THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating Appeal; Set of Barristers' Chambers assessed as a single hereditament following Valuation Officer's notice of alteration; Proposal sought a split assessment; Competing rateable occupations; paramount control; Cardtronics Europe Ltd v Sykes (VO); appeal dismissed.

Re: Basement and Ground Floors, 15 Jockey Fields, London WC1R 4BW

APPEAL NUMBER: CHG100352561

BETWEEN: Kevin Prosser KC (Appellant)
(Pump Court Tax Chambers)
and
Andrew Ricketts (Respondent)
(Valuation Officer)

BEFORE: Gary Garland (President)

CLERK: David Slater (Registrar and Chief Clerk)

REMOTE HEARING HELD ON MONDAY 3 APRIL 2023

PARTIES PRESENT; Mr Nicholas Trompeter KC from Selborne Chambers
(Appellant's representative)
Mr Kevin Prosser KC
(Appellant – Head of Chambers, Pump Court Tax Chambers)
Mr Paul Reynolds from 1 Crown Office Row
(Respondent's Counsel)

Summary of decision

1. The appeal was dismissed, as the Appellant (Pump Court Tax Chambers) was in rateable occupation of the whole property and therefore it was properly assessed as a single hereditament.

Introduction

2. This was an appeal that was received on 18 November 2022, against a Valuation Officer's decision notice dated 11 August 2022, the effect of which was to treat the appellant's proposal as not well founded. The proposal/challenge submission was served on the Valuation Officer on 30 July 2020. The proposal made by Knight Frank LLP, on behalf of the appellant, sought the deletion of the existing entry £152,000 Rateable Value with effect from 1 April 2017 and in its stead 9 new hereditaments were proposed, in other words the appellant sought a split assessment. The appellant proposed the following new entries;

Reception Ground Floor	£44,500 RV
Room 1	£15,750 RV
Room 2	£6,200 RV
Room 3	£12,000 RV
Room 4	£12,000 RV
Room 5	£14,500 RV
Room 6	£11,500 RV
Room 7	£11,500 RV
Basement Rear North & South	£28,500 RV

3. All of the rooms were used as offices and were occupied by tenants of the chambers at the material date by David Ewart KC (Rooms 1 and 2), Rupert Baldry KC (Room 3), Julian Ghosh KC (Room 4), David Yates (Room 5), Peter Nias (Room 6) and Michael Thomas (Room 7).

4. In the event that the appeal was successful, the appellant's proposed valuations for the proposed new entries were not disputed by the respondent.

5. The material day was 1 April 2017 and if the appeal was successful that would also be the effective date for any list alteration(s).

6. The appellant was the Head of Chambers at Pump Court Tax Chambers (PCTC) and pursued the appeal on its behalf. The appeal property comprised a number of contiguous rooms within the basement and ground floor areas of Grays Inn which was described as a period property.

7. The appeal hereditament was split, following an agreement to settle a 2010 Rating List appeal. When the 2017 Rating List came into existence on 1 April 2017, the appeal property comprised a number of assessments before being merged by the Valuation Officer, following a billing authority's report.

8. This decision document is not and does not purport to be a full verbatim record of proceedings.

Facts that were agreed or not disputed

9. Until 1991, the appellant was based at Pump Court in the Temple, London before moving to 15-17 Bedford Row, London. It later acquired the appeal property in 2000 and barristers (Members of Chambers) were spread across the two locations, which were in close proximity to one another.

10. PCTC was not a legal entity. It was an unincorporated association set up by a group of self-employed barristers, as a means by which to share the cost of the premises and administrative services associated with their individual practices. Through PCTC's Articles of Association, its Management Committee provided an administrative framework, including shared staff to provide administrative support and shared accommodation. The costs of running PCTC were shared by the individual barristers who contributed to a pool, to fund the costs of the accommodation and the administrative functions undertaken, within the premises. This is a common model that barristers in self-employed practice operate which may be contrasted by those who meet the requirements of the Bar to operate as sole practitioners.

11. For many years, PCTC has had a written chambers constitution, which all members of chambers were required to sign, and which provided for (i) the terms of membership, (ii) the Head of Chambers, (iii) the Management Committee comprising the Head of Chambers, the senior clerk, and a number of other Members of Chambers, (iv) other committees, (v) the sharing of chambers expenses, and (vi) the ownership of chambers property.

12. Although PCTC's constitution allowed a member of chambers to be expelled by special resolution, this had never happened since 1991. Therefore, barristers remained with the chambers until they decided to retire or leave for another reason, there was nothing unusual in this.

13. The appeal property was occupied under two separate reversionary leases taken out in the names of 4 members of chambers, who held the premises on trust for all of the other members of chambers. The latter were therefore beneficiaries who had a beneficial interest in the property under a trust of land.

14. Barristers, also referred to as members of chambers, were regulated specialist legal advisers and court room advocates. Barristers at Pump Court specialised in taxation matters. Most of their clients were either solicitors or accountants. Cases undertaken usually involved complex areas of law with large amounts of tax at stake. Because of the nature of their work, taxation related matters, members of chambers did not appear very often in court usually 6 to 8 times per annum, with hearings lasting around 2 days maximum.

