IN THE COURT OF APPEAL (CIVIL DIVISION) **CA-2025-001425-B**

ON APPEAL FROM THE HIGH COURT OF JUSTICE

KING'S BENCH DIVISION

Charles Bagot KC sitting as Deputy High Court Judge [2025] EWHC 1130 (KB)

BETWEEN:

THE MAYOR AND COMMONALITY AND CITIZENS OF THE CITY OF LONDON

Appellant/Claimant

and

48TH STREET HOLDING LIMITED

PRINCIPLED OFFSITE LOGISTICS LIMITED

Respondents/Defendants

REPLACEMENT SKELETON ARGUMENT ON BEHALF OF THE APPELLANT

References to paragraphs of the Judgment are given as "[J: para no]"; to the Core Bundle as ["CB/page no.] and to the Supplementary Bundle as "[SB/page no]".

INTRODUCTION AND OVERVIEW

1. Pursuant to permission granted by Bean LJ, through this appeal, the City of London Corporation ("CoL") challenges the efficacy of a "pervasive"[1] rate mitigation scheme ("the Scheme"). Under it, boxes and their redundant contents are placed in otherwise unoccupied property for six weeks in an attempt to generate "occupation" for the sole purpose of triggering recurring three-month exemptions from liability for unoccupied rates under regulations 4a and 5 of the Non-Domestic Rating (Unoccupied Property) (England) Regulations 2008 ("the 2008 Regulations"). The intended result is that such liability is thereby reduced by (here) 67%[2]. Principled Offsite Logistics Limited ("POLL") alone claims to have saved clients (and thereby cost local authorities) £500m. The Scheme

[1] Business Rates Avoidance and Evasion Consultation: Summary of Responses (March 2024) para 2.3 [SB/64].

[2] For the period covered by this claim - but less since changes to the qualifying period addressed below.

and variants of it have resulted in a loss to the public purse of at least £35m per annum in the City of London alone.

2. It is common ground that [J:16]:
   a. the placing of the boxes is solely to attempt to generate occupation for the purposes of regulation 5;
   b. the placing of the boxes and their contents in the premises serves no commercial or business purpose save for rate mitigation; and
   c. the benefit of the "occupation" is solely the claimed rate mitigation benefit.

3. Absent the rate mitigation effect, it follows that the claimed "occupation" would not occur.

4. Prior to this case, the Scheme (and a variation of it) had been found to be effective in two main[3] High Court cases - *R(Principled Offsite Logistics Ltd) v Trafford Council* [2018] EWHC 1687 Admin; [2018] RA 499 ("Principled") and *R (Secretary of State for Health and Social Care on behalf of Public Health England) v Harlow District Council* [2021] EWHC 909 (Admin); [2021] 4 WLR 65 ("PHE"). Neither of those cases addressed the *Ramsay* principles. Subsequent to those cases, in *Rossendale BC v. Hurstwood Properties (A) Ltd* [2021] UKSC 16; [2022] AC 690 ("Hurstwood"), the Supreme Court applied the *Ramsay* principles in the rating context for (apparently) the first time.

5. CoL contends that notwithstanding *Principled* and *PHE* and contrary to the judgement of the High Court (Charles Bagot KC sitting as a Deputy High Court Judge) the Scheme is ineffective to trigger recurring three-month exemptions for two principal reasons:

   a. applying the *Ramsay* principles and the purposive approach to statutory construction, the placing of boxes in the circumstances described above is not within the ambit of the term "occupied" in regulation 5 (and its statutory predecessors – including as originally enacted in s.21(4) of the Local Government Act 1966) - in summary because

[3] The further earlier case of *R(Makro Properties Limited) v Nuneaton and Bedworth BC* [2012] EWHC 2250 (Admin); [2012] RA 285 is considered below.

it is not generally to be expected that Parliament intended to exempt from tax a transaction or activity which has no purpose other than tax avoidance ("Ground 1: the Ramsay Point"). Here Parliament legislated to impose liability for unoccupied rates and it cannot have intended at the same time to create a loophole to avoid that liability through generation of occupation solely for the purpose of avoiding such liability; and

b. in any event, the necessary ingredients of rateable occupation have to be present independently of the statutory consequences of that occupation and the intended rate mitigation effect and not (as here) only being present to secure that rate mitigation effect: ("Ground 2: the Rateable Occupation Point"). Here there would, unarguably, be no putative "occupation" but for the rate mitigation effect.

6. Despite the principles of judicial comity on which the Judge relied, he erred in declining to so hold. In reaching his conclusions he further erred in:

a. relying heavily on the fact that the Non-Domestic (Unoccupied Property) (England) (Amendment) Regulations 2024 ("the 2024 Regulations") did not change the definition of "occupied" so as to address the Scheme when they could have done so to reverse the effect of *Principled* and *PHE.* On CoL's analysis, there was no need for any legislative change to the meaning of "occupied" – the Scheme was already ineffective through application of the *Ramsay* principles and "occupied" in regulation 5 as originally enacted in 1966 was always to be understood in the light of the *Ramsay* principles. The 2024 Regulations proceeded on a misapprehension as to the correct interpretation of "occupied" as articulated in *Principled* and *PHE* when, on CoL's case, those cases were either decided *per incuriam or* were wrongly decided. As in *Goulandris v. Knight* [2018] EWCA Civ 237; [2018] 1 WLR 3345 at [13], regulations drafted on an incorrect understanding of the primary legislation can be of "*little or no*" assistance in construing the legislation;

b. relying on the claimed uncertainty that would arise if CoL's approach was adopted. First, CoL is challenging only this particular Scheme with the (common ground) features in para 2 above. Other schemes may throw up different factual issues but this appeal is focussed only on schemes having the above features. Second, in any event, *Hurstwood* at [61] is clear that the value of legal certainty does not extend to construing legislation in a way which will guarantee the effectiveness of measures undertaken solely to avoid the liability which that legislation seeks to impose; and

c. holding (following *Principled* and *PHE)* that the mere "*planting a flag*" of occupation by a business in "*the business of occupation*" solely for rate mitigation purposes was capable of constituting the necessary beneficial occupation.

