

COUNCIL TAX

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

The Commissioners of the Inland Revenue appoint Listing Officers who are responsible for compiling and maintaining the Council Tax Valuation Lists. Properties are placed in the lists within one of eight bands reflecting their open market capital value as at 1 April 1991, bearing in mind certain statutory assumptions. The legislation sets out the definition of dwellings to be valued for Council Tax and the procedures for seeking an alteration to the band.

The Billing Authorities for each area have the duty to collect the tax. The tax is a mix of a property tax and a personal tax. Generally, where two or more persons reside in a dwelling the full tax is payable. If one person resides in the dwelling then 75% is payable. An empty dwelling attracts only a 50% charge unless the billing authority has made a determination otherwise.

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

1. DEFINITION OF DWELLING

1.1 INTRODUCTION

1.1.1

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

1.1.2

The Listing Officer has discretion to treat multiple properties, occupied as more than one unit of living accommodation, as a single dwelling. Caravans and boats are subject to specific provisions within the legislation and properties used for both domestic and non-domestic purposes (composite properties) are shown in both the Council Tax Valuation List and the Non-Domestic Rating List.

1.2 LEGISLATION

1.2.1

General Rate Act 1967 (GRA 1967)

Local Government Finance Act 1988 (LGFA 1988)

Local Government Finance Act 1992 (LGFA 1992) - Section 3

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

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

The Caravan and Boat Act 1996

The Council Tax (Chargeable Dwellings, Exempt Dwellings and Discount Disregards) (Amendment) (England) Order SI 2003/3121

1.2.2

Definition of Dwelling

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

A dwelling is any hereditament:

- as defined under **section 115(1) of the GRA 1967**;
- not shown or required to be shown in the Local or Central Rating Lists; and
- not exempt from Non-Domestic Rating.

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

1.2.3

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

1.2.4

A property is a dwelling if it is used wholly for the purposes of living accommodation. Property is also considered domestic if it is:

- a yard, garden, outhouse or other appurtenance belonging to or enjoyed with living accommodation;
- a private garage with a floor area of 25 sq. metres or less or is used wholly or mainly for the accommodation of a private motor vehicle;
- a private storage premises used wholly or mainly for the storage of articles of domestic use.

1.2.5

Composite Hereditaments

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

1.2.6

Single and Multiple Properties

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

- Where subject to Article 3A a single property contains more than one self contained unit the property shall be treated as comprising as many dwellings as there are such units included in it and each such unit shall be treated as a dwelling. The term “self contained” means a building or part of a building which has been constructed or adapted for use as separate living accommodation.
- A care home shall be treated as comprising the number of dwellings found by adding one to the number of self-contained units occupied by, or if currently unoccupied, provided for the purpose of accommodating the person registered in respect of it in accordance with Part 2 of the Care Standards Act 2000, and each such unit shall be treated as a dwelling.
- Where a multiple property consists of a single self contained unit or such a unit together with or containing premises constructed or adapted for non-domestic purposes and that unit is occupied as more than one unit of separate living accommodation, the Listing Officer has discretion to treat the property as one dwelling. The term “multiple property” means a property which would be two or more dwellings within the meaning of **section 3 of the LGFA 1992**. In exercising his discretion the Listing Officer shall have regard to all the circumstances of the case including the extent, if any, to which the parts of the property separately occupied have been structurally altered.

1.2.7 Commentary

Subject to Article 3A, under Article 3, the Listing Officer must assess each self contained unit as a separate dwelling. This is known as disaggregation.

However, the Listing Officer has discretion under Article 4 to aggregate multiple units and treat what is, in effect, a multiple property as a single dwelling. This is otherwise known as aggregation.

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

1.3 CASE LAW

1.3.1

Dwelling

LEWIS v CHRISTCHURCH BC HC (RA 1996, page 229)

The beach huts should be assessed for Council Tax because they were not shown in the Non-Domestic Rating List; they were not exempt; and, they were used wholly for the purposes of living accommodation.

1.3.2

JOSEPH ROWNTREE HOUSING TRUST v SPEIGHT (LO) HC (RA 2002, page 203)

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

1.3.3

CLEMENT (LO) v BRYANT & OTHERS HC (RA 2003, page 133)

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

constructed or adapted for use as separate living accommodation. The absence of a bath or a shower did not negate the fact that the bedsits were self-contained.

1.3.4.

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

The High Court quashed the Somerset Valuation Tribunal's decision that four units within a care home for the blind were not self-contained. The Tribunal found that the four units were constructed for use as separate living accommodation. However, instead of finding in favour of the Listing Officer, as it should have done having answered the statutory question, it misdirected itself by erroneously taking into account the fact that the owner did not intend to use the accommodation for independent living. The Tribunal also erred by paying too much attention to the fact that the Listing Officer had determined that the remaining 32 units were not self-contained and it could not discern any notable difference between the 32 that had been aggregated and the 4 which were under appeal.

1.3.4A

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

The Lands Tribunal confirmed that the Valuation Officer had acted correctly in exercising his discretion to assess the appeal property as four separate flats rather than one dwelling house. The Valuation Officer had acted correctly by taking the following factors into account:

- (a) The degree of sharing common facilities,
- (b) The degree of adaptation
- (c) Capability of accurate identification.
- (d) Degree of transience of occupation.

1.3.5.

TULLY v JORGENSEN (VO) LT (RA 2003, page 233)

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

1.3.6

Composites

FOTHERINGHAM v WOOD (VO) LT (RA 1995, page 315)

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

1.3.7

Private Storage Accommodation

ANDREWS (VO) v LUMB LT (RA 1993, page 123)

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

1.3.8

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

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

1.3.9

WILLIAMS v BRISTOL DISTRICT VALUATION OFFICER & AVON VALUATION TRIBUNAL HC (RA 1995, page 189)

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

1.3.10

Annexes, etc

BATTY v BURFOOT; BATTY v MERRIMAN; GILBERT v CHILDS;
RODD v RICHINGS HC (RA 1995, page 299)

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

1.3.11

R (ON THE APPLICATION OF COLEMAN (LO)) v ROTSZTEIN HC
(RA 2003, page 152)

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

1.3.11A

JORGENSEN (LO) V GOMPERTS (RA 2006, page 300)

The High Court upheld the Listing Officer's appeal against the Valuation Tribunal's decision that a basement, ground and first floor maisonette and a second floor flat should be assessed as a single dwelling because the VT had not applied the correct legal test and had

not addressed the correct question. The matter was remitted back to the tribunal with an order that the matter be heard by a differently constituted VT to reconsider the application of Article 3 of the Council Tax (Chargeable Dwellings) Order 1992 for the following reasons:

- From the authorities referred to, the test was an objective bricks and mortar test. Intention and use, actual or prospective were not relevant;
- The VT had not addressed the question - was the second floor flat, in terms of its objective physical structure, constructed or adapted as separate living accommodation?;
- In reaching its conclusion, the VT had referred to the purpose for which the relevant part was constructed or adapted and the historical use of that part; and

The VT needed to consider whether, having regard to the particular circumstances of the case, the physical characteristics of the building constituted a separate living accommodation.

1.3.11B

DANIELS (LO) V ARISTIDES 2006 HC

Mr & Mrs Aristides purchased a property in 2000 with the intention of undertaking extensive building works to it. Within the grounds of their property, they built a substantial wooden structure, known as the studio, which had a slate roof and which they originally intended to use as a games and tool room. They then decided to occupy the studio on a temporary basis, until the work on their main property was completed. The studio was modified to include a gallery bedroom with a fixed ladder leading up to it, a kitchen area, kitchen facilities including a sink, toilet and shower room.

In 2003, Mr & Mrs Aristides removed the cooker and believed that the studio and the main house should be aggregated as a single unit for council tax purposes.

In upholding the Listing Officer's appeal against the valuation tribunal's decision to allow the appeal, the High Court held that the removal of the cooker had not altered the characteristics of the building. The studio was still a self-contained unit.

1.3.12

BEASLEY (LO) V NATIONAL COUNCIL OF YMCAS HC (RA 2000, page 429)

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

1.3.13

McCOLL V LISTING OFFICER HC (RA 2001, page 342)

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

1.3.14

Houseboats

NICHOLLS v WIMBLEDON VALUATION OFFICE HC (RVR 1995, page 171)

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

1.3.15

STUBBS v HARTNELL (LO) 1997 CA (RVR 2002, page 90)

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

1.3.16

Appurtenances, etc

MARTIN & OTHERS v HEWITT (VO) LT (RA 2003, page 275)

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

1.3.17

Chalets not Caravans

OADES & OADES V EKE (VO) LT (RA 2004, page 161)

The Lands Tribunal upheld the Lincolnshire Valuation Tribunal's decision that 123 chalets each formed a separate rateable hereditament. As a result, it dismissed the ratepayer's appeal that there should be a single assessment for the Holiday Park within which they were situated. The reason given was that the chalets were not caravans for the purposes of the NDR (Caravan Sites) Regulations 1990 because they were not capable of being moved.

1.4 COMMENTARY

1.4.1

Dwellings

Proposals disputing whether or not a property is a dwelling follow the normal route through the Listing Officer to reach the Tribunal. It should be noted that a proposal seeking to insert a property into the Council Tax Valuation List whilst that property

already appears in the Non-Domestic Rating List should be held to be invalid (**section 3 of the LGFA 1992**). The taxpayer's remedy is first to appeal against the non-domestic rating entry.

1.4.2

Appurtenances to Dwellings

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

1.4.3

Composites

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

1.4.4

Annexes

In considering whether an annex is a separate unit of accommodation all factors must be taken into account, such as whether the property has its own kitchen and bathroom, the degree of physical separation from the main dwelling, separate services, planning permission, etc.

1.4.5

Care Homes

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

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

2. VALUATION

2.1 INTRODUCTION

2.1.1

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

2.1.2

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

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

Section 5 (4a) Local Government Finance Act 1992 inserted by the Local Government Act 2003 states that the number of bands can be altered for the next Valuation List. The proposed Council Tax Revaluation that was due to come into force on 1 April 2007 was postponed pending the outcome of the Lyons review into the future of Local Government and its funding.

2.2 LEGISLATION

2.2.1

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

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

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

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

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

2.2.2

Valuation of Dwellings

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

2.2.3

Composite Hereditaments

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

2.2.4

Material Reduction

Regulation 4 of SI 1993/290 provides statutory restrictions on the alteration of valuation bands within the Council Tax Valuation List. Of particular relevance is the concept of “material reduction” in value, as defined in **section 24 of the LGFA 1992**. Material reduction is the reduction in value of a dwelling caused in whole or in part by demolition of any part, any change in the physical state of the locality or any adaptation to make it suitable for use by a physically disabled person. **Regulation 4** provides that a valuation band can be altered if there has been a material reduction in value of sufficient magnitude.

2.2.5

Material Increase

Regulation 4 also provides for an alteration of a band where there has been a “material increase” in the value of a dwelling and a “relevant transaction” has subsequently occurred. “Material increase” is defined in **section 24** in terms of an increase in value caused by building or engineering works at the dwelling whether or not planning permission is obtained. “Relevant transaction” is defined in **section 24** as a sale, grant of lease of seven years or more or transfer of a lease by sale.

2.3 CASE LAW

2.3.1

Assumptions

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

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

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

The taxpayer's application was dismissed on both counts.

2.3.2

Re: THE APPEAL OF GRAMPIAN JOINT BOARD ASSESSOR (2002) (RA 2003, page 167)

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

2.3.3

LANARKSHIRE VALUATION JOINT BOARD ASSESSOR (Re: APPEAL)
(RVR 2003, page 6)

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

2.3.4

Composites

ATKINSON AND OTHERS v LORD (LO) CA (RA 1997, page 413)

The council taxpayers contended that for the purpose of valuing composite hereditaments there was a requirement to determine the portion of the relevant

amount. In order to establish that portion it was necessary first of all to establish the relevant amount. This was never done in respect of the taxpayers' composite farmhouse.

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

The taxpayers' appeals were dismissed.

2.3.5

Material Reduction

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

A Valuation Tribunal dismissed a taxpayer's appeal on the basis that the evidence she presented to support her contention that a material reduction in value had occurred, pre-dated an earlier appeal where the original band of her property entered into the Valuation List, and that of others in the same development, had been reduced. The evidence consisted of, in the main, a report concerning atmospheric pollution.

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

2.4 COMMENTARY

2.4.1

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

2.4.2

Vacant Possession

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

2.4.3

Freehold or Leasehold Interest

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

2.4.4

Free from any Rent Charge or Incumbrance

Third in the list of assumptions is a reference to the dwelling being sold free of “rent charge or other incumbrance” (*sic*). Incumbrances are financial liabilities upon property, such as mortgages or charges.

2.4.5

Size, Layout and Character

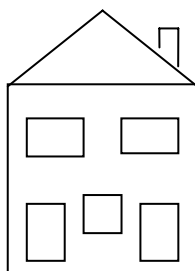
The fourth assumption provides that “the size, layout and character of the dwelling, and the physical state of its locality, were the same as at the relevant date”. The meaning of “relevant date”, also contained in **regulation 6**, is 1 April 1993 for the purposes of the original valuation exercise. However, the assumption also provides a number of exceptions: in the case of a valuation for a proposed material reduction in value; where a relevant transaction has revealed that a material increase in value has occurred; and, for a valuation carried out to correct an inaccuracy which arose in the course of an alteration of the Council Tax Valuation List. For material reduction and material increase valuations, the physical state of a dwelling’s locality, size, layout and character must be assumed to be the same as on the date that an alteration to the Valuation List would have effect from.