15. All members were entitled but not obliged to have their own individual rooms but in practice they all did. Most of their time was spent outside the court room giving confidential advice over the telephone. Hence each practising individual required privacy and hence their own room, which was acquired by verbal arrangement. There was no formal lease or licence involved.

16. Each barrister practice paid a fully inclusive rent for the right to occupy an individual office/suite within the main chambers building. This was referred to as an “own room contribution”. The charge to each individual room holder was calculated to cover the cost (in terms of rent and rates) of their room, based on its floor area. For convenience, all individual barrister’s rooms were “banded” according to 4 sizes: since 2017 the own room contribution had been £28,800 for the largest rooms, £18,000 for the next size rooms, £13,500 for medium size rooms and £9,000 for small rooms; before 2017 this was £19,200, £12,000, £9,000 and £6,000 respectively.

17. Following pupillage, each new member was entitled to their own individual room and during their first full year of practice were not liable to contribute towards any expenses, neither the shared expenses such as staff costs nor the rent or rates attributable to the room occupied by those members. The rent and rates attributable to those first year members’ rooms were instead borne by all the other members of chambers.

18. In practice, a brand new member was offered one of the smaller rooms and if following the retirement of a member one of the larger rooms was vacant, other members were invited, but not compelled, to move to the larger room.

19. In addition to special provisions for new members, it was also provided that if a member of chambers was on parental leave, they were not required to pay these contributions. In addition, those individuals who were on long term sick leave could also be exempted subject to an Ordinary Resolution agreed by other full members.

20. If a barrister fell into arrears, by failing to pay their own room contribution and/or their contribution to chambers expenses, The Management Committee could apply to have the arrears covered from the member's professional receipts generated from his work in chambers.

21. Each of the proposed new entries identified by the appellant was capable of being a hereditament. Each room had a lockable door with access out to the common parts.

22. Each barrister had a key to their individual room. A spare key was kept in Chambers but if the room was locked, the individual barrister had to give permission to allow other staff to enter. However, in practice clerks and cleaning staff were allowed access, unless specific instruction was given otherwise to prohibit it. Once a room was allocated to a barrister, they were responsible for furnishing it. They were also able to make alterations to its layout, lighting, install personal broadband, and additional telephone line(s). One barrister had installed their own radiator.

23. Members of Chambers had access to their rooms 24 hours' a day. They had a key to the front door and were able to turn the burglar alarm on and off if need be.

24. The administrative support services met the standard requirements of any small business, namely shared marketing/promotional material and a collective website to promote the experience/areas of expertise for each of the barrister practices. This included IT services, secretarial support, general administration, invoicing, fees collection, liaising with courts and clerking services.

25. In sharing and managing facilities at the appeal property, it was accepted that there was a great deal of co-operation. There were also areas of mutual co-operation outside the premises, like arranging conferences to promote the businesses of all members of chambers.

26. The majority of clients approached individual barristers direct via the clerks, as opposed to being directed via a recommendation by PCTC. Those clients, who were unsure which barrister to approach, usually contacted PCTC for advice and one of the clerks then recommended a suitable barrister with the appropriate expertise and experience. The client then normally acted upon the clerk's advice and recommendation but as a proportion of a barrister's workload, work directed by a clerk was low at around 16½%.

27. Following the completion of any legal work, undertaken by the barristers, all invoicing was undertaken by the clerks.

28. The appointment of administrative staff, including clerks, was undertaken by the Management Committee who had delegated authority from barrister tenants to employ staff.

Issues in dispute

29. Whether or not the individual rooms were occupied exclusively by the individual barristers/members of chambers or was the appellant in rateable occupation, as they had paramount control over the use of the room(s).

Evidence and submissions

30. The appellant had produced an extensive bundle, which included;
    (a) The challenge submission
    (b) The Valuation Officer's interim and final decision(s)
    (c) The appellant's skeleton arguments
    (d) The appellant's witness statement
    (e) The respondent's skeleton arguments
    (f) Pump Court Tax Chambers Constitution
    (g) Copies of the reversionary leases

31. I was also provided with a bundle of authorities. The case law referred to included the following;

    (a) *Assessor for Central Scotland v Bank of Ireland* [2010] CSIH 91
    (b) *Bradford (VO) v Vtesse Networks* [2006] EWCA Civ 1339
    (c) *Bradley v Baylis* [1881] 8 QBD 195
    (d) *Brook (VO) v Gregg Plc* [1991] RA 61
    (e) *Cardtronics Europe Ltd v Sykes (VO)* [2019] 1 WLR 2281
    (f) *Cardtronics Europe Ltd v Sykes (VO)* [2020] 1 WLR 2184
    (g) *Clydesdale Bank Plc v Lanarkshire* [2005] RA1
    (h) *Holywell Union Assessors v Halkyn* [1895] AC 117
    (i) *John Laing & Sons v Kingswood Assessment Committee* [1949] 1 KB 344
    (j) *Ludgate House Ltd v Ricketts (VO)* [2021] 1 WLR 1750
    (k) *R (on the application of Makro Properties Ltd) v Nuneaton and Bedworth Borough Council* [2012] EWHC 2250 (admin)
    (l) *R v Melladew* [1907] 1 KB 192
    (m) *R v Sterry* 113 ER 743
    (n) *Re; the Appeal of Heilbuth (VO)* [1999] RA 109
    (o) *Smith v Overseers of St Michael* 121 ER 486
    (p) *Verrall v Hackney LBC* [1983] QB 445
    (q) *Westminster City Council v Southern Railway Company* [1936] AC 511

