Neutral Citation Number: [2024] EWHC 2551 (Admin)

Case No: AC-2024-CDF-000115

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

On appeal from the Valuation Tribunal for England
Tribunal Case No. VT00016508

Cardiff Civil Justice Centre
2 Park Street, Cardiff, CF10 1ET

Date: 11 October 2024

Before:

HIS HONOUR JUDGE KEYSER KC
sitting as a Judge of the High Court

- -

Between:

CAMERON MARSHALL	**Appellant**
- and -	
BATH AND NORTH EAST SOMERSET COUNCIL	**Respondent**

- -
- -

Philip Marshall KC (instructed by **Protopapas LLP**) for the **Appellant**
George Mackenzie (instructed by the **Legal Services Manager**) for the **Respondent**

Hearing date: 3 October 2024

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 11 October 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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HIS HONOUR JUDGE KEYSER KC

Judge Keyser KC :

Introduction

1. This is my judgment upon an appeal brought by Mr Cameron Marshall ("the appellant") against a decision ("the Decision") of the Valuation Tribunal for England ("the Tribunal").

2. The appellant, jointly with his siblings and his father, Mr Philip Marshall KC, who represented him both before the Tribunal and before me, is a long leaseholder of a dwelling at 45 Great Pulteney Street, Bath, BA2 4DR ("the Property"); they acquired the leasehold title on 16 February 2022. Between 5 September 2022 and 16 June 2023 the appellant was a student on the Legal Practice Course at BPP University Law School in London. During term he lived with his parents at their house in London.

3. The appellant was aggrieved by the decision of Bath and North East Somerset Council ("the respondent"), as the relevant billing authority, that the Property was chargeable for council tax and that it did not enjoy a statutory exemption relating to his status as a student. He appealed to the Tribunal under section 16 of the Local Government Finance Act 1992 ("the 1992 Act"), but the Tribunal dismissed his appeal. He now appeals to this court, pursuant to regulation 43(1) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 ("the 2009 Regulations").

4. In the remainder of this judgment, I shall deal with matters in the following order: first, the relevant legislative framework for council tax (paragraphs 6 to 11); second, the law on appeals to the Tribunal (paragraphs 7 to 15); third, briefly, the statutory basis for appeals from the Tribunal to this court (paragraphs 16 to 19); fourth, the circumstances of the dispute that led to the appeal to the Tribunal (paragraphs 20 to 26); fifth, the proceedings before the Tribunal (paragraphs 27 to 37); sixth, the Tribunal's Decision (paragraphs 38 to 43); seventh, the issues on this appeal (paragraphs 44 to 77); eighth, conclusion and disposal (paragraph 78).

5. I am grateful to Mr Marshall KC and to Mr Mackenzie, who appeared for the respondent, for their detailed, clear and helpful written and oral submissions.

Council Tax: the Legislative Framework

6. Section 1 of the 1992 Act provides in part:

> "(1) As regards the financial year beginning in 1993 and subsequent financial years, each billing authority shall, in accordance with this Part, levy and collect a tax, to be called council tax, which shall be payable in respect of dwellings situated in its area."

It is common ground that the Property is a dwelling and that the respondent is the billing authority for the area in which it is situated.

7. Section 2(1) of the 1992 Act provides that liability to pay council tax shall be determined on a daily basis.

8. Section 4 of the 1992 Act provides:

> "(1) Council tax shall be payable in respect of any dwelling which is not an exempt dwelling.
>
> (2) In this Chapter—
>
> > 'chargeable dwelling' means any dwelling in respect of which council tax is payable;
> >
> > 'exempt dwelling' means any dwelling of a class prescribed by an order made by the Secretary of State.
>
> (3) For the purposes of subsection (2) above, a class of dwellings may be prescribed by reference to such factors as the Secretary of State sees fit.
>
> (4) Without prejudice to the generality of subsection (3) above, a class of dwellings may be prescribed by reference to one or more of the following factors—
>
> > (a) the physical characteristics of dwellings;
> >
> > (b) the fact that dwellings are unoccupied or are occupied for prescribed purposes or are occupied or owned by persons of prescribed descriptions."

9. Section 6 of the 1992 Act provides in relevant part:

> "(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.
>
> (3) Where, in relation to any chargeable dwelling and any day, two or more persons fall within the first paragraph of subsection (2) above to apply, they shall each be jointly and severally liable to pay the council tax in respect of the dwelling and that day.
>
> (4) Subsection (3) above shall not apply as respects any day on which one or more of the persons there mentioned fall to be disregarded for the purposes of discount by virtue of paragraph … 4 (students etc.) of Schedule 1 to this Act and one or more of them do not; and liability to pay the council tax in respect of the dwelling and that day shall be determined as follows—
>
> (a) if only one of those persons does not fall to be so disregarded, he shall be solely liable;
>
> (b) if two or more of those persons do not fall to be so disregarded, they shall each be jointly and severally liable.
>
> …
>
> (5) In this Part, unless the context otherwise requires—
>
> 'owner', in relation to any dwelling, means the person as regards whom the following conditions are fulfilled—
>
> (a) he has a material interest in the whole or any part of the dwelling; and
>
> (b) 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;
>
> '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."

10. A prescription pursuant to section 4(3) of the 1992 Act was made by the Secretary of State by the Council Tax (Exempt Dwellings) Order 1992 ("the 1992 Order"), as amended by the Council Tax (Exempt Dwellings) (Amendment) (England) Order 2012. Article 3 of the 1992 Order provides,

> "A dwelling is an exempt dwelling for the purposes of section 4 of the [1992] Act on a particular day if on that day it falls within one of the following classes–-"

and sets out 15 classes, A to O. For the purposes of this appeal, the two relevant classes are K and N, the text of which is and was at the material times as follows:

> "Class K: an unoccupied dwelling—
>
> (a) which was last occupied as the sole or main residence of a qualifying person ('the last occupier'); and
>
> (b) in relation to which every qualifying person is a student and either—
>
> (i) has been a student throughout the period since the last occupier ceased to occupy the dwelling as his sole or main residence; or
>
> (ii) has become a student within six weeks of the day mentioned in sub-paragraph (i)"

> "Class N:
>
> (1) A dwelling which is either—
>
> (a) occupied by one or more residents all of whom are relevant persons; or
>
> (b) occupied only by one or more relevant persons as term time accommodation;
>
> (2) for the purposes of paragraph (1),
>
> (a) 'relevant person' means—
>
> (i) a student;
>
> …
>
> (b) a dwelling is to be regarded as occupied by a relevant person as term time accommodation during any vacation in which he—
>
> (i) holds a freehold or leasehold interest in or licence to occupy the whole or any part of the dwelling; and
>
> (ii) has previously used or intends to use the dwelling as term time accommodation".

Article 2 of the 1992 Order defines "qualifying person" to mean "a person who would, but for the provisions of this Order, be liable for the council tax in respect of a dwelling on a particular day as the owner, whether or not jointly with any other person". Article 2 further provides:

> "'unoccupied dwelling' means … a dwelling in which no one lives and 'occupied' shall be construed accordingly".

11. I shall discuss some of these statutory provisions below, in the context of the grounds of appeal.

Appeals to the Tribunal

12. Section 16 of the 1992 Act provides in relevant part:

> "(1) A person may appeal to a valuation tribunal if he is aggrieved by—
>
> > (a) 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; …
>
> …
>
> (4) No appeal may be made under subsection (1) above unless —
>
> > (a) the aggrieved person serves a written notice under this subsection; and
> >
> > (b) one of the conditions mentioned in subsection (7) below is fulfilled.
>
> (5) A notice under subsection (4) above must be served on the billing authority concerned.
>
> (6) A notice under subsection (4) above must state the matter by which and the grounds on which the person is aggrieved.
>
> (7) The conditions are that—
>
> > (a) the aggrieved person is notified in writing, by the authority on which he served the notice, that the authority believes the grievance is not well founded, but the person is still aggrieved; …
>
> (8) Where a notice under subsection (4) above is served on an authority, the authority shall—
>
> > (a) consider the matter to which the notice relates;

> (b) include in any notification under subsection (7)(a) above the reasons for the belief concerned; …"

13. Mr Mackenzie referred me to *Courtney Plc v Murphy (Valuation Officer)* [1998] RA 77, which was a judgment on an appeal to the Lands Tribunal against decisions of a local valuation tribunal determining the rating assessment of a commercial hereditament. The Lands Tribunal held that the local valuation tribunal, and the Lands Tribunal on an appeal, had power to alter the rating list only in accordance with the ratepayer's originating proposals; neither the local valuation tribunal nor the Lands Tribunal could go beyond the scope of those proposals. The appeal to the local valuation tribunal in that case was under regulation 12(1) of the Non Domestic Rating (Alteration of Lists and Appeals) Regulations 1993, which provides in relevant part:

> "(1) Where the valuation officer is not of the opinion that a proposal is well founded, and (a) the proposal is not withdrawn and (b) there is no agreement as provided in reg 11, the disagreement shall .... be referred by the valuation officer, as an appeal by the proposer against his refusal to alter the list, to the relevant valuation tribunal."

(See also regulation 12(2) and regulations 2(1), 9 and 11.) The Lands Tribunal said at 86-87:

> "I agree with counsel for the valuation officer that the scope of the 'disagreement' and the valuation officer's 'refusal to alter the list' are limited by the wording of the proposal (see also reg 9 which relates the alteration of the list to the proposal where the valuation officer is of the opinion that the proposal is well founded). In these appeals the valuation officer was of the opinion that the originating proposals were not well founded and referred this 'disagreement' to the Central London Valuation Tribunal as an 'appeal by the proposer against his refusal to alter the list'. The tribunal reduced the assessment to a rateable value of £100 with an effective date of the 30th January 1995, the date of the commencement of the building works giving rise to the proposal (the material change of circumstances). The ratepayers appealed to this tribunal against the reduced assessment and the effective date. This is the first time that the effective date became an issue: it was not raised before the valuation tribunal.
>
> The jurisdiction of a local valuation tribunal is limited to determining the appeal or 'disagreement' under reg 12 (1) (see regs 2(1) (definition of appeal) and 44 (1) (orders)), which arises out of the originating proposal. It is clear from the provisions of reg 11 (1) that the terms of a proposal govern the alteration of the rating list and that an agreement to alter the list 'in terms other than those contained in the proposal' requires the consent of the persons specified in para (2) of the regulation."

14. The decision in the *Courtney* case concerned different legislation from that in the present case. However, I consider that the position regarding the jurisdiction on appeal is materially the same. An appeal to the Valuation Tribunal for England under section 16 of the 1992 Act is by an "aggrieved person", and the procedure in the section is clearly designed to require the aggrieved person to specify his grievance and the grounds for it and to require the billing authority to state the reasons why it considers the grievance not to be well founded. In my view, the status of the appellant as an "aggrieved person" is constituted by the grievance procedure in regulation 12(4)-(8) and the scope of the Tribunal's appellate jurisdiction is defined by the grievance identified by that procedure. I shall return to this matter below, in connection with the grounds of appeal.

