Neutral Citation Number: [2026] EWCA Civ 970

Case No: CA-2025-001425

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISON
CHARLES BAGOT KC (SITTING AS A DEPUTY HIGH COURT JUDGE)
[2026] EWHC 1130 (KB)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29/07/2026

Before:

LORD JUSTICE BEAN
(Vice-President of the Court of Appeal (Civil Division))
LADY JUSTICE FALK
and
LORD JUSTICE HOLGATE

- -

Between:

THE MAYOR AND COMMONALTY AND CITIZENS OF THE CITY OF LONDON — **Appellant**

- and –

(1) 48TH STREET HOLDINGS LIMITED
(2) PRINCIPLED OFFSITE LOGISTICS LIMITED — **Respondent**

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David Forsdick KC and Jacqueline Lean (instructed by **The Comptroller and City Solicitor**) for the **Appellant**
Andrew Brueton (instructed by **Gregsons Solicitors**) for **the First Respondent**
Daniel Kolinsky KC and Luke Wilcox (instructed by **Mills and Reeve LLP**) for **the Second Respondent**

Hearing dates: 15 and 16 July 2026

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Approved Judgment

This judgment was handed down remotely at 10.00am on 29 July 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lady Justice Falk:

Introduction

1. This appeal concerns a non-domestic rate mitigation scheme promoted by the second respondent, Principled Offsite Logistics Limited ("POLL"). The scheme involves the placing of boxes with redundant contents in otherwise unoccupied premises on a recurrent basis with the aim of reducing liability to non-domestic rates ("NDR") by around two thirds.

2. The appellant, the Mayor and Commonalty and Citizens of the City of London ("CoL"), sought to challenge the scheme by bringing a claim to recover unpaid NDR against the first respondent, 48th Street Holdings Limited ("48th Street"), and a claim for declaratory relief against both respondents. The claim relates to unoccupied office units at 2 America Square, EC3 (the "Premises"), of which 48th Street is the registered leasehold proprietor.

3. The claims were heard by Charles Bagot KC, sitting as a Deputy High Court judge (the "Judge"), in January 2025. In a reserved judgment handed down in May 2025 (the "Judgment"), the Judge concluded that the scheme was effective and dismissed the claims. In reaching his conclusion, the Judge followed the approach of earlier High Court decisions, in particular the decision of Kerr J in *R (Principled Offsite Logistics Ltd) v Trafford Council* [2018] EWHC 1687 (Admin), [2018] RA 499 ("*POLL v Trafford*"). The Judge rejected the argument that *POLL v Trafford* was wrongly decided in the light of the subsequent decision of the Supreme Court in *Rossendale Borough Council v Hurstwood Properties (A) Ltd* [2021] UKSC 16, [2022] AC 690 ("*Rossendale*").

4. Permission to appeal was granted by Bean LJ, who referred to the widespread use of the scheme and the fact that its effectiveness had not been considered by this court. POLL claims to have saved its clients over £500m through use of the scheme, and CoL considers that the scheme and variants of it are causing it £35m per annum in lost revenue.

5. We heard submissions from David Forsdick KC and Jacqueline Lean for CoL and from Daniel Kolinsky KC and Luke Wilcox for POLL. We are grateful for their assistance. Andrew Brueton appeared for 48th Street on a noting brief, taking no active part in the appeal.

6. For the reasons that follow, I have concluded that CoL's appeal should be allowed, and that *POLL v Trafford* should be regarded as wrongly decided.

The statutory framework

7. Before 1966, liability for rates depended entirely on the occupation of property, rather than ownership or legal possession. By legislation originally enacted in the Local Government Act 1966, local authorities were empowered to impose liability for rates in respect of unoccupied property, subject to certain exemptions. That legislation was re-enacted in the General Rate Act 1967 (the "1967 Act"), and can now be found, in respect of NDR, in the Local Government Finance Act 1988 (the "1988 Act") and the Non-Domestic Rating (Unoccupied Property) (England) Regulations 2008, SI 2008/386 ("the 2008 Regulations").

8. Apart from the fact that the rules have since 1988 been split between primary and secondary legislation, the most obvious differences between the original and current provisions are that local authorities are now obliged rather than simply permitted to charge NDR in respect of unoccupied premises, and the amount chargeable has increased from 50% to 100% of the rate payable for occupied property.

