWELL DISTRICT COUNCIL CA (RA 1977 78)

The period within which erection of a building may "reasonably be expected to be completed" under **paragraph 8(4) of schedule 1 to the General Rate Act 1967**, relating to appeals against completion notices for unoccupied rate purposes, where erection has been substantially completed within **paragraph 9**, is the time "reasonably required for carrying out the work" remaining to be done. It does not include the time required for finding tenants who will decide what form the work shall take, in this particular case the partitioning of large open plan offices.

##### 13.3.2d GRAYLAW INVESTMENTS LTD v IPSWICH BOROUGH COUNCIL [1978] RA 111

In relation to a new office building, the Court of Appeal determined that the billing authority must allow the owner time to complete the remaining work after the building had been substantially completed. The completion date shown in the notice was therefore either the date the notice was served or such later date specified in the notice.

The completion notice was served on 7 March 1977 specifying a completion date of 30 April 1977. The county court judge held that the ratepayer should be allowed six months from 7 March 1977 to complete the remaining work which included installation



of partitioning and possible alteration of electrical wiring and so on. He believed it ran from the date of the completion notice.

The Court of Appeal overturned the decision of the county court judge and held that the completion notice must stand. The Court of Appeal held that the time period allowed for completion of the remaining work ran from the date of substantial completion (not the date the completion notice was served). There was clear evidence that the building was substantially completed before 25 March 1976, that being the date the letting agents wrote to the authority, as potential tenants, saying that the building was finished to a high standard and providing it with a letting brochure.

#### 13.3.2e LONDON MERCHANT SECURITIES PLC & TRENDWORTHY TWO LTD v LONDON BOROUGH OF ISLINGTON (1987) H of L (RA 1987 99)

In determining the starting date for the customary works required to complete a newly erected building, it was necessary to determine when the building was complete apart from the customary work, because it was from that date that the period reasonably required for the customary work must be assumed to run. In estimating the time reasonably required for carrying out those works customarily done after substantial completion, time for design and obtaining necessary approvals must be excluded.

#### 13.3.2f SPEARS BROTHERS V RUSHMOOR BOROUGH COUNCIL (RA2006 86)

The Lands Tribunal decided to quash a completion notice because it was apparent from the facts that the appeal property could not reasonably have been expected to be completed within three months of the date that the completion notice was served. In this case, the lack of electrical wiring and lighting meant that the property was nowhere near complete. On the date that the completion notice was issued, there was no prospect of an independent electricity supply being connected to the property within three months. Consequently, a building without electric lighting was incapable of occupation as a workshop. In addition, there was no fire alarm system and the building could not be occupied without one.

#### 13.3.2g LONDON BOROUGH OF NEWHAM v RAD PHASE 1 TYPE B PROPERTY COMPANY No.1 LTD [2020] UKUT 0203 (LC)

The VTE panel had quashed the completion notice as the property could not be completed within three months. However, the Upper Tribunal held that the VTE cannot quash completion notices. It was stated that while the VTE is given express power to “quash” an estimate or penalty under council tax legislation, no such wording is used in the completion notice regime.

The options open to the VTE under paragraph 4(2) of Schedule 4A to the 1988 Act, in the absence of the notice being withdrawn, are to dismiss the appeal if the work can be done by the completion date; or if the works will take longer, the VTE can determine whatever completion date it sees fit for the completion of the works, having regard to the facts, even if this is considerably more than three months.

### 13.3.3

#### Defects in service / validity of the notice

##### 13.3.3a HENDERSON v LIVERPOOL METROPOLITAN DISTRICT COUNCIL HC (RA 1980 238)

Where a new house was under construction in the garden of an existing house, a completion notice bearing the name of the existing house was held valid in respect of the new house because it clearly related to the new house and the ratepayer was not misled.

##### 13.3.3b PRUDENTIAL ASSURANCE COMPANY LTD v VALUATION OFFICER [VTE, 60513764456/0154N05, 24 May 2011]

In two appeals arising from proposals to delete entries in the rating list, the VTE President held that the Valuation Tribunal has jurisdiction to consider any question relating to the validity or existence of a completion notice. In this case, the billing authority had wrongly served the completion notice on the developer rather than the owner. However, as the correct owner had subsequently agreed completion dates with the billing authority, the VTE President found no ground to delete the entries in the rating list.

##### 13.3.3c ENGLISH CITIES FUND (GENERAL PARTNERS) LTD and STANDARD LIFE ASSURANCE LTD v GRACE (VO) and LIVERPOOL CITY COUNCIL [VTE, 431016405449/134N05, 3 December 2012]

The VTE President held that completion notices issued by Liverpool City Council were invalid including those where the name of the owner was wrong.

##### 13.3.3d METIS APARTMENTS LTD v GRACE (VO) and SHEFFIELD CITY COUNCIL [VTE, 442022493928/257N10, 6 January 2014]

The VTE President ordered deletion of the entries from the 2010 rating list because on the balance of probabilities the appellant company had not received the completion notices. The billing authority had made a number of mistakes: the name of the owner shown on the notices was wrong; the notices were not addressed to the secretary or clerk in accordance with paragraph 8 of Schedule 4A; and the billing authority could not show to what address they had been sent.

##### 13.3.3e UKI (KINGSWAY) LTD v WESTMINSTER CITY COUNCIL [2018] UKSC 67

On 5 March 2012 a completion notice specifying 1 June 2012 as the completion date was delivered by hand to the building, where it was given to a receptionist employed by a facilities management company responsible for managing the building on behalf of the appellant. The completion notice was addressed to the "Owner". Neither the management company nor its receptionist had any authority to accept the service of legal documents on behalf of the appellant. The receptionist scanned the completion notice and transmitted it electronically to the appellant. The precise date is not recorded but the completion notice had been received by the appellant not later than 12 March 2012, a week later. The VTE President had originally decided that a completion notice to have been both defective and not to have been validly served.

However, the Upper Tribunal overturned that decision. Paragraph 2 of Schedule 4A only requires a notice to specify the building to which it relates and state the proposed

completion date. As the completion notice satisfied those requirements, the notice was valid, whether or not it was understood by the recipient or anyone else.