FACTUAL BACKGROUND

7. *The Parties:*
   a. CoL is the billing authority for the City of London, with the statutory responsibility for collecting and enforcing business rates liability;
   b. the First Respondent ("48SHL") is the leasehold owner of 2 America Square, London, EC3N 2LU ("the Building"). It is in the business of letting office suites at the Building to office occupiers;
   c. POLL is in the business of providing rate mitigation schemes for unoccupied properties to third parties, such as 48SHL solely to secure the rate mitigation effect.

8. *The Claim:* This is a debt claim brought by CoL under regulation 20 of the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 to recover unpaid non-domestic rates in the amount of £111,475.30 (plus interest) from 48SHL in respect of 4 units within the Building ("the Premises") for varying periods during 2022 and 2023. Declaratory relief against 48SHL and POLL is also sought: see the Claim Form [CB/87].

9. *The Scheme:* The claim preceded before the Judge on the basis of an agreed statement of facts [SB/3]. The relevant chronology is at [CB/67]. The Unit known as Part Fifth Floor Rear ("the Unit") is used as an example of how the Scheme operates (which is summarised at J:13-16). In headline terms:
   a. 48SHL was the owner of the Unit which had been unoccupied for three months - such that the initial period of exemption granted by regulation 4a of the 2008 Regulations had expired or was about to expire;
   b. 48SHL engaged POLL to provide the Scheme to reduce liability for the business rates that would otherwise be payable by 48SHL as owner thereafter;

c. 48SHL granted a lease to POLL terminable on notice. As part of a pre-conceived plan, the break notice was given by POLL at the time of the grant of the lease such that the lease would come to an end after six weeks;
d. upon securing the lease, POLL placed boxes and their redundant contents in the Unit;
e. POLL claimed to be in rateable occupation for those six weeks and liable for *occupied* rates for that period;
f. CoL did not accept that and instead levied *unoccupied* rates on POLL as "owner" which were paid by POLL;
g. at the end of the six weeks, the boxes were removed and 48SHL claimed entitlement to a further three month exemption (seeking to rely on regulation 5 to reset the regulation 4a entitlement);
h. in return for operating the Scheme, POLL was paid a share of the rate savings achieved; and
i. the cycle repeats indefinitely until the Unit is leased to others for office use.

10. There is no dispute that the leases granted by 48SHL to POLL were genuine and conferred a right of exclusive possession upon POLL and the *Ramsay* principles are thus engaged.

11. If necessary to so show, CoL will demonstrate through detailed consideration of the Lease [CB/138] and the terms and conditions of the Scheme [CB/146] that the granting of the Lease did not appreciably impact upon 48SHL's beneficial interest:
a. 48SHL controlled access and was even custodian of the boxes whilst *in situ*;
b. it could market the Unit as if there was no lease;
c. it could terminate the lease at short notice so that its real and practical ability to use the Unit as it wished and to bring it into office use was essentially unimpeded;
d. it incurred no additional costs and its contractual liability for the rates during POLL's occupation was the same as its statutory liability if there was no lease;
e. it retained all the other obligations normally associated with an owner in occupation; and
f. if the Scheme is ineffective, POLL is required to refund the fees charged.

12. Further, from POLL's perspective its only involvement with the Unit was placing the boxes at the start of the lease and removing them at the end and taking photographs. It had no real-world involvement in the Unit save for that.

LEGAL FRAMEWORK

A: The History of the Statutory Scheme

Rates as a charge on Occupation

13. From the inception of the rating system with the Poor Relief Act 1601, rates were a charge on occupation, not ownership or legal possession, of land. The occupier was the person to be rated and, if there was no occupier, there was no liability.

14. The 'classic statement' of the matters which must be established for there to be ratable occupation is found in the judgment of Tucker LJ in *John Laing & Son Ltd v Assessment Committee for Kingswood Assessment Area* [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."***

15. Given that until 1966 liability rested on occupation, by definition, there was no incentive for any landowner to seek to generate occupation of unoccupied property – because to do so would be to make them liable when otherwise they would not be. Thus, the *Laing* ingredients did not need to, and did not, address "occupation" generated solely for the purpose of securing a rate mitigation advantage under the statutory scheme. The issue simply did not, and could not, arise. Instead, the (limited) case law concerned attempts to demonstrate the opposite - that property was unoccupied: see e.g. *R v Melladew* [1907] 1 KB 192.

Introduction of Liability for Unoccupied Rates

16. By sections 20-22 of the Local Government Act 1966 (which, importantly, has remained essentially unchanged in its relevant features since) Parliament introduced for the first time a separate and additional limb into rating – allowing rating authorities to impose

liability for rates on the "owner" of any unoccupied property (s.21(1)) which comprised "relevant hereditaments" (s.21(3) and s.22(4)) after an initial three-month period subject to various exemptions.

17. S.21(4) provided that:

> ***"Where a relevant hereditament which is unoccupied becomes <u>occupied</u> on any day and becomes unoccupied again on the expiration of a period of less than six weeks beginning with that day, then, for the purpose of ascertaining any period of three months during which the hereditament has been continuously unoccupied and any relevant period of vacancy in respect of the hereditament, it shall be deemed to have remained unoccupied on that day and during that period." (underlining added)***

18. This "reset period" provision is the statutory predecessor of regulation 5 which is the central provision on which the Scheme relies for its purported efficacy – POLL's argument being that if the placing of the boxes meets the *Laing* requirements, the Premises are "occupied" and a fresh three-month exemption under what is now regulation 4a is triggered.

