



Neutral Citation Number: [2024] UKUT 264 (LC)

Case No: LC-2023-310

Royal Courts of Justice,
Strand, London WC2A 2LL
4 September 2024

**IN THE UPPER TRIBUNAL (LANDS CHAMBER)
AN APPEAL AGAINST A DECISION OF THE VALUATION TRIBUNAL FOR
ENGLAND**

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

RATING – HEREDITAMENT – whether barristers chambers a single hereditament in the occupation of all members, or whether rooms occupied by individual barristers each a separate hereditament – appeal dismissed

BETWEEN:

KEVIN PROSSER KC

Appellant

-and-

**ANDREW RICKETTS
(Valuation Officer)**

Respondent

**Basement and Ground Floors,
15 Jockey's Fields,
London WC1R 4BW**

**Martin Rodger KC, Deputy Chamber President
and Mark Higgin FRICS FIRR**

30-31 July 2024

*Nicholas Trompeter KC, instructed directly, for the appellant
Paul Reynolds, instructed by HMRC, for the respondent*

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The following cases are referred to in this decision:

Allchurch v Assessment Committee and Guardians of Hendon Union [1891] 2 QB 436

Cardtronics UK Ltd v Sykes [2020] UKSC 21

Esso Petroleum Co Ltd v Walker [2013] RA 355

Holywell Union Assessment Committee v Halkyn District Mines Drainage Co [1895] AC 117

John Laing & Sons Ltd v Kingswood Assessment Committee [1949] 1 KB 344

Ludgate House Ltd v Ricketts [2020] EWCA Civ 1637

Northern Ireland Commissioner of Valuation v Fermanagh Protestant Board of Education
[1969] 3 All E.R. 352

R v Melladew [1907] 1 KB 192

Verrall v Hackney London Borough Council [1983] QB 445

Westminster Council v Southern Railway Company Ltd [1936] AC 511

Woolway v Mazars [2015] UKSC 53

Introduction

1. The appellant, Mr Kevin Prosser KC, is the head of Pump Court Tax Chambers (“Chambers”), a successful set of barristers’ chambers with premises at 15-17 Bedford Row, London WC1R (“Bedford Row”). At the material time members of Chambers also occupied an annex on two floors of a neighbouring building in Jockey’s Fields. With effect from 1 April 2017 the Jockey’s Fields premises were entered as a single hereditament in the local non-domestic rating list with a rateable value of £152,000. The appellant proposed that the list be altered to split the entry and show each of the rooms occupied by individual barristers as a separate hereditament. The respondent Valuation Officer did not support the proposed alteration and, in a decision handed down on 26 April 2023, the President of the Valuation Tribunal for England, Mr Gary Garland, agreed with the Valuation Officer that the premises should remain as one hereditament. The appellant now appeals against that decision.
2. As the practice of barristers grouping together to occupy sets of chambers is not a recent one, it might have been expected that any question about the manner in which their occupation should be rated would long since have been resolved. But we have been shown no authority dealing specifically with this form of occupation and the issue appears to be a novel one. Its emergence follows the introduction of the current regime of small business rate relief by the Non-Domestic Rating (Reliefs, Thresholds and Amendment) (England) Order 2017, one consequence of which is that a ratepayer occupying only one hereditament the rateable value of which is not more than £12,000 will receive a 100% reduction in their rates bill. That provides an incentive to split a larger hereditament into smaller units where the characteristics of the premises permit it.
3. At the hearing of the appeal Nicholas Trompeter KC appeared for the appellant and Paul Reynolds appeared for the respondent. We are grateful to them both for their submissions.

The issues

4. It is common ground that each of the barrister’s rooms in the Jockey’s Fields premises is sufficiently identifiable as a unit of property to be capable in law of forming a separate hereditament if the facts justify that conclusion. It is also common ground that the rateable values for the individual rooms proposed by the appellant are appropriate.
5. The parties agreed that the sole issue in the appeal is whether:
 - (a) as the appellant contends, the seven barristers’ rooms in the Jockey’s Fields premises should be shown in the non-domestic rating list as six separate hereditaments, on the ground that on 1 April 2017 (the material date) they were in the sole or paramount occupation of six individual barristers; or
 - (b) as the Valuation Officer contends, the Jockey’s Fields premises should be shown as a single hereditament, on the ground that as at the material date either the appellant as Head of Chambers, or the Chambers management committee, or the four members of chambers who held the leases on behalf of all members, or all members for the time being, were in sole or paramount occupation of the whole, including the seven barristers’ rooms.
6. We were told that the parties are also in dispute about the status of the barristers’ rooms at Bedford Row and it was suggested by Mr Trompeter KC in his written argument that

we should make findings of fact relevant to those premises. That suggestion was not pursued in oral argument. The only appeal before us concerns the Jockey's Fields premises and we will confine our consideration to those premises.