With regard to the service of the completion notice, paragraph 8 of Schedule 4A provides the three methods of service but begins by stating “Without prejudice to any other mode of service”. The three methods are therefore not mandatory but permissive and any other method of service which brings it into the hands of the owner will be sufficient.

Although the receptionist at the building was not an agent of the respondent for the purpose of receiving legal documents, the receptionist scanned the completion notice and it was ultimately served on the correct owner, albeit via a connected third party.

The Upper Tribunal’s judgment was overturned by the Court of Appeal, before being restored by the Supreme Court.

The Supreme Court held that the completion notice had been served on the owner because there had been actual receipt of the notice. In paragraph 38, the Supreme Court saw no problem with, for example, effective service in the case of a notice correctly addressed, but mistakenly delivered to a neighbouring address and then passed on by the occupant to the intended recipient by a friendly neighbour.

The Supreme Court also accepted that the completion notice had been served by email. The Court considered existing case law on fax transmissions which were held to be served if they were legible. The Court found no good reason had been suggested for distinguishing emails from fax transmissions. Even though the Electronic Communications Act 2000 made no specific provision for electronic service of completion notices, the Supreme Court held that there is nothing to indicate an intention to cut down the existing general or common law which would allow service in this way.

#### 13.3.3f REEVES (VO) v VTE [2015] EWHC (Admin) 973 (also referred to as “TULL PROPERTIES”)

The High Court acknowledged the VTE President’s finding that the completion notice procedure may only be used for new buildings or new hereditaments produced by the structural alteration of an existing building (not to return properties to the rating list which had been deleted).

However, the VTE had wrongly ordered the valuation officer to delete an entry in the rating list when it had no legal power to do so on a completion notice appeal. The High Court found that the only jurisdiction the VTE has on a completion notice appeal is to determine the completion date.

#### 13.3.3f.1 PROVINCIAL REAL ESTATE BURTON LTD v VIRK AND EAST STAFFORDSHIRE BOROUGH COUNCIL [VTE, 341019474725/538N10, 25 FEBRUARY 2015]

The VTE determined that a new owner, upon whom a completion notice was not served, could challenge a completion notice. If proceedings could have been brought at that time by the original owner, the new owner must have the same capacity as the

original owner, but no greater capacity to do so. The VTE president stated, 'I cannot see how the change in ownerships can diminish the right to challenge, but equally there can be no question of the clock starting to run again from the time this appellant acquired the building.'

#### 13.3.3g DELPH PROPERTY GROUP LTD v ALEXANDER (VO) AND LEICESTER CITY COUNCIL [VTE, 246525454690/538N10, 17 JANUARY 2018]

The VTE President found that the only issue for the VTE to decide where an appeal is made against a completion notice is the date. A challenge to an entry in the list (through no valid completion notice being served) could be by way of a proposal rather than by judicial review. The onus was on the billing authority to undertake the process of issuing completion notices properly and for the Valuation Officer to satisfy him or herself that the notices comply with the law and that they are correctly making an entry in the list.

#### 13.3.3h LONDON BOROUGH OF NEWHAM v RAD PHASE 1 TYPE B PROPERTY COMPANY No.1 LTD [2020] UKUT 0203 (LC).

The Upper Tribunal overturned a VTE decision to quash a completion notice even though the works remaining to be undertaken before the completion of a new office building would have taken well in excess of three months to complete which in the VTE's opinion did not fulfil statutory requirements. The VTE decision in *Newham* had followed the earlier UT judgment in *Spears Brothers v Rushmoor District Council* [2006] RA 86.

#### 13.3.3i HERMES PROPERTY UNIT TRUST v ROBERTS (VO) and TRAFFORD COUNCIL [2021] UKUT 308 (LC)

The Upper Tribunal decided the rating list entries must be deleted because the completion notices, served by the billing authority were invalid because they specified a completion date (3 May 2016) that preceded the date of service of the notices (9 May 2016). After consideration of Schedule 4A and the relevant authorities, the Upper Tribunal stated that "it would be startling if the billing authority could create a liability for tax on a basis that is both counterfactual and retrospective".

### 13.3.4

No completion notice issued

#### 13.3.4a PORTER (VO) v TRUSTEES OF GLADMAN SIPPS [2011] RA 337

The Upper Tribunal held that a new office building could not be entered into the rating list without a completion notice being issued. This was because there remained some outstanding work; namely small power (a ring main and power points), tea points and at least some full height partitioning to be installed before occupying them as offices.

A building is only a hereditament if it is ready for occupation, and whether it is ready for occupation is to be assessed in the light of the purpose for which it is designed to be occupied. If the building lacks features which will have to be provided before it can be occupied for that purpose and when provided will form part of the occupied hereditament and form the basis of its valuation, it does not constitute a hereditament and so does not fall to be shown in the rating list. There is in consequence no scope

for including in the list a building which is nearly, even very nearly, ready for occupation unless the completion notice procedure has been followed.

**13.3.4b RGM PROPERTIES LTD v SPEIGHT (LO) [2011] EWHC 2125 (Admin)**  
The High Court considered an appeal concerning the effective date of entry of four flats into the valuation list. On 20 July 2009, the listing officer entered the appeal properties into the valuation list with effect from 20 March 2008. The dwellings had been created from a conversion of a building formerly used as offices. None of the flats in question had ever been occupied as such and the billing authority (BA) had never issued any completion notices, although a different flat in the same building was found to be occupied upon an inspection by the BA on 20 March 2008.

The High Court rejected the appeal made on the basis that the BA had not served completion notices and there was various work required on the building. Mr Justice Langstaff reached the conclusion that it was not a necessary precondition of a dwelling's entry into the valuation list for a completion notice to be served, if the flat was complete and already a hereditament. The High court rejected the appellant's argument that a landlord could not let the flats in their present condition; the correct test was the use to which a tenant/occupier could put the premises.

**13.3.4c AVIVA INVESTORS PROPERTY DEVELOPMENTS LTD AND ANOTHER v WHITBY (VO) and MILLS (VO) [2013] UKUT (LC) 0430; RA/3 & 6/2011**  
Four new warehouses had been entered into the 2005 rating list by the valuation officer but the billing authority had not served completion notices.

