

**DRAFT MINUTE OF**  
**THE HIGHLAND & WESTERN ISLES**  
**VALUATION APPEAL COMMITTEE**

**Inverness, 6 November 2013**

Subjects

**Riverholme, Marrell,  
Helmsdale, Sutherland**

Appellant

Respondents

**The Highland Council**

For the Respondents

**Miss Fiona Malcolm, Solicitor**

The Appellant sought relief from Council Tax. For the period 5<sup>th</sup> March 2010 to 4<sup>th</sup> December 2012 (“the first period”) he sought relief on the basis his late mother was in a residential care home and from 4<sup>th</sup> December 2012 to 4<sup>th</sup> June 2013 (“the second period”) he sought what was referred to as “the executry exemption”.

The factual background to the case can be stated shortly. The Appellant is the executor of the estate of his mother, the late Mrs \_\_\_\_\_. She died on 4<sup>th</sup> December 2012. For periods of time in 2009 and 2010 she was, due to failing health, admitted to different care homes in the Dornoch area. The Appellant was then living in England. Her last admission was to Meadows Nursing Home on 5<sup>th</sup> March 2010. She remained resident there until her death.

On 4<sup>th</sup> June 2013 the Appellant moved into the property to live permanently.

In 2006 the title to the property was transferred from Mrs \_\_\_ to the Appellant.

### **Submissions for the Appellant**

The Appellant gave evidence and made submissions to the Committee in some detail. In relation to the first period, his position, essentially, was that although, in hindsight, his mother's admission to Meadows Nursing Home on 5<sup>th</sup> March 2010 turned out to be permanent, that was not known at the time. Therefore the admission did not, in itself, alter her status as being a resident of the property, Riverholme. As a resident in that property she was liable to pay Council Tax and her stay in Meadows Nursing Home entitled her to statutory relief.

As regards the second period, the Appellant maintained that he should be entitled to the so called "executory exemption". This covered the period of time from his mother's death until he became resident in the property on 4<sup>th</sup> June 2013.

### **Submissions for the Respondents**

The case for the Respondents was presented by Miss Fiona Malcolm, Solicitor. She led evidence from Mr Dawson Lamont, Head of Exchequer for the Highland Council.

In respect of the first period, the position of the Respondents, in essence, was that if, with the benefit of hindsight, it was possible to say that Mrs \_\_\_ was no longer resident at Riverholme when she moved to Meadows Nursing Home then she had no entitlement to any of the statutory reliefs in relation to the property. In terms of the hierarchy of liability set out in Section 75 of the Local Government Finance Act 1992,

(“the Act”) the first person to whom liability attached, after 5<sup>th</sup> March 2010, was the Appellant under Section 75(2)(f).

In respect of the second period, it was the Respondents’ position that since the property was not part of the estate of the deceased, the so called “executory exemption” did not apply.

### **Statutory Provisions**

The first two sub-sections of Section 75 of the Act are in the following terms:-

- “(1)The person who is liable to pay Council Tax in respect of any chargeable dwelling and any day is the person who falls within the first paragraph of Section (2) below to apply, taking paragraph (a) of that sub-section first, paragraph (b) next, and so on.
- (2) A person falls within this sub-section in relation to any chargeable dwelling and any day if, on that day -
- (a) he is the resident owner of the whole or any part of the dwelling;
  - (b) he is a resident tenant of the whole or any part of the dwelling;
  - (c) he is a resident statutory tenant, resident statutory assured tenant or resident secure tenant of the whole or any part of the dwelling;
  - (d) he is a resident sub-tenant of the whole or any part of the dwelling;
  - (e) he is a resident of the dwelling; or
  - (f) he is any of the following-
    - (i) the sub-tenant of the whole or any part of the dwelling under a sub-lease granted for a term of 6 months or more;

- (ii) the tenant, under a lease granted for a term of 6 months or more, of any part of the dwelling which is not subject to a sub-lease granted for a term of 6 months or more;
- (iii) the owner of any part of the dwelling which is not subject to a lease granted for a term of 6 months or more.”

Regulation 3 of the Council Tax (Exempt Dwellings) (Scotland) Order 1997 (“the Order”) is in the following terms - “The classes of dwelling specified in Schedule 1 to this Order are prescribed as exempt dwellings for the purposes of Section 72(6) of the Act. “

The terms of exemptions 5 and 6 in Schedule 1 of the Order are -

*“Dwellings last occupied by persons living or detained elsewhere*

5. An unoccupied dwelling which on the last occupation day was the sole or main residence of a person who -

- (a) is, and has throughout the period since that day been, a relevant person; and
- (b) is a qualifying person.

*Deceased owners*

6. A dwelling -

- (a) which is not the sole or main residence of any person; and
- (b) in respect of which any liability to pay Council Tax (but for the terms of this order) would fall to be met solely out of the estate of a deceased person and either -
  - (i) no grant of confirmation to the estate of that person has been made; or
  - (ii) no more than 6 months have passed since such a grant was made.”