(r) *Wimborne District Council v Brayne Construction Ltd* [1985] 2 EGLR 175

(s) *Woolway (VO) v Mazars LLP* [2015] AC 1862

(t) *Hughes (VO) v York Museums and Gallery Trust* [2017] UKUT 200 (LC)

(u) *Sainsbury's Supermarkets Ltd and Others v Sykes (VO) and Others* [2017] RA 211.

Decision and reasons

32. In cases of this nature, where an appellant sought a split of a single hereditament into multiple hereditaments, the outcome of the appeal was usually hugely influenced by whether or not the smaller units or putative hereditaments were occupied for wholly different purposes. From the outset, that appeared to be a significant difficulty that the appellant would have to overcome, if the appeal was to be successful. The reason being, at face value, all members of chambers were occupying the premises under the umbrella of chambers as a whole, albeit they had their own individual rooms.

33. The appeal property was acquired by Chambers as a collective, on the basis of two separate leases. All then existing members of chambers moved into the premises effectively from day as a collective sharing the accommodation. All then existing members of chambers were entitled but not obliged to take an individual room, there being enough individual rooms to go round. There was therefore no overt act, in terms of conversion works, to convert the building to alternative use. For instance, if the owner of a large unit erected a partitioned wall to enable an area deemed surplus to requirements to be let to a tenant to run a separate business from the host landlord. In the case under consideration, the carving up was undertaken on an informal basis with the larger rooms allocated to those members, who were more senior or those who were prepared to pay more in terms of their own room contribution, and the smaller rooms were allocated to more junior or new members.

34. In this case, the appellant PCTC or chambers was a highly respected eminent tax set that specialised in taxation law. All members of chambers abided by the terms of its constitution and practiced in the same field. It was an agreed fact that historically chambers was established, in order to share costs. In practice all members paid into a pool to cover the costs of the accommodation and the administration, including staff remuneration. This is the common model followed by the Self-employed Bar.

35. All administrative staff and clerks, employed at chambers, provided services to all individual barristers. Clerks were especially important as they were effectively their business managers. Normally, barristers were contacted by potential clients via the clerks.

36. My understanding was, prior to the hearing, the only issue in dispute between the parties was whose occupation was paramount, as the Valuation Officer did not accept that the individual barristers were in rateable occupation of their separate rooms, as their use of the rooms facilitated a common purpose, which was the provision of legal services. However, before he addressed the issue of paramountcy, Mr Trompeter asked me to consider arguments in relation to the geographical test and also his argument that there was only one possible actual occupier for the individual rooms.

The Geographical test

37. In terms of the geographical test, the respondent accepted that the individual rooms or putative hereditaments passed the geographical test. Given this concession, I was not sure how this line of argument would assist the appellant's case. Nevertheless, I tried to keep an open mind whilst listening to two highly skilled advocates, who put forward lengthy articulate submissions on the issue. I had no independent expert evidence before me. Mr Prosser, Head of Chambers, appeared before me as a witness of fact but I found his evidence of limited assistance as some of his responses in cross examination were guarded. In response to some of the questions put to him by Mr Reynolds, instead of answering the question in detail, he simply said the answer was to be found in the constitution.

38. Numerous authorities were referred to me but what I think those earlier cases made clear was whether a property comprises a single hereditament or multiple hereditaments depends on the facts on the ground. The primary test in establishing whether a separate hereditament exists was the geographical test as explained by Lord Sumption in the Supreme Court's judgment in *Mazars.* In paragraph 6, he stated;

> There are two principles on which these questions might be decided. One is geographical and depends simply on whether the premises said to constitute a hereditament constitute a single unit on a plan. The other is functional and depends on the use that is or might be made of it. The distinction was first applied in a series of rating cases in Scotland, where the question was essentially the same as the one which arises on this appeal, namely whether property should be assessed for local rates as a number of distinct heritable subjects or as unum quid ("one thing"). These cases establish that the primary test is geographical, but that a functional test may in certain cases be relevant either to break up a geographical unit into several subjects for rating purposes or to unite geographically dispersed units in unum quid. By far the commonest application of the functional test is in derating cases. In these cases, the functional test serves to divide a single territorial block into different hereditaments where severable parts of it are used for quite different purposes. Thus a garage used in conjunction with a residence within the same curtilage will readily be treated as part of the same hereditament, whereas a factory within the

same curtilage which is operated by the same occupier may not be. There are, however, rare cases in which function may also serve to aggregate geographically distinct subjects. It is with this latter question that the present appeal is concerned.