19. This provision when originally enacted (s.21(4)) and now (regulation 5) is designed to prevent short periods of occupation properly so called triggering new periods of exemption. It is a restriction on the ability to trigger new three-month exemptions. It does not address the separate and prior question as to whether "occupation" generated solely to trigger new periods of exemption counts as occupation for the purposes of the statutory scheme. As to that question, the *Ramsay* principles apply (see below).

20. This provision was subsequently re-enacted in schedule 1 para 1(3) of the General Rate Act 1967 before being moved unchanged in its essential terms into secondary legislation – now regulation 5 of the 2008 Regulations. There is no indication in any of the statutory material and no suggestion from POLL or 48SHL that the meaning of this provision or the word "occupied" in it somehow changed when it was moved from primary to secondary legislation.

B: The Current Legislation

The Local Government Finance Act 1988

21. The GRA 1967 was repealed and superseded by the Local Government Finance Act 1988 ("LGFA 1988") which reflected a reorganisation in local government finance but which left the "*central rationale*" of non-domestic rating "*unchanged*" (*Hurstwood* at [24]).

22. S.43 LGFA 1988 imposes liability on the occupier of occupied hereditaments.

23. S.45(1) imposes liability on the owner in respect of classes of unoccupied property prescribed by the Secretary of State under s.45(1)(d). Wide regulation making powers are provided: s.45(9) and (10) (broadly equivalent to those which previously existed). The quantum of liability is (now[4]) the same as if the property was occupied.

24. S.65(1) defines the "owner" as the person entitled to possession of the hereditament. S.65(2) provides that:

    "whether a hereditament or land is occupied, and who is the occupier, shall be determined by reference to the rules which would have applied for the purposes of the 1967 Act had this Act not been passed…"

    thus incorporating the *Laing* ingredients and, on CoL's approach, importing the *Ramsay* principles too.

The 2008 Regulations

25. The 2008 Regulations were made under s.45(1)(d) and (9).

[4] As originally enacted, s.45 LGFA 1988 provided for rates for unoccupied liability to be payable at 50% of the rate payable for occupied property. That was increased to 100% by the Rating (Empty Properties) Act 2007 ("the 2007 Act"), with provision made for the Secretary of State to reduce liability to 50% by order and specifying classes of property to be zero-rated. The 2007 Act was repealed by the Non-Domestic Rating Act 2023.

26. Regulation 3 prescribes all non-domestic hereditaments other than those prescribed under regulation 4. The effect is that unless a hereditament benefits from an exemption in regulation 4, full rates are payable for the full period when the property is unoccupied.

27. The relevant exemption for the purpose of this appeal is that provided for in regulation 4(a) which exempts any hereditament:

    ***" which, subject to regulation 5, has been unoccupied for a continuous period not exceeding three months*"**

    replicating the same exemption previously found in primary legislation.

28. Regulation 5 (the equivalent to s.21(4) of the 1966 Act and with no material difference from s.21(4)) provided (at the material time for purposes of this appeal) that:

    "*A hereditament which is unoccupied and becomes occupied on any day shall be treated as having been continuously unoccupied for the purpose of regulation 4(a) and (b) if it becomes unoccupied again on the expiration of a period of less than six weeks beginning with that day*".

29. Essentially, the liability to rates for unoccupied property originally provided for by s.21 LGA 1966 is now to be found – without material amendment – in s.45 LGFA 1988 and regulations 4a and 5 of the 2008 Regulations.

The 2024 Regulations

30. After the claim was issued, the 2008 Regulations were amended to substitute "thirteen weeks" for "six weeks" in regulation 5 of the 2008 Regulations ("the 2024 Regulations"). The relevance of the 2024 Regulations to the matters raised in this appeal is addressed below. For completeness, since the judgment here, the government has consulted on further tightening of regulation ('Business Rates and Investment Call for Evidence', November 2025 [SB/76]).

C: The Statutory Purposes

31. There are "*numerous authoritative statements in modern case law which emphasise the central importance in interpreting any legislation of identifying its purpose": Hurstwood* at [10]. In the fiscal context, *"[t]he particular charging or exempting provision must be construed in the context of the whole statutory scheme within which it is contained. The identification of its purpose may require an even wider review, extending to the history of the statutory provision or scheme and its political or social objective, to the extent that this can reliably be ascertained from admissible material": Hurstwood* at [16].

32. In seeking to ascertain the statutory purpose behind s.45 LGFA 1988 and the 2008 Regulations, in *Hurstwood* the Supreme Court considered (inter alia) the February 1966 Command Paper, *Local Government Finance, England and Wales* (Cmnd 2923) which preceded the LGA 1966, highlighting, at [22] that:

> ***"… the Government proposed to "provide for the payment of part rates on properties which remain unoccupied for more than a limited period". This reform was said to be necessary because the notion "that properties should remain empty and available for occupation for long periods in conditions of scarcity is an affront to all right-thinking people." Making rates payable on empty properties should also "reduce the present waste of accommodation"".***

33. That reflects, or is reflected in, the explanation provided by the relevant Ministers in introducing the Bill to each House [SB/7-10].