The following expands on the material date provisions.

2.4.6

General

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



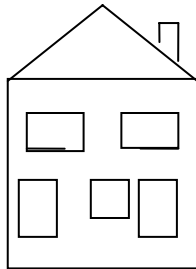
Relevant dates:

House - 1 April 1993

Locality - 1 April 1993

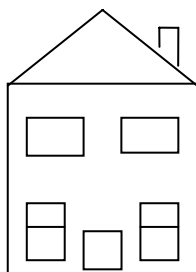
2.4.7
Relevant Dates

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



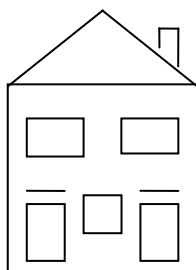
Relevant dates:
 House - 1 April 1993
 Locality - 1 April 1993
 Effective date, if the band is increased, is the date of alteration; effective date if the band is reduced is 1 April 1993

- to alter the list for:
 a material increase coupled with a relevant transaction;
 a new, changed or ceased to be composite;
 or, a new dwelling;
 the relevant dates are the effective date (**reg. 6 (5A) (a) SI 1992/550**).



House sold: 1 April 1995
 Extension added: 1 April 1994
 Relevant dates: House – date of alteration
 Locality – date of alteration
 Effective date – date of alteration

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



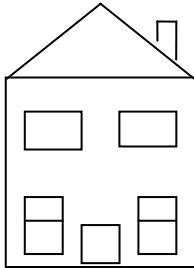
House sold: 1 April 1995
 Extension added: 1 April 1994
 Relevant dates: House – date of previous alteration
 Locality – date of previous alteration
 Effective date, if correction of an error results in an increase, date of alteration; if correction of an error results in a decrease, date of previous alteration.

2.4.8

Material Reductions

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

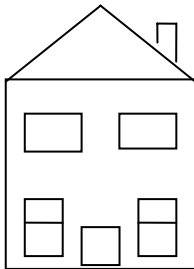
- a physical change to the house - the relevant date for the physical state of the house is the date from which the reduction is sought (**reg. 6 (3) (b) (i) SI 1992/550**).



Extension demolished: 1 April 1994

Relevant dates: House - 1 April 1994
Locality - 1 April 1994

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



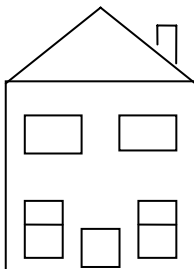
Extension demolished: 1 April 1994

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

Motorway opened: 1. 4. 95

Band reduced

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



House sold: 30 September 1994

Extension added: 1 April 1994

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

Motorway opened: 1. 4. 95

No banding change

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

2.4.9

Paragraph removed

2.4.10

Reasonable State of Repair

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

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

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

2.4.11

Entitled to Use of Common Parts

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

2.4.12

Ignore Fixtures for the Disabled

Assumption seven states:

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

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

2.4.13

Other Fixtures

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

2.4.14

Restricted to Use as a Private Dwelling

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

2.4.15

No Development Value

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

2.4.16

Comparable Evidence

As mentioned in the introduction, the Council Tax valuation exercise was undertaken by reference to the sale prices of “key” properties. The sales of key (or beacon) properties were completed on or close to 1 April 1991. The sales were then used as comparable evidence.

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

2.4.17

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

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

2.4.18

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

3. VALUATION LISTS

3.1 INTRODUCTION

3.1.1

The Commissioners of Inland Revenue are responsible for carrying out valuations of all dwellings in England and Wales and are required to appoint a Listing Officer for every Billing Authority as stipulated in **section 20 of the LGFA 1992**. Each Listing Officer is responsible for the compilation and maintenance of a Valuation List for his Billing Authority. The date of compilation for the current lists was 1 April 1993, when Council Tax came into force.

A new Valuation List was to have been compiled for England on 1 April 2007* but the revaluation was postponed.

3.1.2

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

3.1.3

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

3.1.4

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

3.2 LEGISLATION

3.2.1

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

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

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

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

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

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

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

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

3.2.2

Valuations for Lists

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

3.2.3

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

The Council Tax Revaluation in England was postponed*.

3.2.4

Requests for Information

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

3.2.5

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

3.2.6

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

3.2.7

Right of Entry

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

3.2.8

Contents of Lists

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

3.2.9

Alteration of Lists

SI 1993/290 provides that the valuation band applied to a dwelling may only be altered in certain circumstances. These are that:

- since the valuation band was first shown in the list as applicable to the dwelling:
 - there has been a material increase in the value of the dwelling and a relevant transaction has subsequently taken place in relation to the whole or any part of it; or
 - there has been a material reduction in the value of the dwelling (unless this is caused by the demolition of any part of the dwelling in connection with building works in progress or proposed in relation to it, but excluding works to repair damage caused during demolition);
 - or
 - the dwelling has become or ceased to be a composite hereditament, or is a composite hereditament in respect of which an increase or decrease in its domestic use has taken place.
- the Listing Officer is satisfied that he should have determined a different valuation band, or that the band shown in the list is not that which he determined; or
- a Valuation Tribunal or the High Court has ordered the alteration.

3.2.10

Alteration in Respect of Well-Founded Proposals (made before 1 April 2008)

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

3.2.11

Alteration in Respect of Agreements

Where the Listing Officer and other relevant parties to an appeal have given signed agreement to an alteration of the list in terms other than those contained in a proposal, the Listing Officer must alter the list within six weeks of that agreement, provided that the alteration is made after the expiry of three months from the date of proposal.

3.2.12

Alteration in Respect of Orders

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

3.2.13

Effective Date of Alteration

Regulation 14 of SI 1993/290 provides that an alteration made to show in a list a dwelling which has come into existence since the list was compiled, has effect from “the day on which the circumstances giving rise to the alteration occurred.” That day is usually the day on which the property became a dwelling in accordance with the provisions of **section 3 of the LGFA 1992**. The reference to a dwelling coming into existence includes property which was wholly non-domestic becoming a dwelling which is a composite hereditament. It also includes property which was two or more dwellings being treated as one for the purposes of **article 4 of The Council Tax (Chargeable Dwellings) Order 1992 (SI 1992/549)**.

3.2.14

Completion of New Dwellings

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

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

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

3.2.15

Dwellings Ceasing to Exist

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

3.2.16

Alteration in Respect of Material Increase

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

3.2.17

Alteration in Respect of Material Reduction

An alteration reflecting a material reduction in the value of a dwelling has effect from the day on which the circumstances which caused that reduction arose (regulation 14(3) SI 1993/290).

3.2.18

Alteration in Respect of Composites

An alteration reflecting an increase or reduction in the domestic use of a dwelling which is, or which consequently becomes or ceases to be, a composite hereditament, has effect from the day on which the circumstances which caused that increase or reduction arose (**regulation 14(4) SI 1993/290**).

3.2.19

Where for the purposes of **regulation 14(3) or 14(4)** the day on which the circumstances arose is not reasonably ascertainable the effective date is the date of alteration of the list, except where the alteration is made in pursuance of a proposal, in which case the effective date is the day on which the proposal was served on the Listing Officer.

3.2.20

Alteration to Correct Inaccuracies

Subject to **regulation 4(1A) of SI 1994/1746**, an alteration to correct an inaccuracy in a compiled list has effect from the date of compilation of the list, except where the

alteration is to show a higher band, or to show two or more dwellings by virtue of **article 3 of The Council Tax (Chargeable Dwellings) Order 1992** where one dwelling was previously shown. In such cases the list must be altered with effect from the day on which the alteration is made. Similarly, and also subject to **regulation 4(1A)**, where a previous alteration gave rise to an inaccuracy in the list and a further alteration is required which will show a higher band or more than one dwelling under article 3 of the above, the effective date is the date of alteration of the list.

An alteration to correct any other inaccuracy which arose in the course of making a previous alteration has effect from the day on which the previous alteration had effect, or, but for the inaccuracy, would have had effect. An alteration made to correct an inaccuracy which is not covered by any of the foregoing provisions of **regulation 14** has effect from the day on which the list became inaccurate.

3.2.21

Notification of Alteration

Regulation 15 of SI 1993/290 provides that within six weeks of altering a list the Listing Officer must notify the Billing Authority of the effect of the alteration. The Billing Authority must alter its copy list as soon as reasonably practicable.

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

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

The Listing Officer is required to take such steps as are reasonably practicable to ensure that any requisite notice is served on the taxpayer not later than the corresponding notice to be served on the Billing Authority.

3.3 CASE LAW

3.3.1

R v PADDINGTON (VO) ex parte PEACHEY PROPERTY CORPORATION LTD HC (All ELR 1964, page 200)

and

R v VALUATION OFFICER ex parte HIGH PARK INVESTMENTS LTD HC (All ELR 1987, page 84)

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

Since October 2000, the three remedies following a successful High Court judicial review are:

- A quashing order (*ex-certiorari*) - most common remedy used by High Court nowadays; this is where the decision is nullified and the case is bounced back to the public authority to reconsider it
- A prohibiting order (*ex-prohibition*) - this orders a public body to refrain from an illegal action e.g. where a public body has failed to consult when it has been required to do so, and
- A mandatory order (*ex-mandamus*) - rarely granted by High Courts as the preference is to allow the specialist public body to give effect to the court decision in its own way.

3.4 WORKING PRACTICES

3.4.1

Valuation Lists

There are no statutory requirements concerning the layout of the contents of Valuation Lists, but Listing Officers have ordered their lists alphabetically, by postal towns, then by streets within each town. Within each street numbered addresses are shown first, and then named-only addresses in alphabetical order. Addresses which cannot be allocated to any street are shown at the end of the list of addresses in each postal town under the heading "Within Billing Authority Area". Addresses not allocated to a postal town are shown at the end of the list.

During preparation for the introduction of Council Tax, each Billing Authority provided its Listing Officer with reference numbers for each property address in its area, and continues to do so in respect of newly identified addresses.

3.4.2

Alteration of Lists

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

Listing Officers notify Billing Authorities of alterations to Valuation Lists on at least a monthly basis by providing schedules of alterations, and also provide periodic "snapshots" on microfiche showing the state of lists on particular dates.

4. PROPOSALS

4.1 INTRODUCTION

4.1.1

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

4.2 LEGISLATION

4.2.1

The Council Tax (Alteration of Lists and Appeals) Regulations 1993 SI 1993/290 (amended by SI 1994/1746 & SI 1995/363) - Regulations 5-7, and as amended by the Council Tax (Valuations, Alteration of Lists and Appeals) (England) Regulations 2008 SI 2008/315.

General Rate Act 1967 (GRA 1967)

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

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

4.2.2

Proposal Circumstances

According to **regulation 5 of SI 1993/290**, a proposal may be made by a Billing Authority or interested person if either is of the opinion that the list is inaccurate because:

- it shows a dwelling which ought not to be shown in the list, or
- it fails to show a dwelling which ought to be shown in the list, or
- the Listing Officer has determined the wrong valuation band, or
- since the band was first entered into the list:
 1. there has been a material increase in the value of the dwelling and a relevant transaction, or
 2. there has been a material reduction in the value of the dwelling, or
 3. the dwelling has become or ceased to be a composite hereditament, or
 4. there has been an increase or reduction in the domestic use of a composite hereditament, or
- account has not been taken of a relevant decision of a Valuation Tribunal or the High Court.

4.2.3

Interested Person

An interested person is defined in regulation 2 of SI 1993/290 as:

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

4.2.4

The Proposer

A proposal means a proposal for the alteration of the Valuation List. A proposer is the person making a proposal, i.e. the interested person or Billing Authority.

4.2.5

Composite Hereditaments

Section 64 (9) of the LGFA 1988 states that a hereditament is composite if part only consists of domestic property. Domestic property has previously been examined in this manual and can be found in section 66 of the LGFA 1988 (see 1.2.5 of this manual).

4.2.6

Proposal Periods

A proposal submitted as a result of a Valuation Tribunal or High Court decision must be made before the expiry of the period of six months beginning on the day on which the decision in question was made. A new taxpayer in relation to a dwelling may make a proposal within a period of six months from the date that he/she became the new taxpayer. No proposal may be made where a proposal to alter the same list in relation to the same dwelling and arising from the same facts has already been considered and determined by the Valuation Tribunal or High Court. Furthermore, no proposal may be made if the new taxpayer is a company which is a subsidiary of the immediately preceding taxpayer, or the immediately preceding taxpayer is a company which is a subsidiary of the new taxpayer or both the new and immediately preceding taxpayers are companies which are subsidiaries of the same company, or the change of taxpayer has occurred solely by reason of the formation of a new partnership in relation to which any of the partners is a partner in the previous partnership.

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

- it shows a dwelling which ought not to be shown. This includes property shown as one dwelling which contains more than one self contained unit and therefore should be disaggregated under **article 3 of the Council Tax (Chargeable Dwellings Order) SI 1992/549**. However, it does not include a multiple property

such as a House in Multiple Occupation (HMO) which the Listing Officer has treated as a single dwelling under **article 4** of that Order.