39. Additional authoritative advice was given in the observations of Lord Neuberger in paragraphs 46 to 49;

> 46. The statutory definition of "hereditament" in section 115(1) of the General Rate Act 1967 states that it is "such a unit of … property which is, or would fall to be, shown as a separate item in the valuation list." While, at least to some extent, that is a circular definition, it does contain the expression "unit of property", which carries with it the notion of a single piece of property, what in Scots law is called unum quid. And, in that connection, I entirely agree that there should be no difference of approach between Scottish and English law on the issue raised on this appeal.
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> 47.Normally at any rate, both as a matter of ordinary legal language and as a matter of judicial observation, a hereditament is a self-contained piece of property (ie property all parts of which are physically accessible from all other parts, without having to go onto other property), and a self-contained piece of property is a single hereditament. As the Scottish Lands Tribunal said in Burn Stewart Distillers plc v Lanarkshire Valuation Joint Board [2001] RA 110, 140, "the emphasis on the geographical test is an aspect of recognition that lands and heritages are physical subjects". Thus, two separate self contained buildings, even if sharing a common wall, would not be expected to be a single hereditament but two hereditaments. And a building no part of which was self-contained would be expected to be a single hereditament.
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> 48.At first sight, it might appear that whether certain premises constitute one hereditament or two hereditaments should not depend on how those premises are occupied. To quote again from Burn Stewart, "[a] 'business' is not a concept based on physical or heritable factors" (p 141). Of course, occupation is traditionally a central issue in rating law, but at least primarily for the purpose of determining who, if anyone, is in rateable occupation. On the face of it, however, it may be thought that there should be no logical connection between the identification of the boundaries or extent of a hereditament and the identification of the rateable occupier of that hereditament.
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> 49.Nonetheless, on further reflection, it can be seen that the occupation of premises can in some circumstances serve to control their status as one or more hereditaments. An office building let to and occupied by a single occupier would be a single hereditament, but if the freeholder let each floor of the building to a different occupying tenant, retaining the common parts for their common use, then each floor would be a separate hereditament. Furthermore, it is well

> established that premises are not merely liable to have their rateable value assessed, but also to have their status as a hereditament assessed, by reference to the machinery, plant and other structures which have been placed in or on them, whether by the occupier or someone else, sometimes even if the structure retains its character as a chattel – see per Lord Radcliffe in London County Council v Wilkins (Valuation Officer) [1957] AC 362, 378.

40. Mr Trompeter referred me to paragraph 28 of the Court of Appeal's judgment in *Ludgate House* where Lord Justice Lewison stated;

> The geographic or cartographic test entails deciding whether the putative hereditament has a visual or cartographic unity. In simple terms, this involves asking whether you can draw a continuous red line around it on a plan. Within the red line, the area must be self-contained; but only in the sense that all parts of it are physically accessible without having to go outside the red line. It is not necessary for a putative hereditament to have sharply defined physical boundaries on the ground. But it must be capable of being identified as a unit of property sufficiently defined by its own boundaries to be regarded as self-contained: Woolway (Valuation Officer) v Mazars LLP [2015] UKSC 53, [2015] AC 1862. Whether this test is satisfied is a factual or evaluative judgment: Cardtronics Europe Ltd v Sykes ("Cardtronics CA") [2018] EWCA Civ 2472, [2019] 1 WLR 2281 at [51] to [53]; approved in Cardtronics SC at [38].

41. In the case under consideration, Mr Trompeter argued that there was no principled difference between identifying a hereditament between floors of an office building, let to an individual tenant, and rooms on a single floor, licensed to an individual barrister. Each unit of property satisfied the geographical test as described by Lewison LJ above. He argued that it was irrelevant that the rooms were accessed via common parts retained by Chambers as a whole. As it was common ground that the appellant's proposed hereditaments met the geographic test, he contended that I should allow the appeal.

42. On behalf of the respondent, Mr Reynolds stated that the geographical test did not take us any further in this appeal, because it was accepted that the geographic test was met. He argued that Mr Trompeter's submissions on this issue were a distraction designed to take me away from what I needed to consider which was paramountcy. He explained that the question of whether the individual barrister's rooms were separately rated was not determined by geography but rather by the identity of the rateable occupier. That in turn was determined largely by the purpose of the occupation. If the rateable occupier was the same for the common parts and the rooms, they would only be separately rated if the occupation of each of the areas was used for quite different purposes which, he argued, was not the case here.

43. After considering the parties' respective arguments, I was persuaded by Mr Reynolds' argument that the appeal could not be allowed merely because each individual room passed the geographical test. The fact that the lease(s) for the premises as a whole were held by the appellant was significant. The individual rooms were offered and then allocated on an informal basis to individual barristers. If a barrister was a member of chambers, they were entitled but not obliged to take a room. It appeared custom and practice within chambers for the senior or more experienced barristers to be offered the larger rooms and junior or first year barristers the smaller rooms.