34. Similarly, in *Hastings Borough Council v Tarmac Properties Ltd* (1985) 83 LGR 629, 633 (cited in *Hurstwood* at [24]) the Court of Appeal considered that the 'mischief' to which the relevant statutory provisions was addressed:

> ***"…can be clearly identified. Parliament wanted to stop the owners of premises …leaving them unoccupied to suit their own convenience and to their own financial advantage."***

35. As is apparent from the chronology above, at first, rating authorities had a discretion whether to levy rates on unoccupied properties – and rates were charged at 50% of that for occupied properties. However, subsequently that discretion was removed, and the levying of unoccupied rates became (subject to irrelevant exceptions) mandatory. Similarly, the amount of rates payable, comparable to occupied properties, increased: the 50% cap was removed by s.15 of the Local Government Act 1974 (the proportion thereafter being set by resolution of the rating authority) and the default amount payable under s.45 LGFA 1988 increased to 100% by the 2007 Act.[5]

36. These changes reflect the increased importance which Parliament attached to addressing the mischief identified: that is (1) enhancing the supply of premises available to businesses, helping to reduce rent levels and increase competitiveness; (2) ensuring landowners are incentivised towards making property available for productive use; and (3) providing a strong deterrence against leaving property unoccupied to suit the owner's convenience or in the interests of holding out for a higher rent or more attractive terms later on.

37. These changes created, apparently for the first time, the incentive to devise rate mitigation schemes, in or around 2008, to generate "occupation" (through placing of boxes or Bluetooth devices). That led to the (pre-*Hurstwood*) case law referred to below.

38. The exemptions in regulation 4 are all readily understandable against those purposes (as explained in *Hurstwood* at [25]-[26]). They cover situations where the owner: (1) may be unable to bring the property back into occupation (regulation 4c); (2) may be regarded as having a reasonable excuse for not doing so (regulations 4d, 4e, and 4h – 4m); or (3) may be making some other valuable contribution to society (regulation 4f or separately the zero rating for charities).

---

[5] On the rationale behind the changes included in the 2007 Act, see the Explanatory Memorandum [SB/14] and the Minister's introduction of the Bill at second reading in the House of Lords [SB/11].

39. Regulation 4a applies where a property has first become unoccupied following a period of rateable occupation (properly understood). Naturally it may take time to secure a new use and/or new occupier, providing a reasonable excuse for a short period of non-occupation. The purpose of regulation 4a (combined with regulation 5) is not to enable a landowner to generate a repeating exemption while keeping the property empty directly contrary to the statutory purpose.

40. Those purposes are constant and consistent. They are clear from the statutory provisions – and the legislative materials and debate which accompanied them – dating back to 1966. They are repeated in the materials accompanying more recent legislation: see the Explanatory Memorandum to the 2008 Regulations [SB/18].

41. The exemptions to rates liability for unoccupied property – provided for through e.g. reg 4a and reg 5 of the 2008 Regulations - fall to be considered in that context: see *Hurstwood* at [35].

<u>D: Key authorities</u>

The 'Ramsay principles'

42. The *Ramsay* principles – articulated by the House of Lords in *W.T. Ramsay Ltd v Inland Revenue Commissioners* [1982] AC 300 and subsequently clarified by the House of Lords in *Barclays Mercantile Business Finance Ltd v Mawson* [2004] UKHL 51; [2005] 1 AC 684 - are general principles of statutory interpretation sitting alongside or above the literal requirements of the legislation. Those principles are applied by the courts when considering whether mitigation schemes designed to avoid a charge or secure an exemption from a statutory liability have their intended effect.

43. As the House of Lords explained in *Barclays* at [32];

> ***"The essence of the new approach was to give the statutory provision a purposive construction in order to determine the nature of the transaction to which it was intended to apply and then to decide whether the actual transaction … answered to the statutory description. Of course this does not mean that the courts have to put***

their reasoning into the straitjacket of first construing the statute in the abstract and then looking at the facts. It might be more convenient to analyse the facts and then ask whether they satisfy the requirements of the statute. But however one approaches the matter, the question is always whether the relevant provisions of the statute, upon its true construction, applies to the facts as found …"

44. The purposive approach to statutory interpretation includes the basic proposition (or process of thought) that it is not generally to be expected that Parliament intends to exempt from tax a transaction (here the Scheme) which has no purpose other than tax avoidance. As the Supreme Court stated in *Hurstwood* at [11]:

> **"*The result of applying the purposive approach to fiscal legislation has often been to disregard transactions or elements of transactions which have no business purpose and have as their sole aim the avoidance of tax. This is not because of any principle that a transaction otherwise effective to achieve a tax advantage should be treated as ineffective to do so if it is undertaken for the purpose of tax avoidance. It is because it is not generally to be expected that Parliament intends to exempt from tax a transaction which has no purpose other than tax avoidance. …"***

45. It went on to quote with approval the celebrated passage from *Gilbert v Commissioner of Internal Revenue* (1957) 248 F 2d 399*:*

> **"*If the taxpayer enters into a transaction that does not appreciably affect his beneficial interest except to reduce his tax, the law will disregard it, for we cannot suppose that it was part of the purpose of the Act to provide an escape from liabilities that it sought to impose*."**

46. That is a powerful principle as demonstrated by the case law. It has been repeatedly used by the courts to defeat schemes which are genuine, comprising a number of lawful steps and which fulfil the black letter interpretation of the statutory provisions but which nonetheless are inconsistent with the statutory purposes. Those cases include *Hurstwood* in which the Supreme Court confirmed that the principle, and approach, applied in the non-domestic rating context as it did in other fiscal contexts.