15. The conduct of appeals to the Tribunal is governed by the 2009 Regulations, which include the following provisions.

> "2. *Interpretation: general*
>
> (1) In these Regulations—
>
> …
>
> 'appellant', unless the context otherwise requires, means —
>
> (a) a person who makes a section 16 [of the 1992 Act] appeal; …
>
> …
>
> (3) Any reference in these Regulations to a party—
>
> (a) in relation to a section 16 appeal, means the appellant and the billing authority; …".

> "3. *Discharge of VTE's functions: general*
>
> In giving effect to these Regulations and in exercising any of its functions under these Regulations, the VTE [that is, the Tribunal] must have regard to—
>
> (a) dealing with appeals in ways which are proportionate to the importance of the appeal, the complexity of the issues, the anticipated costs and the resources of the parties;
>
> (b) avoiding unnecessary formality and seeking flexibility in the proceedings;
>
> (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;

(d) using any special expertise of the VTE effectively; and

(e) avoiding delay, so far as compatible with proper consideration of the issues."

"6. *Appeal management powers*

(1) Subject to the provisions of Part 1 of Schedule 11 to the 1988 Act and of these Regulations, the VTE may regulate its own procedure.

…

(3) In particular, and without restricting the general powers in paragraphs (1) and (2), the VTE may—

…

(g) decide the form of any hearing; …"

"17. *Evidence and submissions*

(1) Subject to paragraph (1A), the VTE may give directions as to—

(a) issues on which it requires evidence or submissions;

(b) the nature of the evidence or submissions it requires;

(c) whether any parties are permitted or required to provide expert evidence;

(d) any limit on the number of witnesses whose evidence a party may put forward, whether in relation to a particular issue or generally;

(e) the manner in which any evidence or submissions are to be provided, which may include a direction for them to be given—

(i) orally at a hearing; or

(ii) by written submissions or witness statement; and

(f) the time at which any evidence or submissions are to be provided."

> "20A. *Notices of appeal - section 16 appeals*
>
> (1) A section 16 appeal shall be initiated by giving written notice of appeal to the VTE.
>
> (2) A notice of appeal in the case of a section 16 appeal shall include the following particulars—
>
> (a) full name and address of the appellant;
>
> (b) the address of the relevant chargeable dwelling, if different from the address referred to in sub-paragraph (a);
>
> (c) the date on which the written notice under section 16(4)(a) of the 1992 Act was served and the name of the authority on which it was served;
>
> (d) the date, if applicable, on which the appellant was notified by the authority in accordance with section 16(7)(a) or (b) of the 1992 Act;
>
> (e) the grounds on which the appellant is aggrieved;
>
> (f) brief reasons why the appellant considers that the decision or calculation made by the authority was incorrect; …"

Appeals to the High Court

16. Regulation 43 of the 2009 Regulations provides in relevant part:

> "(1) An appeal shall lie to the High Court on a question of law arising out of a decision or order which is given or made by the VTE on an appeal under section 16 of the 1992 Act …
>
> …
>
> (4) The High Court may confirm, vary, set aside, revoke or remit the decision or order, and may make any order the VTE could have made."

17. The scope of a statutory appeal against a decision of the Tribunal was considered in the *extempore* judgment of Haddon-Cave J in *Ramdhun v Valuation Tribunal for England* [2014] EWHC 946 (Admin), in particular at [20]-[28]. His summary statement of the law was this:

> "20. The approach of the High Court on an appeal such as this from a decision of a First-tier Tribunal is very clear: absent a patent error of law or findings of fact which simply cannot be

> justified on the evidence, the High Court will not interfere. A court sitting on appeals such as this will not substitute its own judgment on the facts found by a Tribunal merely because it comes to a different conclusion on the facts or the balance to be struck amongst a number of competing factors."

Haddon-Cave J referred to *Batty v Burfoot* [1995] RA 299 (Ognall J) and *Ramsey v The Commissioners for Her Majesty's Revenue and Customs* [2013] UKUT O226(TCC) (Upper Tribunal), and quoted with evident approval the summary of principles given in *Ramsey* and drawn from the judgment of Arnold J in *Okolo v Revenue and Customs Commissioners* [2012] UKUT 416(TCC) (Upper Tribunal) (with a token nod to brevity, I omit from the quotation the references given to support the propositions):

> "(1) If the case contains anything which on its face is an error of law and which bears upon the determination, that is an error of law.
>
> (2) A pure 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.
>
> (3) An error of law may arise if the facts found are such that no person acting judicially and properly instructed as to the relevant law could have come to the determination under appeal.
>
> (4) It is all too easy for a so-called question of law to become no more than a disguised attack on findings of fact which must be accepted by the courts. The nature of the factual enquiry which an appellate court can undertake is different from that undertaken by the Tribunal of fact. The question is: was there evidence before the Tribunal which was sufficient to support the finding which it made? In other words, was the finding one which the Tribunal was entitled to make?
>
> (5) For a question of law to arise in those circumstances, the appellant must first identify the finding which is challenged; secondly, show that it is significant in relation to the conclusion; thirdly, identify the evidence, if any, which was relevant to that finding; and fourthly, show that finding, on the basis of that evidence, was one which the Tribunal was not entitled to make. What is not permitted is a roving selection of the evidence coupled with a general assertion that the tribunal's conclusion was against the weight of the evidence and was therefore wrong.
>
> (6) An appeal court should be slow to interfere with a multi-factorial assessment based on a number of primary facts, or a value judgment. Where the application of a legal standard involves no question of principle, but is simply a matter of

> degree, an appellate court should be very cautious in differing from the judge's evaluation. Where a decision involves the application of a not altogether precise legal standard to a combination of features of varying importance, this will fall within the class of case in which an appellate court should not reverse a judge's decision unless he has erred in principle.
>
> (7) Where the case is concerned with an appeal from a specialist Tribunal, particular deference is to be given to such tribunals, for Parliament has entrusted them, with all their specialist experience, to be the primary decision maker. Those tribunals are alone the judges of the facts. Their decisions should be respected unless it is quite clear they have misdirected themselves in law. Appellate courts should not rush to find such misdirections simply because they might have reached a different conclusion on the facts or expressed themselves differently."

18. More recently, in *Broderick v Coventry City Council* [2020] EWHC 2083 (Admin), which concerned an appeal under regulation 43, His Honour Judge David Cooke, sitting as a Judge of the High Court, approved and followed this passage in the judgment of Mr Phillip Mott QC, sitting as a deputy High Court Judge, in *Gill v Fenland District Council* [2018] EWHC 3105 (Admin):

> "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."

19. Mr Mackenzie submitted that findings of fact by the Tribunal and its conclusions on matters of fact and degree commanded particular respect and deference as being those of a specialist tribunal. In agreement with Mr Marshall KC, I reject that submission. The Tribunal certainly has specialist expertise in matters of valuation, but I see no reason to accept that it has any such expertise in respect of finding primary facts of the kind with which the present case is concerned or of drawing conclusions from them, and in the cases that I shall consider below regarding "sole or main residence" the courts exercising an appellate function have shown no inclination to treat the findings and conclusions of the Tribunal any differently from those of other courts or tribunals. Further, as Mr Marshall KC observed, the contention in the present case that the Tribunal had specialist expertise regarding the identification of the appellant's "sole or main residence" is rather undermined by the record in the Tribunal's

Decision that it was the clerk to the Tribunal who "introduced" the judgment on which the Tribunal principally relied.

Background to the Tribunal's Decision

20. The Council Tax Bill that gave rise to the dispute was dated 12 December 2022 and was addressed to all the owners of the Property. It showed a charge for £818.21 for the period 24 November 2022 to 31 March 2023. It said that the sum due was due in instalments of £272.21 on 1 January 2023, £273 on 1 February 2023, and £273 on 1 March 2023.

21. On 14 February 2023 the appellant submitted an electronic Contact Form to the respondent's Council Tax section. The reason for contact was stated as follows:

> "I wish to claim Class K exemption because I am a full time student studying law. I resided in the property at 45 Gt Pulteney Street from 24 November as my home. I have now left to continue my studies. Please also reimburse the £545.21 paid so far [that is, the instalments that fell due on 1 January and on 1 February 2023]."

The form was submitted from Mr Marshall KC's chambers address and gave his chambers email as the contact address, to and from which further communications took place.

22. On 15 February 2023 the respondent replied to the appellant by email, requesting confirmation whether he lived at the Property alone and, as proof that he lived at the Property, utility bills, a bank statement, and the appellant's driving licence, as well as a student certificate letter from the Law School. The email said, "The last correspondence on the account starts [states?] the property has been empty since purchase, therefore we require proof that you moved in."

23. On 8 March 2023 the appellant provided a Certificate of Student Status as at 28 February 2023. It showed that his course had begun on 5 September 2022 and was expected to end on 16 June 2023, and it showed his residential address as a property (in fact, his parents' home) in Richmond, London. The appellant explained, "It [the Certificate of Student Status] has my residence at the start of the course and currently which is in London." He sent undated photographs showing the Property to be furnished "for my residence", and a copy of an assured shorthold tenancy that had been previously granted by the appellant and his co-leaseholders to subtenants and had been terminated by the subtenants with effect on 24 November 2022. The same email continued, somewhat provocatively:

> "As I have already explained to you the utilities bills for the property and service charge have been met by my parents. So I will not be providing any further evidence of residence.
>
> If you reject my application then the matter will go to the Valuation Tribunal. I hope this will not be necessary as you

> will simply be wasting everyone's time on any unnecessary procedure."

24. On 13 March 2023, in an email addressed to Mr Marshall KC, the respondent made a request under regulation 3 of the Council Tax (Administration and Enforcement) Regulations 1992[1] and Schedule 3 to the Local Government Finance Act 1992, in the following terms:

> "We would require the following to show Cameron was living at the property from November 2022 onwards:
>
> - Utility bills showing usage (we do not accept estimates)
> - Broadband bill
> - Bank/credit statements for whole period
> - The date Cameron left the property
> - Evidence whether the previous tenancy was let furnished or unfurnished
> - Inventory for previous tenancy
> - Check out documents for previous tenancy
> - Any evidence of furniture being delivered to the property for Cameron
> - Resubmitted original photographs - this to check the metadata as property was also listed unfurnished this month
> - Any documentary evidence showing Cameron was resident, e.g. driving licence (already requested), bank statements, NHS documents, mobile phone bill, TV subscription etc."