The facts

7. The parties agreed a helpful statement of facts, and additional evidence was provided by Mr Prosser KC and by four members of Chambers, David Ewart KC, David Yates KC, Sadiya Choudhury KC and Ben Elliott.
8. All members of Chambers specialise in taxation matters. Chambers is not a partnership and has no legal personality of its own, and we use the expression to mean all of its members at the material date which for the purpose of this appeal is 1 April 2017. At that time there were 36 members of Chambers.
9. Each member of Chambers (a "Member") carries on his or her own individual business as a self-employed sole practitioner providing legal services under their own name. The fees which the Member receives for their services are theirs alone.
10. In 1991 the Members of Chambers at that time moved from premises in the Temple to Bedford Row. In 2000 four Members took a lease or leases of additional premises at 15-17 Jockey's Fields which they held on trust for all Members. In April 2011 two new leases were taken on the same basis, each for a term of 12 years commencing on 29 September 2011. One lease comprised part of the ground floor of the building and the other part of the basement (jointly, "the Appeal Premises").
11. With effect from 14 May 2012 the Members of Chambers adopted a constitution, which each Member is required to sign to signify his or her agreement to be bound by its terms.

The Appeal Premises

12. The ground floor of the Appeal Premises comprised a reception area (staffed by a receptionist) and seven individual barrister's rooms, each occupied by one Member (a "Room"). Six Members occupied Rooms in the Appeal Premises at the material date including Mr Ewart KC (who had two adjoining rooms) and Mr Yates KC, both of whom gave evidence. The other Members occupied Rooms in Bedford Row, which also housed Chambers' library, main reception, clerks' room, a conference room, and other administrative space.
13. The basement of the Appeal Premises comprised a seminar room, an ancillary administration room and a room allocated for the use of pupils (although from time to time this room has been shared by two junior Members after completing pupillage while waiting for Rooms to become available for them elsewhere).
14. The two leases of the Appeal Premises were in materially the same terms and were held by the same four Members (jointly referred to as "the Tenant"). The prescribed clauses required for land registration purposes included a declaration that the Tenant held the property on a trust of land. Each lease included a covenant by the Tenant prohibiting assignment or parting with or sharing possession or occupation of part only of the demised premises (clause 4.6(a)). That restriction was qualified by clause 4.6(k) which provided that it was not to be a breach for the Tenant to permit other Members and their clerks, pupils and ancillary staff to use and practice from the demised premises provided that no relationship of landlord and tenant was created.

Chambers' Constitution and policies

15. Chambers' Constitution provides for the terms of membership and for the management of Chambers through Chambers' meetings occurring at least once a year, a Management Committee meeting monthly, a number of other Committees and the Head of Chambers. The Constitution also provides for Members' contributions to Chambers' expenses and for the ownership of Chambers' property.
16. Ultimate power over Chambers is exercisable by the passing of ordinary or special resolutions by Members at Chambers meetings. A special resolution requires the support of three quarters of those voting at the meeting, while an ordinary resolution requires a majority vote of those present at the meeting. The quorum for meetings is one half of the Members.
17. Membership of Chambers is by invitation approved by a special resolution at a Chambers' meeting. Membership is conditional on agreeing to be bound by the terms of the Constitution, signified by signing the document. Membership continues until the Member dies, resigns or is expelled. Mr Prosser KC explained that no Member had been expelled since 1991.
18. The Head of Chambers is required to convene a Chambers' Meetings at least once a year as soon as possible after 1 April. That meeting is referred to as the AGM, and its business is provided for by the Constitution and includes approving accounts and budgets, fixing staff salaries and Members' contributions, and electing committees. Meetings may be convened at other times by the Head of Chambers whenever he thinks fit.
19. The general management and administration of Chambers is the responsibility of the Management Committee which comprises the Head of Chambers, the Senior Clerk and at least four Members. It is charged with implementing general policies decided by the Members, preparing the budget for approval by the AGM, financial control and the preparation of accounts, and such other functions as the Members may from time to time decide. It is required to refer important administrative and financial decisions to a Chambers meeting for prior approval.
20. Amongst the responsibilities of the Head of Chambers is the leadership of Chambers, the maintenance of professional standards by Members, and the provision of advice and encouragement to Members. The Head of Chambers is also responsible for the employment of staff on behalf of all Members.
21. Clause 40 of the Constitution provides that "each Member shall bear his due proportion of the rent, rates and other expenses of Chambers". Members' contributions towards rent and rates and their contributions towards other expenses are calculated differently.
22. Clause 41 provides for the "due proportion of the rent and rates attributable to a Member's room" (referred to as an "own room contribution") to be determined by reference to floor area. In practice all Rooms are banded into one of four bands with the highest own room contribution being charged for the largest Rooms and the lowest contribution for the smallest Rooms. For example, at the material day the own room contribution for the largest Rooms was £19,200 a year while for the smallest it was £6,000 a year.