Following the judgment in *Porter (VO) v Trustees of Gladman Sipps*, the Upper Tribunal ordered deletion because the buildings were not ready for occupation, reiterating that there is no scope for including in the list a building which is nearly, even very nearly, ready for occupation unless the completion notice procedure has been followed.

## **13.4 WORKING PRACTICES**

### **13.4.1**

#### **Entry in the valuation list**

There is no requirement for a billing authority to serve a notice if it is of the opinion that a new building has been completed. If there were, the inability to backdate the completion day could result in a significant loss of council tax in a case where a dwelling had in fact been occupied for some time before it came to the authority's attention. The listing officer has the power to direct an authority not to issue a notice in such circumstances, and he may then enter the dwelling into the valuation list from the earlier day on which it actually came into existence.

However, if a dwelling is not ready for occupation, an appeal against its entry in the list is likely to be upheld if the completion notice procedure has not been followed, because of the *Porter (VO) v Trustees of Gladman Sipps* judgment.

### **13.4.2**

#### **Incomplete buildings**

If a completion notice is issued in respect of an incomplete building and no further work is in fact carried out by the completion day stated, the listing officer is obliged to assume that the dwelling has been completed and to value it on that basis. These circumstances may be contrasted with the situation where a person has occupied an incomplete building, which consequently becomes a dwelling by reason of that occupation, but which then has to be valued in its actual, incomplete condition.

### **13.4.3**

#### **Full completion**

If a building is substantially complete but there remains to be done to it work “which is customarily done to a building of the type in question after the building has been substantially completed”, a billing authority may not treat the building as complete with immediate effect. It must allow a reasonable time from substantial completion for full completion, the test of completion being whether, as a matter of fact and degree, the building is, or will be, ready for occupation for the purposes for which it was intended.

### **13.4.4**

#### **Exclusions in time for work outstanding**

Time for obtaining planning approvals after substantial completion, and time, however reasonable, for finding a tenant should be excluded in considering the time reasonably required to complete the work outstanding.

### **13.4.5**

#### **Preparing for a Tribunal hearing**

There should be no surprises for anyone attending the hearing and all evidence to be relied upon by either party should be disclosed to the other party in advance. When the Tribunal notifies the parties of the date, time and place of the hearing, it also provides standard directions to those involved in the appeal. The standard directions require each party to exchange their case before the hearing date; the detail is set out in the Annex to this Manual, Consolidated Practice Statement PS 11 Disclosure in all council tax and completion notice appeals.

## **14. DEATH OF PERSONS LIABLE**

### **14.1 INTRODUCTION**

#### **14.1.1**

Under the powers conferred upon him by **section 18 of LGFA 1992**, the Secretary of State has made provisions by regulations for liability for council tax in respect of deceased persons.

#### **14.1.2**

Readers should also be aware of the existence of Class F exemption which may often apply from the date of death. More information is contained within section 9 of this manual on the various exemptions from council tax, including Class F.

### **14.2 LEGISLATION**

#### **14.2.1**

Local Government Finance Act 1992 (LGFA 1992) - Section 18

The Council Tax (Administration & Enforcement) Regulations 1992 SI 1992/613 - Regulation 58 (as amended by SI 2005/2866 from 10 December 2005 in respect of civil partners)

#### **14.2.2**

Death of persons liable

Where a person dies owing council tax for which he was liable under **section 6, 7, 8 or 9 of the LGFA 1992**, or where he has not paid a penalty imposed on him under **schedule 3 of the LGFA 1992**, his executor or administrator is liable to pay the amount outstanding, including any relevant costs, such as costs shown in a liability order, or costs relating to a distress warrant, or to a warrant for commitment to prison. The sum may be deducted out of the assets and effects of the deceased (**section 18 of the LGFA 1992**).

#### **14.2.3**

Liability of executor / administrator

Where a sum becomes payable (that is, a demand notice is issued) after a person's death, the executor or administrator is similarly liable, provided a notice has been served on him requiring payment of the sum.

#### **14.2.4**

Overpayments

Where an overpayment of council tax (including relevant costs) was made before the deceased person's death, his executor or administrator is entitled to the amount of the excess.

#### **14.2.5**

Enforcement

A sum payable is enforceable as a debt of the deceased's estate and the liability of the executor or administrator is in his capacity as such. No liability order need be applied

for in respect of such a sum. In relation to council tax liability of a deceased person, his executor or administrator may initiate, continue or withdraw proceedings, whether by way of appeal under **section 16 of the LGFA 1992** or otherwise.

### **14.3 CASE LAW**

#### **14.3.1**

See section 9.3.6 of this manual for case law concerning 'Class F'- an unoccupied dwelling following death of the liable person.

### **14.4 COMMENTARY**

#### **14.4.1**

In the majority of cases where a taxpayer dies, liability will cease and a final demand / credit note will be issued by the billing authority to the executors.



## **15. EXCLUSION OF CROWN EXEMPTION**

### **15.1 INTRODUCTION**

#### **15.1.1**

Under **section 19 of the LGFA 1992**, dwellings provided and maintained by certain Authorities shall not be prevented from treatment as chargeable dwellings, despite any rules as to Crown exemption which would otherwise have applied, nor shall the liability of any persons in respect of such dwellings be prevented by those rules.

### **15.2 LEGISLATION**

#### **15.2.1**

Local Government Finance Act 1988 (LGFA 1988) – Section 144

Local Government Finance Act 1992 (LGFA 1992) - Section 19

#### **15.2.2**

Exclusion of Crown exemption in certain cases

Any rules concerning Crown exemption shall not prevent a dwelling being a chargeable dwelling or any person being liable to pay council tax in respect of it, if it is provided and maintained for any Crown purposes, including police purposes or purposes connected with the administration of justice, by any of the following Authorities:

- a billing authority other than the Council of the Isles of Scilly;
- a County Council;
- a Metropolitan County Police Authority;
- the Northumbria Police Authority
- the receiver for the Metropolitan Police District; or
- a combined Police Authority as defined in **section 144 of the LGFA 1988**.