25. On 18 March 2023 a response was sent in the appellant's name:

---

[1] Regulation 3 provides:

(1) A person who appears to a billing authority to be a resident, owner or managing agent of a particular dwelling shall supply to the authority such information as fulfils the following conditions—
(a) it is in the possession or control of the person concerned;
(b) the authority requests (by notice given in writing) the person concerned to supply it; and
(c) it is requested by the authority for the purposes of identifying the person who, in respect of any period specified in the notice, is the liable person in relation to the dwelling.
(2) A person on whom such a notice as is mentioned in paragraph (1) is served shall supply the information so requested—
(a) within the period of 21 days beginning on the day on which the notice was served; and
(b) if the authority so requires, in the form specified in the request.
(3) The reference in paragraph (1) to the liable person is a reference to a person who is liable (whether solely or jointly and severally) to pay to a billing authority, in respect of a particular dwelling, an amount in respect of council tax; and includes a reference to a person who in the opinion of the authority will be so liable.

> "The vacation date from the property was 3 January 2023 although I made short visits from the property to Richmond in the intervening period.
>
> I have already explained in my second email to your colleague that the documents you have requested are not available and would not assist you. The utilities for this property were and are paid for by my parents, there is no broadband bill paid for by me, banking documents will not help you because I did not pay for expenses at the property, I have given you the date of departure above, the evidence of the previous tenancy has already been provided, the tenants brought their own furnishings so there is no inventory, my parents provided my furnishings, you are mistaken about listings - there has been no re-listing; the photos are from a phone; the documentary position has already been addressed in previous emails. I should add that, with funding from my parents, I have been improving and replacing the furniture at the property.
>
> You cannot obstruct an appeal to the valuation tribunal by repeating questions that have already been answered.
>
> You must either accept the appeal or decline it. In the latter event the matter will go the Tribunal."

The respondent was right to point out, in the subsequent appeal proceedings, that the appellant was not entitled to decline to provide documentation because in his opinion it would not assist the respondent. I doubt whether either the substance or the tone of the response did much to help the appellant's efforts to persuade the respondent.

26. By email on 18 April 2023 the respondent issued its final decision, rejecting the appellant's claim to be entitled to a Class K exemption. After referring to legislative provisions, the email continued:

> "According to the Land Registry, the leaseholders are Mr Philip Scott Marshall, Mr Cameron Rafe Marshall, Ms Tamsin Elizabeth Jane Marshall and Mr Alasdair James Marshall. Therefore, they are liable for the Council Tax under Section 6(2)(f) of the Local Government Finance Act 1992 for any period the property is unoccupied. As such, all listed owners are qualifying persons as defined by Article 2(1) of the Council Tax (Exempt Dwellings) Order 1992.
>
> Regardless of whether Cameron Marshall had his main residence at the property for the 41 days claimed, a claim for which you have provided no evidence of, the other named owners did not have their main residences there nor has evidence been provided that they all [sic] full-time students in any case.

> Therefore, your application for a Class K Exemption is refused as the full criteria under Article 3 of the Council Tax (Exempt Dwellings) Order 1992 has [sic] not been met."

The Proceedings before the Tribunal

27. The appellant appealed to the Tribunal pursuant to section 16(1) of the 1992 Act. (The Tribunal recorded that the appeal was received on 17 April 2023 and that the date of the respondent's decision was 13 March 2023. This suggests that the appellant appealed before the respondent had made its final decision and that he gave incorrect information pursuant to regulation 20A of the 2009 Regulations. No point has been taken in that regard.)

28. The reasons for the appeal were stated as follows:

> "As explained in my communications with the Council I am a full time student. I moved into the property as my residence on 24 November 2022. I then left the property on 3 January 2023 to attend my studies at BPP Law School in London. I have claimed Class K exemption. The Council has refused my application without proper grounds."

29. On 23 November 2023 the respondent filed documents, comprising only the communications and attachments that had previously passed between the parties; these, it said, "[set] out the events and correspondence which led to the council's decision of 18th April, to refuse the class K exemption to the Appellant." The documentation was accompanied by a written submission, which said that despite the respondent's request for evidence to support his application for a Class K exemption the appellant had not supplied satisfactory evidence. It commented on the documentation provided by the appellant and continued:

> "9. The council accepted that the Appellant had provided evidence of their [sic] student status, but the student certificate he provided gave a term and home time address in Richmond. The Appellant advised that this was the address at the start of their course and where they were currently living (Evidence 8). The council asked for further evidence that he had been resident at Great Pulteney street since November 2022, and the date that he left the property (Evidence 9). This request was made under Regulation 3 of the Council Tax (Administration & Enforcement) Regulations 1992 and Schedule 3 of the Local Government Finance Act 1992.
>
> 10. The Appellant advised that he had left the property on 03.01.2023, and there was no further evidence that could be provided to show that he had been resident there (Evidence 10). All utilities were paid by his parents, he did not pay for any expenses at the property so banking documents would not corroborate his presence there, the property had been furnished

> by his parents and with their help he had been improving and replacing furniture at the property.
>
> 11. There followed further email correspondence between the council and the Appellant, which did not alter the position of either party. The council issued a final decision on 18th April 2023 (Evidence 11), to confirm that Cameron Marshall was not entitled to a class K exemption, because he did not have his main residence at 45 Great Pulteney Street from 24th November 2022 to 3rd January 2023. As a non-resident owner he was jointly liable for council tax alongside the other owners of the property, and they were not full-time students for the period in question, nor did they have their main residence there.
>
> …
>
> 13. It would be relatively straightforward to provide evidence that the Appellant was living at the property between 22nd November 2022 and 3rd January 2023. For example, a bank statement showing transactions carried out in the area for living costs would support his statement, however this and other evidence has not been provided, and he has asserted that his parents paid expenses for the 41 days that he was resident there. In the absence of any compelling evidence, other than the appellant's word which has been provided throughout by emails from his father's work email address, the council believes that on balance of probabilities his main residence was not at Great Pulteney Street and the request for a class K exemption is a means of trying to avoid paying the council tax which is due."

30. The appellant filed evidence on 15 December 2023. This comprised three witness statements: one from the appellant himself, which exhibited some documents, and two from Mr Marshall KC.

31. On 20 December 2023 the respondent filed a bundle for the appeal. This contained the evidence previously filed by the parties and a submission from the respondent headed Billing Authority Rebuttal.

32. The appellant's statement, dated 15 December 2023, stated that the original intention was that the Property should be an investment for the benefit of himself and his siblings and that it had therefore been let on an assured shorthold tenancy from 25 March 2022. His statement continued:

> "9. In the autumn of 2022 my plans and those of my family changed in respect of the Property. My girlfriend had begun studying law at Bristol University. Also my sister had decided to make her home in Bath and other close relatives (specifically my aunt Susan Mitchell and her family) had also moved to the area. I also had a number of friends who were studying at Bath University. It was in these circumstances that I became

> interested in moving to Bath when the opportunity arose, to stay in the Property as my main home when not attending my course in London.
>
> 10. The opportunity did arise when the tenants served a break notice on 22 September 2022 terminating their lease on 24 November 2022. A copy of the break notice is in exhibit 'CM1'.
>
> 11. I moved into the Property as my main home when the tenants moved out on 24 November 2022. This was towards the end of my university term. I refer to it as my main home given that I also had a temporary residence as a student in London.
>
> 12. After I had dealt with the move I returned to London during the working week until my course finished in December 2022. On most weekends I returned to the Property in Bath. I then stayed at the Property for the bulk of the Christmas holidays period, leaving on 3 January 2023 to return to London for my course. I returned to Bath for many weekends and during the Easter holiday and revision period."

The appellant said that the Property had been acquired with a considerable amount of furniture and that his parents had provided more, so that he had not had to furnish it himself. He referred to photographs that he had already provided, showing the Property furnished. He said, "My parents have also been paying for most of my outgoings at the Property but I have covered the cost of broadband internet and electricity costs from January 2023 onwards", and he exhibited examples. He said that he had dealt with those managing the freehold "in respect of matters such as annual fire inspections at the Property", and again he produced some documentation. He said, "I seek Class N exemption for the period I was in residence and Class K for the period the Property was unoccupied after I returned to university."

33. The exhibit to the appellant's statement included the following documents:

- A break notice dated 22 September 2022 terminating the previous tenancy of the Property on 24 November 2022;
- An order confirmation dated 22 October 2022, addressed to Barbara Marshall, for a bed and mattress that were to be delivered to the Property;
- A receipt dated 10 March 2023 from South West Water to the appellant, acknowledging payment by him of £122.95 on that date;
- A receipt dated 4 February 2023 from Octopus Energy to the appellant, acknowledging payment by him of £359.03 on that date;
- An order confirmation dated 9 January 2023, addressed to the appellant, for NOW broadband;

- Emails in December 2022 between Mr Marshall KC and a third party regarding fire-alarm system checking. In an email on 4 December 2022 Mr Marshall wrote, "If [the test is] needed, my son, Cameron, is now in residence although he will be back and forth to London for the next couple of weeks for the conclusion of his winter term at Law School. He will [be] there on 21 December, can the visit be deferred?"

34. Both of Mr Marshall KC's statements were dated 15 December 2023. Each comprised a single page. The first statement confirmed the correctness of the appellant's statement and said that it had been decided to use his chambers email account in order to ensure one point of communication with the respondent. The second statement sought to clarify one point, as follows:

> "3. As I mentioned in my first statement I assisted my son in dealing with Council Tax for 45 Great Pulteney Street, Bath BA2 4DR ('the Property'). In dealing with the Council's enquiries regarding payment of utility bills and similar items my son explained to me that the focus was on the dates between 24 November 2022 and 3 January 2023. He did not have such bills from this period, they were paid for by his mother. It will be seen from his evidence that he does have such bills from shortly afterwards and these have been exhibited to his statement. When I drafted a response to the Council's enquiries on the topic after it became contentious I was not aware that he had taken over payment for some items from his mother shortly after 3 January 2023. I regret that this is reason for the error in the response to the questions raised by the Respondent prior to the appeal being brought."

35. The Billing Authority Rebuttal maintained the respondent's previous stance, namely that the appellant had not provided sufficient evidence to support his application for an exemption. I mention only some of the points raised.

a) Paragraph 1 of the submission said that the appellant had failed to make clear whether he was applying for a Class K or a Class N exemption. It did not raise an objection to the inclusion of Class N; it simply said that neither Class had been supported by sufficient evidence.

b) With respect to utility bills, the submission said that they did not need to be in the appellant's name; their relevance was to establish usage, though by themselves they could not establish residence.

c) With respect to a television subscription, it was noted that it both was taken out and went live after 3 January 2023 and (paragraph 7) that the appellant "apparently vacated on 3rd January 2023". Paragraph 14 said, "The claimed period of occupation is 24th November 2023 to 3rd January 2023".

d) With respect to bank statements, the submission said that one of the reasons for requesting them was to show spending in Bath during the alleged period of occupation.

e) The submission said that the only documents that had been provided that related to the appellant personally were photographs of the Property being furnished (which it said were questionable) and a broadband bill (which it said "post-dates claimed residency period").