23. The due proportion of all residual expenses (i.e. expenses other than the rent and rates attributable to Rooms) is a percentage of a Member's receipts from work done while a Member, subject to a cap. The percentage and the cap for the forthcoming year are among the matters determined by Members at the AGM. Residual expenses include the rent and rates attributable to those parts of Chambers' accommodation (clerks' rooms, conference rooms etc) which are not occupied by individual Members.
24. The key point about the financial organisation of Chambers under the Constitution is that Members share expenses but do not share receipts (thereby avoiding being in partnership). Each Member benefits from the pooling of expenses, as the accommodation and services they require to carry on their individual practices can be secured more efficiently and cost-effectively than if each made their own separate arrangements.
25. Provision is made in the Constitution for circumstances in which the own room contribution will not be payable. A Member who is absent on maternity leave is not required to make an own room contribution during the period of absence. A Member who is absent for any other reason, including illness, may be exempted from paying the own room contribution by an ordinary resolution passed at a Chambers' meeting. A new Member who joins Chambers on completion of pupillage is not required to contribute to Chambers' expenses for the first two years of their membership and will therefore occupy a Room without charge. In each of these circumstances the contribution foregone becomes part of the residual expenses of Chambers borne by the other Members.
26. In its original form the Constitution dealt only with maternity leave and not with other forms of parental leave. A new parental leave and part-time working policy was adopted by Chambers on 1st June 2016 and was in force at the material day. This policy authorised Chambers to make use of any Member's Room while they were absent on parental leave, and also empowered the Management Committee to require a Member who was working on a part-time basis (defined as less than 40 hours a week) to move to a smaller room or share with another Member. The new policy was introduced after a prolonged period of maternity leave by one Member during which she retained her Room but made little or no use of it. The policy was approved at the 2016 AGM without any debate being recorded in the minutes and Mr Prosser KC and Ms Choudhury KC who were asked questions about it were unable to recall there having been any. In the event, the provisions of the policy concerning the use of Rooms were never used and new policies were introduced with effect from 2nd October 2018.
27. The parental leave policy which applied at the material day also provided that rent for a Member's Room would be waived for a period of six months following their return from parental leave, and that Chambers contributions would be waived for at least six months, and for up to 12 months (depending on the Member's professional receipts). If at the end of this period of time the member's outstanding receipts are less than £250,000 Chambers contributions (but not rent) will continue to be waived until such time as the returning member's outstanding receipts exceed this sum or for a further period of 6 months whichever is the sooner.
28. The Constitution also provides that all leases, plant, equipment and other property acquired or held for or at the expense of Chambers are to be held by one or more Members on trust for all the Members. No other provision is made in the document concerning the occupation, control or use of Rooms. In particular, the Constitution does

not guarantee that each Member will have a Room, although in practice that is what happens (for new recruits sometimes after a period of room sharing).

Rooms in Chambers

29. Members are not required by the Constitution to have a room in Chambers, but in practice all do and on joining Chambers a new Member is allocated a Room. Members rarely move to a different Room and when this does happen it is usually because one has become available on the retirement or departure of another Member. On those occasions the opportunity to move Rooms is offered to Members on the basis of seniority and there is no requirement for any individual to move.
30. Members are free to decide whether and how to decorate and furnish their Rooms and do so at their own expense (although Chambers' administrative staff will assist in organising redecoration and liaising with contractors when requested). Some Members have incurred considerable expense in decorating and furnishing their Rooms in the expectation that they will remain in occupation for a long time.
31. Members may, if they wish, work exclusively from home and not use their Room at all but, at the material date, the great majority of Members carried out most of their work from their own Rooms. When they are present, Members are not prohibited from using their Rooms for non-business purposes (although there was no evidence that they did so), and no checks are made on the uses to which they put their Rooms.
32. Each Member has a key to their own Room, as well as a key to the door of Chambers premises (and a fob to turn the burglar alarm on and off), so that they have access to their Room at all times. In 2014 a memo was circulated by the appellant on behalf of the Management Committee informing Members of its decision to adopt measures relating to confidential information, including a requirement that Members must keep their doors locked overnight and at other times when they were not in the building. Members do not have keys for each other's Rooms, and do not use each other's Rooms for any purpose, but both the clerks and the cleaners have keys and are able to enter Members' Rooms when they need to. The set of duplicate keys for staff use are kept secure and are not available for general use.
33. The confidential nature of much of Chambers' work, the fact that Members frequently need to discuss instructions with their professional clients in conference or remotely, and the fact that they are often on opposite sides in the same litigation make sharing Rooms impractical. Occasions on which it has been necessary for Members to be asked to share have therefore been infrequent and temporary. The appellant could recall three occasions since Chambers moved to Bedford Row when very junior Members had been recruited on the understanding that they would be required to share a Room until space became available for them each to have their own. Since September 2023 two Members who now work mostly from home have also chosen to share to reduce their expenses. Other than under the terms of the parental leave and part-time working policy (which were never invoked and which he regarded as exceptional) the appellant did not think it would be within the power of Chambers to insist on a Member moving Rooms or to require sharing, and even if technically it was within the power of an AGM he did not think that in practice it would ever happen.
34. No written or other formal agreements are entered into by Members relating to the use or occupation of their Rooms, other than the Constitution (which deals with payment) and the parental leave and part-time working policy (which at the material day dealt with

sharing). In practice formal arrangements are largely unnecessary (except to satisfy regulatory requirements, such as in relation to parental leave) and for the most part Members relate to one another on a basis of trust and informality. Members understand that, generally, they will have their Room for as long as they want it and on the infrequent occasions when someone would prefer to move and no empty Room has been available a solution has been found, whether out of collegiality, self-interest, or a bit of both.