#### **15.2.3**

Prescribed classes

The Secretary of State may, by order, provide that exclusion of Crown exemption may also apply in relation to any dwelling of a class prescribed by the order. Such prescription may be by reference to one or more of the following factors:

- the physical characteristics of dwellings;
- the fact that dwellings are unoccupied, or are occupied, for prescribed purposes or are occupied or owned by persons of prescribed descriptions.

### **15.3 CASE LAW**

#### **15.3.1**

There is no relevant case law at present.

## **15.4 COMMENTARY**

### **15.4.1**

The legislation provides for properties included within Crown exemption to be classed as chargeable dwellings.

## **16. COUNCIL TAX REDUCTION (COUNCIL TAX SUPPORT)**

### **16.1 INTRODUCTION**

#### **16.1.1**

From 1 April 2013, the Government abolished council tax benefit and replaced this with a requirement for each billing authority to put in place their own council tax reduction (CTR) scheme setting out the circumstances under which council tax payers in financial need could reduce their liability. Some billing authorities also refer to CTR schemes as “council tax support” schemes.

#### **16.1.2**

Every billing authority has its own published scheme. For each financial year, each billing authority must consider whether to revise its scheme or to replace it with another scheme. The authority must make any revision to its scheme, or any replacement scheme, no later than 11 March in the financial year preceding that for which the revision or replacement scheme is to have effect.

#### **16.1.3**

The Government has protected applicants of pensionable age by ensuring the same rules that existed before 1 April 2013 will continue to apply to that group. This means the same scheme rules apply to applicants of pensionable age wherever they live in the country. The rules are commonly referred to as the Government’s “default scheme”.

#### **16.1.4**

A person is classed as a “pensioner” if:

- (a) he has attained the qualifying age for state pension credit; and
- (b) he is not, or, if he has a partner, his partner is not -
  - (i) a person on income support, on an income-based jobseeker’s allowance or on an income-related employment and support allowance; or
  - (ii) a person with an award of universal credit.

#### **16.1.5**

For those applicants who are not pensioners (working-age applicants), billing authorities are free to devise their own scheme rules (provided they contain certain prescribed elements); some schemes are more generous than other schemes, but they share many similarities.

## **16.2 LEGISLATION**

### **16.2.1**

Local Government Finance Act 1992- section 13A (as substituted by section 10(1) of the Local Government Finance Act 2012)

Local Government Finance Act 1992- Schedule 1A (as inserted by section 10(1), section 10(2), section 10(3)(a) and Schedule 4 of the Local Government Finance Act 2012)

The Council Tax Reduction Schemes (Prescribed Requirements) (England) Regulations 2012, SI 2012/2885, as amended by SI 2012/3085, SI 2013/3181, SI 2014/107, SI 2014/513, SI 2014/3255, SI 2014/3312, SI 2015/642, SI 2015/643, SI 2015/971, SI 2015/993, SI 2015/1985, SI 2015/2041, SI 2016/211, SI 2016/1262, SI 2017/204, SI 2017/422, SI 2017/863, SI 2017/1305, SI 2018/48, SI 2018/1346, SI 2019/237, SI 2020/23, SI 2021/29, SI 2022/25 and SI 2023/16

The Council Tax Reduction Schemes (Default Scheme) (England) Regulations 2012, SI 2012/2886 as amended by SI 2012/3085, SI 2013/276, SI 2015/971, SI 2015/1985, SI 2016/211, SI 2017/422, SI 2018/378, SI 2019/1027, SI 2019/1458 and SI 2022/634

The Council Tax Reduction Schemes (Transitional Provision) (England) Regulations 2013, SI 2013/215.

### **16.2.2**

First and foremost, regard should be given to the local billing authority's own CTR scheme. It is not possible within this manual to provide all of the rules concerning CTR schemes. Readers are encouraged to consult the billing authority's own local scheme.

### **16.2.3**

The requirement for billing authorities to make CTR schemes can be found in section 13A of the Local Government Finance Act 1992 (as substituted by section 10(1) of the Local Government Finance Act 2012).

### **16.2.4**

The framework for schemes, including the matters which must be included in CTR schemes, is to be found in Schedule 1A to the 1992 Act (as inserted by section 10(1), (3)(a) and Schedule 4 to the 2012 Act).

### **16.2.5**

#### **Calculation of CTR**

In the main, CTR is calculated by assessing a person's income (including that of any partner) and comparing it with a figure known as an "applicable amount", which is based on the needs of that household. The applicable amount varies depending on the composition of the household; for example, the applicable amount is higher in households with dependent children than those without; similarly, in households with a disabled person there are premiums added to reflect the extent of that disability.

Where the income is below the applicable amount, the applicant will usually qualify for the maximum CTR that is available under the billing authority's scheme. If the applicant is of pensionable age, this will cover his or her full council tax liability. However, for working-age applicants there may still be a council tax liability even if maximum CTR is awarded (for example, the maximum CTR might be adjusted locally at only 80% of the council tax liability). In cases where the income is above the applicable amount, the applicant may still qualify for a council tax reduction, but it will be less than the maximum amount.

Some billing authorities have adopted an income-banding approach to calculating CTR entitlement for working-age applicants. In those cases, there is no applicable amount or premiums against which the income is compared. Instead, the level of income is compared to pre-set income bands which determine the amount of the reduction.

Billing authorities exclude people from qualifying for CTR if they hold capital over a set limit. The £16,000 level is the national limit which applies for pensionable-age applicants, but for working-age applicants this figure is usually significantly less. In the case of an applicant who is a pensioner and who is in receipt, or whose partner is in receipt, of a guarantee credit, the whole of his capital and income must be disregarded.

In assessing a person's capital, billing authorities do not count the value of a person's home they own and reside in, a self-employed person's business assets, life insurance policies that have not matured and certain compensation payments or state benefits arrears.

Billing authorities allow CTR from the beginning of the week (i.e. the Monday) following receipt of the person's application.

#### **16.2.6**

##### **Backdating**

For applicants of pensionable age, billing authorities are able to backdate entitlement to CTR by up to 3 months, provided that person would have qualified on the earlier date.

For working-age applicants, the rules for backdating vary at local level. Some billing authorities do not allow any backdating, but others permit backdating by up to 6 months provided the applicant can show "continuous good cause" for not making a claim on an earlier date.