44. In *Cardtronics* regarding Automated Teller Machines, the Upper Tribunal in paragraph 130 of its judgment stated;

> We think there is force in that point. Once a machine has been installed there should, in our view, be no difficulty in defining the boundaries of a fixed ATM site with sufficient precision to satisfy the geographic test of self-containment. In cases involving more mobile equipment it may additionally be necessary to consider the nature of the occupancy and whether the Bank's right was a right of occupation of a specific unit of property or simply a right of access to a machine wherever it happened to be located. But assuming the occupier of the site had a sufficient right of occupation, identifying the unit of occupation would not be problematic.

45. In *Esso Petroleum Company v Walker (VO) [2013] UKUT 052,* an authority cited by the clerk in open tribunal, when giving advice, the Upper Tribunal stated in paragraph 74 of its judgment;

> Once the hereditament is identified, as a matter of fact, the question who is in occupation of it arises. The four ingredients of rateable occupation have long been recognised as: firstly, there must be actual occupation; secondly, there must be occupation exclusive for the particular purposes of the possessor; thirdly, the possession must be of some value or benefit to the possessor; and fourthly, the possession must not be for too transient a period. (*John Laing and Son Ltd v Kingswood Assessment Area Committee* [1949] 1KB 344; *LCC v Wilkins* [1957] AC 362). The requirement that occupation must be exclusive has given rise to the mistaken suggestion that there could not be two simultaneous occupants. This misconception was laid to rest by the House of Lords in *Holywell Union Assessment Committee and Halkyn Parish v Halkyn District Mines Drainage Company* [1895] AC 117……

46. Ultimately, the concept of rateable occupation was inextricably linked with the concept of hereditament. As a corollary, just because the individual barrister's rooms could in theory constitute separate hereditaments, this could only have been so, if the individual barristers were in rateable occupation of them. As in *Cardtronics*, the fact that the individual rooms could potentially form separate hereditaments did not mean that they were separately rateable from the host building. If the individual barrister's occupation of their rooms was not exclusive and subordinate to that of chambers, the rooms would not be capable of separate assessment.

No sharing of Actual occupation test

47. As the appellant's case could not succeed, purely on the basis of the geographic test being met for the putative hereditaments, Mr Trompeter argued that only the individual barristers were in actual occupation.

48. The appellant or chambers as a whole was an unincorporated association, it therefore had no legal entity as distinct from the individual barristers who comprised its members. Mr Trompeter referred me to the Court of Appeal's judgment in *Verrall v Hackney LBC* [1983] QB 445 to support his argument that chambers as a whole could not be a rival occupier. He referred me to the following extracts in this judgment from page 459 G to H and page 462 B to D;

> Having regard, no doubt, to the way in which the demand for the rate had been addressed and to the well-recognised concept of paramount occupancy in rating cases arising from the decision of the House of Lords in *Westminster City Council* v. *Southern Railway Co.* [1936] A.C. 511, the defendant contended before the magistrate that the National Front had not been the paramount occupier of the premises, but that there had been a number of occupiers of different parts, including in particular a members' club known as the Excalibur Canteen and Refreshment Club which was an entirely separate entity which for part of the time occupied the third floor of Excalibur House. In any event, it was submitted that the defendant did not control the National Front and was not responsible for the occupation of the premises, by whomsoever this had occurred.
>
> We think it follows that the mere fact that a person is a " member " of „ an unincorporated association is insufficient material upon which to base a finding that that person is the occupier of premises used for the purposes of the unincorporated association, either himself alone, still less jointly with the association.
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> The first and real question for the magistrate was who had been in rateable occupation of the material hereditament over the relevant period. When this question falls to be considered and answered in these cases we stress in the first place that any liability for rates depends upon actual occupation or possession of premises. This is the first of the four well established ingredients of the concept of rateable occupation approved by the Court of Appeal in *John Laing & Son Ltd.* v. *Kingswood Assessment Area Assessment Committee* [1949] 1 K.B. 344 and recognised by the House of Lords in *London County Council* v. *Wilkins* [1957] A.C. 362.
>
> Legal title to or the right to possession of land is not by itself sufficient to render the person with that title or right to possession liable for rates in respect of that land. There must at the least be actual possession and some use of the hereditament rated.

49. Whilst it was not disputed that PCTC was an unincorporated association, I failed to see how this assisted the appellant's case. As PCTC had no legal entity, budgetary responsibility, the employment of staff, planning and policy matters were the responsibility of the Chambers' Management Committee and Mr Prosser had various responsibilities as Head of Chambers in terms of leadership. As PCTC had no legal standing, Mr Prosser was named as the appellant in this appeal.

50. On behalf of the respondent, Mr Reynolds contended that this argument that individual barristers were the only actual occupiers of their rooms had not been raised by Knight Frank during challenge submissions. Moreover, the new argument was inconsistent with what was said on behalf of the appellant previously when it was stated;

> Each "occupies" the separate barrister rooms for distinct and different purposes. The Barristers occupy the rooms exclusively for their purpose of providing legal services to their own individual clients, whereas the set of Chambers are legally prevented from providing such advice, and occupy the rooms for the purpose of the providing professional accommodation, facilities and support to their tenants.