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

4.2.7

Proposal in respect of a Listing Officer's Notice

If the Listing Officer chooses to alter the Valuation List by notice in respect of a dwelling a proposal may be served within six months of the date of that notice. The proposal may seek the restoration of the list to its previous state or seek a further alteration in respect of that dwelling.

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

4.2.8

Manner of Making a Proposal

Regulation 6 of SI 1993/290 provides that a proposal shall be made in writing served on the Listing Officer and shall:

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

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

4.2.9

Multiple Assessments

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

4.2.10

Acknowledgement by Listing Officer

On receipt of the proposal the Listing Officer shall serve an acknowledgment of its receipt within 28 days. No acknowledgment is required if a notice is served under **regulation 8 of SI 1993/290**, where the proposal has been treated as invalid. The notice of acknowledgment shall specify the date of receipt and shall be accompanied by a statement setting out the procedures subsequent to the making of a proposal.

4.3 CASE LAW

4.3.1

Effective Date

COURTNEY PLC v MURPHY (VO) LT (RA 1998, page 77)

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

4.3.2

Grounds of Proposal

FIRKINS v DYER (VO) LT (RVR 1972, page 242)

The grounds of the proposal were misleading as to be insufficient and the true facts were therefore outside the Valuation Officer's contentions and the powers of the Local Valuation Court.

4.3.3

BRITISH AMERICAN TYPEWRITERS v HILL (VO) LT (RVR 1962, page 374)

"That structural alterations have been made and that the present assessment is incorrect and insufficient" was held valid grounds of proposal; although, the proposal related to a division of the hereditament, the deletion of the existing entry and the insertion of a new one.

4.3.4

JOLLYS (OLDHAM) LTD v ALMOND (VO) LT (R & IT 1951, page 375)

The proposal did not specify the proposed alteration of the Valuation List. It was held that the current legislation did not require a proposal to state the amendment of the list sought.

4.3.5

MERRIFIELD SOCIAL CLUB v PRITCHARD (VO) LT (R & IT 1960, page 562)

In this case the Valuation Officer made a proposal to alter the list by the deletion of the existing entry "Cinema" (GV £600, RV £497) and the insertion of a new entry "Social Club" (GV £700, RV £580) on the grounds of a change of use and the structural alterations. The ratepayers objected but did not make a proposal. At the Lands Tribunal the Valuation Officer conceded the proper assessment was GV £350 but argued that the Tribunal could not reduce the value below £600 GV (the figure in the list). The Tribunal held that there was a time between the deletion of the old entry and the insertion of the new one when the hereditament was not assessed. It was therefore open to the Tribunal to determine any figure from £0 to £700 GV. The appeal was actually determined at £350 GV.

4.3.6

R v ASSESSMENT COMMITTEE FOR THANET AND DISTRICT ASSESSMENT AREA AND COUNTY VALUATION COMMITTEE FOR KENT ex parte ISLE OF THANET GAS LIGHT AND COKE COMPANY HC (All ELR 1939, page 489)

The grounds of the proposal were that the existing assessment was incorrect and unfair; and, the amendment proposed was that it should be altered to such an amount as was determined by an accounts valuation. It was held that the grounds did not amount to a proposal.

4.3.7

BENTS BREWERY COMPANY LTD v UPPER AGRIGG ASSESSMENT COMMITTEE HC (All ELR 1944, page 37)

Held that a proposal made on the grounds “Annual Revision” was bad in law.

4.3.8

R v READING ASSESSMENT COMMITTEE ex parte MACCARTHY E FITT LTD HC (R & IT 1948, page 38)

The Rating Authority made a proposal where the value of an industrial hereditament had been apportioned on the grounds that the “existing assessment was unfair incorrect and insufficient”. The proposed amendment was not shown and was to be advised by letter in due course. Six months later details of the proposed assessment was given. It was held that the original proposal was bad in law and could not be cured by the subsequent letter.

4.3.9

R.G.HESTON v ISLEWORTH RATING AUTHORITY ex parte CONTI HC (All ELR 1941, page 116)

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

4.3.10

R v WINCHESTER AREA ASSESSMENT COMMITTEE ex parte WRIGHT HC (R & IT 1948, page 348)

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

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

4.3.11

The Hereditament

GREEN (VO) v BARNET LBC LT (RA 1994, page 235)

A swimming pool in a sports centre was held by the Lands Tribunal to be a separate hereditament because it was within a separate curtilage which was well defined. It

was not contiguous with the nearby stadium and separate buildings should be separately assessed.

4.3.12

R v CARDIFF JUSTICES ex parte CARDIFF CORPORATION HC (1962)

On the hearing of an appeal against an objection to a proposal, a Local Valuation Court had no jurisdiction to deal with an assessment not referred to in the objection; although, it was intended to be covered by the proposal but was not shown as being so in the copy sent by the Valuation Officer to the objector (the Rating Authority). The description "Bus Station" was intended to cover bus station, 22 bays, offices and a waiting room at the terminal building.

4.3.13

PRATT v NORTH WEST NORFOLK ASSESSMENT COMMITTEE HC (R & IT 1947, page 243)

Legality of wholesale proposals was accepted. There was no force in the argument that if proposals in large numbers were made the result was the same as a new list.

4.3.14

R v HORSHAM AND WORTHING ASSESSMENT COMMITTEE ex parte BURGESS HC (All ELR 1937, page 681)

It was held that the Rating Authority may revalue a whole class of hereditament in the course of a quinquennium, notwithstanding that there had been no change of circumstances.

4.3.15

MURPHY RADIO LTD v WELWYN GARDEN CITY RATING AUTHORITY HC (All ELR 1943, page 16)

It was held that the Rating Authority was able to amend the list to correct an error during the period of the quinquennium.

4.3.16

MAINSTREAM VENTURES v WOOLWAY (VO) LT (RA 395/2000)

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

4.3.17

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

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

4.4 COMMENTARY

4.4.1

Contention of the Appellant

It should be noted that where a proposal seeks a reduction in banding the Tribunal may nevertheless, in certain circumstances, increase the banding level. Under the provisions of **section 75(5) of the GRA 1967** jurisdiction of the Tribunal was limited to the contention of the appellant. No such provision is brought forward in the new legislation.

Section 24 of the LGFA 1992 is now the enabling provision for the making of a proposal. Where there is a disagreement about the accuracy of the list an appeal may be made to the Valuation Tribunal. Under **regulation 29(3) of SI 1993/290**, if the Tribunal in deciding an appeal sets a band higher than that shown in the list and higher than that contended for in the proposal, the effective date is the date of the decision.

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

4.4.2

Notice of Invalidity

Where the Listing Officer is of the opinion that a proposal has not been validly made he may serve a notice of invalidity on the proposer (see **5.2** of this manual). However, under the provisions of **regulation 8(11) of SI 1993/290** any party to an appeal may challenge validity of proposal at an ordinary hearing even if the Listing Officer has not served an invalidity notice.

5. INVALID PROPOSALS

5.1 INTRODUCTION

5.1.1

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

5.2 LEGISLATION

5.2.1

The Council Tax (Alteration of Lists and Appeals) Regulations 1993 SI 1993/290 - as amended by the Council Tax (Valuations, Alteration of Lists and Appeals) (England) Regulations 2008 SI 2008/315.

5.2.2

Proposals Treated as Invalid

According to **regulation 8 of SI 1993/290** the Listing Officer, having received a proposal, must determine whether the proposal has been validly made. If he is of the opinion that the proposal is invalid he may within four weeks of its service on him serve an invalidity notice on the proposer advising that the proposal has been treated as invalid and the subsequent procedure.

5.2.3

Withdrawal of Invalidity Notice

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

5.2.4

Appeal to the Valuation Tribunal

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

- A copy of the invalidity notice
- The address of the dwelling that the proposal relates to.
- The proposer's reasons for appealing against the invalidity notice.
- The names and addresses of the proposer and Listing Officer.

5.2.5

Statutory Procedure

Where the Listing Officer withdraws an invalidity notice after an appeal against it has been made, the Listing Officer shall inform the Clerk of the withdrawal. Until it is finally decided that the original proposal was validly made the procedure subsequent to making a proposal will not apply. Where it is finally decided that the proposal was validly made the regulations setting out the procedure subsequent to the making of the proposal shall have effect as if the proposal had been served on the date of that decision.

5.2.6

Final Decision

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

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

5.2.7

Contention of Invalidity for Proposals Accepted as Valid

Regulation 8(11) of SI 1993/290 allows any party to a **regulation 13** appeal (proposals not well-founded) to contend that the appeal proposal was not validly made.

5.3 CASE LAW

5.3.1

R v NORTHAMPTONSHIRE LVC & OTHERS ex parte ANGLIAN WATER AUTHORITY CA (RA 1990, page 93)

A proposal giving the address of the subject hereditament as "Rushton Sewage Treatment Works, Northampton, Rushton" which no longer existed and had been removed from the Valuation List, was held invalid even though the Valuation Officer (for a time) treated it as applying to nearby sewage treatment works because the proposal form, which was a public document intended to be adequately definitive of the property affected, was self evidently inadequate to identify the existing works and the Valuation Officer's subsequent conduct did not overcome the inadequacies.

5.3.2

MELLAND & COWARD LTD AND OTHERS v HARE (VO) LT (RA 1991, page 283)

Proposals made by the ratepayers for the deletion of three entries in the Valuation List, following a merger and division into two, were valid because the ratepayers were aggrieved by the inclusion of the three entries in the list but had no right to propose the insertion of new entries relating to different hereditaments, and because the meaning of the proposals was clear and there was no evidence that the Valuation Officer or the Rating Authority misread or misunderstood the proposal.

5.3.3

BROOK (VO) v GREGG PLC AND OTHERS LT (RA 1991, page 61)

Although 128 stalls, 32 stores, and the remainder of a market hall were separately rateable as 161 hereditaments, the Valuation Officers proposal was invalid because it proposed 164 hereditaments.

5.3.4

WESTMINSTER CITY COUNCIL v WOODBURY (VO) AND YARD ARM CLUB LTD CA (RA 1992, page 1)

A proposal to include in the Valuation List a “Restaurant and Premises” was held invalid because it related to a vessel which was a chattel and therefore not rateable.

5.3.5

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

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

5.3.6

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

A letter written to the Valuation Officer was held as not a valid proposal because it was not sufficient for what was intended to be a request for a reduction in the assessment to have been largely a matter of implication without any positive indication of the reason why a reduction was sought. In response to the letter the Valuation Officer supplied the standard proposal form which was returned completed by the ratepayer and accepted as valid.

5.3.7

EXEL LOGISTIC v OLIVER (VO) LT (RA 1995, page 336)

The ratepayer’s proposal relating to a cold storage depot had been misunderstood by the Valuation Officer who treated it as referring to a property described in the Valuation List as “Premises, Ordsall Lane (Union Cold Store Co Limited)”, whereas, properly construed it referred to a property described in the Valuation List as “Cold Store and Premises, Fairbrother Street, (Union Cold Stores & Co Ltd)”.

5.3.8

FLOATELS (UK) LTD v PERRIN (VO) LT (RA 1995, page 326)

A proposal for the alteration of the 1973 Valuation List for the insertion of "Hotel and Premises, The Friendly Floatel, London Road, gross value £11,000 rateable value £9,138" was held invalid because however generously it was construed it related to a chattel (a floating structure) and failed to identify the land with which it was occupied.

5.3.9

CANNING (VO) v CORBY POWER LTD LT
DOWNING (VO) v CORBY POWER LTD LT
(RA 1997, page 60)

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

5.3.10

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

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

5.3.11

MAINSTREAM VENTURES LTD v WOOLWAY (VO) (RA 395/2000)
Proposal made by previous occupier invalid (see 4.3.16)

5.4 COMMENTARY

5.4.1

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

5.4.2

Valuation Tribunals have determined that there is little discretion, if any, in the determination of an appeal. Case law (see Esau) has established that Tribunals have no discretion with regard to altering the time limits imposed by statute. However, when determining such an appeal a Tribunal will seek the Listing Officer's undertaking to review the banding of the property as it is a statutory obligation for him to maintain a correct Valuation List.

5.4.3

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

6. PROCEDURE SUBSEQUENT TO THE MAKING OF A PROPOSAL

6.1 INTRODUCTION

6.1.1

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

6.2 LEGISLATION

6.2.1

The Council Tax (Alterations of Lists and Appeals) Regulations 1993 SI 1993/290 - as amended by SI 1994/1746, SI 1995/363, SI 409/2000, SI 2006/3395 and SI 2008/315.

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

6.2.2

Procedure Subsequent to the Making of Proposals

Regulation 9 of SI 1993/290 provides that within six weeks of receipt of the proposal the Listing Officer will serve a copy on any person who appears to him to be the taxpayer for any dwelling to which the proposal relates. The Listing Officer must also serve a copy on the Billing Authority where that Authority has served notice on the Listing Officer that it wishes to receive a copy of a class or classes of proposals and the proposal falls within any such class. (Each copy of a proposal shall be accompanied by a statement of the effect of **regulations 10 – 13.**)

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

6.2.3

Proposals made before 1 April 2008 and agreed by Listing Officer

Where the Listing Officer is in agreement to the proposed change the proposal shall be treated as well-founded (**regulation 10 of SI 1993/290**). The Listing Officer will then serve notice on the proposer and any other person who then appears to him to be the taxpayer as regards the dwelling that he proposes to alter the list accordingly. The list will then be amended within six weeks of the date of the notice.