36. The Tribunal heard the appeal by means of a remote hearing on 21 March 2024. The appellant, as I have said, was represented by Mr Marshall KC. The respondent was not represented; it relied on the documentary evidence and its written representations.

37. Mr Marshall KC, who attended the hearing, told me that it became apparent at the start of the hearing that the members of the panel did not have all the documents that had been filed and there was a delay while the documents were again provided and while one of the panel members overcame technical difficulties in opening the electronic bundle. He said that the panel had then taken some time to read the papers (this is confirmed by paragraph 7 of the Tribunal's decision), but he said that this had only taken some 10 to 15 minutes; the clear implication being that Mr Marshall KC thought that they were unlikely to have read or digested them properly.

The Tribunal's Decision

38. The Tribunal's Decision was dated 19 April 2024. Paragraph 4 recorded that the respondent had requested that the appeal be heard in its absence. Paragraph 2 recorded that the appeal was against the respondent's determination that the appellant was not entitled to the Class K or the Class N exemption for the period from 24 November 2022 to 3 January 2023 (inclusive). Paragraph 9 recorded that the issue for the Tribunal was whether the appellant was entitled to the Class K or Class N exemption. Paragraph 1 stated the Tribunal's determination that the appellant was entitled to neither exemption.

39. The Tribunal set out the main legislative provisions in paragraphs 14 to 16 of the Decision. In paragraphs 10 to 13 it identified the evidence before it and the submissions made by the parties:

> "10. The BA [Billing Authority: that is, the respondent] provided the joint evidence bundle which included the parties' statement of cases; an extract of the land registry entry; a student certificate issued by BPP law school; a copy of a tenancy agreement signed by the former tenant on 24 March 2022; a witness statement from the appellant; a witness statement from Mr P Marshall; utility bills and correspondence that had passed between the parties. Prior to the hearing Mr Marshall provided the Court of Session judgment of *Inland Revenue v Cadwaleder* [sic], the House of Lords judgment of *Levene v Commissioners of Inland Revenue* and a decision of this Tribunal *DE v Wakefield Council* (appeal number 4725M179333/254C).
>
> 11. Mr Marshall argued that the appellant, his son, (Mr CM) had resided in the appeal property from 24 November 2022

> until 3 January 2023.
>
> 12. As his son was a student and he jointly owned the appeal property, he was unable to provide much evidence that it was his main home for the period in dispute.
>
> 13. The BA had decided that there was no evidence to support Mr CM residing in the appeal property and therefore it refused to award the exemptions."

40. The Tribunal set out its reasoning and conclusions in paragraphs 17 to 27. Paragraph 17 said:

> "17. There was no dispute that the appellant was a joint owner of the appeal property or that he was a student. However, the task for the panel was to decide if the appellant had occupied the appeal property as his main home. If the panel determined that the appeal property was his sole or main residence, he would be entitled to the class N, or, the class K exemption if it had been left empty."

41. At paragraphs 18 and 19 the Tribunal referred to the authorities on the meaning of "sole or main residence" and said that it was most assisted by paragraph 26 in the judgment of the Court of Appeal in *Williams v Horsham District Council* [2004] RA 49, to which the clerk to the Tribunal had referred it. The Tribunal referred to other authorities mentioned by Mr Marshall KC but considered that the *Williams* case was more helpful as being of greater authority and directly concerned with council tax. I refer below to the relevant authorities.

42. The Tribunal noted that the respondent had provided little positive evidence to show that the exemptions did not apply but instead had relied on the appellant's failure to adduce evidence that he resided at the Property. Regarding the evidence produced by the appellant, the Tribunal said this:

> "20. The panel understood that being a student, the appellant may not have much evidence to support the appeal property being his main residence, such as mortgage statements, payslips, a driving licence or a car.
>
> …
>
> 22. The panel noted that the BA had requested further evidence, but the appellant had not provided any evidence apart from utility bills, but there were drawbacks with the evidence produced as they did not confirm the usage or the period they covered. However, as [the appellant] only stayed there at weekends, to see his girlfriend who was studying in Bristol University, the usage would have been low. The panel also applied less weight to letter confirming the internet connection as that stated that it would 'go live from 19 January 2023', which was a date after the period in dispute.

> 23. The panel also noted that an email was produced which confirmed that the appellant would be present for a test of the fire alarm system on 21 December, but the email did state that the appellant was 'back and forth to London'.
>
> 24. Mr Marshall argued that even though [the appellant] only stayed in the appeal property at the weekends this would not deprive [the appellant] of having his main residence there. Whilst absences of long or short duration would not deprive someone of having a main residence, the panel must be satisfied that the appeal property was [the appellant's] main residence for the period in dispute."

43. The Tribunal expressed its conclusions in paragraphs 25 to 27 by reference to the evidence in the bundle:

> "25. There was very scant evidence provided by both parties. However, the panel concluded that the weight of the evidence supported the [respondent's] view that on the balance of probabilities the appeal property was not the appellant's sole or main residence for the period in dispute, particularly in view of the following:
>
> a) the utility bills did not show actual usage, or where they had been sent to. The water bill of £122.95 did not state if it was metered and for the period of the charge, the panel found that this was not sufficient to demonstrate that it was someone's main residence;
>
> b) the electricity bill of £359.03 also did not state the period of time the charge related to or show the usage but again, the panel did not consider that it was sufficient to demonstrate that the appeal property was [the appellant's] sole or main residence. By his own admission he only stayed at weekends and therefore any usage would be low;
>
> c) the student certificate showed his term time address was in Richmond. He had not informed BPP that his residence had changed to the appeal property;
>
> d) he was studying at BPP in London and in his witness statement he stated that he only stayed in the appeal property during weekends and lived in London during the week. Whilst this did not deprive [the appellant] of having his main residence at the appeal property, the period in dispute was only for two months and the panel was not persuaded that staying in a property at the weekends for two months would demonstrate that his main residence changed for these two months;

e) although the photographs provided showed that the appeal property was furnished, the furnishings were paid for by his parents and there was no evidence of any of [the appellant's] belongings in the appeal property; and

f) to Mr Marshall's knowledge, the appellant's doctor had not changed from one in London.

26. Given the above, the panel was not satisfied that the appeal property was the appellant's sole or main residence at the material times.

27. In considering the Class K exemption, the evidence bundle did not state the period that he was seeking this exemption. However, if it was for a period after [the appellant] had stayed in the appeal property, the panel noted that the 1992 Order states 'which was last occupied as the sole or main residence of a qualifying person'. As the panel had made a finding of fact that the appeal property was not the appellant's sole or main residence, the panel concluded that the appellant was also not entitled to the Class K exemption. If the exemption was being claimed due to the former tenants who had moved out, leaving the property unoccupied, no evidence was produced to demonstrate that the former tenants were students. The panel dismissed the appeal."

This Appeal

44. The appellant filed his appellant's notice on 10 May 2024. It seeks an order setting aside the Tribunal's Decision and declaring "that the appellant has no liability for Council Tax in respect of [the Property] for the period in which he was a student."

45. The grounds of appeal identify the following errors of law said to have been made by the Tribunal.

1) The Tribunal failed to differentiate between the quite separate requirements for the Class K exemption and the Class N exemption. It focused entirely on whether or not the appellant had occupied the Property as his "sole or main residence", which was a relevant question for Class K. However, it did not address the question whether the appellant had "occupied" the Property while a student, including whether during vacation he held a leasehold interest in the property and had previously used or intended to use it as term-time accommodation. If it had done so, it would have held that the appellant was entitled to Class N exemption.

2) The Tribunal erred in law with regard to the evidence, in that:

a) It failed to refer to or take into account the contents of all three of the witness statements filed on behalf of the appellant.

b) It failed to take account of the fact that the witness statements were unchallenged and that the respondent, though having an opportunity to test the evidence in the statements by cross-examination, had chosen not to do so.

3) The Tribunal adopted an incorrect approach to the determination of "main residence", in that it failed to recognise that length of time at a property and length of departures from it are not determinative of the issue.

4) In the circumstances, the Tribunal reached a decision—namely, that neither Class K nor Class N exemption applied—that no reasonable tribunal could have reached.

46. Before dealing with the grounds of appeal, however, I need to say something about the proper scope of the appeal, because it proved a source of contention between the parties. Two issues arise. The first issue is whether the appeal relates solely to the Class K exemption or whether, rather, it also relates to Class N exemption. The second issue is whether the appeal is concerned only with the period 24 November 2022 to 3 January 2023 or whether, rather, it is concerned with the entire period from 24 November 2022 until the appellant's course ended in June 2023. The issues are related, and it seems to me that they both arise because of the confusing way in which the appellant presented his claim for exemptions, both to the respondent and to the Tribunal.

47. As to the first issue, Mr Mackenzie referred to section 16 of the 1992 Act and the decision in *Courtney Plc v Murphy (Valuation Officer)* (see paragraphs 12 to 14 above) and submitted that the grievance with which the Tribunal was properly concerned, and over which alone it had jurisdiction, related to the Class K exemption, because it was only Class K that had been raised before the appeal was brought and because the appeal that was lodged referred only to Class K and made no mention of Class N (see paragraph 28 above). As to the second issue, Mr Mackenzie submitted that the appeal to the Tribunal was strictly against the respondent's refusal to accept an exemption in respect of the claimed days of residence between 24 November 2022 and 3 January 2023 (what I shall call the "Occupation Period"), and that it was that refusal that identified the relevant grievance and therefore the scope of the appeal.

48. While I have some sympathy for those submissions, I have concluded that they are not correct. The appellant sought a Class K exemption on the basis that he was currently a student who had been resident at the Property during the Occupation Period and had then vacated it: see paragraph 21 above. The Class K exemption applies to *unoccupied* properties: see paragraph 10 above. The Occupation Period cannot therefore have been the period for which the Class K exemption was claimed; it was identified as a precondition for the exemption for the later period after the Property had been vacated. The appellant also claimed reimbursement of the moneys already paid, which relate to the Occupation Period: again, see paragraph 21 above. Class K cannot have given an entitlement to the reimbursement in respect of that period. That entitlement can only have rested on Class N. However, the facts raised by the appellant on 14 February 2023 were sufficient to indicate that Class N was relevant to part of the claimed exemption, albeit that Class N was not explicitly mentioned. Accordingly, I consider that Class N was properly before the Tribunal. Further, the appellant's statement in the appeal to the Tribunal referred both to Class

K and to Class N (see paragraph 32 above). The respondent's Billing Authority Rebuttal noted the reference to Class N and, while commenting on uncertainty as to how the matter was being put, did not object to Class N being raised but advanced the case that the Class N exemption was not made out (see paragraph 35 above). The appellant and the respondent were the only parties to the appeal (see regulation 2(3) of the 2009 Regulations, in paragraph 15 above), and no third party fell to be adversely affected by the inclusion of Class N in the scope of the appeal. The respondent must be taken to have waived any objection to its inclusion that might have been open to it and ought not now to be allowed to raise such an objection.