47. It may be necessary to examine the cases in some detail in oral submissions but the following principles emerge (as recently largely confirmed by the Court of Appeal in *R (Emeraldshaw Ltd) v Sheffield Magistrates Court* [2025] EWCA Civ 1601):

a. a purposive approach is required. The court's task is to identify and give effect to Parliament's purpose in enacting the legislation: *Ramsay* at p323C; *Barclays* at [29]; *Hurstwood* at [10]-[11]. That requires the relevant provision to be construed in light of the whole statutory scheme, including its history and statutory objective;

b. as noted above, that will often lead to elements of a mitigation scheme which have no business purpose and which have as their sole aim the avoidance of liability being disregarded: *Hurstwood* at [11]. This is not a question of morality but of giving effect to Parliament's intent;

c. that approach may apply to individual steps in a transaction even if the overall transaction has a business purpose other than avoidance of liability: see *Furniss v Dawson* [1984] 1 AC 474 ("Furniss") at p537D;

d. where an 'anti-Ramsay' device is inserted into a scheme for no commercial purpose, it should be disregarded: *Inland Revenue Commissioners v Scottish Provident Institution* [2004] UKHL 52; [2004] 1 WLR 3172 at [23];

e. where a mitigation scheme involves multiple steps, it is necessary to consider the scheme as a whole and "in the round": *Ramsay* at pp323-4;

f. a two stage approach is required when assessing a particular scheme in accordance with those principles: *Hurstwood* at [15]. The first, is to ascertain the class of facts to which the legislative provision was intended to apply: *Ramsay* at p323C; *Hurstwood* at [9]-[11], [15]-[16]; *Barclays* at [32] and [36]. The second, is to analyse the mitigation scheme as a whole, "in the round", and in the 'real world' to ascertain whether or not the overall effect of the scheme is within the class of facts to which the legislation was intended to apply: *Barclays* at [32];

g. the ultimate question is always whether the statutory provisions, construed purposively, were intended to apply to the scheme viewed realistically: *Barclays* at [36] citing *Collector of Stamp Revenue v Arrowtown Assets Limited* [2003] HKCFA 46;

h. the application of the *Ramsay* principles to rating are not limited to the "unusual" case; to a case where there is illegality in the scheme or where the specific elements in *Hurstwood* are present: per Holgate LJ in *Emeraldshaw* at [44] –[46];

i. the fact that the “*sole*” purpose was rate mitigation is a “*significant and integral part of the test laid down in [Hurstwood]”*: *Emeraldshaw* at [80]; and

j. the courts have a critical role. It is not necessary for Parliament to legislate on a ‘whack a mole’ basis but it is for the Courts to apply the *Ramsay* principles on a case by case basis – “*legislation cannot be required or even be desirable to enable the courts to arrive at a conclusion which corresponds with the parties’ own intentions*”: *Ramsay* at p326D.

48. Those principles are not confined to the “self-cancelling” transactions as in *Ramsay:* see *Furniss.*

49. They apply even though each step in the scheme is genuine – a scheme may have several genuine and lawful steps (as in *Ramsay* and here) but still not achieve its objective. Indeed, the *Ramsay* principles are applied when on a literal interpretation of the legislation, genuine lawful steps would have result X but consideration of the statutory purposes require the courts to not recognise that effect. In none of the leading cases did the legislative scheme contain any reference to the *Ramsay* principles and in all of them, on a black letter reading of the legislation, the avoidance schemes would have been effective.

50. A recent example of the application of the above principles post – *Hurstwood* is *Revenue and Customs Commissioners v Altrad Services Limited* [2024] EWCA Civ 720; [2024] 1 WLR 4397. The taxpayers devised a series of transactions designed to artificially inflate their qualifying expenditure on plant and machinery, thus securing additional capital allowances without incurring the economic burden typically associated with such increases. The scheme involved selling assets to a bank and immediately leasing them back with the option to re-purchase, effectively creating a loop which could be repeated indefinitely to generate perpetual tax benefits. The Court of Appeal took an holistic view of the transactions and concluded that (despite the sale) the taxpayers did not, in reality, cease to own the assets when they sold them to the bank – in reality continuing to have uninterrupted beneficial use of them. Thus, the intermediate steps that took place between the sale to the bank and their reacquisition had to be disregarded (*Altrad* at [86]).

Hurstwood

51. CoL does not suggest that the circumstances in the present case are directly analogous to *Hurstwood*. It does not seek to assert that the arrangements in respect of the Unit are ineffective to confer an entitlement to possession on POLL, nor that POLL would not be able to assert the usual legal rights and powers conferred on a tenant of property as was the case in *Hurstwood.* It relies on *Hurstwood* as authority for the propositions that:
    a. the *Ramsay* principles apply in the non-domestic rating context, and are *"an application of general principles of statutory interpretation"* [13];
    b. the court may – and should – be prepared to depart from the "*normal*" definitions of terms used in statute, even when long established in case law, where to apply such definition *"would defeat the purpose of the legislation"* [48]. In that case, even the term "person entitled to possession" was given a different meaning from its long established meaning as a term of art; and
    c. the value of legal certainty does not extend to construing legislation in a way which will guarantee the effectiveness of schemes undertaken solely to avoid the liability which the legislation seeks to impose [61].

52. The *Ramsay* principles can thus be seen to have profound implications for avoidance schemes including in rating

Intermittent Occupation Rate Mitigation Schemes: Makro, Principled and PHE

53. In *Makro*, the Magistrates Court had found that "occupation" with boxes by the former lessee of the property (and related group company of the owner) of around 0.2% of the warehouse space "*had no commercial or business purpose other than avoiding a liability to rates*". The High Court disagreed, on appeal by way of case stated, finding that an inferred intention to occupy taken together with use of the premises, even if slight, may be sufficient. If the result amounted to avoidance of tax, that was a matter for the legislature: "*the court is not a court of morals, but of law*" [56]. *Ramsay* was not considered or addressed. The storage of the boxes there served a purpose (albeit limited) other than just rates mitigation.