The expression "good cause" has been described in many social security cases. More recently, tribunals are applying the test to focus on the applicant and whether they had good cause, rather than considering what a hypothetical reasonable person would do. In *UH v London Borough of Islington* [2010] UKUT 64 (AAC), Upper Tribunal Judge Lane held –

"10. I agree with Judge Levenson in CH/2198/2008 that, at the end of the day, the test is whether *the* claimant has *good* cause. The reasonableness of what the claimant does or does not do in relation to claiming is clearly an important consideration, but must be set against other factors which may cast a different light on his behaviour. The more reasonable a person's behaviour, having regard to age, experience and particularly (it seems to me) the information available, the more likely he is to have good cause. The less reasonable the behaviour, even bearing in mind those other factors, the less likely the claimant is to establish good cause for delay."

### **16.2.7**

#### **Appeals**

Appeals may be made to the Valuation Tribunal for England (VTE) under section 16 of the 1992 Act, if a person is aggrieved by any calculation made by the billing authority as to the amount that he or she is liable to pay as to council tax. This includes the amount of CTR calculated.

A person aggrieved by a decision of a billing authority may serve notice, in writing, on the authority stating the grounds of the grievance, and the authority has a duty to consider the matter and may change its decision or confirm it. The billing authority must notify the taxpayer of any steps it has taken to deal with the grievance, or if the authority believes that the grievance is not well founded it must provide its reasons for having that belief. If the taxpayer receives no notification from the billing authority within two months, he or she may appeal direct to the VTE.

An appeal to the VTE must be made within two months of the billing authority's response, or where the authority does not respond, within four months of the date of the aggrieved person's original notice.

There is a "council tax reduction" appeal form available on the Valuation Tribunal website - [www.valuationtribunal.gov.uk](http://www.valuationtribunal.gov.uk), or by calling 0303 445 8100. If no appeal form is used, it is imperative that the following information is provided to the Tribunal:

- (a) the full name and address of the appellant/applicant;
- (b) the address of the chargeable dwelling if this is different;
- (c) the date of the original appeal to the billing authority;
- (d) the date of the billing authority's reply (if applicable) and also a copy of that reply;
- (e) the grounds on which the appellant/applicant is aggrieved;
- (f) brief reasons for the appeal; and,
- (g) the appellant/applicant is required to notify the Tribunal if a housing benefit appeal has been, or is being made on common issues of fact.

More information to assist with council tax reduction appeals can be found in the VTE Consolidated Practice Statement PS11 "Disclosure in all council tax and completion notice appeals", also available on the Tribunal's website.

It is important to note that the VTE has no jurisdiction to deal with challenges to the legality of CTR schemes; section 66(2) of the 1992 Act was amended by part 2 of Schedule 4 to the 2012 Act and confirms this may only be challenged by way of judicial review. A number of such challenges have been made and are referred to in the case law section shown below.

## **16.3 CASE LAW**

### **16.3.1**

#### Challenges against CTR Schemes

##### **16.3.1a R (WINDER AND OTHERS) v SANDWELL MBC [2014] EWHC 2617 (ADMIN)**

The High Court held that Sandwell's CTR scheme, which prevented non-pensioners from claiming CTR unless they had resided in the borough for the previous two years, was ultra-vires and unlawful; the council had no power to define a class for the purposes of section 13A(2)(b) by reference to non-financial criteria.

##### **16.3.1b R (ON THE APPLICATION OF MOSELEY (IN SUBSTITUTION OF STIRLING DECEASED) v HARINGEY LBC [2014] UKSC56**

The Supreme Court held that the Council had failed to properly consult on the fundamental basis of the scheme. However, Lord Wilson's conclusion was that it would not be proportionate to order Haringey to undertake a fresh consultation exercise in relation to a scheme which would have been in operation for two years and which Haringey was not minded to revise.

### **16.3.2**

#### Appeals against the calculation of CTR

##### **16.3.2a SOUTH TYNESIDE COUNCIL v AITKEN [2014] EWHC 4163**

The appeal concerned whether the billing authority should be allowed to make a standard deduction of 30% to the maximum entitlement to CTR. The Valuation Tribunal panel erred in its approach by examining whether the severely disabled applicant had capability to work rather than concentrating on the actual benefit which was in payment by the Secretary of State. As the benefit in question was not one of those listed in the billing authority's CTR scheme which would avoid the standard deduction, the High Court held that the authority had been correct to make the deduction.

##### **16.3.2b DG v LIVERPOOL CITY COUNCIL [VTE, 4310M140277/CTR, 11 January 2016]**

The appellant's council tax bill for 2014-15 included a brought forward balance from 2013-14 due to a downward adjustment of the appellant's council tax reduction (CTR) recalculated and applied retrospectively following a change in her financial circumstances. The appellant submitted that she had notified the billing authority (BA) of the change in income when it occurred but that the BA had not re-calculated until the end of the year because of an official error; she argued that she should not have to pay back the "overpayment" of CTR for that period.

As the entitlement to CTR for the two years was now in line with the BA's CTR scheme, the VTE Vice-President noted that there can be no overpayment of CTR; a downward adjustment in CTR awarded means an underpayment of the council tax for which the person is liable.

Under the council tax benefit regulations, the concept of "official errors" was important because it affected whether overpaid benefit was recoverable. Although the

terminology still exists for housing benefit, it disappeared for council tax when CTR replaced council tax benefit in 2013.

### **16.3.3**

#### **Backdating**

METROPOLITAN BOROUGH of GATESHEAD v GD (CTB) [2017] UKUT 0041 (AAC)  
Overturning the First-tier Tribunal's (FTT) decision, the Upper Tribunal found that a claim for council tax benefit (CTB) could only be awarded from the date it was received. The FTT had determined that a claim made in 2015 should be awarded and backdated to 2009 (when his CTB had been removed) as the applicant had severe mental impairment, had been given wrong information by the council and had shown "continuous good cause".

The UT pointed out that the maximum backdating allowable had only ever been 52 weeks and was, at the time of the decision, only three months. In addition, no effective claim for CTB could be made after 1 July for a period before that, since CTB was abolished from 1 April 2013. It therefore went on to determine that, as no claim had been made until 2015, the applicant was not entitled to any award between 2009 and 31 March 2013.