Professional practice in Chambers

35. We received detailed evidence about the way in which professional practice was conducted by Members of Chambers. Some of that evidence concerned the subjective views and motivations of individual Members, which we do not regard as relevant to the issues we have to determine. Nor do we believe that the arrangements it described are materially different from those we would expect to find in other specialist sets of barristers' chambers. The purpose of most of this evidence was to emphasise the degree to which each Member has their own individual practice and to try to diminish the importance of the collegiate or collective character of Chambers, without disputing that it exists. In his closing submissions Mr Trompeter KC acknowledged that evidence about the allocation of work within Chambers does not shed light on the use and occupation of Rooms.
36. Each Member conducts their own business and receives their own instructions from clients. Chambers' clerks are employed by the appellant on behalf of all Members but act as agents for individual Members. They are closely involved in assisting Members to organise and manage their respective practices, including by negotiating fees, chasing payment, and recommending the appropriate Member to prospective clients. It is part of their responsibility to consolidate or leverage relationships made by Members with professional clients to introduce those clients to others, especially more junior Members.
37. Almost all instructions are received from professional rather than lay clients. Most of those professional clients are themselves specialists in the field of taxation and, especially for more senior work, will commonly already have decided which Member they wish to instruct. If the preferred Member is unavailable the clerks will suggest others who are free to do the work. If the work is suitable for more junior members, the professional client may not have a particular barrister in mind and will ask Chambers' clerks for suggestions. On other occasions, which the appellant estimated covered about 25% of cases, instructions come from professional clients who are not tax specialists and who ask the clerks to recommend a suitable Member to receive their instructions. In most of those cases the professional client follows the clerks' recommendation.
38. As a result of prior selection, when instructions arrive they come addressed to a particular Member, and it is never left to the clerks to accept instructions on behalf of Chambers as a whole and then to allocate them to a Member of their choice. Where potential instructions come to Chambers without the client having a particular Member in mind, they will not formally be delivered until a Member has been identified to receive them.
39. If the Member to whom instructions have been delivered is unable to do the work, those instructions will not automatically be retained in Chambers. It will always be up to the professional client whether to instruct another Member or a barrister in another set of

chambers. The clerks' job is to try to keep the work in Chambers by recommending an alternative Member who is available to receive the instructions.

40. Chambers as a whole has a public profile and markets itself and its Members to professional clients on a collective basis. We were referred to Chambers' current website (and it was not suggested this was different in relevant respects at the material day). Here Chambers is referred to collectively, both when quoting the glowing assessments of legal directories and when describing their work ("We advise on all corporate/business tax issues", "Chambers undertakes a high proportion of work ...", "Members of Chambers advise"). Each Member also has their own individual page detailing their particular expertise and experience.
41. Members are not obliged to participate in the management and administration of Chambers, but many do. Examples of activities intended to benefit Chambers as a whole include interviewing prospective pupils, acting as a pupil supervisor, and sitting on the Management Committee or other Chambers' committees. Members also attend and give lectures at conferences and seminars organised, promoted and facilitated by Chambers, with Chambers branding, and attended by professional clients. Participation in such events is encouraged. They are seen by some Members principally or even exclusively as a way of promoting their own businesses, while others regard them mainly or additionally as a way of promoting Chambers as a whole.

Relevant legal principles

42. Non-domestic rates are a tax on individual units of property, referred to as hereditaments. Valuation officers are required to prepare and maintain a local valuation list showing each hereditament in the area of the billing authority to which the list relates.
43. Section 64(1) of the Local Government Finance Act 1988 ("the 1988 Act") defines a hereditament by adopting the explanation of that expression, such as it is, in section 115(1) of the General Rate Act 1967 ("the 1967 Act") i.e. that a hereditament is "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." Whether a property falls to be shown as a separate item in the valuation list is determined by applying principles developed by judges through the cases.
44. The leading authority on the identification of a hereditament is the decision of the Supreme Court in *Woolway v Mazars* [2015] UKSC 53 which concerned the proper treatment of geographically distinct units with a common occupier (which is not an issue in this appeal). Lord Sumption JSC (at [12]), identified the primary test as "based on visual or cartographic unity" and as "geographical", (i.e. "whether the premises said to be a hereditament constitute a single unit on a plan", at [6]). Lord Neuberger PSC also explained, at [47], that: "Normally at any rate ... a hereditament is a self-contained piece of property (i.e. property all parts of which are physically accessible from all other parts, without having to go onto other property), and a self-contained piece of property is a single hereditament."
45. It is unnecessary to refer in any greater detail to the principles by which a hereditament is identified, as it is agreed that the Rooms occupied by individual Members are capable of being separate hereditaments. Someone entering one of the Rooms and closing the door would find themselves in a self-contained space which could be depicted on a plan. The appeal turns on a different issue, namely the identity of the person who, in law, is the

occupier of those Rooms. Viewed as a whole, the Appeal Premises are also self-contained (all parts being accessible without leaving the premises). If, for rating purposes, they are occupied by the same person, it is not disputed that the Appeal Premises would also be capable of being a separate hereditament.

