

# VALUATION TRIBUNAL FOR ENGLAND



*Council Tax - Single Person's Discount – Local Government Finance Act 1992- Williams v Horsham District Council HC [RA2003] CAA [RA 2004] CA - Appeal seeking to challenge the Billing Authority's decision not to award single person's discount - designation of the sole or main residence of the Appellant's wife; Appeal Allowed.*

RE: 19 Laurel Grove, Huyton, Liverpool, L36 5UD

APPEAL NUMBER: VT00000795

BETWEEN:	Mr Paul Reyland	Appellant
	and	
	Knowsley Borough Council (The Billing Authority)	Respondent

BEFORE: Mr M Aspinall (Senior Member)

REMOTE HEARING: 21 October 2020

CLERK: Mr J Massey

APPEARANCES: Mr P Reyland (Appellant)  
Ms J Sullivan for Knowsley Borough Council (Respondent)

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## Summary of Decision

- 1 Appeal Allowed – Determination of main residence of Ms Chelsea Crichton not held to be at subject property with effect from 16 April 2019.

## Introduction

- 2 This was a Council Tax liability appeal made under Section 16 of the Local Government Finance Act 1992 on 3 December 2019. The Appellant was aggrieved by the Billing Authority's (BA) determination not to award a 25% single person discount for the period from 16 April 2019 to 24 November 2019 (inclusive).

- 3 My fellow member was not in attendance and we had not been able to arrange for a replacement at short notice. However, the tribunal's business arrangements permitted me to hear this appeal alone.
- 4 The President of the Valuation Tribunal for England (VTE) is required to make sure arrangements are in place and make such statements and Directions so as to ensure that business before the Tribunal is conducted in accordance with The Local Government Finance Act 1988, Schedule 11, Part 1, paragraph A17(1) and The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009. By virtue of Part 2 regulation (5)(arrangement for appeals) and regulation (6)(3)(g) (appeal management powers) the VTE may determine the form of any hearing.
- 5 Therefore, in pursuance of Regulation (6)(3)(g) the VTE has incorporated "remote hearings" as part of that definition and for the time being as the default option until it is safe to return to normal working. The Tribunal's Consolidated Practice Statement has been amended to reflect this. This hearing was conducted via video conference using Microsoft Teams and I was satisfied that both parties were fully able to participate in the hearing.

## **Issue**

- 6 The matter before the Tribunal was to determine whether Ms Crichton's main residence was at the subject property for the period from 16 April 2019 to 24 November 2019. The contention of the Respondent is that Ms Crichton's main residence was at the subject property. The Appellant contended that Ms Crichton's main residence was in the United Arab Emirate (UAE) from the date she departed the UK on 16 April 2019.

## **Evidence and submissions**

- 7 Mr Reyland informed me that his wife had left the subject property on 16 April 2019 and relocated to the UAE in order to take up permanent employment there. In his submission he provided a copy of her offer of employment, a one-way flight ticket from Manchester to Dubai, and a copy of his, and her residence permits for the UAE, expiring in November 2023 and April 2022 respectively.
- 8 Mr Reyland was of the opinion that the subject property was no longer his wife's main residence after 16 April 2019 – the intention was always that this would be a permanent move, and Mr Reyland had always planned to join her in the UAE once he had secured employment there. As he was the only resident at the subject property from the date his wife left for the UAE, until he left to join her on 24 November 2019, he asserted that he was entitled to a single person discount for this period.
- 9 Ms Sullivan's evidence bundle in support of the Respondent BA's case contained a chronological account of Mr Reyland's application for single person's discount, copies of correspondence with Mr Reyland, the relevant legislation and a summary of the authorities pertaining to sole or main residence for Council Tax purposes.
- 10 In her submission, Ms Sullivan stated that Mr Reyland had made applications to the BA for single persons discount on 22 May 2019 and 2 August 2019. In order to confirm the situation, the Respondent wrote to Mr Reyland requesting further information and copies of documents to support his application. Having reviewed the information and documents provided by Mr Reyland, and considered the relevant Court of Appeal and High Court judgements, the BA rejected his application on the grounds that Ms Crichton;
  - is resident in the UAE solely for purposes of her employment.

- is still the joint owner of the subject property and she therefore has greater security of tenure.
- returns to the subject property periodically throughout the year.
- is still married to Mr Reyland and the subject property is the marital home.

## Decisions and Reasons

- 11 The Local Government Finance Act 1992("the Act") introduced council tax. Within the Act section 11 makes provision for the taxpayer to receive a discount in certain circumstances:

### 11. Discounts

*(1) The amount of council tax payable in respect of any chargeable dwelling and any day shall be subject to a discount equal to the appropriate percentage of that amount if on that day—*

- there is only one resident of the dwelling and he does not fall to be disregarded for the purposes of discount;*
- there are two or more residents of the dwelling and each of them except one falls to be disregarded for those purposes.*

*(2) Subject to sections 11A, the amount of council tax payable in respect of any chargeable dwelling and any day shall be subject to a discount equal to twice the appropriate percentage of that amount if on that day—*

- there is no resident of the dwelling; or*
- there are one or more residents of the dwelling and each of them falls to be disregarded for the purposes of discount.*

*(3) In this section "the appropriate percentage" means 25 per cent. or, if the Secretary of State by order so provides in relation to the financial year in which the day falls, such other percentage as is specified in the order.*

The concept of resident can be found in section 6 of the Act and is defined as follows:

*"resident", in relation to any dwelling, means an individual who has attained the age of 18 years and has his sole or main residence in the dwelling.*