### **16.3.4**

#### **Failure to comply with billing authority requests for information and evidence**

##### **16.3.4a**

TURNER v SOUTH CAMBRIDGESHIRE DC [2016] EWHC 1017 (Admin)

When the billing authority was informed that the appellant's working tax credit had ended, it sought information from the appellant in respect of his self-employment and his private pensions, under the following rule of its local CTR scheme:

"... a person to whom a reduction under the authority's scheme has been awarded, must furnish such certificates, documents, information and evidence in connection with the ... award, as may reasonably be required by the authority in order to determine that person's ... continuing entitlement to a reduction under its scheme ..."

A one month period was initially given to provide the evidence and this was extended twice by the billing authority as a result of further communication with the appellant.

The High Court judge held that the VTE was correct to dismiss the appeal because the billing authority had information that the appellant's companies were still trading (and in fact they received royalty income). Consequently, accounts information was needed and if that could not be provided (as was the case here) then the billing authority pro forma needed to be completed. The VTE was correct to hold that this was a reasonable request from the billing authority.

The High Court judge stated that it was perfectly legitimate for the billing authority to take a fairly strict position on tax matters. Not everyone is wholly honest all the time



about all tax matters and that due verification of information provided is of critical importance. It was stated:

“In the end, the position is this. The Council made some relatively straightforward requests for information, evidence and verification. They were clear enough, and could without any real difficulty have been complied with in full and on time. The VTE was fully entitled to conclude that they were reasonable requests, and it had an ample basis for finding that they were not met.”

#### 16.3.4b FRANCOIS v LONDON BOROUGH OF WALTHAM FOREST [2017] EWHC 2252 (Admin) CO/2100/2017

Council tax reduction had been refused for the appellant because the billing authority alleged she had capital of more than the £6,000 limit specified within its scheme. The appellant had received a payment as a result of a compensation claim for personal injury and this was held in a Personal Injury Trust set up by solicitors. No details of the trust were provided by the appellant, who referred the to her solicitors. The billing authority did not contact the solicitors. On appeal to the VTE, the Tribunal also issued a direction for this information and bank statements to be provided by the appellant. The appellant did not comply with this direction and the Tribunal dismissed the appeal, finding that the billing authority was entitled to conclude that the applicant had more than £6,000 of capital.

The High Court referred to case law, which set out that the applicant, as the person with the knowledge of or access to the information needed to support their claim, should provide it. The VTE had made no error in law in its decision and the appeal was dismissed.

#### 16.3.4c KASPEROWICZ v PLYMOUTH CITY COUNCIL [2021] EWHC 1208 (Admin)

The VTE had found that the appellant was in receipt of Universal Credit (UC) at the relevant time and that the billing authority was correct not to allow council tax reduction because the appellant had not provided proof of that UC income.

The High Court held that the issues before the VTE were pure questions of fact. There was evidence that entitled the VTE to conclude as it did. As there was no issue of law in respect of which the VTE fell into error, the High Court dismissed the appeal.

## 16.4 WORKING PRACTICES

### 16.4.1

#### Preparing for a Tribunal hearing

There should be no surprises for anyone attending the hearing and all evidence to be relied upon by either party should be disclosed to the other party in advance. When the Tribunal notifies the parties of the date, time and place of the hearing, it also provides standard directions to those involved in the appeal. The standard directions require each party to exchange their case before the hearing date; the detail is set out

in the Annex to this manual and Consolidated Practice Statement PS 11 Disclosure in all council tax and completion notice appeals.

## **17. DISCRETIONARY REDUCTION**

### **17.1 INTRODUCTION**

#### **17.1.1**

Each billing authority has had the power to allow discretionary reductions since 2003. It is a general power and can be awarded in addition to any other reductions or discounts already allowed to a taxpayer.

Discretionary reductions can be exercised in respect of individual cases or by implementing classes of case. For example, some billing authorities have allowed relief to all dwellings damaged in major flood events.

### **17.2 LEGISLATION**

#### **17.2.1**

Local Government Finance Act 1992- section 13A (inserted by section 76 of the Local Government Act 2003, then substituted by section 10(1) of the Local Government Finance Act 2012).

#### **17.2.2**

Section 13A of the Local Government Finance Act 1992 does not only include council tax reduction schemes. It also includes, under section 13A(1)(c), a general power for billing authorities to reduce a person's council tax to such extent as it thinks fit, even to a nil amount. This power may be exercised in relation to individual cases or by determining a class of case in which liability is to be reduced. Appeals may be made to the VTE against billing authority determinations under section 13A(1)(c).

This type of appeal is covered by section 16 of the Local Government Finance Act 1992 and anyone preparing for a hearing should refer to Consolidated Practice Statement PS 10 Discretionary reductions in council tax (liability appeals) and PS 11 Disclosure in all council tax and completion notice appeals. (See section 12 of this manual).

#### **17.2.3**

##### **Appeals**

Appeals may be made to the Valuation Tribunal for England (VTE) under section 16 of the 1992 Act, if a person is aggrieved by any calculation made by the billing authority as to the amount that he or she is liable to pay as to council tax. This includes the refusal of, or dispute over, a discretionary reduction.

A person aggrieved by a decision of a billing authority may serve notice, in writing, on the authority stating the grounds of the grievance, and the authority has a duty to consider the matter and may change its decision or confirm it. The billing authority must notify the taxpayer of any steps it has taken to deal with the grievance, or if the authority believes that the grievance is not well founded it must provide its reasons for having that belief. If the taxpayer receives no notification from the billing authority within two months, he or she may appeal direct to the VTE.

An appeal to the VTE must be made within two months of the billing authority's response, or where the authority does not respond, within four months of the date of the aggrieved person's original notice.

There is a "council tax liability" appeal form available on the Valuation Tribunal website - [www.valuationtribunal.gov.uk](http://www.valuationtribunal.gov.uk), or by calling 0303 445 8100. If no appeal form is used, it is imperative that the following information is provided to the Tribunal:

- (a) the full name and address of the appellant;
- (b) the address of the chargeable dwelling if this is different;
- (c) the date of the original appeal to the billing authority;
- (d) the date of the billing authority's reply (if applicable) and also a copy of that reply;
- (e) the grounds on which the appellant is aggrieved; and
- (f) brief reasons for the appeal.