46. Non-domestic rates are payable by the occupier of a hereditament (section 43(1), 1988 Act). In a further unhelpful co-option of historic judge-made principles, section 65(2), 1988 Act explains that whether a hereditament is occupied, and who is the occupier, is to be determined by reference to the rules which would have applied when the 1967 Act was in force. Those rules were summarised by Tucker LJ in *John Laing & Sons Ltd v Kingswood Assessment Committee* [1949] 1 KB 344, 350:

“... there are four necessary ingredients in rateable occupation First, there must be actual occupation; secondly, that it must be exclusive for the particular purposes of the possessor; thirdly, that the possession must be of some value or benefit to the possessor; and, fourthly, the possession must not be for too transient a period.”

47. In this appeal it is agreed that if, in law, Members of Chambers are in possession of their Rooms, that possession is of value to them and is not transient.

48. The requirement that, to be rateable, the relevant occupation must be “exclusive for the particular purposes of the possessor,” does not require that the rateable occupier be the only occupier. Two situations may be distinguished, as the following passage from the speech of Lord Diplock in *Northern Ireland Commissioner of Valuation v Fermanagh Protestant Board of Education* [1969] 3 All E.R. 352, 364, illustrates:

“Parliament cannot have intended to impose separate and independent liabilities to pay the rate for the same hereditament on more than one person except where their legal right of occupation is a joint right, as in the case of joint tenants. In English law, therefore, although there may be a joint occupation of a single hereditament there cannot be rateable occupation by more than one occupier whose use of the premises is made under separate and several legal (or equitable) rights.”

Thus, occupation of a single hereditament by two or more individuals having joint rights will be treated as rateable occupation by them all, whereas if occupation is by more than one person having separate legal or equitable rights it is necessary to determine which of them is the rateable occupier. These situations are distinct from cases where different parts of a building are let separately to different occupiers, each of whom will be the rateable occupier of their own hereditament (as in *Allchurch v Assessment Committee and Guardians of Hendon Union* [1891] 2 QB 436).

49. Where more than one person is in actual occupation of a single hereditament (where their occupancy is separate rather than joint), the rateable occupier will be the person whose occupation of the hereditament is ‘paramount.’ This approach to cases of concurrent occupation was clearly identified by Lord Herschell LC in *Holywell Union Assessment Committee v Halkyn District Mines Drainage Co* [1895] AC 117, 126:

“Where a person already in possession has given to another possession of a part of his premises, if that possession be not exclusive he does not cease to be liable to the rate, nor does the other become so. A familiar illustration of this occurs in the case of a landlord and his lodger. Both are, in a sense, in

occupation, but the occupation of the landlord is paramount, that of the lodger subordinate.”

50. Lord Davey made the same point at page 133:

“It is clear that exclusive occupation does not mean that nobody else has any right in the premises. The familiar case of landlord and lodger is an illustration. The cases show that if a person has only a subordinate occupation, subject at all times to the control and regulation of another, then that person has no occupation, in the strict sense, for the purpose of rating, but the rateable occupation remains in the other who has the right of regulation and control.”

51. The House of Lords confirmed ‘paramount occupation’ as the guiding principle in *Westminster Council v Southern Railway Company Ltd* [1936] AC 511. Lord Russell emphasised that the issue is one of fact, and focussed attention on the putative hereditament (in that case kiosks and stalls in Victoria Station) when considering which occupier is paramount (at p.529):

“Occupation, however, is not synonymous with legal possession: the owner of an empty house has the legal possession, but he is not in rateable occupation. Rateable occupation, however, must include actual possession, and it must have some degree of permanence: a mere temporary holding of land will not constitute rateable occupation. Where there is no rival claimant to the occupancy, no difficulty can arise; but in certain cases there may be a rival occupancy in some person who, to some extent, may have occupancy rights over the premises. The question in every such case must be one of fact – namely, whose position in relation to occupation is paramount, and whose position in relation to occupation is subordinate; but, in my opinion, the question must be considered and answered in regard to the position and rights of the parties in respect of the premises in question, and in regard to the purpose of the occupation of those premises. In other words, in the present case, the question must be, not who is in paramount occupation of the station, within which the premises in question are situate, but who is in paramount occupation of the particular premises in question.”

52. This approach to selecting the rateable occupier has been considered in the Supreme Court and the Court of Appeal on several occasions, most recently in *Cardtronics UK Ltd v Sykes* [2020] UKSC 21 and in *Ludgate House Ltd v Ricketts* [2020] EWCA Civ 1637.

53. *Cardtronics* concerned the identification of the rateable occupiers of ATM sites in supermarkets where the ATM was operated by a bank within the supermarket corporate structure. Lord Carnwath JSC, with whom the other members of the Supreme Court agreed, relied at [46], on Lord Herschell’s illustration of the applicable principle in *Holywell Union* by reference to the example of a landlord and a lodger, where the landlord occupies the whole of the premises for the purpose of his business of letting lodgings. This Tribunal had been satisfied on the evidence that the retailers retained occupation of the ATM sites, notwithstanding the rights they had conferred on the banks which substantially restricted their own use of those sites, but having done so because the presence of the ATMs furthered their own business purposes. Both parties therefore derived a direct benefit from the use of the site for the same purpose and shared the

economic fruits of the activity for which the space was used. That finding was sufficient, Lord Carnwath concluded, to support the conclusion that the sites remained in the occupation of the retailers.