51. Similarly, in paragraph 1.7. of the appellant's evidence statement completed by Nick Bell of Knight Frank it was stated;

> Be that as it may, the central issue dividing the parties is whether the putative hereditaments within the Premises - or, perhaps more accurately, the OIB Rooms - are under the "general control" or alternatively "paramount occupation" of Chambers (or the Tenants on behalf of Chambers

52. Mr Trompeter referred to Clause 41 of the Chambers' constitution which required members, who had their own room, to make an own room contribution by reference to its floor area.

53. In his witness statement at paragraph 26, Mr Prosser stated;

> To my knowledge, all MOCs understand that their "own room" as described in the constitution is indeed their own room. That is, they have the key, and the exclusive access to, and exclusive possession of and control over, the room which has been allocated to them. No one else may use it, or enter it, without the MOC's permission. The room is always kept locked when the MOC is not present. For example, if a MOC is absent from chambers on parental leave, no-one else can use their room.

54. Within Mr Prosser's witness testimony, he also stated that the leases for the premises as a whole were held by four members of chambers as trustees for all of the other members. The trustees were themselves purely passive and exercised no control over the use of the premises.

55. In this case, it was accepted that the appellant was the leaseholder and was in actual occupation of the common parts and any vacant individual rooms that had yet to be allocated to individual barristers. Mr Prosser had also emphasised that the individual barrister rooms when locked were effectively off limits to chambers staff, unless the respective barrister had granted permission to allow them access. In practice, clerks could gain access and deliver papers and cleaning staff routinely cleaned the rooms on a daily basis.

56. Given that each individual room was serviced by the same telephone and broadband lines, I put it to Mr Prosser that, in the event that the IT cabling network in the premises needed to be upgraded then individual barrister rooms would need to be accessible in order to do the upgrade. However, Mr Prosser insisted that, if an individual barrister refused permission for the IT cabling in their room to be upgraded, their decision would be respected and no upgrade work would be undertaken. Mr Prosser's response to my question was, in my opinion, difficult to accept and undermined his reliability as a credible witness.

57. In order to address the point about other chambers staff gaining access, Mr Trompeter said this was where delegation and agency came into play and referred me paragraph 44 of the Upper Tribunal's judgment in *Hughes (VO) v York Museums and Gallery Trust* [2017] UKUT 200 (LC)

> 44. Where the person who occupies a hereditament does so as an agent for another, the principal or employer is in rateable occupation through the agent, and not the agent in its own right. That was clearly stated by Slade LJ in *Ratford v Northavon Council* [1987] 1 QB 357, 371 which concerned the liability of a receiver appointed by a debenture holder:
>
> "*It is a general principle of rating law that where an agent is required to occupy a hereditament in order to secure the better performance of his duties as agent, his occupation is for rating purposes ordinarily treated as that of his principal. If, on the other hand, an agent occupies his principal's property otherwise than in his capacity as agent, the occupation will be treated as his own for rating purposes."*

58. I did not find the above authority helpful. In the appeal before me, in order to be able to occupy a room, a barrister had to be a member of chambers. Once they left chambers, their right to occupy and use a room ceased. As there could never be a situation where a barrister could occupy a room without being a member of chambers, Mr Trompeter's argument on this point never got beyond first base and was quickly rejected. I therefore turned to address what had been identified in the challenge submission, as the real issue in dispute between the parties which was the question over who was in paramount occupation of the individual barrister rooms.

Were members of chambers in paramount occupation of their individual rooms?

59. As previously stated, the leasehold interest in the appeal property was vested in the names of four trustees who held the premises on trust for the other members of chambers, who were in effect beneficiaries. Each member of chambers was entitled to but not obliged to take an individual room. In practice, each individual barrister was allocated a room. Normally, the more senior or experienced barristers occupied the larger rooms, new members of chambers were usually offered the smaller rooms.

60. Whilst each barrister operated as a separate legal entity, none of them could function without the services of the clerks, who effectively managed their businesses, and the administrative staff. All members of chambers were required by the Constitution to contribute towards the costs of the staff and the premises as a whole. However, Mr Trompeter argued that this was not relevant, in terms of establishing who was in rateable occupation of the individual rooms. In *City of Westminster v The Southern Railway Company* [1936]AC 511 there was an agreement between the railway company and WH Smith for the latter to pay the former a share of the gross profits. Despite this WH Smith was still held to be in paramount occupation of its bookstall.

61. In *Southern Railway* the case concerned the bookstalls, chemist's shop, kiosks, hairdressing salons and other premises within Victoria Station. The issue was whether these stalls, kiosks and shops were separate hereditaments or simply part of the railway hereditament. Lord Russell made several general observations about rateable occupation and then (at p. 529) he turned to the situation where there was more than one occupant:

> Where there is no rival claimant to the occupancy, no difficulty can arise; but in certain cases, there may be a rival occupancy in some parts who, to some extent, may have occupancy rights over the premises. The question in every such case must be one of fact -- namely, whose position in relation to occupation is paramount, and whose position in relation to occupation is subordinate; but, in my opinion the question must be answered in regard to the

> position and rights of the parties in respect of the premises in question, and in regard to the purpose of the occupation of those premises. In other words, in the present case, the question must be, not who is in paramount occupation of the station, within whose confines the premises in question are situate, but who is in paramount occupation of the particular premises in question.