## **17.3 CASE LAW**

### **17.3.1**

The Tribunal's jurisdiction in discretionary reduction appeals

17.3.1 SC AND CW v EAST RIDING OF YORKSHIRE COUNCIL [VTE, 2001M113393/CTR & 2001M117053/CTR, 27 May 2014]

The VTE President clarified that appeals may be made to the VTE against billing authority determinations under section 13A(1)(c). In hearing such appeals, a tribunal panel is not limited to only considering judicial review principles (due process, reasonableness, proportionality, legality, etc.) and can substitute its view for that of the authority, but any such substitution must be soundly and solidly based. In one of the *East Riding* appeals, the President decided to reduce a person's council tax to nil where the authority had refused to allow any relief under section 13A(1)(c). See 17.4.1 of this manual for more guidance information.

### **17.3.2**

Discretionary reduction applications in respect of empty properties

17.3.2a MORGAN v WARWICK DISTRICT COUNCIL [VTE, 3725M139915/176C, 11 FEBRUARY 2015]

The VTE president considered a preliminary matter concerning the jurisdiction of the VTE. It was found that discretionary reduction is separate to Council Tax Reduction (CTR) although entitlement to CTR should be pursued before seeking to invoke discretionary relief. It was found that discretionary reduction can have retrospective effect for periods before 1 April 2013. The president considered that it is inconceivable

that Parliament in 2003 intended to permit relief only in regard to liability that arose after its introduction; and even less conceivable that in enacting section 13A(1)(c) of the Local Government Finance Act 1992 and repealing the former section 13A Parliament intended to remove the pre-existing power to grant discretionary relief.

**17.3.2b JO v BURY COUNCIL [VTE, 4210M139633/254C, 20 JULY 2015]**

A VTE Vice-President considered an appeal for a reduction under section 13A(1)(c) in respect of an unoccupied dwelling which was liable for full council tax plus an additional 50% premium. Taking into account the circumstances, namely the fact that one of the appellants had been assaulted and the lack of notice concerning the premium charge, the Vice-President decided to allow the appellants a period of three months where the 50% premium should not apply.

**17.3.2c ZP v BOLTON COUNCIL [VTE, 4205M137018/254C & 4205M137019/254C, 20 JULY 2015]**

Another appeal was considered by a VTE Vice-President concerning the 50% premium council tax. In this case, the appellant had had to move out of the subject dwelling as a result of fire damage. However, the Vice-President decided not to alter the billing authority's determination that a reduction under section 13A(1)(c) was not appropriate, because there was no financial hardship and the delay in moving back into the property had, in part, been caused by the appellant's own decision to extend the accommodation into the roof space while the property was being repaired.

**17.3.3**

Whether disability income should be included in the discretionary assessment

**R (ON THE APPLICATION OF HARDY) v SANDWELL METROPOLITAN BOROUGH COUNCIL [2015] EWHC 890 (Admin)**

The respondent local authority was responsible for assessing the applicant's application for a Discretionary Housing Payment ("DHP"). To be eligible for a DHP a person must be in receipt of housing benefit ("HB"). The local authority is granted very broad discretion as to whether or not to make DHPs in a particular case and as to the amount of payments and the period for, or in respect of which they are made.

Section 73 of the Social Security Contributions and Benefits Act 1992 makes specific provision that the mobility component of disability living allowance ("DLA(m)") was to be disregarded as income when assessing a person's means under any enactment or instrument

The issue in this case was whether it was unlawful for a local authority to take into account the care component of disability living allowance ("DLA(c)") when assessing the amount of a DHP.

The Court found that the local authority's policy of always accounting for DLA(c) as available means fettered its discretion. The Court went on to find that the local authority's approach to including DLA(c) as income in calculating the applicant's DHP amounted to unjustified disability discrimination contrary to Article 14 of the European Convention on Human Rights, or section 29(6) of the Equality Act 2010. Further the Court held that, in not taking account of significant changes to HB and the increasing

reliance upon DHP's to "plug the gap", the local authority had failed in its Public Sector Equality Duty to make reasonable adjustments.

Accordingly, the Court quashed the local authority's decisions as to the amount of the applicant's DHP.

*Note: The above case has been included as it may possibly be relevant when considering a person's application for a discretionary council tax relief. However, it should be stressed that the case did not concern council tax.*

#### **17.3.4**

Delays by the billing authority in assessing a discretionary reduction

MM v MEDWAY COUNCIL (BA) [VTE, 9 March 2016]

The respondent billing authority had already granted the appellant a council tax reduction under its local scheme. The council tax reduction reduced the appellant's liability by 75%, the maximum permitted under the local council tax reduction scheme. The appellant sought for the billing authority to make a further reduction using its discretion under section 13A(1)(c), but it declined to do so.

Part of the appellant's dispute turned on the apparent delays in the billing authority's assessment of his application for the discretionary reduction.

The appeal was heard and determined by a Vice-President of the Tribunal. The Vice-President rejected the appellant's contention that the discretionary reduction should be granted by default because of the delays. Instead, the Vice-President considered that the remedy to delay is, in effect, set out by the statutory appeal process. At paragraph 38 of his judgment the Vice-President held:

"... it is now plain enough that an application for a discretionary reduction in council tax takes effect as a notice under section 16(4) of the 1992 Act because, in seeking that reduction, the applicant is aggrieved at the calculation of council tax he has otherwise been found liable to pay. That application, by way of notice, must comply with sections 16(5) and (6). Then, if the billing authority does not give notification of its decision, in accordance with section 16(7)(a) or (b), within two months the aggrieved person, or appellant, may appeal to the Tribunal in accordance with section 16(4) and (7)(c). ..."

This establishes that an application for a discount or reduction would in most cases, take effect as a notice of the person's aggrieved grounds. It is therefore not necessary to repeat the process after a decision on the initial application for a discount or reduction is rejected by the billing authority, the person could instead appeal to the Tribunal.