54. *Ludgate House* concerned the occupation of a disused office building awaiting demolition by property guardians, allowed in by a security company which had contracted with the building owner. At [40], Lewison LJ identified a number of points from the passage from Lord Russell's speech in *Southern Railway* which we have quoted in full above. These included that rateable occupation depends on "the position and rights of the parties in respect of the premises in question" and that consideration must be given to "the purpose of the occupation of those premises". He later explained, at [71] and at [76], that it is necessary to consider the purpose of both parties. Where that purpose was "complementary and mutually reinforcing", as in the case of guardians who, by occupying the building, facilitated the security company's operation of providing property guardianship services to the building owner, the exercise of "general control" was the critical factor in establishing who is in rateable occupation. The owner retained the right to require the guardians to move within the building or to vacate the premises without notice and had general control. It, rather than the guardians, remained in occupation of the whole building, including the individual rooms occupied by the guardians.
55. It is also relevant to mention the treatment for rating purposes of unincorporated associations; it appears to have been common ground before the Valuation Tribunal that Chambers is such an association but that became contentious in the course of the appeal. An unincorporated association is a group of individuals who have come together to carry out a mutual purpose (not being a business purpose) but which has no separate legal identity distinct from the individuals who comprise its membership. An unincorporated association is distinguished from a partnership in that partners carry on business together with a view to profit.
56. The proper treatment of occupation in connection with the activities of an unincorporated association depends on the facts. Generally, membership of an unincorporated association will not be enough to render the members rateable occupiers. That is illustrated by the decision of the Court of Appeal in *Verrall v Hackney London Borough Council* [1983] QB 445, which concerned the occupation of a building as the headquarters of the National Front, an unincorporated association. Different parts of the premises were occupied by different legal entities and individuals connected to the National Front but the Magistrate who was asked to issue a distress warrant for unpaid rates was unable to conclude that any one of them occupied the whole. He determined instead that the paramount occupier was the National Front itself and issued a distress warrant against one individual who had a leading role in the organisation. That conclusion was reversed by the Court of Appeal. May LJ explained that an unincorporated association could not occupy anything, "because it was a nonentity", before continuing, at page 461:

"Most unincorporated associations, such as clubs or charities, have trustees, or a committee, legal persons with funds available to pay the rates which it is recognised will have to be paid. It is these persons who, as a matter of law, usually occupy the relevant premises which are used for the purposes of their club or charity and are liable as such occupiers for the general rates. In our opinion, however, the unincorporated association which, speaking loosely, they run, can never be the occupier of those or any premises."

Verrall, the prominent member of the National Front who had been named in the warrant was not himself the occupier or one of a number of joint occupiers of the single hereditament comprising the whole building and the summons against him therefore had to be dismissed.

57. Mr Trompeter KC suggested that it was not correct to characterise Chambers as an unincorporated association as it is an association for business purposes (though not a partnership, because its Members carry on separate businesses). That may technically be correct but as an unincorporated association cannot in any event be in rateable occupation, we do not think it matters. Of more significance is the formal legal structure adopted by Chambers to hold property on behalf of its Members and the rights enjoyed by Members as a result.

Who is in occupation of the Appeal Premises?

58. Mr Trompeter KC's basic submission on behalf of the appellant was that while Chambers as a whole occupies the common parts of the Appeal Premises (including the seminar room, administration room and the pupils' room), each individual Member is the only person in occupation of his or her own Room. Chambers as a whole retains no, or no material control over that occupation. The individual Members were therefore in rateable occupation of their own Rooms.
59. The Valuation Officer's case is that all of the Members of Chambers are jointly in rateable occupation of the whole of the Appeal Premises (and of Chambers' other accommodation). At different times in the proceedings the Valuation Officer's case has been expressed in a variety of ways, with either Mr Prosser KC himself or the Management Committee of Chambers or the four joint lessees being said to be the rateable occupier. Single occupancy of the whole of the Appeal Premises could reasonably be reflected in the valuation list in different ways and although Mr Trompeter KC objected to the fluctuations in the Valuation Officer's case we do not think it matters for this appeal precisely how a common occupancy is described. The important issue is whether the Appeal Premises are properly shown in the list as a single hereditament, rather than as seven or more in separate rateable occupations.
60. In support of his submission Mr Trompeter KC pointed to the following features of the evidence. First, that each Members has exclusive occupation and use of their Room. Secondly, that they cannot be required to move or give up their Room nor, thirdly, can they be required to share it. Fourthly, Members occupy their own Rooms for the purposes of their respective businesses. Fifthly, they make minimal use of their Rooms for other purposes. Sixthly, there are no controls over what use Members may make of their Rooms. Seventhly, there is no connection between a Member being allocated their own Room and their willingness to participate in the management of Chambers or co-operate in Chamber's activities. Eighthly, Members are free to decorate and furnish their Rooms as they choose. Ninthly, Members 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.
61. This analysis was criticised by Mr Reynolds as focussing only on the individual Rooms and as not looking at the wider context. We agree that the wider context is important, as *Cardtronics* in particular illustrates.
62. Two features of particular significance were omitted by Mr Trompeter KC from his list of material facts but which we nevertheless consider to be important to the determination

of this appeal. The first is that 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. The second is that amongst the rights which Members of Chambers enjoy (and the only right which bears directly on occupancy of accommodation) is an equitable interest under the trust of land in which the leases of the Appeal Property are held pursuant to clause 46 of the Constitution which provides expressly that property acquired for Chambers is to be held on trust for all Members.