62. In the light of the above, the correct approach was not to determine who was in occupation of the appeal property but who was in occupation of each of the proposed hereditaments. It was the individual barristers who were the only ones in actual occupation for the benefit of their respective legal practices. There was nothing in the chambers' constitution that dictated how a member's room could be used. Therefore, according to Mr Trompeter there was no element of control exercised by chambers.

63. In support of this assertion, it was contended that it was open to barristers to decorate and furnish their own rooms at their own expense. Although it was claimed that some had spent large sums on doing so, I was not convinced that anything turned on it. What I thought was more relevant was that if a barrister was absent due to maternity leave they did not have to make any contributions towards their own room during the period of absence. Barristers who were absent long term due to ill health were also exempted from having to pay, provided this was agreed by a majority of the other members. As a corollary, whilst barristers were actively working, they contributed towards the cost of their own room but when they were absent long term they did not. In one case, Mr Prosser contended that one barrister was absent on parental leave for over five years and during their absence the room remained locked and was not used, even though it would have been useful if Chambers could have allowed another member to use it. I found this assertion difficult to reconcile, but if I accepted in good faith what Mr Prosser said was true, again it does not assist the appellant's case. The reason being take a different hereditament for example like a shop or an office. If the tenant was unable to occupy the hereditament, it was unlikely that his landlord would allow them to retain the unit rent free indefinitely. The likelihood is the tenant would need to employ someone else to run their business for them or surrender the tenancy and the premises.

64. The situation highlighted by Mr Prosser merely appeared to confirm that this was a case where occupation was shared and if one occupier was not in a position to pay their own room contribution, the other barristers collectively covered the cost. A similar arrangement occurred with new members, following completion of pupillage, they were not expected to pay any contributions during their first year. This led me to conclude that the individual barristers were merely akin to being lodgers, in their respective rooms, and that PCTC or chambers as a whole was in rateable occupation of all of the rooms and the premises as a whole.

65. I also observed that whenever an individual room became vacant, if it was a larger room, one of the more senior barristers was encouraged, albeit not obliged, to swap rooms so that a smaller room could be allocated to a new member. This suggested that the needs of chambers as a whole took precedence over those of the individual members.

66. In *Cardtronics Europe Ltd v Sykes (VO)* [2020] 1 WLR 2184, the Supreme Court after reviewing two earlier authorities *Holywell Union Assessment Committee v Halkyn District Mines Drainage Co* [1895] AC 117, 126 and the *Southern Railway* case stated in paragraphs 14 to 18 of its judgment;

> 14. Two authorities at the highest level provide guidance as to the application of the second ingredient ("exclusive") in cases of concurrent occupation. The first is Holywell Union Assessment Committee v Halkyn District Mines Drainage Co [1895] AC 117, 126, in which Lord Herschell LC said:
>
> *"There are many cases where two persons may, without impropriety, be said to occupy the same land, and the question has sometimes arisen which of them is rateable. Where a person already in possession has given to another possession of a part of his premises, if that possession be not exclusive he does not cease to be liable to the rate, nor does the other become so. A familiar illustration of this occurs in the case of a landlord and his lodger. Both are, in a sense, in occupation, but the occupation of the landlord is paramount, that of the lodger subordinate."*

15. The concepts of “paramount” and “subordinate” occupation were taken a stage further in the second case: Westminster Council v Southern Railway Co [1936] AC 511. This has been at the centre of much of the arguments in the present appeal. It was held that certain retail units at Victoria Station, including bookstalls, kiosks, a chemist's shop and various showcases, occupied by independent retailers under agreements with the railway company, should be treated as separate hereditaments in the rateable occupation of the retailers. As Lord Wright MR explained (p 551):

“*The question … is whether the premises in question have been so carved out of the railway hereditament, to which they or their sites belonged, as to be capable of a separate assessment, or whether they have, though let out, been so let out as still to leave them in the occupation of the Railway Company.”*

As that passage shows, although it may be convenient for the purpose of analysis to separate the issues of hereditament and occupation, they are in truth linked.

16 Lord Russell of Killowen (at pp 529—530) made some general observations on rateable occupation, including the treatment of concurrent occupation, which have been regarded as authoritative in later cases:

The occupier, not the land, is rateable; but, the occupier is rateable in respect of the land which he occupies. Occupation, however, is not synonymous with legal possession: the owner of an empty house has the legal possession, but he is not in rateable occupation. Rateable occupation, however, must include actual possession, and it must have some degree of permanence: a mere temporary holding of land will not constitute rateable occupation. Where there is no rival claimant to the occupancy, no difficulty can arise; but in certain cases there may be a rival occupancy in some person who, to some extent, may have occupancy rights over the premises. The question in every such case must be one of fact, namely, whose position in relation to occupation is paramount, and whose position in relation to occupation is subordinate; but, in my opinion, the question must be considered and answered in regard to the position and rights of the parties in respect of the premises in question, and in regard to the purpose of the occupation of those premises. In other words, in the present case, the question must be, not who is in paramount occupation of the station, within whose confines the premises in question are situate, but who is in paramount occupation of the particular premises in question.

