

# THE VALUATION TRIBUNAL FOR ENGLAND



*Council tax liability; single person discount; sole or main residence; view of the reasonable onlooker in possession of all the material facts; R (on the application of Williams) v Horsham [2004] EWCA Civ 39 RA 49; appeal dismissed.*

APPEAL NUMBER: VT00016222

BETWEEN:	BM and Tendring District Council	Appellant  Respondent
RE:	Flat, 2 St James Court, Clacton-on-Sea, CO15 1DA	
PANEL:	Mr D Hogg (Presiding Senior Member) Mr F Stuart (Senior Member)	
CLERK:	Mrs Deborah Davies BA Hons, IRRV Hons	
SITTING ON:	11 December 2023 Remote Hearing 6	
APPEARANCES:	BM (appellant) Mr S Lancaster on behalf of the respondent BA	

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## Summary of decision

1. Appeal dismissed; the panel determined that the appeal address was the appellant's sole or main residence for the period in dispute, 18 November 2017 to 18 July 2021.

## Introduction

2. The appellant was aggrieved by the Billing Authority's (BA's) decision notice dated 30 November 2022 in which it confirmed its determination that the appeal property was the appellant's sole or main residence from 18 November 2017. The Valuation Tribunal for

England (VTE) accepted the appeal as an appeal made under section 16 of the Local Government Finance Act 1992.

3. This hearing was conducted via Microsoft Teams; the panel confirmed that the evidence bundle had been received and read beforehand.
4. This decision document is not and does not purport to be a verbatim record of proceedings.

### **Preliminary issue**

5. The appellant failed to submit her evidence to the respondent BA in accordance with the Tribunal's Standard Directions because she was awaiting confirmation from a third party; this slightly delayed the BA's submission of the collated evidence bundle to the Tribunal.
6. The panel considered the two breaches of the Standard Directions, having regard to the three-stage test set out in *Denton v TH White Ltd* [2014] 1 WLR 3926, summarised as:
  - a. Stage one - determine the significance and seriousness of a breach; what are the consequences of the breach and is there prejudice to any party?
  - b. Stage two – consider why the failure and default occurred; if the defaulting party had good reasons for the non-compliance relief from sanctions may be granted.
  - c. Stage three – give due regard to all the circumstances of the case, including the need for litigation to be conducted efficiently and at proportionate costs, and the need to enforce compliance with the rules, directions, and orders of the Tribunal.
7. The panel found that both breaches were minor. The appellant and the respondent had corresponded with each other and kept the Tribunal informed of the delay and the reasons for it. All parties had received the evidence over a week before the hearing and therefore the panel was satisfied that the hearing should proceed with the evidence allowed and without sanction for either party.

### **Issue**

8. The issue before the panel was whether the appellant had her sole or main residence at the appeal property from 18 November 2017 to 18 July 2021.

## **Evidence and submissions**

9. The BA's collated submission included their summary of the case, copies of letters and emails between the parties, extracts of relevant legislation and reference to case law, specifically *R (on the application of Williams) v Horsham* [2004] EWCA Civ 39 RA 49. There was also medical and legal evidence relating to the appellant's mother. The appellant made specific reference to the High Court decision in *Codner v Wiltshire VCCT* (RVR 1994 169).
10. The appellant's mother, GK, had owned the appeal property, a first floor flat, since 1996. She had a serious stroke in August 2016, and as a result, it had become difficult for her to reside in the property. After a period in hospital and residential care GK took a tenancy on a ground floor flat and moved into it in the summer of 2017. The ground floor flat gave her access to an outdoor space and facilitated her recuperation. The appellant lived in Chelmsford, over 30 miles away. In order to better care for her mother, she left Chelmsford and moved into the appeal property, which was within a short walk of the rented flat. The arrangement was intended to be a temporary measure but, in the event, it remained in place until GK died in July 2021.
11. The BA became aware of the situation regarding the actual occupancy of the appeal property following the death of GK when the solicitor executor made contact in the course of administering the estate. The BA issued a retrospective council tax demand to the appellant on the basis that she was the sole occupier of the appeal property and had been since 18 November 2017.
12. The appellant disputes her liability for council tax up to the date of her mother's death, stating that it is in fact her mother's estate that is responsible for the council tax. This is based on the appellant's belief that the appeal property remained her mother's sole or main residence up until the date she died.

## **Decision and reasons**

13. The panel took as the starting point the Local Government Finance Act (LGFA) 1992. Section 6 explains who is liable to pay the council tax on a dwelling:  
6 Persons liable to pay council tax.

- (1) The person who is liable to pay council tax in respect of any chargeable dwelling and any day is the person who falls within the first paragraph of subsection (2) below to apply, taking paragraph (a) of that subsection first, paragraph (b) next, and so on.
- (2) A person falls within this subsection in relation to any chargeable dwelling and any day if, on that day—
  - (a) he is a resident of the dwelling and has a freehold interest in the whole or any part of it;
  - (b) he is such a resident and has a leasehold interest in the whole or any part of the dwelling which is not inferior to another such interest held by another such resident;
  - (c) he is both such a resident and a statutory, secure or introductory tenant of the whole or any part of the dwelling;
  - (d) he is such a resident and has a contractual licence to occupy the whole or any part of the dwelling;
  - (e) he is such a resident; or
  - (f) he is the owner of the dwelling.