49. In the circumstances, I consider that for the purposes both of the appeal to the Tribunal and of this appeal the relevant issues relate to the appellant's entitlement to (1) a Class N exemption for the Occupation Period and (2) a Class K exemption for the period thereafter during which he remained a student.

50. As for the Class K exemption, paragraph 27 of the Decision shows that the Tribunal held that it did not apply because the appellant had not satisfied the "sole or main residence" criterion during the Occupation Period. I address this below. However, I add that the Class K exemption could *never* have applied to the Property in respect of the period after 3 January 2023, because the condition in (b)—see paragraph 10 above—could not be satisfied: the "qualifying persons" for the *ex hypothesi* unoccupied Property were those liable for council tax as owners, in accordance with section 6(2)(f) of the 1992 Act, and it was not the case that all such qualifying persons were students. This was pointed out by Mr Mackenzie in his skeleton argument. Mr Marshall KC submitted that the point could not be taken, because the respondent had not filed a respondent's notice. As I consider the point to be an obvious one that rests on a point of law relating to the payment of a tax, I should have permitted the late filing of a respondent's notice if the need had arisen.

51. Turning to the grounds of appeal, I shall proceed in the following manner.

    (i) First, I shall deal with the law on the meaning of "sole or main residence". (Paragraphs 52 to 57)

    (ii) Second, I shall deal with the question whether the "sole or main residence" issue was relevant to, or even determinative of, the appellant's entitlement to the Class N exemption. This is Ground 1. (Paragraphs 58 to 65)

    (iii) Third, I shall turn to consider whether the Tribunal's conclusion as to the "sole or main residence" issue falls to be set aside as resting on a misdirection of law or an impermissible approach to the evidence or as being a conclusion that no reasonable tribunal, properly directing itself, could have reached. This is Grounds 2, 3 and 4. (Paragraphs 66 to 77)

<u>The meaning of "sole or main residence"</u>

52. I was referred to several authorities in which the meaning of "sole or main residence" has been considered by the courts. *Bradford Metropolitan City Council v Anderton* [1991] RA 45 (Hutchison J) was an appeal to the High Court from a decision of the West Yorkshire Valuation and Community Charge Tribunal that the respondent seaman did not have his sole or main residence at a particular house. The Tribunal

had held that the respondent's main residence was the ship on which he worked and on which he lived for the greater part (about three-quarters) of the year. The appeal was allowed on the grounds that a ship plying the high seas could not in law constitute a person's residence and, therefore, the house that he shared with his wife was his sole residence. However, Hutchison J went on to say that, even if a ship *could* be a residence, nevertheless the house would be the respondent's main residence. He referred to the decision of the House of Lords in *Levene v Commissioners of Inland Revenue* [1928] AC 217, which concerned the question whether a person who had spent the greater part of each of five tax years in France could be considered to be resident and ordinarily resident in the United Kingdom. Holding that he could, Viscount Cave LC said at 222:

> "My Lords, the word 'reside' is a familiar English word and is defined in the Oxford English Dictionary as meaning 'to dwell permanently or for a considerable time, to have one's settled or usual abode, to live in or at a particular place'. No doubt this definition must for present purposes be taken subject to any modification which may result from the terms of the Income Tax Act and schedules; but, subject to that observation, it may be accepted as an accurate indication of the meaning of the word 'reside'. In most cases there is no difficulty in determining where a man has his settled or usual abode, and if that is ascertained he is not the less resident there because from time Io time he leaves it for the purpose of business or pleasure. Thus, a master mariner who had his home at Glasgow where his wife and family lived, and to which he returned during the intervals between his sea voyages, was held to reside there, although he actually spent the greater part of the year at sea: *In re Young-, Rogers v Inland Revenue*."

Having reviewed other authorities, Hutchison J stated his conclusions, which so far as relevant for present purposes are at 59:

> "2. Even if such a ship could constitute a residence, I consider that the line of cases culminating in *Ex parte Shah* is applicable to the words of s. 2(1)(b) [of the Local Government Finance Act 1988] and that those cases establish that the respondent's sole or main residence is the house, because that is where his home is, where he has his settled and usual abode, which he leaves only when the exigencies of his occupation compel him to go to sea, for 'temporary or occasional absences of long or short duration'.
>
> 3. I consider that, in any event, the tribunal erred in confining its attention exclusively — or if not exclusively, almost exclusively — to the question of time. That this was its approach is evidenced not only by the words 'the tribunal considered that the only firm evidence presented related to the respondent's service record', but also by its 'disregard' of the

> case of *Frost v Feltham*[2]. The paucity of evidence did not mean that there were not other factors which the tribunal, drawing reasonable and proper inferences from what was before it, could take into account. I instance the following matters:
>
> (a) the fact that the respondent regarded the house as his home; that it was here his wife (and presumably any children they might have) lived; that he spent his time there when not on the ship; and that he has an interest in and security of tenure at the house;
>
> (b) that he lived on the ship only because of and in connection with his work; and that he has no security of tenure (beyond that which his contract of employment gives him) on any accommodation which he occupies on the ship.
>
> 4. Even if, contrary to my conclusion in 1 [i.e. that a ship could not constitute a residence] and 2 above, the cases there referred to are not authority for those conclusions, they are undoubtedly highly material, providing valuable pointers as to the true meaning of the phrase 'sole or main residence'. In my view, had the tribunal had in mind the matters which, as *Frost's* case shows, it should have had in mind, it would inevitably have reached the conclusion that the respondent's sole or main residence was the house, not the ship."

53. *Codner v Wiltshire Valuation and Community Charge Tribunal* [1994] RVR 169 (Laws J) was an appeal by a chargepayer, a practising barrister, against a determination that he was liable for personal community charge in respect of a house in Potterne, which the chargepayer and his wife had bought and where his wife lived with their children. The chargepayer had retained a flat in London and he stayed at the flat during the week in order to carry on his practice and went to join his family at the house in Potterne at weekends (there was no evidence about what arrangements were made for holiday periods). By reason of section 2 of the Local Government Finance Act 1988, the chargepayer was liable to the personal community charge only if the house in Potterne were his sole or main residence. Dismissing the appeal, Laws J held that the house was the chargepayer's main residence. Having referred to the *Anderton* case, he continued:

> "In my judgment it is beyond contention that the question for the purposes of s. 2 of the Act 1988, what is a person's main residence, is not to be determined purely by reference to the amount of time he spends there. The tribunal in the present case plainly addressed the issue by considering what, in substance, was the chargepayer's home, what was the place to which he returned whenever possible, how strong were his links with that place. I have no hesitation in concluding that all

[2] [1981] 1 WLR 452

> the factors which they took into account, and in particular the residence of his family in the Kennet house and his part ownership of it, were indeed relevant factors for them to consider. That being so, the chargepayer could only succeed if though they regarded relevant factors and, in my judgment, no irrelevant factors, their decision was nevertheless, in truth, perverse. I am quite unable to hold that it was. But the chargepayer's primary case was, that though home is where the heart is, as he put it, and his was very much with his wife and children, nevertheless considerations of that kind ought not to determine the statutory question what was his main residence.
>
> In my judgment considerations of that kind are indeed material to the statutory question."

54. *Cox v London (South West) Valuation and Community Charge Tribunal and another* [1994] RVR 171 (Turner J) was a similar case. The chargepayer owned a house, at which his wife and young child lived and where he resided most weekends, but he spent most of his time and had most of his possessions at a flat in London. Turner J referred to the remarks of Viscount Cave in the *Levene* case and another case and continued:

> "I bear in mind fully the quotations from Viscount Cave's speeches in those two Revenue cases but, despite what he there said, there was no evidence before this tribunal to displace what plainly was the inference which they drew, namely that where a husband lives partly in one place and partly in a place albeit for a lesser period quantitatively viewed than he lives on his own, that nevertheless it may reasonably be presumed that the place where his wife and child live are his main residence."

55. In *Doncaster Borough Council v Stark and Stark* [1998] RVR 80 (Potts J), the council appealed against the determination of a valuation tribunal that Mrs Stark was entitled to a single person's discount against council tax, in circumstances where her husband, Corporal Stark, was obliged to occupy accommodation at his RAF base when on duty. Potts J allowed the appeal. He referred to cases including the *Anderton* case and the *Codner* case and said at 83:

> "It is to be noted that the tribunal had regard to the fact that all utilities accounts for the Mexborough property were in Mrs Stark's name. Whilst this was, in my judgment, a relevant consideration it could not on any view be a determinative one given the exercise that the tribunal had to perform.
>
> On analysis it is clear that the tribunal had no regard to the following factors which were identified by Hutchinson J in the *Bradford* case as relevant to the issue to be decided here:
>
> (1) Corporal Stark's security of tenure at the Mexborough house;

> (2) the fact that he spent his time there when off duty;
>
> (3) the fact that if he was not employed by the Royal Air Force he would return to that house; and
>
> (4) the fact that the house was his marital home.
>
> All these factors, in my judgment, were factors to be taken into account by the tribunal. Had the tribunal taken them into account I am satisfied that, in the light of its other findings of fact, it could not properly have allowed Corporal Stark's appeal but would have been bound to conclude that his sole or main residence was at Mexborough.
>
> Therefore, the council's appeal must be allowed."

56. The decision to which the Tribunal in the present case had regard was that of the Court of Appeal (Lord Phillips of Worth Matravers, M.R., and Buxton and Keene LJJ) in *Williams v Horsham District Council* [2004] EWCA Civ 39, which specifically concerned the meaning of "sole or main residence" in section 6(5) of the 1992 Act. Mr Williams and his wife owned a cottage (Pump Cottage), to which they subsequently retired. During the period in question, however, they lived at a house (The Oaks) within the grounds of the school at which Mr Williams was a housemaster. They moved most of their furniture from the cottage to the house; and, although they left some furniture at the cottage in case they should choose to stay there during the holidays, they never did so. The tribunal had held that the cottage was Mr and Mrs Williams' main residence, on the principal grounds that they had security of tenure at the cottage and intended to return to live there after Mr Williams' employment ended. McCombe J reversed that decision, holding that the tribunal had misdirected itself by treating those two factors not merely as relevant but as overriding principles of law. The council appealed against McCombe J's judgment on the grounds that the tribunal had taken into account the relevant factors and that it was not open to the High Court to interfere with its conclusion on what was a matter of fact and degree. The Court of Appeal dismissed the council's appeal. The judgment of the Court was delivered by the Master of the Rolls, and as the Tribunal relied on it I shall quote at length from the reasoning:

> "22. 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 carries the same significance in a different factual scenario. However, whether McCombe J was right or wrong in his conclusion as to the reasoning of the Tribunal, there is, we believe, a more fundamental ground for challenging their decision.
>
> 23. There was and could be no suggestion that Pump Cottage constituted the Williams' sole residence during the relevant period. The issue before the Tribunal was whether during that period Pump Cottage or The Oaks was their main residence.