6.2.3.a

Proposals made after 1 April 2008 and agreed by the Listing Officer

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

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

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

6.2.4

Withdrawal of proposals made before 1 April 2008

The proposer may withdraw the proposal by notice in writing served on the Listing Officer (**regulation 11 of SI 1993/290**). If the proposer is no longer the taxpayer in respect of the dwelling he may not withdraw the proposal unless the taxpayer at the date of the withdrawal has agreed to the withdrawal in writing. Where, at the date of the withdrawal more than one person is the taxpayer, the agreement of one of them shall be treated as the agreement of all of them.

6.2.4a

Withdrawal of proposals made after 1 April 2008

Regulation 11 of the Council Tax (Alteration of Lists and Appeals) Regulations 1993 which regulated the withdrawal of proposals has been revoked.

With effect from 1 April 2008, because proposals that are not considered well founded will not be automatically referred on to the relevant valuation tribunal by the Listing Officer, there is no requirement for the proposal to be withdrawn. Under the revised regulations, if a Listing Officer considers that a proposal is not completely well founded, he will issue a decision notice outlining his reasons within four months of the date that the proposal was served upon him. Upon receipt of the Listing Officer's notice of decision, the proposer or any other person who is entitled to make an appeal against that decision, has the right to initiate an appeal to the relevant valuation tribunal within a time period of three months of the date when the decision notice was served.

6.2.5

Interested persons in relation to proposals made before 1 April 2008

Where, within three months of the proposal being served, an interested person has served notice in writing on the Listing Officer that he wishes to be a party to the proceedings and the proposal is subsequently withdrawn, the Listing Officer shall serve notice of the withdrawal on that interested person. Where the interested person, within the period of six weeks, serves notice in writing on the Listing Officer that he is aggrieved by the withdrawal of the proposal his notice of interest shall be treated as if a proposal had been made on the same day on which the notice had

been served. Any resulting alteration shall have effect from the day which would have been applicable had there been no withdrawal.

6.2.5a

Interested Persons in relation to proposals made after 1 April 2008

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

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

6.2.6

Agreed alterations following proposals made before 1 April 2008

Having considered the proposal where all parties agree on an alteration of the list in terms other than those contained in the proposal, and that agreement is signified in writing, **regulation 12 of SI 1993/290** requires that the Listing Officer shall alter the list to give effect to the agreement within six weeks of the day on which the agreement was made. The proposal shall be treated as being withdrawn. The parties referred to are the Listing Officer, the proposer, the taxpayer at the date of the proposal, the taxpayer at the date of the agreement and any other person, who within three months of the proposal being served on the Listing Officer, would have been competent to make this proposal and has served notice on the Listing Officer to the effect that he wishes to be a party.

6.2.7

Where the taxpayer at the date of the proposal is no longer the taxpayer at the date of the agreement and the Listing Officer has taken all reasonable steps to ascertain the whereabouts of that person but they have not been ascertained, or a person who has given notice of interest cannot be contacted the agreement of that person shall not be required. Where there is more than one taxpayer at the date of the proposal the agreement of one of those persons will satisfy the requirements for an agreed alteration.

6.2.7a

Agreed alterations following proposals made after 1 April 2008

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

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

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

6.2.8

Day from which Alterations have Effect

Where it is agreed to alter the list so as to show a dwelling that has not previously been shown or to delete a dwelling, the alteration shall have effect from the day on which the circumstances giving rise to the alteration occurred (**regulation 14 SI 1993/290**).

An alteration reflecting a material increase in value, following a relevant transaction shall have effect from the date that the list is altered by the Listing Officer. An alteration reflecting a reduction in value shall have effect from the day on which the circumstances that caused the reduction arose.

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

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

6.2.9

Increase in Band

Where it is found that the valuation band that has been applied to a property should be increased, or that one dwelling should have been treated as two or more dwellings, the day on which the alteration shall have effect is the day it is entered in the list. In any other case, the alteration shall have effect on the day on which the list was compiled. Where a further inaccuracy arises in the course of making a previous alteration the alteration shall have effect from the day on which the alteration is entered in the list (**regulation 14 (5)(b)**).

6.2.10

Any reference to a dwelling ceasing to exist or coming into existence includes a reference to a dwelling which has been or is now non-domestic property.

6.2.11

Notification of Alteration

Regulation 15 of SI 1993/290 provides that the Listing Officer must serve notice on the Billing Authority stating the effect of any alteration within six weeks and the Billing Authority shall, as soon as reasonably practicable, alter the copy of the list deposited in its principal office. Furthermore, the Listing Officer shall serve notice on the person who then appears to him to be the taxpayer as regards any dwelling to which the

alteration relates stating the effect of the alteration. The notice shall be served within six weeks.

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

- the Listing Officer that the whole of a proposal was well-founded, or
- that an agreement had been reached in accordance with **regulation 12** in relation to a proposal made before 1 April 2008, or
- that an agreement had been reached in accordance with Regulation 10, in relation to a proposal made after 1 April 2008, or
- a change in the address of the dwelling concerned, or
- a change in the area of the Billing Authority, or
- a Valuation Tribunal or High Court in relation to the dwelling concerned.

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

6.3 CASE LAW

6.3.1

See Case Law in **5.3**.

6.3.2

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

Justice Jowitt ruled that a Valuation Tribunal had been wrong to agree with six taxpayers that the amended provisions of **regulation 14(6) of SI 1993/290** (i.e. **regulation 2 of SI 1994/1746**) could be applied retrospectively. Retrospective application had the effect of bringing forward the effective date of the Listing Officer's increase in band of incorrect original entries in the Valuation List. The taxpayers had argued that because the regulation had been amended before the date of the Tribunal hearing, the Listing Officer's increase should be effective from the date the list was altered (in April 1994) and not 1 April 1993. Justice Jowitt pointed out that the amended regulation was not in force at the date that the Listing Officer altered the list and that for this reason the increase should be effective from 1 April 1993.

6.4 COMMENTARY

None at this time.

7. RECEIPT OF APPEALS

7.1 INTRODUCTION

7.1.1

Making an appeal

A proposer or a competent person may make an appeal to the relevant valuation tribunal against the Listing Officer's notice of decision. A competent person is somebody who would have been entitled to make the proposal at the time when the Listing Officer served his decision notice. An appeal is initiated by the appellant serving on the Clerk of the relevant valuation tribunal a copy of the Listing Officer's decision notice together with a written statement containing their reasons for appealing against the Listing Officer's decision. An appeal form to facilitate making an appeal can be obtained from the relevant valuation tribunal's administrative office or on line at www.valuation-tribunals.gov.uk

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

7.2 LEGISLATION

Council Tax (Alteration of Lists and Appeals) Regulations 1993 SI 1993/290 as amended by SI 2008/315

7.2.1

Clerk's duty following receipt of an appeal

Following receipt of an appeal, the Clerk of the relevant valuation tribunal shall within two weeks of receiving it, serve on the appellant a formal notice acknowledging the appeal's receipt. He will also serve a copy of the appellant's written statement (appeal) on the Listing Officer and on any other person who appears or is known to the Clerk to be an interested person.

7.2.2

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

In cases where an appellant is not the proposer and the proposer also appeals against the same decision notice, the appeal that proceeds will be the one made by the proposer. Where two or more appellants, none of whom is the proposer, appeal against the same decision notice, the first appeal that was received by the Clerk will proceed.

7.2.3

Arrangements for Appeals

Regulation 18 of SI 1993/290 provides that it is the duty of the President of the Tribunal to secure that arrangements are made for appeals to be determined. He shall ensure that:

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

7.2.4

Withdrawal of appeals in respect of proposals made before 1 April 2008

An appeal may be withdrawn where written notice is given to the Clerk by the Listing Officer that all parties have consented to the withdrawal, before the commencement of a hearing or the consideration of written representations.

7.2.5

Withdrawal of appeals against Listing Officer's decision notices

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

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

7.2.6

New Appellant's appeal

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

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

As soon as practicable after receiving the new appellant's appeal, the clerk will notify the withdrawing party and every other party to the withdrawing party's appeal that the appeal is withdrawn and that the new appellant's appeal is proceeding. The clerk will provide the other parties with the new appellant's reasons for appealing and request every party (apart from the Listing Officer and the withdrawing party) to notify him if they wish to be a party to the proceedings.

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

7.3 CASE LAW

7.3.1

There is no relevant case law at present.

7.4 COMMENTARY

7.4.1

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

7.4.2

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

8. THE LIABLE PERSON

8.1 INTRODUCTION

8.1.1

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

8.1.2

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

8.2 LEGISLATION

8.2.1

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

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

The Rent Act 1977

The Rent (Agriculture) Act 1976

The Housing Act 1985 – Part 4

The Caravan Sites and Control of Development Act 1960

The Registered Homes Act 1984

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

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

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

Council Tax (Civil Partners) (England) Regulations 2005

Council Tax (Exempt Dwellings) (Amendment) (England) Order 2005

8.2.2

Persons Liable to Pay Council Tax

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

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

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

8.2.3

Joint and Several Liability

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

8.2.4

Statutory Definitions

The following terms are defined in the legislation:

“Statutory tenant” is defined as a tenancy under the Rent Act 1977 or the Rent (Agriculture) Act 1976.

“Secure tenant” is defined as a tenancy under Part 4 of the Housing Act 1985.

“Owner” is either the person holding a material interest who is the freeholder or a person holding a single leasehold interest for the premises granted for a term of six months or more.

8.2.5

Liability in Respect of Caravans and Boats

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

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

“Owner” of a caravan or boat means:

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

8.2.6

Liability in Prescribed Classes

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

8.2.7

Liability for Owners

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

8.2.8

Class A – Care Homes, Independent Hospitals.

Definitions of the above are found in **paragraph 7 of Schedule 1 of the LGFA 1992 as amended by the Care Standards Act 2000**.

“Care home” means

- (a) a care home within the meaning of the Care Standards Act 2000 or
- (b) a building or part of a building in which residential accommodation is provided under section 21 of the National Assistance Act 1948:

“Independent hospital” has the same meaning as in the Care Standards Act 2000.

“Hostel” is defined in **The Council Tax (Discount Disregards) Order 1992 as amended by SI2003/3121** as

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

8.2.9

Class B - Religious Communities

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

8.2.10

Class C - Houses in Multiple Occupation (HMO)

A HMO is any dwelling which:

- was originally constructed or subsequently adapted for occupation by persons who do not constitute a single household;

or (“and” prior to 1st April 1995)

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

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

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

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

8.2.11

Class D - Residential Staff

A dwelling:

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

8.2.12

Class E - Ministers of Religion

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

Where a minister of the Church of England is in receipt of a stipend, the owner is taken to be the Diocesan Board of Finance of the diocese in which the dwelling is situated.

8.2.13

Class F – Asylum Seekers

Regulations came into force on 3 April 2000. Council Tax liability for any accommodation provided under Section 95 of the Immigration and Asylum Act 1999 falls on the owner of the accommodation as opposed to the resident asylum seeker.

8.2.14

Discretionary Powers

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

8.2.15

Liability of Spouses and Civil Partners

Under section 9 of the LGFA 1992, as amended by the Civil Partnership Act 2004, spouses and civil partners of liable persons are jointly and severally liable for the tax if:

- the person is not a student or severely mentally impaired; and
- they are a man and a woman who are married to one another or not married but living together as man and wife,
- they are of the same sex and either civil partners of each other or are not in a civil partnership but who are living together as if they were civil partners.

8.3 CASE LAW

8.3.1

FROST (INSPECTOR OF TAXES) v FELTHAM (1981) HC

A mortgage tax relief case in which Mr and Mrs Feltham, who were tenants of a public house in Essex, visited their house in Wales for short periods each month. It

was held that Mr and Mrs Feltham had no security of tenure at the public house and that their main residence was the house in Wales of which they owned the freehold.

8.3.2

CITY OF BRADFORD METROPOLITAN BOROUGH COUNCIL v NEIL ANDERTON HC (RA 1991, page 45)

A merchant seaman's sole or main residence was held to be his house in Bradford on the basis that: it was where his home was; it was his settled or usual abode which he left only when the exigencies of his occupation compelled him to do so for absences of long or short duration; it was where his wife and family lived; and, he had no security of tenure on his ship. A merchant ship plying the high seas cannot in law constitute a person's residence.

8.3.3

WARD v KINGSTON-UPON-HULL CITY COUNCIL HC (RA 1993, page 71)

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

8.3.4

CODNER v WILTSHIRE VALUATION AND COMMUNITY CHARGE TRIBUNAL HC (RVR 1994, page 169)

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

8.3.5

COX v LONDON SOUTH WEST VALUATION TRIBUNAL HC (RVR 1994, page 171)

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

8.3.6

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

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

8.3.7

DONCASTER BOROUGH COUNCIL v STARK HC (RVR 1998, page 80)

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

8.3.8

HAYES v HUMBERSIDE VALUATION TRIBUNAL AND KINGSTON-UPON-HULL CITY COUNCIL CA (RA 1998, page 37)

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

8.3.9

PEARSON v LONDON BOROUGH OF HARINGEY HC (RVR 1998, page 252)

The High Court disagreed with the decision of a Valuation Tribunal that the dwelling in question was correctly designated a HMO. Justice Collins stated “the fact that rooms have keys seems to me to be nothing to the point. Many houses, perhaps most, have bedrooms which can be locked.”