9. Section 43 of the 1988 Act deals with occupied property. It imposes liability to NDR on the person "in occupation of all or part" of premises, referred to in the legislation as a hereditament. Liability arises on a day-by-day basis.

10. Section 65(2) provides:

> "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 …"

11. Section 45 imposes liability on the "owner" where "none of the hereditament is occupied". Again, liability arises on a day-by-day basis. The "owner" of a hereditament is defined in section 65(1) as the "person entitled to possession of it". That concept was considered in detail by the Supreme Court in *Rossendale*.

12. Liability under section 45 also requires the hereditament to fall within a class prescribed by the Secretary of State in regulations "by reference to such factors as [he or she] sees fit" (section 45(9)). This is addressed by regulation 3 of the 2008 Regulations, which (broadly) prescribes all buildings and associated land, subject to the exclusions in regulation 4.

13. Regulation 4(a) of the 2008 Regulations excludes any hereditament:

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

14. Regulation 4(b) provides for a longer period of six months for certain industrial premises. (The treatment of unoccupied industrial premises has changed over the legislative history, being initially treated in the same way as other premises, then exempted entirely, before the introduction of the current six-month rule.) There are further exemptions in regulations 4(c)-(m), including where occupation is prohibited by law or the property is the subject of a building preservation notice, and in respect of certain insolvency-related events.

15. At the relevant time, regulation 5 of the 2008 Regulations provided:

> "A hereditament which has been unoccupied and becomes occupied on any day shall be treated as having been continuously unoccupied for the purposes 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."

By regulation 2 of the Non-Domestic Rating (Unoccupied Property) (England) (Amendment) Regulations 2024, SI 2024/323 (the "2024 Regulations") the period of thirteen weeks was substituted for the period of six weeks referred to above, with effect for periods beginning on or after 1 April 2024.

16. It is worth pausing here to comment on the evident statutory purpose of regulation 5, namely that periods of occupation of less than six weeks should not prevent the continuous "clocking up" of a three-month period under regulation 4(a) or a six-month period under regulation 4(b). Rather, periods of occupation of less than six weeks that occur between periods when the premises are unoccupied are deemed to form part of a single period throughout which the premises are unoccupied.

17. Leaving to one side the change made by the 2024 Regulations and the exceptions in regulations 4(b)-(m), the effect of the legislation can be summarised as follows:

    a) There is an exemption from NDR for the first three months after non-domestic premises become unoccupied. This is known as empty property relief.

    b) Thereafter, the "owner" becomes liable to NDR.

    c) If the premises become occupied again for a period of less than six weeks that is disregarded, such that the property is treated as continuously unoccupied for the purposes of regulation 4(a).

    d) In contrast, if the premises become occupied again for a period of six weeks or more, that is not disregarded.

    e) The result is that a period of occupation of at least six weeks – commonly referred to as the "reset" period – will trigger the re-application of empty property relief under regulation 4(a).

The scheme

18. The scheme is described in an agreed case summary, using one of the units forming part of the Premises.

19. POLL is in the business of providing rate mitigation schemes. It was engaged by 48th Street to reduce liability for unoccupied property NDR in respect of the Premises. The scheme worked as follows:

    a) On the expiry of the first three months following the unit becoming unoccupied, 48th Street granted POLL a six-month lease of the unit at a peppercorn rent.

    b) Contemporaneously, a break notice was served terminating the lease after six weeks. This notice was served pursuant to a provision of the lease that permitted either party to determine the lease on 14 days' notice at any time from six weeks following grant.

    c) POLL placed boxes and their contents in the unit for those six weeks. It claimed to be the occupier and accepted liability for NDR on that basis.

    d) At the end of the six-week period the lease terminated and the boxes were removed.

    e) 48th Street then claimed exemption for a further period of three months.

    f) The cycle repeated for so long as needed.

g) Under contractual terms entered into at the same time as the lease, 48th Street agreed to pay POLL a fee equal to a percentage of the savings achieved. If the scheme proves not to be effective the fee will be refunded. In addition, 48th Street agreed to pay a non-refundable fee equal to the NDR incurred by POLL in respect of the Premises. The lease also required 48th Street to bear the cost of utilities.

