

Insights

BUSINESS RATES AND THE BAR - OCCUPATION, PURPOSE AND TRUST IN A SET OF CHAMBERS

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SUMMARY

In the recent case of *Prosser v Ricketts* [2024] UKUT 264 (LC), the Upper Tribunal Lands Chamber (UT) had to decide whether barristers' chambers rooms should be treated as a collective, single unit for business rates purposes, or whether each individual room, occupied exclusively by an individual member of chambers, should be assessed separately, potentially qualifying for small business rates relief.

BACKGROUND

A successful set of barristers' chambers are leaseholders of a set of rooms in London. The leases were granted to four members of chambers on trust for all the members. Each room is allocated to individual members of chambers and there is also some communal space used as a seminar room, administration room and a room used by the pupil barristers. The entire premises were entered as a single hereditament in the 2017 rating list.

Head of Chambers, Mr Kevin Prosser KC, proposed that the assessment be split to show each room as a separate hereditament in order to claim small business rates relief. The Valuation Officer (VO) rejected Mr Prosser's proposal and opposed the split, asserting that all the members of chambers were jointly in rateable occupation of the whole premises. Mr Prosser appealed to the UT.

THE ARGUMENTS IN THE UT

Mr. Prosser's case was that, although chambers as a whole occupies the common parts of the premises:

- a. each member has exclusive occupation and use of their room - they cannot be required to move or give up their room nor can they be required to share it;

- b. members occupy their own rooms for the purposes of their respective businesses and make minimal use of their rooms for other purposes;
- c. there are no controls over what use members can make of their rooms;
- d. there is no connection between a member being allocated their own room and their willingness to participate in the management of chambers or cooperate in chambers' activities;
- e. members are free to decorate and furnish their rooms as they choose, and have spent large sums furnishing and decorating their rooms (and would not have done so if there was a risk that they might be required to move or share).

This analysis was criticised by the VO as focusing only on the individual rooms and not looking at the wider context. The UT agreed that the wider context is important, as *Cardtronics* (the "ATMs" case) in particular illustrates.

THE UT'S DECISION ON OCCUPATION

The UT attached significance to the formal legal structure adopted by chambers which held the premises on behalf of its members, and the rights enjoyed by members as a result.

The UT considered these two features to be important:

- a. All members of chambers are bound together in a contractual relationship through their subscription to the chambers' constitution, which imposes obligations and confers rights on them.
- b. The constitution expressly provides that property acquired for chambers is to be held on trust for all members with each member of chambers enjoying an equitable interest under such trust. The members of chambers agreed that they would jointly acquire premises from which to conduct their separate businesses, and agreed to be bound by the terms of the constitution and policies approved by chambers.

The UT considered that the allocation of rooms within chambers to individuals did not convert the arrangement from a joint occupancy of the whole premises to separate rateable occupancy of individual rooms. The features relied on by Mr Prosser as supporting the exclusive occupancy of rooms by individual members were equally consistent with occupation being retained by members collectively. The whole purpose of jointly acquiring the premises was to retain a collective identity, but at the same time accommodate members in the style necessary to enable them to carry on their individual practices. This required privacy and single occupancy and also the joint provision of support and administrative service and sharing of expenses. It did not require that the members cease their joint occupation of the whole. It simply reflected the mode of occupation appropriate to this particular use.

The policies adopted by chambers reflected the collective control which chambers had over its premises and with which it had not parted to individual members. Chambers as a whole retained the power to vary the prevailing arrangements so as to require or permit moving or the sharing of rooms.

The fact that there was considerable stability in the occupation of individual rooms and that chambers had not exercised the powers in the adopted policies, or implemented different policies for room sharing or allocation, did not determine who was in rateable occupation. In *Ludgate House*, Lewison LJ emphasised that an assessment of who has general control is not limited to consideration of the rights which the parties have exercised, but includes *unexercised rights*

In this case, the members of chambers had retained all their rights of occupation while allocating between themselves the use of individual rooms. The joint occupancy of the whole of the premises by the members of chambers satisfied the conditions for rateable occupation.

The UT concluded that the individual members of chambers were not in rateable occupation of their separate rooms because the whole of the appeal premises were in the joint occupation of all members.

PARAMOUNT CONTROL

The UT's above conclusion meant that it did not need to consider who was in paramount control. If that conclusion was wrong and it was necessary to decide as between chambers and the individual members to whom each room was allocated, the UT would have held that the chambers was in paramount control.

The position of the individual member was analogous to that of the bank in the ATMs case.

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MEET THE TEAM



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