8.3.10

UHU PROPERTY TRUST v LINCOLN CITY COUNCIL HC (RA 2000, page 419)

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

8.3.11

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

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

8.3.12

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

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

8.3.13

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

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

8.3.14

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

Mr. Williams, a schoolmaster, resided in college accommodation with his wife. He also owned another property nearby, Pump Cottage, but neither he nor his wife actually stayed there during the period of the four and a half years that was in dispute. The Billing Authority deemed that the property he owned was his main residence because he had security of tenure and there was an intention to reside there at some future date. The West Sussex Valuation Tribunal decided in favour of the Billing Authority. Mr. Williams subsequently successfully appealed to the High Court. The High Court held that the Tribunal had erred by placing too much emphasis on the fact that Mr. Williams had security of tenure at Pump Cottage and that he intended to reside there at some future date and had given insufficient regard to other factors. The Billing Authority ultimately appealed to the Court of Appeal which upheld the High Court's decision.

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

8.3.15

SUMEGHOVA v McMAHON (2002) CA (RVR 2003, page 8)

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

8.3.16

BENNETT v COPELAND BOROUGH COUNCIL CA (RA 2004 page 171)

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

The appellant subsequently successfully appealed to the Court of Appeal where it was held that a person could not be deemed to be a resident in a property, if he had never lived there.

The Court of Appeal's judgment in Bennett's case reinforced its earlier judgment, in respect of Williams v Horsham District Council.

8.3.16A

PARRY v DERBYSHIRE DALES DISTRICT COUNCIL HC 2006
(RA 2006, page 252)

A man who lived, worked and paid income tax in Spain for two years did not become the liable person for the cottage he owned in England when his tenant vacated it. It became his sole or main residence only when he returned to live in it. Following the judgment in respect of Williams v Horsham DC, the High Court ruled that he could not have had his sole or his main residence there while he was resident in Spain.

8.3.17

Joint and several liability

GARDINER v SWINDON BOROUGH COUNCIL HC (RVR 2003, page 242)

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

8.3.18

Refusal to pay

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

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

8.3.19

Jurisdiction of the tribunal

HARDY V SEFTON METROPOLITAN BOROUGH COUNCIL (RA 2007/140)

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

8.4 COMMENTARY

8.4.1

Hierarchy of Liability

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

8.4.2

Caravans and Boats

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

8.4.3

A dwelling consisting of a pitch or mooring which is not occupied by a caravan or boat is an exempt dwelling (Class R). A dwelling comprising a pitch occupied by a caravan or boat, is an exempt dwelling for any continuous period of less than six months under Class C whether or not it contains furniture or whether any furniture is fixed or not.

8.4.4

Ministers of Religion

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

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

8.4.5

Houses in Multiple Occupation

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

9. EXEMPT DWELLINGS

9.1 INTRODUCTION

9.1.1

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

- it has a particular physical characteristic e.g. it is vacant and requires or is undergoing major repair works to make it habitable;
- it may be unoccupied or occupied for prescribed purposes e.g. it is owned or managed by a charity;
- it may be occupied or owned by someone of a prescribed description e.g. a member of a visiting armed force.

9.1.2

There are currently 23 prescribed classes (Classes A to W), most relate to empty dwellings (A to L, Q, R and T).

9.2 LEGISLATION

9.2.1

Local Government Finance Act 1992 (LGFA 1992): Sections 4 and 72; Schedule 1
The Council Tax (Exempt Dwellings) Order 1992 SI 1992/558, amended by SI 1992/2941, SI 1993/150, SI 1994/539, SI 1995/619, SI 1997/656, SI 1998/291, SI 1999/536, SI 1999/1522, SI 2000/424 (England) and SI 2006/2318.

The Council Tax (Administration and Enforcement) Regulations 1992 SI 1992/613, Part III, amended by SI 1992/3008

The Council Tax (Chargeable Dwellings, Exempt Dwellings and Discount Disregards) (Amendment) (England) Order 2003/SI 3121

The Housing Act 1996 (Consequential Amendments) Order 1997 SI 1997

9.2.2

Class A

A vacant dwelling which requires or is undergoing major repair work to render it habitable or which is undergoing structural alteration, or where these works have been substantially completed less than six months previously (definition in **SI 1993/150** substituted by that in **SI 2000/424**. From 1 April 2000, Class A exemption has a maximum duration of one year; any dwelling which had been exempt for one year or more at 1 April 2000 ceases to be exempt on that date. (An earlier amending Order, **SI 1999/1522**, has been revoked).

9.2.3

Class B

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

9.2.4

Class C

A vacant dwelling which has been so for less than six months (**SI 1992/558** substituted by **SI 1993/150** and **SI 1994/539**). For a newly-completed dwelling, upon which a completion notice has been served, the six month exemption period runs from the date it was deemed to have been completed.

9.2.5

Class D

An unoccupied dwelling, where the former resident - as the freeholder, leaseholder, tenant or licensee and/or as the liable person - is a prisoner as defined in **schedule 1 paragraph 1 of the LGFA 1992** (**SI 1992/558** amended by **SI 1994/539**).

9.2.6

Class E

An unoccupied dwelling, where the former resident - as the freeholder, leaseholder, tenant or licensee and/or as the liable person - has become a long-term patient in a hospital or care home as defined in **schedule 1 paragraphs 6, 7 and 8 of the LGFA 1992** (**SI 1992/558** amended by **SI 1994/539**).

9.2.7

Class F

An unoccupied dwelling which has been unoccupied since the death of the person who was formerly liable. Exemption is given (to the administrator or executor for the deceased) for six months after the grant of probate or letters of administration (**SI 1992/558** substituted by **SI 1993/150**, substituted by **SI 1994/539**).

9.2.8

Class G

An unoccupied dwelling, where occupation is prevented by an imposed planning restriction or is otherwise prohibited by law or by the actions of any public authority with a view to acquiring the property under an Act of Parliament (**SI 2006/2318**).

9.2.9

Class H

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

9.2.10

Class I

An unoccupied dwelling where the former resident owner or tenant has his sole or main residence in another place for the purpose of receiving personal care (not in a hospital or care home as for Class E), (SI 1992/558 as amended by SI 1994/539 and SI 2003/3121).

9.2.11

Class J

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

9.2.12

Class K

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

9.2.13

Class L

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

9.2.14

Class M

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

9.2.15

Class N

A dwelling occupied only by students, school- or college-leavers, or a student's spouse/civil partner/ dependant who is not a British citizen (**SI 1992/558** substituted by **SI 1993/150** amended by **SI 1995/619**).

9.2.16

Class O

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

9.2.17

Class P

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

9.2.18

Class Q

An unoccupied dwelling left empty by a bankrupt (**SI 1993/150**).

9.2.19

Class R

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

9.2.20

Class S

A dwelling occupied only by under-18s (**SI 1995/619**).

9.2.21

Class T

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

9.2.22

Class U

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

9.2.23

Class V

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

9.2.24

Class W

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

9.2.25

Exempt dwellings continue to appear in the Valuation List.

9.2.26

Duty to Inform

Billing Authorities are under a duty each financial year to ascertain whether dwellings are exempt and must notify the person who would otherwise be liable that a particular dwelling is exempt (except where a dwelling is in Class O – UK armed forces' accommodation). Similarly, there is a duty on those so notified to inform the Billing Authority if the dwelling should no longer be classed as exempt. (See **regulations 8, 10 and 11 of The Council Tax (Administration and Enforcement) Regulations 1992, SI 1992/613.**)

9.3 CASE LAW

9.3.1

Granny Annexes

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

9.3.2

Repairs

DUFFY v JONES AND CEREDIGION COUNTY COUNCIL HC
(Unreported case)

Decided that “major” qualifies “repair works” and not “structural repair works” (see Class A).

9.3.3

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

The council served statutory notice requiring the appellant’s property (a house in multiple occupation) to be put into good repair and made fit for habitation. The appellant failed to comply fully with the notice and kept the property unoccupied. The High Court

concluded that the actions of the council were not taken under powers with a view to prohibiting occupation of the property or with a view to acquiring it, and exemption under class G of SI 1992/558 therefore did not apply.

9.3.4

LANARKSHIRE VALUATION JOINT BOARD ASSESSOR (Re: APPEAL)
(RVR 2003, page 6)

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

9.4 COMMENTARY

9.4.1

The following definitions are relevant to this area:

- an “unoccupied” dwelling is one in which no-one lives;
- a “vacant” dwelling is one which is unoccupied and substantially unfurnished;
- “vacant” in relation to a pitch or mooring applies when the caravan or boat is unoccupied;
- a “relative” of a person can be the spouse, civil partner, parent, child, grandparent, grandchild, brother, sister, uncle, aunt, nephew, niece, great-grandparent, great-grandchild, great-aunt, great-uncle, great-nephew, great-niece (or great-great variations from 1 April 1998). A relationship by marriage is treated as a relationship by blood and a stepchild is treated as a child; a man and woman living as husband and wife are treated as being married. Persons of the same sex who are living together as civil partners are treated as being civil partners.
- a “qualifying person” means a person who would, but for the provisions of the exempt dwellings order, be liable for the Council Tax in respect of a dwelling on a particular day as the owner; and
- a “relevant absentee” means a person who is detained elsewhere (as in Class D), or who has his sole or main residence elsewhere either to receive or provide personal care (as in Classes E, I or J).

9.4.2

Substantially Unfurnished

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

9.4.3

Reference to Definitions Elsewhere

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

9.4.4

Unoccupied Dwellings

The most common “exemption appeals” are those made under Class A and Class C, where, for example, the appellant contends that the dwelling was vacant whilst undergoing major works to make it habitable, or simply that the dwelling was vacant. For Classes A and C (B and F also), any one period of occupation lasting less than six weeks is disregarded.

From 1 April 2000, for Class A exempt dwellings, the exemption period ends six months from the date major repair works or structural alterations are substantially complete, provided that the dwelling is still vacant during that period, or 12 months from the date upon which the dwelling first became vacant, whichever is the shorter.

The term “major”, in relation to works, is not defined. Departmental practice notes suggest that the cost, extent and time of the works required to make a property habitable should be examined.

9.4.5

Class G Dwellings

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

9.4.6

Crown Property

Crown property is not necessarily exempt. Armed forces' barracks and married quarters are exempt, whether occupied or not, and a contribution in lieu of Council Tax is paid by the Ministry of Defence. Crown-owned dwellings, where there is a resident in the normal way, are chargeable dwellings. However, where liability would fall on a non-resident owner, the Crown pays a contribution in lieu of Council Tax.

Crown exemption does not apply to dwellings managed by local authorities for the police or other Crown purposes; local authorities are liable as the non-resident owner in the normal way where there is no one who has his sole or main residence in the dwelling.

9.4.7

Diplomatic Premises

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

10. AMOUNTS OF COUNCIL TAX PAYABLE

10.1 INTRODUCTION

10.1.1

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

10.2 LEGISLATION

10.2.1

Local Government Finance Act 1988 (LGFA 1988)

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

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

The Council Tax (Discount Disregards) Order 1992 SI 1992/548, and amendments: SI 1994/543, SI 1995/619, SI 1996/363, SI 1996/636, SI 1996/3143, SI 1997/656, SI 1998/291 and SI 2003/3011

The Council Tax (Additional Provisions for Discount Disregards) Regulations 1992 SI 1992/552, and amendments: SI 1992/2492, SI 1993/149, SI 1994/540, SI 1995/620, SI 1996/637, SI 1997/657 and SI 1998/294

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

The Council Tax (Prescribed Classes of Dwellings) (England) Regulations 2003/SI 3011

The Council Tax (Chargeable Dwellings, Exempt Dwellings and Discount Disregards) (Amendment) (England) Order 2003/SI 3121

10.2.2

Basic Amounts Payable

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

10.2.3

Discounts

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

10.2.4

Discounts: Special provision for England

Section 11A (3) Local Government Finance Act 1992 (inserted by 2003 Act) provides that billing authorities may by determination in any financial year reduce the level of discount for a prescribed dwelling below 50% but not less than 10%. A billing authority which makes a determination under this section shall publish a notice of it in at least one newspaper circulating in its area within 21 days of its determination. *Please note that Section 11A(4) referred to below allows the billing authority to prescribe that no discount should be applicable for properties that are classed as long term empty dwellings.*

The Council Tax (Prescribed Classes of Dwellings) (England) Regulations 2003 prescribed Classes A and B for the purposes of Section 11A (3).

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

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

Exceptions – Classes A and B shall not include the following:

- Any dwelling which consists of a pitch occupied by a caravan, or a mooring occupied by a boat.
- Any dwelling where the qualifying person is also a qualifying person in relation to job-related accommodation.
- Job-related accommodation where the qualifying person is also a qualifying person for another dwelling.

Section 11A (4) Local Government Finance Act 1992 (inserted by 2003 Act) provides that billing authorities may by determination in any financial year not allow a discount for a prescribed dwelling under Class C. A billing authority **which makes a determination** under this section shall publish a notice of it in at least one newspaper circulating in its area within 21 days of its determination.

The Council Tax (Prescribed Classes of Dwellings) (England) Regulations 2003 prescribed Class C for the purposes of Section 11A (4).