- 12 I accept that the term 'sole or main residence' is not defined in the legislation but a number of cases have been determined by the higher courts where this matter has been considered. Factors that have been held to be relevant by the courts include the financial interest in the properties concerned, the location of immediate family and possessions, the time spent at the locations and the longer term intentions.
- 13 Ms Crichton had two possible residences for the period of this appeal – the subject property, or the property in which she was staying in UAE. The question to be determined was which property was her main residence during this period? It was understood that the term "sole or main residence" indicated that a person needed to be resident at the dwelling for it to be a sole or main residence. In the decision in the case of *Williams v Horsham District Council HC [RA2003] CAA [RA 2004] CA*, McCombe J stated that:

*'Reference to decided cases may be of assistance in identifying factors relevant to the question of which is a person's main residence. But, because in a particular case one individual factor has been treated as of particular significance, it does not follow that it follows the same significance in a different factual scenario'*

And the judgement continues:

*... "sole or main residence" refers to premises in which the taxpayer actually resides. The qualification "sole or main" addresses the fact that a person may reside in more than one place. We think that it is probably impossible to produce a definition of "main residence" that will provide the appropriate test in all circumstances. Usually, however, a person's main residence will be the dwelling that a reasonable onlooker, with knowledge of the material facts, would regard as that person's home at the material time. That test may not always be easy to apply.....'*

- 14 It is therefore incumbent upon me to take account of all of the facts, and, in doing so, consider the view of a reasonable onlooker as to where the main home would be.
- 15 Mr Reyland accepted that Ms Crichton has a financial interest in the subject property, as she is a joint freeholder of the property, with him, since 18 May 2016 and is paying a proportion of the mortgage. He argued it was common for people to own 'second' or 'holiday' homes and still have a rental, or other, property as their main residence. The Respondent had referred to the 'hierarchy of liability' set out in section 6(2) of The Act, arguing that Ms Crichton's interest in the subject property is higher in this list than that of a tenant. I am conscious that this appeal relates to residence rather than liability and, whilst I find that Ms Crichton's financial interest and security of tenure is greater at the subject property, these are not the only factors to be considered when determining residence.
- 16 Ms Sullivan had referred to the High Court case of *Ward v Kingston Upon Hull*. Mr Ward's main residence was held to be the matrimonial home which he jointly owned with his wife, despite the fact that he lived and worked in Saudi Arabia for 5 years. His return to the matrimonial home was restricted to a maximum 9 weeks per year. His right to reside in Saudi Arabia was limited to the duration of his contract of employment. She also referred to *Codner v Wiltshire Valuation and Community Charge Tribunal* (1994) 34 RVR 169 and *Cox v. London (South West) Valuation and Community Charge Tribunal and Poole Borough Council* (1994) 34 RVR 171. These cases related to Appellants living away from home for the purpose of their employment, where it was determined that time spent at a property was not a determining factor as to their main residence at that property and that it may reasonably be presumed that a person's main residence is the place where his wife and children reside.
- 17 I do find some differences between the instant case, and those put forward by the Respondent. Whilst Mr Ward's contract was of a fixed term and his intention was to return at the end of this to live at the matrimonial home, Ms Crichton has permanent employment in the UAE and the intention was for Mr Reyland to join her in UAE; this has actually transpired. I acknowledge that her residency visa is for only four years. However, I also accept Mr Reyland's assertion that such visas are only ever issued for this period after which time they have to be renewed, and there is no such thing as an indefinite leave to remain in the UAE unless a dispensation is given by the King. I also accept that this case differs from that of *Ward* in that Ms Crichton's accommodation in UAE is not provided by her employers, and she would be free to remain there if the employment ceased.

- 18 In the cases of *Codner* and *Cox*, the Appellants had rented properties close to their places of work, in the United Kingdom, where they resided during the working week; returning to their 'family' home at weekends. I find that the Appellant and Ms Crichton's circumstances are significantly different. Not only would it be entirely impractical (and uneconomic) for her to return each weekend to the subject property, but additionally that Ms Crichton has clearly relocated to the UAE on what, for the foreseeable future, is intended to be a permanent basis. Again, this is supported by the fact that Mr Reyland has subsequently secured his own employment in the UAE and moved there to join his wife.
- 19 Ms Sullivan referred to Mr Reyland's statement that Ms Crichton plans to return to the UK for up to two weeks per year in order to visit friends and family, and that she will likely use the subject property when she does. She argues that this constitutes an intention to return to the marital home. I do not agree with this assessment and am inclined to see the subject property as more akin to the 'holiday home' described by Mr Reyland. In my view, for a property to remain a person's main residence, an intention to return to the subject property would need to be an intention to return to live in that property, rather than to stay in it for a few days or a week. Although there is every chance that Ms Crichton and Mr Reyland will at some point in the future return to live in the subject property, I do not consider, during the period the discount is claimed for, nor at this moment in time, it was or is the intention of either to do so.
- 20 In view of the above facts, and the assertions made by the Appellant, I concluded that the reasonable onlooker aware of the facts would consider, on the balance of probabilities, that Ms Crichton's main residence was not at the subject property from 16 April 2019 onwards and single person's discount is therefore applicable from this date until Mr Reyland vacated the property on 24 November 2019.
- 21 I therefore determined that the appeal be allowed.

### **Order**

- 22 Under the provisions of Regulation 38 of The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 the VTE orders the respondent Council to alter their records in respect of 19 Laurel Grove, Huyton, Liverpool, L36 5UD to show a 25% single persons discount for the period 16 April 2019 to 24 November 2019. The amendment to take place within two weeks of the date of this order.

**Date:** 29 October 2020

**Appeal Number:** VT00000795