### **17.4 WORKING PRACTICES**

#### **17.4.1**

Guidance on discretionary reduction applications and appeals

At paragraph 25 of the East Riding appeals judgment, the VTE President provided 16 observations designed to assist billing authorities, council taxpayers and Tribunal members and clerks in dealing with this type of appeal:

- 1) “The focus of an appeal as opposed to a review is fundamentally different: full appeal reaches further and assesses the actual merits of the decision reached.
- 2) Some deference should, however, be paid to the view of the original decision-maker and an effort made to understand how that decision was arrived at, but that cannot prevent the Tribunal from substituting its view for that of the authority provided that the Tribunal can articulate cogently why it is doing so and how it has arrived at its conclusion.
- 3) The authority’s decision does not have to be unreasonable in the *Wednesbury* sense before it can be set aside, but the Tribunal should intervene only where there are strong grounds for doing so.
- 4) It may not be an exact parallel, but the Court of Appeal will allow an appeal against sentence only where the sentence is wrong in principle. This suggests that some restraint should be exhibited by the Tribunal before disturbing a billing authority’s decision.
- 5) Procedural defects may recede in importance, or be completely effaced, since the Tribunal will be chiefly concerned with the actual merits of the decision. Earlier defects in process may therefore be cured or superseded by the appeal, and a decision may be adjudged correct despite defects in process.
- 6) Although a scheme or policy is not required by statute, it is difficult to see how such an open-ended discretion can be satisfactorily exercised in the absence of one.
- 7) Any such policy should be scrutinised by the authority’s lawyers before promulgation.
- 8) Compliance with a formal published policy or scheme, if there is one, cannot preclude the Tribunal from allowing an appeal.
- 9) Any such scheme is not immune from challenge in the Tribunal as, for example, is a council tax reduction scheme ... It is not the Tribunal’s business to impugn any scheme as such but rather that its own powers cannot be inhibited or circumscribed by a scheme.

- 10) Failure to comply with a substantive element of a scheme to the detriment of the applicant is likely to lead to the overturning of the decision unless there are good reasons for having departed from it.
- 11) However, compliance with a scheme or policy may help in persuading the Tribunal that the original decision was correct.
- 12) The Tribunal should be slow to interfere with a decision that properly flows from a determination made under section 13A(7).
- 13) An authority cannot as a matter of law fetter its discretion and must therefore consider every application on its merits whatever the policy or scheme says.
- 14) Suppose, for example, there is a provision that non-essential expenditure should be disregarded when calculating legitimate outgoings and determining disposable income. The Tribunal could conclude that the item was wrongly so characterised and should be included. Or that on its specific facts it should be included. Thus, mobile phones might normally be treated as a luxury but might become a necessity if the appellant is a carer who might need to be contacted urgently when not at home. Or a subscription to a satellite television service might have to be accepted if the appellant is locked into a contract that pre-dates his financial difficulties.
- 15) A factor which cannot have any relevance for the Tribunal is an overall budget created by the authority for the totality of discretionary applications in a given year so that any application will be considered in relation to the available budget and once that sum is exhausted no further applications can be granted. I do not see how in law this can be a cash-limited exercise. The merits of an appeal cannot be affected by the existence of any such budget. A “budget” is in any event a somewhat artificial concept in view of the fact that the authority is forgoing income and not spending existing funds.
- 16) Where the Tribunal is minded to allow the appeal and order a recalculation but is unsure of the actual amount to substitute, the appeal may either be adjourned for the parties to supply whatever further information is needed to reach a decision or it may conclude the appeal by quashing the calculation and ordering the authority to recalculate properly. The former is likely to be the better course in most cases”.



### **17.4.2**

When an appeal can be made to the Valuation Tribunal

*MM v Medway Council* establishes that the Tribunal's involvement in an appeal can be earlier than anticipated by the billing authority. When a taxpayer requests discretionary relief, this is to be viewed as his or her aggrieved person's notice because, in seeking that reduction, the applicant is aggrieved at the calculation of council tax he has otherwise been found liable to pay. A person can then appeal to the Valuation Tribunal within two months of the billing authority's decision, or in a case where the billing authority fails to make a decision within two months, within four months of his or her aggrieved person's notice.

## **Annex - Preparing for a Tribunal hearing (Standard Directions)**

The standard directions are changing from 1 April 2024 and this will be included in the next edition of this manual.

## **Abbreviations**

GRA 1967 or 1967 Act = General Rate Act 1967

LGFA 1988 or 1988 Act = Local Government Finance Act 1988

LGFA 1992 or 1992 Act = Local Government Finance Act 1992

LGFA 2012 or 2012 Act = Local Government Finance Act 2012

2003 Act = Local Government Act 2003

## **Definitions**

### *Competent person*

In relation to a proposal and an appeal, means a person (other than the proposer) who, at the date on which the decision notice in respect of that proposal was served on the proposer, who would have been competent to make the proposal. (SI 2008/315 Reg 4)

### *Interested person*

The owner; the occupier when the owner resides elsewhere; the liable person (exempt dwellings); any other taxpayer in respect of the dwelling. (SI 1993/290)

### *Dwelling*

Any hereditament as defined under Section 15(1) of the GRA 1967; not shown or required to be shown in the Local or Central Rating Lists; and not exempt from Non-Domestic Rating. (Section 3 of LGFA 1992).

### *Material increase*

An increase in value caused by building or engineering works at the dwelling whether or not planning permission is obtained. (Section 24 of LGFA 1992)

### *Material reduction*

The reduction in value of a dwelling caused in whole or in part by demolition of any part, any change in the physical state of the locality or any adaptation to make it suitable for use by a physically disabled person. (Section 24 of LGFA 1992)

### *Relevant transaction*

A sale, grant of lease of seven years or more or transfer of a lease by sale. (Section 24 LGFA 1992)

### *Self-contained*

A building or a part of a building which has been constructed or adapted for use as separate living accommodation. (SI 1997/656)

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Arranged alphabetically, word-by-word, the entries refer to paragraph numbers in the Manual. Italicised entries refer to cases. Abbreviations are used within the entries but not as lead terms, eg VO, VT, BA (Billing Authority), BC (Borough Council), DC (District Council), LB (London Borough). As the division within sections of the Manual is consistent, any reference whose second number is 3 (eg 1.3.1) will lead you to case law.

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