17 He also commented on the example of lodgers in a lodging-house, mentioned by Lord Herschell LC, which he regarded as exceptional and largely the product of practical considerations, adding:

But it can I think be justified and explained when we remember that the landlord, who is the person held to be rateable, is occupying the whole premises for the purpose of his business of letting lodgings, that for the purpose of that business he has a continual right of access to the lodgers rooms, and that he, in fact, retains the control of ingress and egress to and from the lodging house, notwithstanding that the power of ingress and egress at all hours, is essential to the lodger. The general principle applicable to the cases where persons occupy parts of a larger hereditament seems to be that if the owner of the hereditament (being also in occupation by himself or his servants) retains to himself general control over the occupied parts, the owner will be treated as being in rateable occupation; if he retains to himself no control, the occupiers of the various parts will be treated as in rateable occupation of those parts (p 530).

18 He referred to this as the landlord-control principle, and having discussed its application to other cases, such as docks, he summarised the position:

In truth the effect of the alleged control upon the question of rateable occupation must depend upon the facts in every case; and in my opinion in each case the degree of the control must be examined, and the examination must be directed to the extent to which its exercise would interfere with the enjoyment by the occupant of the premises in his possession for the purposes for which he occupies them, or would be inconsistent with his enjoyment of them to the substantial exclusion of all other persons

67. Applying sound common sense when looking at what was happening on the ground, it was clear to me that there was no rivalry between individual barristers and chambers as a whole, in the use of the rooms. Even though each individual barrister operated as a separate business entity, none of them truly operated independently from Chambers as a whole. Probably, the only time they acted independently was in giving confidential legal advice to their clients and representing them in tribunal or court. For virtually all other matters, they were hugely reliant on the shared clerk and administrative support provided by Chambers as a whole, without whom they simply could not function. Clerks were effectively their business managers and managed their diaries, they also managed the invoicing and the banking of receipts. The relationship between the individual barristers and chambers as a whole was intertwined and symbiotic.

68. Barristers attended seminars and promotional events to further the aims of Chambers, representing PCTC as opposed to themselves as individual businesses. The individual rooms that each barrister occupied was for a shared or at least a complementary purpose to that of Chambers as a whole.

69. Moreover, the Supreme Court cited with approval the Upper Tribunal's approach in *Cardtronics* as explained by the latter in paragraph 176 of its judgment, which the Supreme Court endorsed;

> 176. We do not consider that it is generally helpful to characterise the store and the bank as rivals in their occupation of the site of an ATM. Both parties derive a direct benefit from the use of the site for the same purpose and share the economic fruits of the specific activity for which the space is used. In smaller stores it may be easier to detect an element of rivalry or competition associated with the presence of an ATM, despite the shared interest in providing the machine, because relative to the area of the store as a whole the potential sales space taken by the ATM is much greater than in a larger store. But even in the case of a small store we regard the concept of rivalry in occupation as artificial and unhelpful when considering which party's occupation of an ATM site is rateable.

> 177. When considering rateable occupation in the context of a complementary activity like the provision of an ATM, we do not regard control or interference as particularly relevant considerations either. Clearly where a segregated secure room has been created to accommodate the handling of cash, a high degree of security is to be expected. It suits the purposes of both the bank and the store for there to be very limited access to such a room, but there is no suggestion that the mutually beneficial security arrangements in place deprive the bank of access which it would otherwise wish to have to enable it to operate its ATM facilities. The restrictions in place should therefore be seen as facilitating the bank's enjoyment of the site, rather than as interfering with it.

70. Instead, the Upper Tribunal added that they preferred to consider the purpose of the occupation in question, in respect first of the external ATMs (at para 179):

> We find it more helpful to consider the purpose of the occupation of the site in the light of the decisions the parties make about the manner in which the space dedicated to ATMs will be used. We regard it as significant that, by design, the target market of an external ATM is much broader than the retail customers of the store. An external ATM is not only physically remote from the generality of the retail o›er of the store as it was described, but its purpose is also distinctively different. It is to reach as wide a market for ATM services as possible, rather than to restrict usage to those who have entered the store to make use of facilities only available to customers of the store.

71. I also finally note that if there were any dispute by an individual tenant with the landlord/freeholder that would have to be through chambers (via the trustees) who were the legal tenants and could not, I suggest, be brought by an individual member. This again in my opinion indicates the primacy of chambers in the matter of occupation.

72. In my judgment, the individual rooms occupied by individual barristers was clearly complementary to the business of chambers and of mutual benefit to both and therefore in reality the occupation of the rooms by barristers was subordinate to chambers whose occupation was paramount. The reality in this case was that individual members were lodgers whose entitlement to a room ceased when they ceased to be members of chambers. The appeal was therefore dismissed.

73. I am grateful to the parties for their careful and helpful submissions.

President

Date: 26 April 2023

Appeal number: CHG100352561

Right of further appeal

Any party who is aggrieved by the Tribunal's decision, and who appeared or was represented at the hearing, has the right of appeal to the Upper Tribunal (Lands Chamber). Any such appeal should be made within four weeks of the date of this decision notice.