54. In *Principled*, the High Court found the Scheme in issue in this appeal to be effective. It preceded *Hurstwood.* The *Ramsay* point was not pursued in that case nor was there any engagement with the statutory purposes of regulation 4a/reg 5 and the statutory history. The dispute between the parties turned on whether occupation was "beneficial" for the purpose of the *Laing* tests. Despite recognising that the purpose of the occupation was not to store goods – but to "*plant the occupier's flag; to populate the premises to whatever extent is required to occupy it in law and fact*" [122] – the court could not "*see any good reason why, if ethics and morality are excluded from the discussion, the thing of value to the possessor should not be the occupancy itself*" [124], the benefit of the occupation to POLL then being solely the share of the rate savings.

55. In *PHE,* PHE intended to use the premises in future as its headquarters and in the meantime used it to intermittently store crates of documents for six-week periods, thereafter claiming the three-month exemption. Neither the *Ramsay* principles nor the statutory purposes were considered. There was there a need to retain the documents and thus this was not a case of the storage being solely for the purposes of rate mitigation.

The Judgment Below

56. In finding the Scheme to be effective and dismissing CoL's claim, the Judge here held that:
    a. *Principled* fell to be considered in light of the Supreme Court's decision in *Hurstwood* [J:79];
    b. the court should *"guard against descending into any moral judgment or distorting of legislation"* but *"should have regard for the statutory purpose"* [J:80];
    c. the general anti-avoidance rule was just a *"general principle"* [J:82] and did not mean that every avoidance scheme was to be struck down. The purpose of the statutory scheme was *"more nuanced"* than CoL contended [J:85]. The statutory purpose *"encompassed competing considerations or to put it another way, a balance of different considerations"* [J:85];
    d. it was not "*obvious*" that rates avoidance schemes were *"automatically or even necessarily contrary to Parliament's purpose"* (citing *Secretary of State for Business Innovation and Skills v PAG Management Services Ltd* [2015] EWHC 2404 (Ch)) [J:86];

e. the approach taken in the 2024 Regulations, the Consultation which preceded them and the Explanatory Memorandum to them *was "instructive as to the statutory purpose and intention of the legislature, before and after this point"* [J:88]. The statutory purpose was *"confirmed by the decision in the 2024 Regulations … to maintain that exemption route but recalibrate it to make it less advantageous to exploit"* [J:93]. The *"desire to avoid over-complicating the process for billing authorities"* was also *"material"* to that decision [J:95];

f. *"Properly understood … the statutory purpose, whilst directed at bringing unoccupied properties back into use, also envisages providing some scope for ongoing support, thereby opening the door or leaving the door open … for RMS such as this one…"* [J:90];

g. the outcome of the previous line of cases dealing with intermittent occupation schemes was consistent with that interpretation of statutory purpose, and they were not 'undermined' by a *"greater focus*" on the *Ramsay* principles [J:95];

h. CoL's submissions *"rest on an overly simplistic reading of the purpose of the empty rates regime which pays insufficient attention to the structure and content of the legislation itself, or to the consequences of COL's approach for the wider integrity and operation of the rating system"* [J:97];

i. Ground 1 therefore failed;

j. on the *Laing* ingredients, the Judge agreed with Kerr J's conclusions in *Principled: "Possession of value to the possessor is present where the value is the occupancy itself"* [J:114];

k. "occupying" for the purpose of a business was sufficient [J:115] – here, occupation for the purpose of a business generating occupation for rate mitigation purposes only;

l. there was no support in the case law for introducing an *"additional distinct step"* above the *Laing* ingredients in considering whether there was the necessary occupation [J:116]. That would be *"contrary to the need for coherence in the law and the following of precedent"* [J:117];

m. if the position were to be tested by reference to the position as it was before 1966, *"POLL's presence would plainly amount to occupation"* on the principles established in the earlier cases. *"The empty rates regime explicitly rests on that same understanding of occupation, through the adoption without modification of the common law understanding of the term"* [J:119];

n. if the upholding of such scheme was successful, and the Government did not like the position it could amend it – and amend it by statutory instrument [J:121];

o. *"…opening up an enquiry into the value of occupation, where some occupation is productive and some is not, does beg the question of the criteria to be applied".* Here, the legislator had decided to *"prioritise legal certainty"*, so the court *"does not have to make that judgment call"* [J:126]; and

p. to adopt the route suggested by CoL *"would involve the Court engaging in impermissible value judgments about intermittent occupation schemes, going beyond merely having an eye to the statutory purpose*" [J: 131] and would *"call into question the whole line of cases from Makro onwards, on the 2008 Regulations"* [J:131].

57. The following themes can be discerned:

a. the statutory scheme embodied competing considerations deliberately leaving space for mitigation schemes having no purpose other than rate avoidance [J:82; 85; 86; 88; 90; 93; 95]. This was core to the reasoning. In essence the legislation had deliberately left open a loophole which allowed schemes which had no purpose other than tax avoidance to have that effect and (seemingly) that part of the legislative purpose was to provide an escape from the liability which Parliament sought to impose;

b. that was said to be demonstrated by the approach in the 2024 Regulations;

c. CoL's approach would undermine the coherence of the scheme [J:97; 117; 126]. This was notwithstanding *Hurstwood* [61] – "*the value of legal certainty does not extend to construing legislation in a way which will guarantee the effectiveness of transactions undertaken solely to avoid the liability which the legislation seeks to impose*". Certainty did not prevent the Supreme Court in *Hurstwood* refusing to apply the well-established term of art – "entitled to possession" - in its normal way;

d. CoL's approach would involve the making of value judgements [J:131] – rather than, as CoL would have it, giving effect to Parliament's intent; and

e. CoL's approach would call into question the case law back to *Makro* [J131].