The Tribunal's starting point should have been to consider the meaning of this phrase. *Frost v Feltham* might have assisted them in that task. Nourse J at page 455 appears to have accepted that 'main' in this context means 'principal' or 'most important'. Perhaps more significantly, he made the observation that a residence is a place where someone lives. The precise meaning of the word 'residence' can vary according to its context. The 3rd edition of the Shorter Oxford English Dictionary includes the following material definitions of residence:

> 'a) "the place where a person resides; his dwelling place; the abode of a person;
>
> b) a dwelling, esp. one of a superior kind".'

24. Mr Easton [counsel for the appellant council] submitted that we should give "residence" the latter meaning in the present context. We do not agree.

25. Where an estate agent's brochure speaks of a 'desirable residence' it gives the word the latter meaning. In the present case, residence is used as part of the definition of the word 'resident'. The primary meaning of 'resident' given by the dictionary is:

> 'One who resides permanently in a place.'

The relevant definition of 'reside' is:

> 'To dwell permanently or for a considerable time; to have one's settled abode; to live in or at a particular place.'

26. All this reinforces the conclusion (which is one that we would have reached without reference to the dictionary) that in section 6(5) of the Act '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 an easy one to apply, but we have no doubt as to the conclusion to which it leads in the present case.

27. Mr Williams, upon whom we did not need to call, in a lengthy and lucid written argument, contended that the facts of his case are very different from the three considered by the Tribunal [namely, the *Anderton* and *Stark* cases, and *Ward v*

> *Kingston upon Hull City Council* [1993] RA 71]. We agree. In each of those cases there was: a matrimonial home in which the wife resided; the taxpayer had to live elsewhere as a condition of his employment, but when on leave or holiday returned to the matrimonial home; and in each of those cases the reasonable onlooker would have concluded that the residence subject to Community Charge or Council Tax remained at all material times the taxpayer's home. Where a person ceases to reside in the house which has been his sole or main residence for a period of time, an issue may arise as to whether during that period the house in question ceases to be his sole or main residence. The answer will depend on the particular circumstances; it will be a matter of fact and degree.
>
> 28. In the present case the Tribunal had regard to the fact that, during the material period, Mr and Mrs William never stayed at Pump Cottage, but failed to have regard to a number of circumstances that made that fact of particular significance. The first is the length of time that they lived elsewhere. Then there is the fact that Pump Cottage in West Sussex is very close to The Oaks in Mid−Sussex. That explains why Mr and Mrs Williams kept their doctor and dentist. According to Mr Williams, a visit to either only entailed driving for an extra 15 minutes or so. Another factor is that schoolmasters have much longer holidays than most people. Had Mr and Mrs Williams wished to live in Pump Cottage, there must have been lengthy periods when they would have been free to do so. Certainly the proximity of the two houses would have facilitated this. The next circumstance is that they opted to stay on in The Oaks at their own expense for nearly a year after Mr Williams' employment as housemaster ceased.
>
> 29. These circumstances would, in our view, lead any reasonable onlooker to conclude that Mr and Mr Williams moved their home from Pump Cottage to The Oaks, and that between January 1993 and July 1997, a period of 4 ½ years, The Oaks was their home. Furthermore, we do not consider that any reasonable Tribunal that applied a proper test to the material facts could have come to any conclusion other than that The Oaks, rather than Pump Cottage, was Mr and Mrs Williams' main residence during the relevant period. Indeed it could be argued that it was their sole residence."

57. In my judgment, the *Williams* case has developed, or at least clarified, the law in one particular respect but has not rendered the earlier cases irrelevant. One decision to which I was not referred is *R (Bennett) v Copeland Borough Council* [2004] EWCA Civ 672 (Peter Gibson, Rix and Longmore LJJ). Giving the lead judgment, Rix LJ noted at [23] with evident scepticism the submission in that case that "the decision of *Williams* has made no difference to the previous jurisprudence under section 6(5) of the 1992 Act". He identified as the critical point in *Williams* the "point of

construction", namely that "residence" referred to actual residence: see [31]; see also *per* Longmore LJ at [37], and *per* Peter Gibson LJ at [41]. Where there is actual residence in more than one place, the factors mentioned in the earlier cases will be of relevance in deciding which is the "main" residence in accordance with the broad test at paragraph 26 of the judgment in the *Williams* case. In the present case, the Tribunal appropriately directed itself in accordance with that judgment.

Ground 1

58. The appellant's complaint under Ground 1 is that the Tribunal was wrong to apply the "sole or main residence" test for the purposes of Class N. Before me, Mr Marshall KC submitted that that test did not apply to either of the two bases on which the appellant put his case for a Class N exemption, namely under para (1)(a) or under para 1(b) (see paragraph 10 above for the text of the exemption).

59. The appellant's primary case on Class N was that during the Occupation Period he was (a) a student, (b) occupying the Property, (c) a "resident" there and (d) the only resident occupying the Property: see Class N, para (1)(a) and para 2(a)(i).

60. In Part I of the 1992 Act, "'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": section 6(5). Mr McKenzie submitted that this definition of "resident" applied also for the purposes of the 1992 Order, which was made pursuant to section 4(3) of the 1992 Act. He referred to section 11 of the Interpretation Act 1978:

> "Where an Act confers power to make subordinate legislation, expressions used in that legislation have, unless the contrary intention appears, the meaning which they bear in the Act."

61. For the appellant, Mr Marshall KC submitted that a contrary intention did appear in the 1992 Order and that "resident" in the Class N exemption referred simply to actual residence but did not require sole or main residence. He noted that certain definitions in the 1992 Act were expressly adopted in the 1992 Order: thus article 2(1) provides that "'student' means a person falling within the definition of student in paragraph 4 of Schedule 1 of the [1992] Act", and article 2(4) gives to the words "severely mentally impaired" the meaning they are given in paragraph 2 of Schedule 1 to the 1992 Act. No such express adoption of the definition of "resident" was made; this indicates (he said) that the word should bear its ordinary meaning. As to what that meaning was, he referred to the judgment of the Court of Session Inner House First Division in *Inland Revenue v Cadwalader* [1904] 42 SLR 117, where an American citizen who lived and worked in New York but took a three-year lease of a shooting lodge in Scotland, at which he remained continuously for two months of each year during the grouse-shooting season, was held to be "a person residing in the United Kingdom" for the purposes of the Income Tax Act 1853. The Lord President said at 119:

> "I do not think that the appellant can reasonably maintain that he is in the United Kingdom 'for some temporary purpose only, and not with any view or intent of his establishing his residence therein,' in the sense of [section 39 of the 1853 Act], as he took Millden with the view of residing there during a material part

> of each year, and maintaining his connection with it as tenant during the rest of the year, as he has a residence always ready for him if he should choose to come to it. It is not necessary in order to a person being chargeable that he shall have his sole residence in the United Kingdom. A man can reside in more countries than one, although he can only have one domicile."

Lord Adam said at 119-120:

> "Now, in order to reside a person must have a residence, and the question is, what residence has the respondent here? He is tenant under a lease of some two or three years of Millden Lodge and shootings. Millden Lodge is a furnished house. It is kept up for him, and is placed at his disposal to go to at any time of the year he chooses. In fact he has occupied it in the past and probably will in the future continuously for two months in each year, with all the comforts and necessaries of a man of wealth, as if it were his own house. That is the mode of residence of this gentleman. Can it be said that during, for example, these two months in which he is residing continuously in Millden Lodge he is not residing there? Where is he residing? He is residing, in my humble opinion, in Millden Lodge, and therefore residing in the United Kingdom, and if that be so, then it humbly appears to me that he is a person, in the sense of the Act, residing in the United Kingdom and assessable under the Act. We know that numerous persons have two houses with two residences in the United Kingdom, but in such a case as that the question does not arise, because if they are residing in the United Kingdom it does not matter what house they reside in."

62. I reject Mr Marshall KC's submission. The *Williams* case explains the meaning of residence, and it is clear that one may have more than one residence. However, nothing to which Mr Marshall KC has pointed indicates any intention that "resident" in the 1992 Order should bear any different meaning from that which is given to it by the 1992 Act. The concept of a "resident" is central to the liability provisions in section 6 of the 1992 Act, and the Order would have made it very clear if a word that played such an important role bore any other meaning for the purpose of an exemption from liability than it bore for the purpose of the primary provisions dealing with liability. Further, if in Class N "residents" has a meaning other than its statutory meaning, its use is at best confusing and probably redundant. The definition of "occupied" in article 2 means that, for the purposes of the Order, a dwelling is occupied only if someone lives there. Whether "residents" has the same meaning as in the 1992 Act or its ordinary, dictionary meaning, it does not require *sole* residence: in either case, one could have more than one residence. That being so, if the meaning contended for by Mr Marshall KC were intended, para (1)(a) would simply have said, "occupied only by one or more relevant persons" or, possibly, "occupied by one or more persons all of whom are relevant persons". Yet further, the distinction between para (1)(a) and para (1)(b) reflects the fact that persons qualifying under the latter sub-paragraph are not "residents" within the definition in the 1992 Act.

63. Accordingly, in my judgment the Tribunal was correct to consider that the "sole or main residence" criterion applied to the exemption in Class N, para (1)(a).