The phrases “relevant person” and “qualifying person” are defined within regulation 2 of the Order -

“Qualifying person” means a person who would be liable (either solely or jointly and severally with another person or persons) for Council Tax in respect of the dwelling concerned, but for the provisions of this order;

“Relevant person” means a person who -

- (a) is disregarded for the purposes of discount by virtue of paragraph 1, 6, 7 or 8 of Schedule 1 to the Act;
- (b) Has his sole or main residence in a place (other than the dwelling concerned or a place referred to in paragraph 6(1), 7(1)(a) or 8(1)(a) of that Schedule) for the purpose of receiving personal care which he requires by reason of old age, disablement, illness, past or present alcohol or drug dependence or past or present mental disorder; or
- (c) Has his sole or main residence in a place other than the dwelling concerned (for the purpose of providing, or better providing, personal care for a person who requires such care by reason of old age, disablement, illness, past or present alcohol or drug dependence or past or present mental disorder”

### **Decision and Reasons**

The Respondents did not dispute that until 5<sup>th</sup> March 2010, Riverholme was Mrs \_\_\_\_\_ sole or main residence or that from then until her death, she was living elsewhere for the purpose of receiving personal care by the reason of old age. The Committee therefore held her to be a “relevant person”.

The Respondents did, in effect, dispute Mrs \_\_\_\_ was a “qualifying person”. Under the hierarchy of liability, the Appellant rather than his mother was liable, according to the Respondents.

This submission by the Respondents is one with which the Committee could not agree. Looking at the last date of occupation of the property, 5<sup>th</sup> March 2010, the first person to whom liability for paying Council Tax attached was the late Mrs \_\_\_\_ . That liability arose from the terms of subsection 2(e) i.e. she was resident there. The Appellant being the owner but not a resident owner, the first paragraph of subsection 2 which would apply to him, is paragraph (f). Therefore, the Committee determined Mrs \_\_\_\_ was a “qualifying person”.

The Committee took the view that it was not necessary for the purposes of interpreting the legislation, to determine what may or may not have been that in the minds of Mrs \_\_\_\_ or her Doctor or her carers on 5<sup>th</sup> March 2010 as to whether or not her stay in Meadows Nursing Home would be permanent. If, at the time of her admission, she was resident in the property, and was a relevant person and a qualifying person, the exemption in paragraph 5 of Schedule 1 to the 1997 Order applied to her. Therefore, having determined Mrs \_\_\_\_ was the resident in the property and that she was both a relevant person and a qualifying person, she was entitled to the exemption of paragraph 5. The exemption should apply from 5<sup>th</sup> March 2010 to 4<sup>th</sup> December 2012.

With regard to the second period, whether exemption 6 applies, the so called “executory exemption”, turns on a consideration of the person upon whom falls liability to pay Council Tax from 4<sup>th</sup> December 2012. If it was the estate of Mrs \_\_\_\_, then, since the property was not “the sole or main residence of any person” (exemption 6(a)) the exemption would apply. If it was not the estate, the exemption could not apply.

The Committee noted the significant difference, as between exemptions 5 and 6, regarding the relevance of the concept of “residence”. In order to qualify for exemption 5, the claimant must, among other things, have been the last person to occupy the property as their sole or main residence immediately before, as here, going into care. It was that “residence” which gave Mrs \_\_\_\_ precedence over her son in the hierarchy of liability - she in terms of clause (e); he in terms of clause (f).

Upon death, a person has no “residence” for legal purposes in the present context. Mrs \_\_\_\_\_ and therefore the estate were no longer liable under clause (e). On the basis of the evidence led before it, the Committee could find no other basis in law for holding the estate to be liable for Council Tax. The Committee noted, from his evidence in chief, the Appellant stated there was some sort of informal agreement whereby, after the property was disposed to him in 2006, the property would not be sold during the lifetime of Mrs \_\_\_\_\_. Whatever the precise nature of that informal agreement, the Committee considered Mrs \_\_\_\_\_ - and, by extension, her estate - did not fall into any of the categories of liable persons defined in paragraphs (a) to (f) of Section 75(2) of the Act. That being so, in terms of the hierarchy, liability for the period following the death of Mrs \_\_\_\_\_ must lie with the Appellant under paragraph (f)(iii) for the period

from 4<sup>th</sup> December 2012 to 3<sup>rd</sup> June 2013 and under paragraph (a) from 4<sup>th</sup> June 2013 onwards.

Therefore, for all of these reasons, the Committee decided as follows:-

- (i) To find the late Mrs \_\_\_\_ was entitled to exemption from liability for Council Tax for the property from 5<sup>th</sup> March 2010 to 4<sup>th</sup> December 2012 and therefore the Appellant, as her executor, to be entitled to have refunded to him all sums paid in respect of Council Tax for that period;
- (ii) That the Appellant, as executor, was not entitled to exemption from liability for Council Tax for the period from 4<sup>th</sup> December 2012 to 3<sup>rd</sup> June 2013.