Class C – dwellings which are both unoccupied and substantially unfurnished.

10.2.5

Reduced Amounts

Section 13 provides that the Secretary of State can make regulations allowing persons fulfilling prescribed conditions to pay reduced amounts of Council Tax. It allows the Secretary of State, in determining the prescribed conditions, to take into account matters relating to the persons concerned e.g. a disabled person having his/her sole or main residence in the dwelling under consideration; the circumstances and other matters relating to the person; and, the physical characteristics of the person's dwelling.

Section 13A Local Government Finance Act 1992 (inserted by 2003 Act) gives billing authorities the power to mitigate or remit in particular cases by determination.

10.2.6

Transitional Relief

Section 13B Local Government Finance Act 1992 (inserted by 2003 Act) allows the Secretary of State to introduce a Transitional Relief Scheme to ensure the smooth change in council tax liability following the introduction of the new Valuation List.

10.2.7

Discount Disregards

Schedule 1 of the LGFA 1992 provides a list of classes of persons who can be disregarded for the purposes of the determination of a discount (see above). **The Council Tax (Discount Disregards) Order 1992, SI 1992/548**, amplified the requirements for a number of the classes of disregarded persons. In particular, **schedule 1 of SI 1992/548** defines the terms “apprentices”, “students”, “student nurses” and “youth training trainee”. **Schedule 2** defines the “prescribed educational establishments” for students and student nurses. Later amendments altered the requirements for inclusion in a number of classes.

10.2.8

Additional Provisions

The Council Tax (Additional Provisions for Discount Disregards) Regulations 1992 (as amended by the Council Tax (Civil Partners) (England) Regulations 2005) provided additional provisions for “care workers”. Amendments also provided for classes of persons to be included in the final paragraph of schedule 1 of the LGFA 1992, “persons of other descriptions”:

- Class A - members of international headquarters and defence organisations;
- Class B - members of religious communities;
- Class C - school and college leavers;
- Class D - members of visiting forces;

- Class E – certain, non-British spouses or civil partners or dependants of students;
- Class F - diplomats and others.

10.2.9

Disability Reduction Scheme

The Council Tax (Reductions for Disabilities) Regulations 1992, SI 1992/554, provides for a “qualifying individual”, with a sole or main residence fulfilling one of three criteria, to apply for a reduction in the amount of Council Tax payable for his/her dwelling. The reduced Council Tax bill is calculated using a lower Council Tax band than would ordinarily be applicable to the dwelling. A “qualifying individual” is defined as “a person who is substantially and permanently disabled (whether by illness, injury, congenital deformity or otherwise)”. The three criteria are that the dwelling must have:

- a room predominantly used by and required for meeting the needs of the qualifying individual, but not a bathroom, kitchen or lavatory; or,
- an additional bathroom or kitchen required for meeting the needs of the qualifying individual; or,
- sufficient floor space for the use of a wheelchair required for meeting the needs of the qualifying individual.

The phrase “required for meeting the needs of”, as used in the regulations, is defined as “being essential or of major importance to his well-being by reason of the nature and extent of his disability”.

10.2.10

Band A

From 1 April 2000, the disability reduction scheme is extended to band A dwellings. The standard qualifying criteria apply. The reduction for a qualifying band A dwelling is 1/9th of the band D charge; this is equivalent to the reduction for qualifying dwellings in bands B, C and D (**SI 1999/1004**).

10.3 CASE LAW

10.3.1

MULLANEY v WATFORD BOROUGH COUNCIL AND HERTFORDSHIRE VALUATION TRIBUNAL and CLAYTON v SAME HC (RA 1997, page 225)

The taxpayers, Miss Mullaney and Mr Clayton, each received a 25% single resident discount in respect of two separate dwellings. The Billing Authority removed Mr Clayton’s single resident discount and Miss Mullaney was awarded a 50% no resident discount for her dwelling on the basis that it was no person’s sole or main residence. The Valuation Tribunal dismissed Miss Mullaney’s and Mr Clayton’s appeals, thereby upholding the Billing Authority’s decision.

Miss Mullaney and Mr Clayton appealed to the High Court. Justice Scott Baker considered the evidence presented at the Tribunal hearing in relation to the issue of

which of the two dwellings was Miss Mullaney's main residence, including: early morning surveillance reports; benefit investigation officer's meetings with Mr Clayton; and, location of Miss Mullaney's possessions. The High Court dismissed Miss Mullaney's and Mr Clayton's appeals.

The appeals were concerned primarily with the issue of "sole or main residence". However, the determination of sole or main residence had ramifications for the awarding of discounts to the taxpayers. A dwelling which is only one person's sole or main residence will attract a 25% single resident discount; a dwelling which is no person's sole or main residence may attract a 50% no resident discount.

10.3.2

DONCASTER BOROUGH COUNCIL v STARK HC (RVR 1998, page 80)

A Valuation Tribunal decided that the wife of a serving member of the RAF, Corporal Stark, was entitled to a 25% single person discount at the marital home. Accommodation was provided for Corporal Stark at his RAF base; he was forbidden from commuting between the base and the marital home. Doncaster Borough Council appealed against the Tribunal's decision to the High Court; the appeal was allowed.

Once again the appeal concerned "sole or main residence". Justice Potts concluded that Corporal Stark's sole or main residence was the marital home and not his accommodation on the RAF base. On this basis, he directed that Doncaster Borough Council's decision not to award the 25% single resident discount should be reinstated.

10.3.3

BOGDAL v KINGSTON UPON HULL CITY COUNCIL HC (RA 1998, page 45)

The High Court agreed with a Valuation Tribunal that a dwelling was not a residential care home and that the residents could not be disregarded for the purposes of Council Tax discount. On this basis, a 50% no resident discount was not applicable for the dwelling in question. Justice Moses dismissed Mr Bogdal's appeal.

Schedule 1 of the LGFA 1992 provides a list of persons that can be disregarded for Council Tax purposes. **Paragraph 7** provides for "patients in homes in England and Wales" to be disregarded.

"Care home" means

- (a) a care home within the meaning of the Care Standards Act 2000 or
- (b) a building or part of a building in which residential accommodation is provided under section 21 of the National Assistance Act 1948:

"Independent hospital" has the same meaning as in the Care Standards Act 2000.

The legislation referred to in (a) provided that registration was not required in respect of a small home if only persons receiving board and personal care there were persons "carrying on the home", employed there or their relatives. A small home was defined as an establishment having fewer than four persons receiving board and personal care.

Mr Bogdal contended that the dwelling was a small home that did not have to be registered and that the occupants (himself, his mother and another elderly lady) should

be disregarded for discount purposes, thereby qualifying for a 50% no resident discount. Justice Moses agreed with the Tribunal's findings that the dwelling was not a small home but an ordinary domestic dwelling. Evidence was placed before the Tribunal that neither Mr Bogdal's mother nor the other elderly lady were receiving personal care. Justice Moses also concluded that there was no evidence to support the notion that the dwelling was an "establishment".

The appellant subsequently appealed to the Court of Appeal which held that it was not an establishment as there was no element of organisation in the way it was run.

10.3.4

Student disregard discount

R (ON THE APPLICATION OF CARMARTHENSHIRE COUNTY COUNCIL) V WEST WALES VT & EVANS (RVR 2004, page 138)

The VT's decision was quashed because it had erred in its finding that Mrs Evans was a full time student doing a qualifying course of education. Mrs Evans was undertaking an All Wales Part Time Occupational Therapy Course at the University of Wales. The High Court decided that Mrs. Evans's course of study did not meet the qualifying criteria for the Council Tax (Discounts Disregards) Order 1992 because she was not required to attend the college for 24 weeks or more in an academic year.

10.3.5

Reduction for disabilities

SANDWELL MBC V PERKS (HC) (RVR 2003 page 317)

The West Midlands (West) Valuation Tribunal's decision to allow the council taxpayer a disabled person's discount was set aside because it had failed to establish a causative link between the disabled person and her need for a room. In this case, the disabled person was unable to climb the stairs in the family home and resided in the living room. The High Court's judgment followed the Court of Appeal judgment in Howell-Williams v Wirral Borough Council, where it was decided that a disabled person needed a living room like anyone else, not merely because she was disabled.

10.3.5A

R (ON THE APPLICATION OF HANSON) V MIDDLESBROUGH BOROUGH COUNCIL (HC) 2006

The Valuation Tribunal had misdirected itself in law in three respects: they failed to apply the test of 'major importance' because they equated that with a test of 'extreme difficulty without'; they failed to apply a test of 'major importance' because having found it was not essential, they failed to appreciate that there is an alternative and lesser requirement of major importance; they introduced a further, unwarranted requirement, namely what a potential purchaser would be able to detect. A bidet was needed because of the qualifying person's disability, and the grip-rail in the bathroom (whether an accessory or a constituent part of the bathroom) was a measure needed to reduce the risk of falling, and as such was of major importance. A causative link had also been shown to the satisfaction of Deputy Judge Mr James Goudie QC.

The High Court allowed the council taxpayer's appeal and overturned the valuation tribunal's decision not to allow disabled relief for an additional en-suite bathroom. Deputy Judge James Goudie QC determined that the valuation tribunal had misdirected itself on three counts.

Firstly, it reformulated the statutory test of being "essential or of major importance" into what he judged to be a more stringent requirement of being "physically or extremely difficult".

Secondly, the tribunal erroneously concluded that the additional en-suite bathroom was not essential or of major importance to the disabled person because, even without it, she could still occupy the property.

Thirdly, the tribunal had also erred in importing a further test into the equation. Would a future purchaser be able to detect that the property had been altered to meet the needs of a disabled person?

The Deputy Judge determined that the en-suite bathroom was of major importance to the disabled person because it reduced the risk of her getting injured whilst bathing. The tribunal should have applied the statutory language not misapply or fail to apply the test of being "essential or of major importance."

10.3.5B

SOUTH GLOUCESTERSHIRE COUNCIL V TITLEY: SAME V CLOTHIER (RA 2007, page 27)

Mr Titley was profoundly deaf and resided alone in a two bedroom house. His living room was equipped with a hearing loop to enable him to watch television, listen to his radio and receive visitors.

The High Court held that Mr Titley's case was indistinguishable from that of Mrs Howell-Williams. Mr Titley used his living room as any other normal person would do. It was the hearing loop system not the living room in which it was placed that was essential to his well-being.

Mr Clothier had two grown up children, a daughter aged 33 and a son aged 20, both of whom suffered from Downs syndrome. Each of them had their own bedroom where they spent the majority of the day alone. Medical evidence was provided to support the fact that both children needed their own bedroom which provided a safe environment to allow them to enter their own private world. There were no physical adaptations made to either bedroom.

Again, the High Court held that no relief was applicable. Even if the children had no disability but were still living with their parents at that age, they were likely to have their own bedroom(s) anyway. Neither bedroom was an "additional" feature, which had been created to meet the needs of a disabled person.

10.3.6

Service of demand notices

REGENTFORD v THANET DISTRICT COUNCIL (HC) (RA 2004 page 113)

The High Court dismissed the appellant company's argument that the Billing Authority had not served demand notices as soon as practicable. Consequently, the Billing Authority was entitled to recover the outstanding council tax liability going back six years.

10.4 COMMENTARY

10.4.1

Sole or Main Residence

As can be noted from the legislation referred to at the beginning of this section, Council Tax discounts are related to the number and nature of residents in a dwelling. "Resident" is defined in **section 6 of the LGFA 1992** as:

"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."

The concept of "sole or main residence" was introduced in the **LGFA 1988**, the primary legislation that created the Community Charge. However, no definition of "sole or main residence" was included and it was left to the High Court, by way of appeals against decisions of Valuation and Community Charge Tribunals, to interpret the meaning of the phrase. The factors which the High Court considered important for interpretation were also examined in the later cases in respect of Council Tax liability appeals (see 8.3).

10.4.2

Discount Disregards

Schedule 1 of the LGFA 1992 lists classes of persons who are residents of a dwelling but can be "disregarded" for Council Tax discount determination purposes. The requirements for inclusion in the classes were amplified by **SI 1992/548** and **SI 1992/552**; these have been amended by various other orders and regulations issued since that time.

10.4.3

Students

Perhaps the largest group of discount disregards is found within **paragraph 4 of schedule 1**: "Students etc". The paragraph provides that a person is disregarded if he/she is a "student, student nurse, apprentice or youth training trainee". These terms are defined in **schedule 1 of SI 1992/548**. The largest of the three sub-groups is that covered by the term "student", defined as:

- " (a) a foreign language assistant.....
- (b) a person undertaking a full-time course of education.....
- (c) a person undertaking a qualifying course of education....."

Sub-paragraph (b) above is itself defined in terms of somebody "attending" a course at a "prescribed educational establishment". There are therefore three questions that need

to be answered in the affirmative before this type of student can be designated a discount disregard:

- Is the person enrolled at a prescribed education establishment?
- Is the person required to attend a course at the establishment?
- Is the course full-time?

SI 1992/548 provides all the requirements needed to answer these questions. It lists the prescribed educational establishments (universities etc) and defines what is meant by “full-time”.

Full-time courses of education are those which have a duration of at least one academic year (or one calendar year for those institutions not having academic years); for which attendance for at least 24 weeks in each academic or calendar year is required; and, that would normally require the student to study, be tutored and/or undertake work experience, for a total of at least 21 hours per week in the year.