Subsequent Case Law

58. *Emeraldshaw* concerned a rate mitigation scheme which involved granting a lease of a building for the duration of building works. The correct ambit of *Hurstwood* was assessed [44]-[46] – *Hurstwood* was not authority for the proposition that: (1) there was a requirement to distinguish between the "unusual" and normal case; (2) illegality was not a requirement for the *Hurstwood* principle to apply; and (3) the ambit of *Hurstwood* was not limited to its precise facts. Further, the fact that the sole purpose of the lease arrangement was rate mitigation was highly material [80]. *Principled* (2018) did not assist the ratepayer not least because it had not addressed *Ramsay or Hurstwood* [81] and:

    "…the Ramsay principle is a principle of statutory interpretation based on the identification of the purpose of the legislation in question. The application of that principle does not in any way involve the court distorting or manipulating the meaning and effect of a transaction or arrangement "in the name of morality"."

59. *Wigan Council v Property Alliance Group Ltd* [2025] EWHC 2336 (Ch) was to similar effect.

GROUNDS OF APPEAL

60. There are two grounds of appeal. The Judge erred:
    a. in failing to hold that application of the *Ramsay* principles meant that, on a purposive approach to statutory interpretation, the placing of boxes for the sole purpose of rate mitigation and avoiding the liability which would otherwise arise did not fall within the class of facts to which regulation 5 was intended to apply; and/or
    b. in failing to hold that the *Laing* ingredients had to exist and be satisfied independently of the benefit which would be generated if the regulation 4a/5 exemption was engaged.

Ground 1: The Ramsay Point

61. None of the case law on "occupation" – incorporated by s.65(2) LGA 1988- addresses the *Ramsay* principles or considers "occupation" generated solely for rate mitigation purposes.

62. The *Laing* ingredients do not touch on these issues. This is because the legal consequences of generating occupation solely for rate mitigation purposes only arose: (1) after the introduction of liability for unoccupied rates and well after *Laing* with relevant schemes appearing to only have emerged around 2008; (2) upon the regulation 4a/regulation 5 package making the generating of occupation solely for rate mitigation purposes potentially attractive; and (3) after *Hurstwood* made clear that the *Ramsay* principles applied in rating.

63. Those issues now fall to be considered for the first time by this Court in the context of this type of scheme.

64. Under the declaratory principle (*Kleinwort Benson Ltd v. Lincoln City Council* [1999] 2 AC 349[6]), the *Ramsay* principles have always been part of the legal framework for interpreting "occupied" in s21(4) of the 1966 Act (what is now regulations 4a and 5) and, further, are included in the rules to which s.65(2) refers. *Hurstwood* and *Emeraldshaw* are clear examples of those principles being used in rating to yield a different answer from what application of rating principles without consideration of *Ramsay* would have yielded.

65. Satisfaction of the *Laing* ingredients is thus necessary but not sufficient to trigger further three-month exemptions.

66. The short question which arises is whether, in introducing a comprehensive scheme of liability for rates in respect of unoccupied property and in enacting the package of what is now regulations 4a and 5, Parliament can be taken to have intended that the mere placing of boxes for the sole purpose of avoiding that liability was within the class of facts to which "occupied" in s.21(4) and regulation 5 was intended to apply? Were the statutory provisions constructed purposively intended to apply to Scheme viewed realistically? Or,

---

[6] See also *Barclays* at [33]: *"… the Ramsay case did not introduce a new doctrine operating within the special field of revenue statutes. On the contrary, as Lord Steyn observed in McGuckian [1997] 1 WLR 991, 999 it rescued tax law as being "some island of literal interpretation" and brought it within generally applicable principles."*

to put it another way, in legislating in what is now regulations 4a and 5 did Parliament intend to provide a means to escape the liability it sought to impose?

67. Despite the Judge's view to the contrary, the answer is a resounding 'no', especially when the particular exempting provision is "*construed in the context of the whole statutory scheme within which it is contained"* and by reference to "*the history of the statutory provision or scheme and its political or social objective": Hurstwood* at [16].

68. The statutory purposes of the imposition of liability for unoccupied property are clear and regulations 4a and 5 have to be understood consistent with those purposes. The Scheme runs directly contrary to those purposes. Far from incentivising owners to bring properties back into commercial use and avoid leaving them dormant for prolonged periods, it creates a situation in which premises are "occupied" solely to facilitate the perpetuation of the lack of occupation. Far from deterring owners from leaving premises unoccupied "*to suit their own convenience and to their own financial advantage"* it actively facilitates a situation whereby owners can choose to hold tight and wait for more attractive tenants or market conditions, or for scarcity of accommodation to drive up rental prices, without being financially penalised for doing so. Further, far from boosting the UK economy and/or generating additional revenues for the public purse, the Scheme ensures the opposite.

69. The question is not one of 'morality' or 'ethics' (as recently confirmed in *Emeraldshaw*). It is, instead, a straight question of Parliamentary intent. Can Parliament, realistically, be understood to have intended to legislate so as to enable a business model the very purpose of which was the avoidance of business rates liability it sought to impose?

70. In concluding to the contrary, the Judge failed to properly address the statutory purposes of the unoccupied property regime. The Judge (implicitly and in part explicitly) supposed that it was part of the legislative intent when introducing liability for rates in respect of unoccupied property to create a readily available, simple, and potentially ubiquitous means by which every ratepayer could avoid 67% of their liability whilst leaving the premises essentially unoccupied by simply moving some boxes in for six-weeks. Further, on the Judge's logic, there would not even be a need for a rate mitigation company to be

engaged. A landowner could simply move some boxes in, take some photos and move them out again after six weeks. That cannot realistically have been the intent.