63. In *Ludgate House*, at [49], Lewison LJ approved the following observation by this Tribunal (HHJ Mole QC and Mr N J Rose FRICS) in *Esso Petroleum Co Ltd v Walker* [2013] RA 355, at [81]:

“When Lord Russell said, in *Southern Railway*, that it was “immaterial whether the title to occupy is attributable to a lease, a licence or an easement” he did not mean, in our opinion, that the nature of the title to occupy was irrelevant. That is made plain by the earlier paragraphs of his judgement. He said that the question of paramountcy is to be answered having regard to “the position and rights of the parties in respect of the premises in question.” What he meant was that the “forms of the documents”, in the sense of the names or classification of those documents, is not of significance. But the nature and attributes of the title to occupy which the documents of title grant is certainly very relevant. ... An essential fact of occupation is the relative position of the parties and the rights under which each party occupies. That may well, in turn, depend on the “title” to occupy, however lawyers would label that title. In our view the respective rights of the occupying parties form an essential part of the factual setting.”

64. By virtue of clause 46 of the Constitution each Member of Chambers has an equal and joint beneficial interest under a trust of land in every part of the Appeal Premises. That arrangement is recorded in the leases themselves, which include a declaration that the Tenant holds the property on a trust of land. The leases also permits the Tenant to allow the beneficiaries of the trust to use the Appeal Premises provided no relationship of landlord and tenant is created. It follows that no one individual Member has any greater right under the trust to the occupation of any part of the premises than any other. As the passage from Lord Diplock's speech in *Northern Ireland Commissioner of Valuation* quoted at [48] above makes clear, where individuals occupy under a joint right (legal or equitable) for rating purposes the situation will be treated as one of joint occupation of a single hereditament and each occupier will be liable for the same rate. That treatment will only be disturbed if a different arrangement is entered into under which occupation is divided and each becomes entitled to exclusive occupation of part of the premises.
65. Mr Trompeter KC acknowledged that clause 46 of the Constitution gave Members a joint interest in the whole of the Appeal Premises but said that those rights had been derogated from by the Constitution and that in any practical sense joint occupancy was inconsistent both with the facts and with the Constitution. In particular it was inconsistent with the requirement that each Member pay the “own room contribution”. We do not consider the labelling of the payment in that way is determinative or that it implies more than the agreed allocation of space for the time being and the sharing of some of the costs of occupation; other occupation costs, such as heating, lighting or insurance, are met as part of Chambers' residual expenses. Occupancy of separate parts of property held in common is not inconsistent with the continuance of the parties' joint

rights in relation to the whole, nor are unequal contributions to the joint expenses of occupation which may be insisted on by the trustees (both being within the powers of the trustees under section 13, Trusts of Land and Appointment of Trustees Act 1996).

66. Nor do we consider that the allocation of Rooms within Chambers to individuals changes the arrangement from a joint occupancy of the whole to separate rateable occupancy of individual Rooms. The features relied on by Mr Trompeter KC as supporting the exclusive occupancy of Rooms by individual Members are equally consistent with occupation being retained by Members collectively. The whole purpose of jointly acquiring the Appeal Premises was to accommodate Members in the style necessary to enable them to carry on their individual practices, which for the most part requires privacy and single occupancy. That does not require that the Members cease their joint occupation of the whole, it simply reflects the mode of occupation appropriate to this particular use. As Farwell LJ noted in *R v Melladew* [1907] 1 KB 192:

“Rateable property has many varieties; of some the normal use is by personal occupation, e.g. a dwelling-house, of others by occupation by live or dead stock, e.g. a linnay used as a shelter for cattle, or a barn; and the nature of the property and its mode of use must be considered in each case. The test, in a case like the present, of business premises, appears to me to be, Has the person to be rated such use of the tenement as the nature of the tenement and of the business connected with it renders it reasonable to infer was fairly within his contemplation in taking or retaining it.”

67. The purpose for which the Appeal Premises are occupied is a shared purpose of all Members, namely to enable each of them to carry on their individual practices from the same premises and under their collective identity, and to benefit from the joint provision of support and administrative services and the sharing of expenses. That common purpose requires that some parts of the Appeal Premises be allocated to individual Members and some parts to administration, to the provision of seminars which contribute to the collective profile of Chambers as well as to the reputations of individuals, and to the training of pupils who will provide the next generation of colleagues thereby, it is hoped, sustaining Chambers’ reputation and prolonging the benefits of membership for current Members. None of these uses of different parts of the building changes the nature of the agreed arrangement from a joint occupancy of the whole.
68. In this case the Members of Chambers have agreed that they will jointly acquire premises from which to conduct their separate businesses. They have agreed to be bound by the terms of the Constitution and policies approved by Chambers. There are also conventions and understandings about how Chambers’ premises will be occupied, but those are subject to the collective decisions of Chambers, approved by a majority vote, or delegated to the Management Committee (as under the part-time working policy). The approval of the parental leave and part-time working policy demonstrates that those conventions, including in relation to the occupation of Rooms, are not sacrosanct and that Chambers as a whole may choose to override them. They may also be adapted or departed from where it becomes expedient to do so, such as when new members are recruited on the understanding that they will be required to share for a time, or members wishing to work from home choose not to have a Room of their own but decide they will share.