Section 6(5) defines 'resident' as an individual who has attained the age of 18 years and has his / her sole or main residence in the dwelling.

14. The appellant confirmed that she was living in the flat at her mother's invitation, having given up her own tenancy. The panel understood that the appellant met the definition of 'resident'. The appellant stated that she had no security of tenure at any address, and if she had left her mother's flat, she would have gone to stay with friends on a temporary basis. The panel was aware from LGFA 1992 s6(2)(e) that a resident may be liable for council tax even if that resident does not have a material interest in the property.
15. It was common ground between the parties that the appellant was actually resident at the appeal property for the period in question; the matter revolved around whether the dwelling remained the sole or main residence of her mother during the same period. The BA determined that GK was resident at various times at either the address at which she had taken out a tenancy agreement or in residential care. The appellant contends that the appeal address was her mother GK's sole or main residence throughout the whole period. She does not dispute that her mother was living at the rented flat or in a care home but argues that this was a temporary arrangement, made necessary by circumstances (ill-health and the restrictions

imposed as a result of the pandemic), and that her sole or main residence remained the property that she owned.

16. The appellant referred to the decision in *Codner v Wiltshire VCCT* (RVR 1994 169) in which the High Court confirmed that time spent at a property wasn't decisive in determining sole or main residence. That case concerned a man who lived at one address during the week, but who returned to the house where his family resided at weekend. The majority of his time was spent at the week-time address but the place where his family resided was deemed his main residence. The panel was of the opinion that the circumstances of this case differed in essence to the facts of the appeal.
17. The BA had referred the panel to the decision of the Court of Appeal in *R (on the application of Williams) v Horsham* [2004] EWCA Civ 39 RA 49. The panel considered the finding that *'...“The qualification “sole or main” addresses the fact that a person may reside in more than one place.... 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.’* In this case the Court of Appeal agreed that a property that the appellant owned but did not live in could not be considered his sole or main residence. The appellant was aware that this decision is the leading authority on sole or main residence, but she stated that it was different to her mother's case: Mr Williams chose to live elsewhere for the purpose of his employment, but her mother had not elected to live away from her home, she had been obliged to do so because of coronavirus restrictions and her temporary need for a ground floor flat.
18. The appellant explained that her mother had intended to return to the appeal property to live, but the setbacks in her health and restrictions placed on movement during the pandemic prevented this from happening. There had never been a point at which it was decided that the appellant would permanently reside in the appeal property and that her mother wouldn't return, things evolved. The solicitor had apprised the BA of the facts after GK died and the BA had assessed liability for council tax accordingly. The BA had checked the dates that the appellant had left her previous address in order to ascertain the date that she could be considered to have moved from one address to another.
19. In arriving at its decision, the panel took the role of the 'reasonable onlooker' and examined all the factors for and against treating the appeal property as the main residence of the appellant's

mother. GK owned the property, and most of the items in it belonged to her. However, it was a first floor flat that she could no longer manage, and therefore she had taken the tenancy on alternative accommodation and moved there. It was not disputed that the appellant was occupying the appeal property and that her mother was not there at the same time. The panel fully accepted that GK intended to return to the appeal property when she could but had to consider the reality of the situation. GK had not 'lived' (in the standard use of the word) at the appeal property since November 2016, albeit she had visited occasionally. Comparing the circumstances to the *Williams* case the panel was persuaded by the fact that, like Mr Williams, GK owned the appeal property but lived elsewhere. In GK's case she had a material interest (a tenancy of six months or more) in another property in which she resided.

20. The appellant briefly raised the matter of whether she should be eligible for a discretionary award in place of backdated entitlement for council tax support. The panel did not explore this as it was outside the jurisdiction of this appeal. However, the BA's representative explained that the BA had recognised the difficult circumstances faced by the appellant and had offered to make an exceptional hardship payment to clear the retrospective council tax liability. The appellant had declined on several occasions to complete the required application form because she did not accept that she was liable for the council tax. The BA's representative confirmed that this option would still be available to the appellant should her appeal be dismissed. The panel was grateful for this intervention and recommends to the appellant that she contact the BA for further details.
21. In appeals of this nature, the burden of proof rests on the appellant to provide evidence to confirm that she should not be held liable for council tax at the appeal property during the disputed period. The appellant failed to persuade the panel that the appeal property was the sole or main residence of her mother for the period in dispute. The appeal was therefore dismissed.

**Date:** 20 December 2023 (re-issued 16 January 2024)

*Amended decision in accordance with Regulation 39 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 due to a clerical error. Paragraph 10 is amended to correct the typographical error of "November 2016 to show "August 2016".*

**Appeal number:** VT00016222

**Right of further appeal**

Any party who is aggrieved by the Tribunal's decision has the right of appeal to the High Court on a question of law. Any such appeal should be made within four weeks of the date of this decision notice.