However, if the total hours of the work experience element exceeds that of the study and/or tuition, then the course concerned cannot be deemed to be a full-time course of education (the exception to this being the course for the initial training of teachers in schools).

A qualifying student should be provided with, upon request, a certificate from the educational establishment that he/she attends (**paragraph 5 of schedule 1 of the LGFA 1992**). The certificate should then be passed to the relevant Billing Authority in order that the Authority can recognise the qualifying student as a discount disregard.

10.4.4

Disability Reduction Scheme

According to the Department for Communities and Local Government, the disabled band reduction scheme seeks to ensure that disabled people do not pay more council tax because they live in a larger property than they would have needed if they were not disabled. To qualify for a reduction, an extra room need not have been specially built, but can be an existing room provided the link between its use and the person’s disability is sufficiently strong.

A Tribunal hearing an appeal in relation to **SI 1992/554**, having established that the person is a qualifying individual, must consider first whether the room is essential or of major importance, and secondly whether a causative link has been shown between the disability and the requirement of the use of the room

10.4.5.

Job-related accommodation

A dwelling is job related if it is provided by an employer for the person concerned in cases where, because of the nature of the employment, the employee is required to live in that dwelling for the proper or better performance of his duties. An example could be a schoolmaster who is required to live within the school premises, during term time. It

may also apply if the dwelling is provided as a part of a special security arrangement to protect that employee's safety.

11. PENALTIES

11.1 INTRODUCTION

11.1.1

Where a person fails to supply certain information requested by a Billing Authority, or knowingly supplies inaccurate information in purported compliance with such a request, the Authority may impose a penalty of £50 on him.

11.1.2

Where a penalty has been imposed and a further request to supply the same information is made and again is not properly complied with, the Authority may impose a further penalty of £200, and may do so each time it repeats the request and the person concerned does not properly comply with it.

11.1.3

Where a person is required by **schedule 2 of the LGFA 1992** to correct an assumption made by a Billing Authority concerning a discount or an exemption of a dwelling and he fails to do so without reasonable excuse, the authority may impose a penalty of £50 on him.

11.2 LEGISLATION

11.2.1

Local Government Finance Act 1992 (LGFA 1992) – Section 14(2) and Schedules 2 & 3
The Valuation and Community Charge Regulations 1989 SI 1989/439 – Regulations 35, 36 & 37
The Council Tax (Administration and Enforcement) Regulations 1992 SI 1992/613 – Regulations 2, 3, 11, 12, 16 & 29

11.2.2

Supply of Information to a Billing Authority

A person who appears to a Billing Authority to be a resident, owner or managing agent of a dwelling must, on written request, supply certain information to the Authority. It must be supplied if it is in the person's possession or control and the Authority has requested it in order to identify the person who is, or would be, liable for a specified period in relation to the dwelling, including persons jointly and severally liable. The information must be provided within 21 days of the Authority's written request and in any form which is specified (**regulation 3 of SI 1992/613**).

A Billing Authority possesses similar powers in respect of dwellings which appear to it to be exempt and in respect of which it requires the resident, owner or managing agent to provide information for the purposes of identifying the liable person or persons for any specified period, or the person or persons who would be liable if the dwelling had not been exempt for that period.

11.2.3

Time Period

Where a person fails to provide the information referred to in the above paragraph within the period of 21 days from the date of the written request, or where he knowingly supplies information which is materially inaccurate, the Billing Authority may impose a penalty of £50 on him (**schedule 3 of the LGFA 1992**).

11.2.4

Further Penalty

Where the Authority has imposed a penalty and a further request for the same information is made to that person and is again not properly complied with, the Authority may impose a further penalty of £200. A penalty of £200 may be imposed each time the Authority repeats the request and the person does not fulfil his statutory obligations (**schedule 3 of the LGFA 1992**).

11.2.5

Exemptions and Discounts

Where a Billing Authority has assumed that a dwelling is exempt, or that the chargeable amount in respect of it is subject to a discount, and it has informed the liable person (or the person who would be liable if a dwelling were not exempt) of that assumption, that person must inform the Authority within 21 days of his having reason to believe that any time before the end of the financial year following the year in respect of which the assumption as to exemption or discount was made, the assumption did not apply or will not apply. This includes cases where a discount should not apply, or a smaller discount should be made, and where a dwelling is not exempt or is exempt for a shorter period than assumed by the Authority. A Billing Authority may impose a fine of £50 on a person who fails without reasonable excuse to notify it of such information.

11.2.6

Penalty Demand

A penalty must be paid to the Billing Authority that imposed it. It may be collected as part of a person's ordinary Council Tax liability or may be demanded by notice served on the person requiring payment within a specified period (not being less than 14 days). An Authority may quash a penalty that it has imposed. It may not impose a penalty in respect of conduct by a person that has led to his being convicted of an offence (see **section 27(4) and 27(5) of the LGFA 92**).

11.2.7

Appeals

A person may appeal to a Valuation Tribunal if he is aggrieved by the imposition on him of a penalty, or he may appeal against the amount imposed. An appeal against a penalty must be dealt with by the Tribunal whose area of jurisdiction includes the area of the Billing Authority concerned (**schedule 3 of the LGFA 1992**).

The appeal must be initiated by serving on the Clerk of the Tribunal a written notice of appeal containing the grounds on which the appeal is made and the date of service of written notice of the imposition of the penalty. An appeal shall be dismissed if it is not initiated within two months of the date of service of the penalty notice, unless the President is satisfied the delay was caused by circumstances outside the appellant's control and authorises the appeal to be entertained.

11.3 CASE LAW

11.3.1

There is no relevant case law at present.

11.4 COMMENTARY

11.4.1

Community Charge

When Community Charge was introduced a new provision allowed a Billing Authority to issue a penalty against an individual who knowingly gave wrong information or refused to supply information with regard to their liability. There was also a right of appeal to the Tribunal.

In the main, Billing Authorities found the issuing of a penalty to be of little assistance and very few were issued. As a result there were very few appeals against penalties. The same applies with regard to Council Tax.

11.4.2

Points to Note

- There is no formal procedure requiring a taxpayer to appeal to the Billing Authority, regarding the imposition of a penalty, prior to taking the matter up with the Valuation Tribunal.
- A Valuation Tribunal can only quash a penalty; it has no power to amend the amount.
- A Billing Authority is prevented from collecting a penalty whilst there is an appeal in respect of the penalty outstanding (**regulation 29(2) of SI 1992/613**).

12. INITIATION OF LIABILITY APPEALS

12.1 INTRODUCTION

12.1.1

A person may appeal to a Valuation Tribunal if he disagrees with a Billing Authority's decision that he is liable for Council Tax, or that a dwelling is chargeable. He may also appeal if he disputes the amount of Council Tax for which he is held liable by the authority. No appeal may be made, however, unless he has first made representations in writing to the Billing Authority.

12.1.2

The manner of making an appeal and relevant time limits are prescribed in regulations.

12.2 LEGISLATION

12.2.1

Local Government Finance Act 1992 (LGFA 1992) - Sections 15 and 16

The Valuation and Community Charge Tribunals Regulations 1989 SI 1989/439 (as amended by SI 1993/292, SI 1993/615 and SI 1995/363) - Regulations 34 to 37

12.2.2

Jurisdiction

Section 15 (2) (a) of the LGFA 1992 sets out the jurisdiction of Valuation Tribunals in respect of Council Tax liability appeals.

12.2.3

Taxpayer's Choice of Valuation Tribunal

An appeal must usually be dealt with by the Valuation Tribunal established for the area in which the dwelling concerned is situated. However, where a person is held liable to pay Council Tax as a resident of a dwelling by more than one Billing Authority for the same day, and the person has appealed against the decision of each Billing Authority, he may choose which Tribunal shall deal with the appeal by giving notice in writing to the Clerks of the Tribunals involved.

12.2.4

Appeals made by VT Members and Staff

Where the appellant is a member of staff appointed by the Valuation Tribunal Service to serve a relevant Tribunal or is a member of the relevant Tribunal, the appeal cannot be dealt with by that Tribunal and must be dealt with by another, appointed for the purpose by the Secretary of State. This also applies to a former member or employee of a Tribunal, if the President of that Tribunal determines that it shall not deal with his appeal.

12.2.5

Rights of Appeal

Sections 16(1) and 16(2) provide that a person may make an appeal if he is aggrieved by:

- any decision of a Billing Authority that a dwelling is a chargeable dwelling, or that he is liable to pay Council Tax in respect of such a dwelling; or
- any calculation (or estimate) made by such an Authority of an amount which he is liable to pay to the Authority in respect of Council Tax.

12.2.6

Conditions

Before an aggrieved person may make an appeal certain conditions must have been met. The aggrieved person must have served a written notice on the Billing Authority concerned, giving details of his grievance. The Billing Authority must consider the matter and any written reply it makes must set out the steps it has taken to deal with the grievance, or the reasons why it believes the grievance is not well founded. Where the aggrieved person receives a reply that does not satisfy him, or has not received a reply within two months of serving his notice on the authority, he may appeal to the relevant Valuation Tribunal.

12.2.7

Time Limits

An appeal must be made within two months of the date of service of the Billing Authority's notice, or in a case where no such notice is received from the Authority, within four months of the date of service of the aggrieved person's notice. Any appeal made outside the above time limits must be dismissed, unless the President of the Tribunal is satisfied that the failure to make the appeal in time arose due to circumstances beyond the appellant's control and the President authorises the appeal to be entertained (**regulation 36 of SI 1989/439**).

12.2.8

Notice of Appeal

Regulation 37 of SI 1989/439 provides that an appeal is initiated by serving a written notice on the Clerk of the relevant Tribunal. The notice must contain:

- the grounds on which the appeal is made;
- the date on which the appellant served his notice of grievance on the Billing Authority; and
- the date of the Billing Authority's reply, if any.

12.2.9

Receipt of Appeal

Within two weeks of receiving the notice of appeal, the Clerk must notify the appellant of its receipt and serve a copy of it on the Billing Authority, and on any other Billing Authority which appears to him to be involved.

12.3 CASE LAW

12.3.1

R v WEST NORFOLK ASSESSMENT COMMITTEE, EX PARTE WARD HC (RA 1930, page 418)

The High Court refused to interfere by way of *mandamus* with the refusal of an Assessment Committee to hear an appeal arising from a second proposal, which was made only because the proposer had failed to appeal in the time against the Committee's decision on the first proposal.

12.4 COMMENTARY

12.4.1

Exempt Dwellings

Any person may appeal against a decision of a Billing Authority that a dwelling is not an exempt dwelling, (**section 16(1) (a)**), provided he is aggrieved by the decision. If, however, an aggrieved person believes that a property is not a dwelling at all, he should seek its deletion from the Valuation List via a proposal served on the Listing Officer, as no appeal may be made under **section 16** in these circumstances.

12.4.2

Appeal by Liable Person

An appeal against being treated as the liable person, (**section 16(1) (a)**), or concerning the calculation of the amount of Council Tax for which a person is held liable, (**section 16(1) (b)**), may only be made by the person held liable, including any person who is jointly and severally liable under **sections 6, 7, 8 or 9 LGFA 1992**. An appeal against a Billing Authority's calculation of the amount of Council Tax payable may concern whether or not a discount should be granted, based on the numbers of persons treated as resident (sole or main residence) or whether a resident should or should not be disregarded for discount purposes.

12.4.3

Disability Reduction Appeal

An appeal against a Billing Authority's refusal to grant a reduction for disability under **SI 1992/554** may also be made under **section 16(1) (b)**.

12.4.4

Council Tax Benefit

No appeal may be made to a Valuation Tribunal where a person disputes the amount payable because he disagrees with the calculation of the amount of Council Tax benefit to which he is entitled. In such circumstances separate procedures exist whereby the person concerned may challenge the Authority's determination of the amount of benefit entitlement.

12.4.5

Judicial Review

Section 66 of LGFA 1992 sets out other matters which may only be challenged by application for judicial review. These include the specification by the Secretary of State of classes of exempt dwelling; any decision by him with regard to allocation of grant or capping of expenditure; the decisions of a Billing Authority in setting the amount of Council Tax or a substituted amount for a financial year, or that of a Precepting Authority with regard to the issue of a precept, or a substituted precept.

12.4.6

Further Appeal

Although there are statutory requirements as to the manner of and periods in which appeals may be made, there appears to be no statutory bar to making a further appeal where, for example, an earlier appeal on the same grounds was dismissed as out of time. In the West Norfolk Assessment Committee case, the High Court did not interfere with the Committee's refusal to consider a further appeal made in broadly similar circumstances. It is suggested, however, that any such appeal should more correctly be decided by the Valuation Tribunal, even if the circumstances of the case once again require a dismissal as out of time.

12.4.7

Sole or Main Residence

In some cases concerning the question of the place of a person's sole or main residence, dwellings in the area of more than one Billing Authority will be involved. It is likely that an appeal will be made against the decision of only one Billing Authority (assuming they have agreed between themselves as to which dwelling is the person's sole or main residence). However, each Billing Authority will have an interest in the appeal and in accordance with **regulation 37(5) of SI 1989/439** (, the Clerk should serve a copy of the notice of appeal on each Billing Authority.