69. We therefore do not accept Mr Prosser KC's characterisation of the policies adopted by Chambers about sharing as an exception which proves the rule that Chambers as a whole has no control over the occupancy of individual Rooms. On the contrary, they are consistent with the absence from the Constitution of any restriction on the control of accommodation and are examples of the power of Members acting jointly, or by delegation, to allocate the use of space in whatever manner is considered to be most convenient. They are a reflection of the collective control which Chambers has over its premises and which it has not parted with to individual Members. The first, second and third of the matters relied on by Mr Trompeter KC (at [60] above) are therefore an incomplete account of the relevant facts and must be qualified by the additional consideration that Chambers as a whole retains the power to vary the prevailing arrangements so as to require or permit moving or the sharing of Rooms.
70. The fact that there is considerable stability in the occupation of individual Rooms and that Chambers has not exercised the powers in the adopted policies, or implemented different policies for Room sharing or allocation is not determinative of the question of who is in rateable occupation. In *Ludgate House*, at [77] to [80], 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: "the question is whether the exercise of the retained rights would interfere with the occupant's enjoyment of the premises he occupies for the purposes for which he occupies them". Those observations were made in a context where there was no question of joint rights of occupation, but they seem to us to be equally applicable. In this case the Members of Chambers have retained all their rights of occupation while allocating between themselves the use of individual Rooms. We do not understand it to be disputed that the joint occupancy of the whole of the Appeal Premises by the Members of Chambers, if that is the correct analysis, would satisfy the conditions for rateable occupation. We consider that it is the correct analysis and we dismiss the appeal on that basis. We find that individual Members of Chambers are not in rateable occupation of their separate Rooms because the whole of the Appeal Premises are in the joint occupation of all Members.

Paramount occupancy

71. Because of our finding that Members are in occupation of the whole of the Appeal Premises, the issue of which of two occupiers is in paramount occupation does not arise. Members do not occupy their individual Rooms in two different capacities (as individuals and as members of the larger group). Their occupancy is of each and every part. But in case we are wrong in that finding we will deal additionally but briefly with the question of paramount occupancy.
72. If it is appropriate to regard individual Members as each being in occupation of their own Rooms while Chambers collectively occupies the whole of the Appeal Premises we would have no difficulty in treating the arrangement as analogous to that of a landlord licensing rooms in a lodging house to individual lodgers, or a supermarket operator permitting occupation by a bank of an ATM site. Paramount control remains vested in Chambers which controls the building as a whole, allocates Rooms, services them, and retains the power to adopt policies or make individual decisions requiring that they be shared or, ultimately, vacated. Individual Members are entitled by virtue of their membership of Chambers and subscription to the Constitution to have access to a Room, but they do so subject to the right of Chambers acting through its Chambers' Meetings or through the Management Committee to adopt policies which regulate their occupation.

73. There is no doubt that Chambers as a whole remains in occupation of the whole of the Appeal Premises and has not parted with possession. First and foremost this is achieved through the presence of the individual Members, but it is reflected also in the presence of Chambers' staff.
74. The fact that individual Members are the only Members who make use of a particular Room is not inconsistent with this assessment. In that respect they are no different from the lodger allocated a separate room or the bank which exercises a very high degree of control over the enclosed space which houses its ATM. Occupation of the Room by an individual Member advances the purpose for which Chambers as a whole occupies the Appeal Premises, namely, to enable each Member of Chambers to carry on their individual practices from the same premises and under their collective identity, and to benefit from the joint provision of support, administrative services and the sharing of expenses. By allocating each Member a separate Room and leaving them there relatively undisturbed Chambers facilitates each individual's practice and the successful operation of Chambers as a whole. Although they do not share the profits of their separate businesses, Members benefit financially from sharing the Appeal Premises by reducing their individual expenses, and they benefit reputationally by their association with each other and their brand which helps to attract work, especially for those in the early years of practice.
75. Were it necessary to do so, which we consider it is not, we would determine that Chambers remains in paramount occupation of the whole of the Appeal Premises.

Disposal

76. For these reasons the appeal is dismissed and the rating list will continue to show the Appeal Premises as a single hereditament.

Mark Higgin FRICS FIRR V

Martin Rodger KC
Deputy Chamber President
4 September 2024

Right of appeal

Any party has a right of appeal to the Court of Appeal on any point of law arising from this decision. The right of appeal may be exercised only with permission. An application for permission to appeal to the Court of Appeal must be sent or delivered to the Tribunal so that it is received within 1 month after the date on which this decision is sent to the parties (unless an application for costs is made within 14 days of the decision being sent to the parties, in which case an application for permission to appeal must be made within 1 month of the date on which the Tribunal's decision on costs is sent to the parties). An application for permission to appeal must identify the decision of the Tribunal to which it relates, identify the alleged error or errors of law in the decision, and state the result the party making the application is seeking. If the Tribunal refuses permission to appeal a further application may then be made to the Court of Appeal for permission.