71. In reaching his conclusion, the Judge was materially influenced by the approach taken in the 2024 Regulations, the consultation process which preceded them, and the Explanatory Memorandum to them. That reliance is misplaced:
    a. the 2024 Regulations cannot be used to interpret the word "occupied" in what started out as s.21(4): see *Gouldandris v Knight* [2018] EWCA Civ 237; [2018] 1 WLR 3345 at [12] – [13] – in construing legislation "*little or no weight*" can be properly placed on how subsequent secondary legislation interpreted the primary provision;
    b. the 2024 Regulations do not purport to change what "occupied" meant in 1966;
    c. the 2024 Regulations were introduced to mitigate the effects of authorities which assumed these schemes to be effective but which CoL on this appeal contends were wrongly decided; and
    d. that Parliament decided to respond in a limited way in that context is no substitute for a *Ramsay* compliant statutory construction exercise required of the court.

72. The Judge was wrong to infer that the consultation took into account *Ramsay* and *Hurstwood* - the very premise of the consultation was that *PHE* and *Principled* had legitimised[7] schemes which created "*artificial or contrived occupation*", as being "*contrived means which circumvent the spirit and intention of the legislation*", and which involved "*bending the rules of the tax system to gain a financial advantage which Parliament did not intend*".[8]

73. If, as CoL contends, "occupation" generated solely for the purposes of triggering the exemption is not within the class of facts to which the pre-existing legislation was intended to apply, then the 2024 Regulations have no effect on the answer here.

[7] Business Rates Avoidance and Evasion Consultation: Summary of Responses (March 2024) para 2.3 [SB/64]

[8] Business Rates Avoidance and Evasion (July 2023) para 1.11, Foreword, and para 1.4 [SB/47-49]

74. As to the Judge's concern on certainty and complexity:

a. on the agreed facts here there is no scope for any uncertainty – the Scheme to which this claim is directed is self-avowedly solely to generate occupation for the sake of rate mitigation. It allows the legal principles to be applied on those stark facts;

b. certainty should not give way to the correct interpretation - *Hurstwood* at [61];

c. other cases which are less clear on their facts may yield a different answer but that is for another day;

d. in any event, the rating scheme is used to addressing complex and nuanced factual circumstances: see *Cardtronics UK Ltd v Sykes (VO)* [2020] UKSC 21; [2020] 1 WLR 2184*, Nuffield Health v Merton LBC* [2023] UKSC 18; [2024] AC 653, and *Ludgate House Ltd v Ricketts (VO)* [2020] EWCA Civ 1637; [2021] 1 WLR 1750*.* Billing authorities commonly have to make assessments on questions such as how a charity uses properties; if a property is completed or not; and when awarding reliefs such as retail hospitality and leisure reliefs. These are not value judgments: they are usually based on the facts on the ground and whether those facts meet statutory or policy criteria.

Ground 2: Rateable Occupation

75. Ground 1 proceeds on the assumption that each of the four *Laing* ingredients were satisfied. CoL's second ground of appeal (and alternative ground of claim below) is that the third of the *Laing* ingredients (beneficial occupation including volition to occupy) is not satisfied in circumstances such as the present and on this point *Principled* was wrongly decided.

76. Here, there is no benefit or value to POLL from its occupation of the Premises independent of the benefit which accrues to 48SHL under regulations 4a and 5 if the Scheme is effective. To rely on that benefit is circular – one needs beneficial occupation to secure the exemption but one only gets the exemption if one has beneficial occupation. The Scheme thus puts the cart before the horse. The short point is that the *Laing* ingredients must be satisfied ***before*** consideration of the statutory consequences of them being satisfied.

77. On the facts, the benefit relied on by POLL is dependent on the Scheme being effective. If the Scheme is not effective, no monies pass to POLL and it has to repay fees obtained – such that there would be no benefit to POLL. The necessary beneficial occupation is conditional on the efficacy of the Scheme.

78. This is analogous with the conditionality of the intent to redevelop in *S Franses Ltd v Cavendish Hotel (London) Ltd* [2018] UKSC 62; [2019] AC 249. The landlord only "intended" to carry out the works in order to engage the ground for possession in s.30(1)(f) of the Landlord and Tenant Act 1954. It did not have any free standing intention to carry out the works independent of using the statutory scheme to gain vacant possession. As a matter of statutory construction that conditional intent was not sufficient. Here, POLL intends to occupy only in order to rely on and secure the benefit which flows from engaging the regulation 4a/5 exemption. Absent that benefit there would be no occupation – just as the landlord in *Franses* would not have intended to do the works but for s.30(1)(f).

79. Further, *Franses* was not simply about conditionality. In fact, it supports Ground 1 on *Ramsay.* There the entire value of the works consisted in getting rid of the tenant [17] and not in any benefit derived from the redevelopment itself. Essentially, the value to the landlord ran directly contrary to the statutory purpose of Part II of the 1954 Act (conferring security of tenure on business tenants) of which s.30(1)(f) provided limited and prescribed grounds on which that security of tenure could be brought to an end. The parallels here are clear. To allow POLL to use the statutory scheme to generate exemptions runs directly contrary to the purpose of Part III of the LGFA 1988 (liability for unoccupied properties).

<u>Conclusion</u>

80. The Court is respectfully invited to allow this appeal.

David Forsdick KC

Jacqueline Lean

4th March 2026

Landmark Chambers
180 Fleet Street, London EC4A 2HG
clerks@landmarkchambers.co.uk