64. I regard the attempt to rely on Class N, para (1)(b) as hopeless. First, it seems to me that the "term time accommodation" basis was not a matter before the Tribunal. Mr Marshall KC said in submissions to me that the whole of Class N was relied on in argument before the Tribunal. As I have no transcript of the hearing, I am unable to know precisely what was said. But the papers before the Tribunal do not contain anything from which either the respondent or anyone else could reasonably have supposed that para (1)(b) was being relied on. The original claim to an exemption was made on the basis that the appellant had resided in the Property from 24 November 2022 but had "now left to continue [his] studies" (see paragraph 21 above). That was also the basis of the appeal (see paragraph 28 above). The entire tenor of the appellant's evidence was that he was living in London when attending his course at university and going to Bath when he did not have to attend university. Moreover, reliance on para (1)(b) is entirely inconsistent with the claim—the only claim expressly advanced in terms—to a Class K exemption for the period after 3 January 2023, because Class K applies only to *unoccupied* properties. That, indeed, was the express basis on which the appellant claimed the Class K exemption for the period after 3 January 2023: see paragraph 32 above. I am certainly not prepared to accept that the Tribunal failed to deal with an argument under para (1)(b) with which it ought to have dealt. In any event, the para (1)(b) basis for Class N exemption was completely unarguable on the evidence. The expression "term time accommodation" is not expressly defined. Mr Marshall KC submitted that it had a purely temporal reference, so that (apparently) any accommodation that was occupied by a student at any point during the currency of a term was "term time accommodation". On this basis, staying at the Property during some weekends in term time and during the entirely unspecified "revision period" would engage the exemption. In my judgment, this is plainly wrong. In broad terms, Class N is intended to create exemptions from council tax for students in two cases: the first is when a property is occupied solely by students who are "residents" there; the second is when students are resident elsewhere but occupy student accommodation while and for the purpose of studying. The basic point of the second case is, obviously, to create an exemption for accommodation used only by students during term for the purpose of facilitating their studies and attending their courses (typically, when they are in student halls, or in private digs) and to extend the exemption to the vacation when they have returned to the place where they generally have their home (commonly, their parents' homes). As I have said, the Occupation Period was 24 November 2022 to 3 January 2023. The appellant's evidence in his witness statement (paragraph 32 above) was that he moved into the Property on 24 November 2022, when the tenants left, and then returned to London during the working week until his college term ended on an unspecified date in December, though he was returning to the Property on "most weekends". (There cannot have been many in "most", as I explain below.) The remainder of the residence period comprised the Christmas and New Year holiday period. Thereafter, the appellant says he left the Property, returning there only for some weekends and for two unspecified periods that fell outside the period covered by the council tax bill (as to which, see further below). Consistently to this extent with his claim to a Class K exemption, his evidence did not show that he was occupying the Property as term time accommodation at any time.

65. For these reasons, I consider that the Tribunal did not err in applying the "sole or main residence" test to the Class N exemption, and I reject Ground 1 of the appeal.

Grounds 2, 3 and 4: the Tribunal's conclusion as to "sole or main residence"

66. Grounds 2, 3 and 4 are different ways of putting the case that the Tribunal erred in law in finding that the Property was not the appellant's main residence during the Occupation Period. Ground 2 complains about the Tribunal's treatment of the evidence adduced by the appellant. Ground 3 complains that the Tribunal's approach to the question of main residence was wrong in law. Ground 4 complains that the Tribunal's conclusion was not one to which it could reasonably have come on the evidence.

Ground 2

67. The first complaint under Ground 2 is that the Tribunal failed to have regard to all of the witness statements filed by the appellant. This is said to be shown by paragraph 10 of the Decision, which refers to one witness statement from Mr Marshall KC, whereas in fact he had made two witness statements. There is no substance in this complaint. The two witness statements from Mr Marshall KC each bore the same date, and each of them consisted of a single page. The Tribunal referred to the bundle before it, and it is far more likely that the reference to one statement rather than two is either a mere slip or a reasonable decision to treat them as two parts of a single statement than that one of the statements went unnoticed. Anyway, neither of the statements was sufficiently important for oversight of its existence to have impeached the Tribunal's Decision.

68. The second complaint under Ground 2 is that, as the witness statements of the appellant and Mr Marshall KC were unchallenged, the Tribunal ought to have accepted them as they stood and not rejected or departed from their contents. Mr Marshall KC relied in particular on the decision of the Supreme Court in *TUI UK Ltd v Griffiths* [2023] UKSC 48, [2023] 3 WLR 1204, which concerned the rejection by the trial judge of uncontroverted expert evidence. At [34] Lord Hodge, with whose judgment the other Justices agreed, identified as the first question raised on the appeal, "what is the scope of the rule, based on fairness, that a party should challenge by cross-examination evidence that it wishes to impugn in its submissions at the end of the trial?" At [36] he said:

> "36. In this judgment I address civil proceedings and leave to one side questions of criminal procedure. It is trite law that as a generality in civil proceedings, the claimant bears the burden of proof in establishing his or her case. It is trite law that the role of an expert is to assist the court in relation to matters of scientific, technical or other specialised knowledge which are outside the judge's expertise by giving evidence of fact or opinion; but the expert must not usurp the functions of the judge as the ultimate decision-maker on matters that are central to the outcome of the case. Thus, as a general rule, the judge has the task of assessing the evidence of an expert for its adequacy and persuasiveness. But it is trite law that English law operates an adversarial system, and the parties frame the

> issues for the judge to decide in their pleadings and their conduct in the trial. It is also trite law that, in that context, it is an important part of a judge's role to make sure that the proceedings are fair. At the heart of this appeal lies the question of the requirements of a fair trial."

Later he said:

> "42. It is the task of a judge in conducting a trial in an adversarial system to make sure that the trial is fair. It is the task of the judiciary in developing the common law, and the makers of the procedural rules, to formulate rules and procedures to that end. One such long-established rule is usefully set out in the current edition of *Phipson on Evidence* 20th ed. (2022). Bean LJ quoted the previous edition, which was in materially the same terms, at the start of his dissenting judgment. At para 12-12 of the 20th edition the learned editor states:
>
> > 'In general a party is required to challenge in cross-examination the evidence of any witness of the opposing party if he wishes to submit to the court that the evidence should not be accepted on that point. The rule applies in civil cases … In general the CPR does not alter that position.
> >
> > This rule serves the important function of giving the witness the opportunity of explaining any contradiction or alleged problem with his evidence. If a party has decided not to cross-examine on a particular important point, he will be in difficulty in submitting that the evidence should be rejected.'
>
> This statement is supported by case law, some of which I discuss below, and has often been cited with approval by the Court of Appeal. …
>
> 43. I am satisfied that the statement in *Phipson* is correct and, as explained below, it summarises a longstanding rule of general application. It is not simply a matter of extensive legal precedents in the case law. It is a matter of the fairness of the legal proceedings as a whole. While many of the cases may have been concerned with challenges to the honesty of a witness, I see no rational basis for confining the rule to such cases or those analogous categories, such as allegations of bad faith or aspersions against a witness's character, as Mr Stevens suggests."

After reviewing the relevant authorities, Lord Hodge stated his conclusions, which were expressed with an eye to the facts of the case before him:

"61. From this review of the case law it is clear that there is a long-established rule as stated in *Phipson* at para 12.12 with which practising barristers would be familiar, as Bean LJ suggested in para 87 of his judgment. There are also circumstances in which the rule may not apply. Several come to mind. First, the matter to which the challenge is directed is collateral or insignificant and fairness to the witness does not require there to be an opportunity to answer or explain. A challenge to a collateral issue will not result in unfairness to a party or interfere with the judge's role in the just resolution of a case; and a witness in such a circumstance needs no opportunity to respond if the challenge is not an attack on the witness's character or competence.

62. Secondly, the evidence of fact may be manifestly incredible, and an opportunity to explain on cross-examination would make no difference. …

63. Thirdly, there may be a bold assertion of opinion in an expert's report without any reasoning to support it …

64. Fourthly, there may be an obvious mistake on the face of an expert report. …

…

66. Fifthly, the witnesses' evidence of the facts may be contrary to the basis on which the expert expressed his or her view in the expert report. …

67. Sixthly, as occurred in *Edwards Lifesciences*, an expert has been given a sufficient opportunity to respond to criticism of, or otherwise clarify his or her report. For example, if an expert faces focused questions in the written CPR Pt 35.6 questions of the opposing party and fails to answer them satisfactorily, a court may conclude that the expert has been given a sufficient opportunity to explain the report which negates the need for further challenge on cross-examination.

68. [The seventh example has no relevance to this case.]

69. Because the rule is a flexible one, there will also be circumstances where in the course of a cross-examination counsel omits to put a relevant matter to a witness and that does not prevent him or her from leading evidence on that matter from a witness thereafter. In some cases, the only fair response by the court faced with such a circumstance would be to allow the recall of the witness to address the matter. In other cases, it may be sufficient for the judge when considering what weight to attach to the evidence of the latter witness to bear in mind that the former witness had not been given the opportunity to

comment on that evidence. The failure to cross-examine on a matter in such circumstances does not put the trial judge 'into a straitjacket, dictating what evidence must be accepted and what must be rejected': *MBR Acres Ltd v McGivern* [2022] EWHC 2072 (QB), para 90 per Nicklin J. This is not because the rule does not apply to a trial judge when making findings of fact, but because, as a rule of fairness, it is not an inflexible one and a more nuanced judgment is called for. In any event, those circumstances, involving the substantive cross-examination of the witness, are far removed from the circumstances of a case such as this in which the opposing party did not require the witness to attend for cross-examination.

70. In conclusion, the status and application of the rule in *Browne v Dunn* and the other cases which I have discussed can be summarised in the following propositions:

(i) The general rule in civil cases, as stated in *Phipson*, 20th ed, para 12-12, is that a party is required to challenge by cross-examination the evidence of any witness of the opposing party on a material point which he or she wishes to submit to the court should not be accepted. That rule extends to both witnesses as to fact and expert witnesses.

(ii) In an adversarial system of justice, the purpose of the rule is to make sure that the trial is fair.

(iii) The rationale of the rule, i.e. preserving the fairness of the trial, includes fairness to the party who has adduced the evidence of the impugned witness.

(iv) Maintaining the fairness of the trial includes fairness to the witness whose evidence is being impugned, whether on the basis of dishonesty, inaccuracy or other inadequacy. An expert witness, in particular, may have a strong professional interest in maintaining his or her reputation from a challenge of inaccuracy or inadequacy as well as from a challenge to the expert's honesty.

(v) Maintaining such fairness also includes enabling the judge to make a proper assessment of all the evidence to achieve justice in the cause. The rule is directed to the integrity of the court process itself.

(vi) Cross-examination gives the witness the opportunity to explain or clarify his or her evidence. That opportunity is particularly important when the opposing party intends to accuse the witness of dishonesty, but there is no principled basis for confining the rule to cases of dishonesty.

> (vii) The rule should not be applied rigidly. It is not an inflexible rule and there is bound to be some relaxation of the rule, as the current edition of *Phipson* recognises in para 12.12 in sub-paragraphs which follow those which I have quoted in para 42 above. Its application depends upon the circumstances of the case as the criterion is the overall fairness of the trial. Thus, where it would be disproportionate to cross-examine at length or where, as in *Chen v Ng*, the trial judge has set a limit on the time for cross-examination, those circumstances would be relevant considerations in the court's decision on the application of the rule.
>
> (viii) There are also circumstances in which the rule may not apply: see paras 61-68 above for examples of such circumstances."

69. I do not consider that the conduct of the hearing or the Decision of the Tribunal involved any unfairness to the appellant. I make the following points.

1) I proceed on the basis that the principle of procedural fairness stated by Lord Hodge in the *TUI* case in the context of civil litigation applies also in appeals to the Tribunal.