13. COMPLETION NOTICES

13.1 INTRODUCTION

13.1.1

The completion day for a new building for Council Tax purposes falls to be determined under the provisions of **section 17 of the LGFA 1992** and in accordance with **schedule 4A of the LGFA 1988** (**Schedule 4A** also applies in respect of completion of new buildings for the purposes of non-domestic rating).

13.1.2

A completion notice must be served by a Billing Authority on the owner of any building in relation to which the remaining works appears to it to be reasonably capable of completion within 3 months. An Authority may also serve a notice in respect of a new dwelling which it finds to have been completed, but it cannot backdate the effective date (the completion day) stated in the notice in such circumstances, even if the dwelling was in fact completed some time earlier. If a person disagrees with the completion day stated in a notice he may seek to agree a different completion day with the Billing Authority, and/or may appeal to a Valuation Tribunal.

13.1.3

The completion day stated in the notice is the day on which a new dwelling is deemed to have come into existence, unless a different day is determined following agreement between the owner and the Billing Authority, or following an appeal, in which case that other day shall apply.

13.2 LEGISLATION

13.2.1

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

Local Government Finance Act 1992 (LGFA 1992) - Section 17

The Valuation and Community Charge Tribunals Regulations 1989 SI 1989/439 (as amended by SI 1993/292, SI 1993/615 and SI 1995/363) - Regulations 34 to 37

13.2.2

Completion of New Dwellings

Section 17(1) of the LGFA 1992 provides that **schedule 4A to LGFA 1988** shall apply for Council Tax purposes, with the exception of **paragraph 6** of the schedule.

13.2.3

New Buildings (Completion Days)

Schedule 4A requires a Billing Authority to serve a notice on the owner of any building on which the work remaining to be done can reasonably be expected to be completed within three months unless the Listing Officer directs otherwise in writing. "Owner" is defined as the person entitled to possession of the building.

The notice must be served as soon as is reasonably practicable and must specify the building to which it relates and the day proposed as the completion day, which may not

be later than three months from the day on which the notice is served. **Paragraph 8** of the schedule contains provisions concerning the mode of service of notices.

13.2.4

Completion Notice

If a Billing Authority becomes aware that a new building has been completed, it has the discretion to serve a completion notice on the owner, again subject to the Listing Officer's written veto. If the Authority does serve the notice, the completion day specified must be the same as the day on which the notice is served.

13.2.5

Withdrawal of Completion Notice

A Billing Authority may withdraw a completion notice by serving a subsequent completion notice on the owner. If the owner has appealed against the earlier notice, however, the Authority may only withdraw that notice with the written consent of the owner. No withdrawal may be made if the completion day has already been determined under **schedule 4A**, for example where an appeal against the day stated in the notice has been decided, or where no appeal has been made within the statutory time limits.

13.2.6

Agreement in Writing

A person on whom a completion notice is served may agree in writing with the Authority concerned that a different completion day shall apply, in which case the completion notice is deemed to have been withdrawn.

13.2.7

Appeal against Completion Notice

A person on whom a completion notice is served may appeal to a Valuation Tribunal on the grounds that the building has not been, or cannot reasonably be expected to be completed by the day stated in the notice. If the appeal is not withdrawn or dismissed, the completion day is the day determined by the Tribunal.

Regulation 36(4) of SI 1989/439, as amended, provides that an appeal against a completion notice shall be dismissed if it is initiated later than four weeks after the notice was served, although Regulation 36(5) allows the President of the Tribunal to authorise an appeal to be considered if he is satisfied that the delay was caused by circumstances outside the appellant's control.

13.2.8

Notification to the Listing Officer

A Billing Authority is required to supply to the Listing Officer a copy of every completion notice which it serves, and must notify the Listing Officer if it withdraws a notice or agrees a different date in writing with the person on whom the notice was served.

13.2.9

Completion Day

Paragraph 9 of schedule 4A provides that the completion day stated in a notice served on the owner of a building which is substantially complete, must allow a reasonable time for full completion of the works outstanding.

13.2.10

Structural Alterations

Sections 17(5), 17(6) and 17(7) of LGFA 1992 make provision for when a completion day is determined under the **schedule 4A** where structural alterations have taken place, by virtue of which part or the whole of an existing dwelling or dwellings (or other building) becomes, or becomes part of, one or more different dwellings. In such circumstances the existing dwelling or dwellings are deemed to have ceased to exist - and the different dwelling or dwellings are deemed to have come into existence - on the completion day so determined.

13.3 CASE LAW

13.3.1

Most of the following cases relate to non-domestic rating, but remain relevant for Council Tax purposes.

13.3.2

RAVENSEFT PROPERTIES LTD v LONDON BOROUGH OF NEWHAM CA (RA 1975, page 410)

A newly-erected building is a completed building for the purpose of a completion notice for the unoccupied rate, only when it is ready for occupation and not when it is structurally completed; and a 14 storey office block under construction is not completed where the vast floors have no partitions installed. *Quaere* whether an office with no points for electricity outlets for the fuse box and no wiring for a power circuit, and no wiring for lighting and with no telephones is a completed building.

13.3.3

POST OFFICE v NOTTINGHAM CITY COUNCIL CA (RA 1976, page 49)

A newly-erected building is completed for the purpose of a completion notice for the unoccupied rate when it is ready for occupation in the sense that as a building it is ready for occupation for the purpose for which it was intended (as a house, shop, office, factory etc) and not only when the furniture and equipment necessary for its actual occupation are installed, when occupation will have commenced (leaving no scope for the unoccupied rate on a newly erected building). A county court judge was held to have applied the right test and to have been fully justified in finding that a telephone exchange building would be completed when as a building it was ready for occupation as a telephone exchange although it could not be used as a telephone exchange until further telephone equipment had been installed.

13.3.4

JGL INVESTMENTS LTD v SANDWELL DISTRICT COUNCIL CA (RA 1977, page 78)

The period within which erection of a building may “reasonably be expected to be completed” under **paragraph 8(4) of schedule 1 to the General Rate Act 1967**, relating to appeals against completion notices for unoccupied rate purposes, where erection has been substantially completed within **paragraph 9**, is the time “reasonably required for carrying out the work” remaining to be done. It does not include the time required for finding tenants who will decide what form the work shall take, in this particular case the partitioning of large open plan offices.

13.3.5

GRAYLAW INVESTMENTS v IPSWICH BOROUGH COUNCIL (1978) HC

Where work remains to be done to a substantially completed building of a kind customarily done after substantial completion, the building may be treated as completed for unoccupied rating purposes on a date arrived at by adding on to the date of substantial completion the time reasonably required for carrying out the work.

13.3.6

HENDERSON v LIVERPOOL METROPOLITAN DISTRICT COUNCIL HC (RA 1980, page 238)

Where a new house was under construction in the garden of an existing house, a completion notice bearing the name of the existing house was held valid in respect of the new house because it clearly related to the new house and the ratepayer was not misled.

13.3.7

LONDON MERCHANT SECURITIES PLC & TRENDWORTHY TWO LTD v LONDON BOROUGH OF ISLINGTON (1987) H of L (RA 1987, page 99)

In determining the starting date for the customary works required to complete a newly-erected building, it was necessary to determine when the building was complete apart from the customary work because it was from that date that the period reasonably required for the customary work must be assumed to run.

In estimating the time reasonably required for carrying out those works customarily done after substantial completion, time for design and obtaining necessary approvals must be excluded.

13.3.8

SPEARS BROTHERS V RUSHMOOR BOROUGH COUNCIL (RA2006, page 86)

The Lands Tribunal decided to quash a completion notice because it was apparent from the facts that the appeal property could not reasonably have been expected to be completed within three months of the date that the completion notice was served. In this case, the lack of electrical wiring and lighting meant that the property was nowhere near complete. On the date that the completion notice was issued, there was no prospect of an independent electricity supply being connected to the property within three months.

Consequently, a building without electric lighting was incapable of occupation as a workshop. In addition, there was no fire alarm system and the building could not be occupied without one.

13.4 WORKING PRACTICES

13.4.1

Adequate Identification

A completion notice must adequately identify the building to which it relates (Henderson v Liverpool Metropolitan District Council).

13.4.2

Entry in the Valuation List

There is no requirement for a Billing Authority to serve a notice if it is of the opinion that a new building has been completed. If there were, the inability to backdate the completion day could result in a significant loss of Council Tax in a case where a dwelling had in fact been completed for some time before it came to the Authority's attention. The Listing Officer has the power to direct an Authority not to issue a notice in such circumstances, and he may then enter the dwelling into the Valuation List from the earlier day on which it actually came into existence.

13.4.3

Incomplete Buildings

The Listing Officer may also direct a Billing Authority to refrain from issuing a completion notice in the case of an incomplete building to which the Authority believes the remaining work may reasonably be expected to be completed within three months. If a notice is issued in respect of an incomplete building and no further work is in fact carried out by the completion day stated, the Listing Officer is obliged to assume that the dwelling has been completed and to value it on that basis. These circumstances may be contrasted with the situation where a person has occupied an incomplete building, which consequently becomes a dwelling by reason of that occupation, but which then has to be valued in its actual, incomplete condition.

13.4.4

Full Completion

If a building is substantially complete but there remains to be done to it work "which is customarily done to a building of the type in question after the building has been substantially completed", a Billing Authority may not treat the building as complete. It must allow a reasonable time from substantial completion for full completion, the test of completion being whether, as a matter of fact and degree, the building is, or will be, ready for occupation for the purposes for which it was intended. (Post Office v Nottingham City Council; Ravenseft Properties v London Borough of Newham; Graylaw Investments Ltd v Ipswich Borough Council).

13.4.5

Exclusions in Time for Work Outstanding

Time for obtaining planning approvals after substantial completion and time, however reasonable, for finding a tenant should be excluded in considering the time reasonably required to complete the work outstanding (London Merchant Securities Plc & Trendworthy Two Ltd v London Borough of Islington; JGL Investments Ltd v Sandwell District Council).

14. DEATH OF PERSONS LIABLE

14.1 INTRODUCTION

14.1.1

Under the powers conferred upon him by **section 18 of LGFA 1992**, the Secretary of State has made provisions by regulations for liability for Council Tax in respect of deceased persons.

14.2 LEGISLATION

14.2.1

Local Government Finance Act 1992 (LGFA 1992) - Section 18
The Council Tax (Administration & Enforcement) Regulations 1992 SI 1992/613 - Regulation 58

14.2.2

Death of Persons Liable

Where a person dies owing Council Tax for which he was liable under **section 6, 7, 8 or 9 of the LGFA 1992**, or where he has not paid a penalty imposed on him under **schedule 3 of the LGFA 1992**, his executor or administrator is liable to pay the amount outstanding, including any relevant costs, such as costs shown in a liability order, or costs relating to a distress warrant, or to a warrant for commitment to prison. The sum may be deducted out of the assets and effects of the deceased (**section 18 of the LGFA 1992**).

14.2.3

Liability of Executor / Administrator

Where a sum becomes payable (i.e. a demand notice is issued) after a person's death, the executor or administrator is similarly liable, provided a notice has been served on him requiring payment of the sum.

14.2.4

Overpayments

Where an overpayment of Council Tax (including relevant costs) was made before the deceased person's death, his executor or administrator is entitled to the amount of the excess.

14.2.5

Enforcement

A sum payable is enforceable as a debt of the deceased's estate and the liability of the executor or administrator is in his capacity as such. No liability order need be applied for in respect of such a sum. In relation to Council Tax liability of a deceased person, his executor or administrator may initiate, continue or withdraw proceedings, whether by way of appeal under **section 16 of the LGFA 1992** or otherwise.

14.3 CASE LAW

14.3.1

There is no relevant case law at present.

14.4 COMMENTARY

14.4.1

In the majority of cases where a taxpayer dies, liability will cease and a final demand / credit note will be issued by the Billing Authority to the executors.

15. EXCLUSION OF CROWN EXEMPTION

15.1 INTRODUCTION

15.1.1

Under **section 19 of the LGFA 1992**, dwellings provided and maintained by certain Authorities shall not be prevented from treatment as chargeable dwellings, despite any rules as to Crown exemption which would otherwise have applied, nor shall the liability of any persons in respect of such dwellings be prevented by those rules.

15.2 LEGISLATION

15.2.1

Local Government Finance Act 1988 (LGFA 1988) – Section 144
Local Government Finance Act 1992 (LGFA 1992) - Section 19

15.2.2

Exclusion of Crown Exemption in Certain Cases

Any rules concerning Crown exemption shall not prevent a dwelling being a chargeable dwelling or any person being liable to pay Council Tax in respect of it, if it is provided and maintained for any Crown purposes, including police purposes or purposes connected with the administration of justice, by any of the following Authorities:

- a Billing Authority other than the Council of the Isles of Scilly;
- a County Council;
- a Metropolitan County Police Authority;
- the Northumbria Police Authority
- the receiver for the Metropolitan Police District; or
- a combined Police Authority as defined in **section 144 of the LGFA 1988**.

15.2.3

Prescribed Classes

The Secretary of State may, by order, provide that exclusion of Crown exemption may also apply in relation to any dwelling of a class prescribed by the order. Such prescription may be by reference to one or more of the following factors:

- the physical characteristics of dwellings;
- the fact that dwellings are unoccupied, or are occupied, for prescribed purposes or are occupied or owned by persons of prescribed descriptions.

15.3 CASE LAW

15.3.1

There is no relevant case law at present.