2) However, in taking a nuanced approach to the application of the principle one may properly have regard to certain matters. First, while a section 16 appeal to the Tribunal is adversarial with defined parties, it does not concern purely matters of private right. Part I of and Schedule 2 to the 1992 Act impose obligations on the billing authority to collect and on the chargepayers to pay council tax. The Tribunal is therefore concerned to ensure that taxation obligations in public law are defined and complied with. Second, regulations 3 and 6 of the 2009 Regulations require the Tribunal to conduct its functions, including appeals, in a proportionate, flexible and appropriately informal manner and give the Tribunal authority to regulate its own procedure.

3) This was not a case where a riposte to previously unchallenged evidence came only when it was too late to respond to it, for example in closing submissions. The parties had set out their positions clearly, both before and in the appeal proceedings. Mr Marshall KC submitted to me that the appellant had no opportunity to respond to the respondent's Billing Authority Rebuttal. That is unconvincing. First, the Billing Authority Rebuttal (which reiterated and amplified the case set out in the respondent's submission dated 23 November 2023) was contained in the bundle filed on 20 December 2023, whereas the hearing took place on 21 March 2024. Second, Mr Marshall KC told me that he and the appellant had anticipated that their evidence would be challenged at the hearing and were ready to be cross-examined, but that the respondent did not appear at the hearing to challenge the evidence. While the lack of cross-examination is noted, there was in those circumstances nothing of which I am aware to prevent the appellant and Mr Marshall KC making submissions or giving evidence to address any points that (according to Mr Marshall KC) they had not had prior opportunity to address or, indeed, tendering evidence for

questioning by the Tribunal, which would have been entirely appropriate in a procedurally flexible and informal hearing. Indeed, it is clear from the Decision itself that the Tribunal did ask questions regarding the facts, because it refers to a query concerning the appellant's doctor (see below).

4) Importantly, there is a difference between evidence of fact and interpretative statements. The Tribunal did not reject the factual evidence adduced by the appellant in any material way. (I remark in connection with Ground 4 on modes of expression that Mr Marshall KC said amounted to rejection or at least misinterpretation.) It simply decided that the facts did not establish that the Property was the appellant's main residence during the Occupation Period. Whether or not the respondent's decision not to cross-examine the appellant or Mr Marshall KC placed the Tribunal "into a straitjacket, dictating what evidence must be accepted and what must be rejected" (see *TUI* at [69], above), the Tribunal was certainly not obliged to accept the assertion by the appellant and Mr Marshall KC that the Property was the appellant's main residence.

70. Accordingly, I reject Ground 2 of the appeal.

Ground 3

71. Ground 3 is that the Tribunal failed to adopt the correct approach to the determination of "main residence", in that the authorities "make clear that length of time at a property is not determinative of the question of where a person is ordinarily resident or has their main residence. Many persons, including students, seamen, soldiers and others may depart from their chosen residence (or the place they regard as home) for long periods but this does not mean that it ceases to be their main residence."

72. In my judgment, the Tribunal did not misdirect itself in that manner. At paragraph 24 of the Decision it expressly accepted that "absences of long or short duration would not deprive someone of having a main residence". It is true that paragraph 25(d) states that "the panel was not persuaded that staying in a property at the weekends for two months would demonstrate that his main residence changed for these two months." However, I do not regard it as reasonable to take that passage as an expression of a supposed proposition of law. It has to be read in the context of the Decision as a whole and in the context of the facts of the particular case. The appellant's case was that the Property was his main residence from 24 November 2022 until 3 January 2023. Before that Occupation Period the appellant's main—indeed, apparently, sole—residence was his parents' home, and it was there that he returned to after the Occupation Period, albeit making return visits to the Property. Even during the Occupation Period, his presence at the Property was intermittent, as explained below. Those facts are not determinative on a purely mensural basis, but they are capable of being highly material when deciding which of two properties is one's "main" residence.

73. Accordingly, I reject Ground 3 of the appeal.

Ground 4

74. Ground 4 is that the Tribunal's conclusion as to "main residence" was not reasonably open to it and that the only proper conclusion, when the law was correctly applied to the facts, was that the Property was the appellant's main residence.

75. In approaching this ground, I bear in mind that an appellate court should be cautious about differing from the panel's "multi-factorial assessment based on a number of primary facts, or a value judgment" and that it is impermissible to make "a roving selection of the evidence coupled with a general assertion that the tribunal's conclusion was against the weight of the evidence and was therefore wrong" (see paragraph 17 above). However, Mr Marshall KC supported his argument that the facts dictated only one conclusion with the submission that the Tribunal misinterpreted or misrepresented several pieces of uncontradicted evidence.

(i) It is said that the Tribunal mistakenly said, in paragraph 22 of the Decision, that the appellant only stayed at the Property "to see his girlfriend", whereas in fact he stayed there because it was his home and he had several reasons for making it his home (see his statement, paragraph 9). However, the actual point being made in paragraph 22 concerned time spent at the Property and usage of utilities, rather than subjective motives; it would be wrong to place too much emphasis on the mode of expression. I add that an appellant's assertion that he regards a place as his "home" is not the be all and end all and does not prevent the Tribunal from making its own assessment in respect of the statutory test. Mr Marshall KC emphasised the relevance of the "home is where the heart is" factor (cf. the *Codner* case, paragraph 53 above). That does not make an assertion of where one considers one's home to be definitive. The contrast between the facts of this case and that of a case like *Codner* could hardly be greater. And the *Williams* case makes clear that, while the realities of the situation may no doubt include the emotional and familial ties one feels to a place, the identification of the main residence is a matter for the objective assessment of the court or tribunal, not the mere say-so of the individual.

(ii) With reference to paragraphs 22 and 25(a) of the Decision, it is said that the Tribunal's remarks concerning the utility bills imply that the appellant had to establish the period of usage, whereas the unchallenged evidence was that the previous tenants, who had been responsible for utility bills, left on 24 November 2022 and that the appellant had thereafter been the only person in residence. I see no force in that complaint. The Tribunal was simply turning its mind to the extent to which the utility bills assisted in answering the question whether the Property was the appellant's *main* residence.

(iii) It is said that paragraph 25(c) of the Decision, which notes that the appellant had not informed the university that his address had changed, ignores the explanation in paragraph 18 of his witness statement that his student confirmation showed his parents' address because he was resident there when he was accepted for his course of study in July 2022. The complaint seems to me to miss the point: the Tribunal was simply observing that the appellant had not subsequently updated his address with the university.

(iv) It is said that the statement, in paragraph 25(e) of the Decision, that "there was no evidence of any of [the appellant's] belongings at the appeal property" was contrary to the appellant's unchallenged evidence, which implied that he was there with his possessions. In my view, the Tribunal was entitled to have regard to matters such as the extent to which the appellant's personal effects were in this residence rather than that one. As the Tribunal did not reject the appellant's claim to have been staying at the Property, but merely the contention that it was his sole or main residence, it is not reasonable to interpret paragraph 25(e) as indicating a finding that there was literally nothing whatsoever of his at the Property. The point being made was simply that the photographs did no more than show furniture provided by the appellant's parents and that there was no evidence that he had moved his own stuff there. I regard the point as a reasonable one and do not consider that it is contrary to the evidence.

(v) Mr Marshall KC told me that paragraph 25(f) of the Decision ("to Mr Marshall's knowledge, the appellant's doctor had not changed from the one in London") misrepresented what he had told the Tribunal, which was that he simply had no idea whether he had changed his doctor. In the absence of a transcript, I cannot proceed on the basis that the Tribunal was under any material misapprehension, and I would not in any event think that the point was significant. The Tribunal, exercising entirely appropriate flexibility and informality in the conduct of the hearing, clearly made an enquiry and was not given any confirmation that the appellant had changed his doctor. (As I have said, Mr Marshall KC told me that both he and the appellant were available for cross-examination, so one might have expected that any positive information could be provided to the Tribunal upon its request.)

(vi) The main point advanced by Mr Marshall KC was that the Tribunal repeatedly said that the appellant stayed at the Property only at weekends (see paragraphs 22, 25(b) and 25(d) of the Decision), whereas the appellant's evidence had been that he stayed there during the entire Occupation Period and later for other extended periods (see in particular paragraph 12 of his witness statement). This point is superficially attractive, but I do not think it bears much weight. It would be surprising if the Tribunal had truly misunderstood the evidence: first, the evidence was short and simple and the panel had read it; second, paragraph 11 of the Decision recorded Mr Marshall KC's submission that the appellant had resided in the Property from 24 November 2022 until 3 January 2023, which was what the appellant had said. If one breaks down the evidence, the appellant's occupation of the Property during that period appears rather fragmentary. He says that until the end of term in December 2022 he returned to the Property on "most weekends". If he literally took up occupation on 24 November 2022, despite that being a Thursday in term time and the very day on which the tenants' tenancy came to an end, he had potentially three weekends at most before the end of term. (In the absence of contrary evidence, I would not accept that even the Legal Practice Course term ended later than Friday 16 December 2022.) If he was at the Property for the weekend of 16 to 18 December (as to which there was no evidence), he was probably not there on 19 or 20 December but went there

> on 21 December, as appears from the emails concerning the fire alarm test. It is quite right that the evidence indicates that he was at the Property from 21 December until 3 January 2023, which is more than merely "weekends". After the Occupation Period, the appellant's evidence was that he "returned to Bath for many weekends and during the Easter holiday and revision period." The number of weekends is not specified. Easter 2023 fell on 9 April, which was not even within the period covered by the Council Tax Bill in question, and the length of the "Easter holiday" is not specified. The date of the "revision period" is also not specified, but in the absence of evidence I infer that it will have been after Easter 2023, with examinations to follow in the summer term. Regardless of all this, the appellant's actual contention in respect of the period after 3 January 2023 was, as I have said, that the Class K exemption applied: that is, that the Property was *unoccupied*.

76. In my judgment, the Tribunal was perfectly entitled to conclude that the Property was not the appellant's "main" residence during the Occupation Period, albeit that it may possibly have been *a* residence of his. Mr Marshall KC's submissions focused to a considerable extent on the cases where the chargepayer had (e.g. *Codner, Cox* and *Stark*), or arguably had (e.g. *Anderton* and *Williams*), more than one residence. But as the Master of the Rolls said in the *Williams* case, a factor that is of particular significance in one case may be less significant on the facts of another case. Before the Occupation Period the appellant was, so far as the evidence shows, not merely staying at his parents' home for the purposes of his studies while he was away from his main home: his parents' home was his sole residence. Thereafter, for a short period, the Property may perhaps have become another residence of his. (Though even this is doubtful: cf. the *Williams* case at [25]-[26].) Even if it did, the evidence, whether in relation to the Occupation Period or in relation to the ensuing months, came nowhere near compelling the conclusion that it had become his "main residence". The Tribunal was entitled to reach the decision it did reach, and, with respect, I think it was entirely correct to do so.

77. Accordingly, I reject Ground 4 of the appeal.

Conclusion

78. The appeal is dismissed.