20. For obvious reasons, the scheme has been referred to as "box shifting". Its effect, if POLL is correct, is that the overall liability to NDR can be reduced by approximately two-thirds: an exemption for three months, followed by NDR payable by the occupier for a six-week reset period, and then three months of further exemption, and so on.

21. The agreed case summary further records that it is common ground that:

a) the sole purposes of placing boxes in the Premises was to generate "occupation" for the purposes of regulation 5 of the 2008 Regulations;

b) the placing of the boxes and their contents in the Premises served no commercial or business purpose save for rate mitigation, which was the business purpose of POLL;

c) the benefit of the "occupation" was solely the claimed rate mitigation benefits; and

d) the lease was not a sham: it and the other legal arrangements produced the legal results for which they provided.

22. As Mr Forsdick pointed out, it is implicit in this that, apart from their role in the scheme, the contents of the boxes are redundant or worthless, rather than items that need to be stored somewhere.

The meaning of "occupation"

23. As Lord Briggs and Lord Leggatt observed in *Rossendale* at [21]:

> "The question whether property is occupied and, if so, who is the occupier for rating purposes is still largely governed by the common law rules: see section 65(2) of the 1988 Act. The classic statement of those rules is that of Tucker LJ in *John Laing & Son Ltd v Assessment Committee for Kingswood Assessment Area* [1949] 1 KB 344, 350, recently reaffirmed by this court in *Cardtronics UK Ltd v Sykes (Valuation Officers)* [2020] 1 WLR 2184, para 13:
>
> > '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.'"

The primary focus in these proceedings, as in *POLL v Trafford*, has been on the third of the ingredients listed by Tucker LJ in *John Laing & Son Ltd v Assessment Committee for Kingswood Assessment Area* [1949] 1 KB 344 ("*Laing*") at p.350, which is also reflected in the label sometimes applied of "beneficial occupation".

24. It is unnecessary for the purposes of this decision to undertake a comprehensive review of the case law that lies behind Tucker LJ's summary, but some limited observations on the first and third ingredients are warranted at this stage.

25. First, it is uncontroversial that the existence of actual occupation of property is not precluded by the fact that its use is limited. So, for example, use of a small part of premises can amount to occupation. This is reflected in section 43 of the 1988 Act, which applies if "all or part of the hereditament" is occupied.

26. Secondly, there will be no occupation where the putative occupier is <u>unable</u> to derive benefit from the property, most obviously because of a requirement to make it available to the public without charge: *Hare v Churchwardens and Overseers of Putney* (1881) 7 QBD 223 (Putney Bridge); *Churchwardens and Overseers of Lambeth Parish v London County Council* [1897] AC 625 ("*Lambeth v LCC*") (Brockwell Park); contrast *Winstanley v North Manchester Overseers* [1920] AC 7 ("*Winstanley*") (receipt of burial fees).

27. Thirdly, the fact that the use of property is not profitable, or indeed that the making of profit is prohibited, does not preclude beneficial occupation: see generally *Ryde on Rating and Council Tax* (March 2026), Division B at [182]. This point was definitively confirmed by the House of Lords in *London County Council v Erith Churchwardens* [1893] AC 562, which concerned property used for sewage works and outfall sewers and, as such, not capable of yielding a profit. The property was held to be rateable on the basis that the test was whether the occupation was "of value". In *Laing* at p.357, Jenkins J put the requirement of beneficial occupation in terms of "some use or value or benefit to the possessor", reflecting in slightly more detail the submission of Counsel that was accepted by Tucker LJ as to the four necessary ingredients of occupation. *Ryde* describes it as "occupation which serves a purpose". In my view that is a shorthand which requires some care in its application and, given the next (distinct) point, is probably better avoided.

28. Fourthly, a distinction has been drawn between purpose and motive. In this context, "purpose" has been taken to mean the object of the activity in the sense of "what a man does rather than why he does it", the latter being motive: *Wimborne DC v Brayne Construction Co Ltd* [1985] RA 234 ("*Wimborne v Brayne*") at p.239, per Lloyd LJ. In determining whether there is beneficial occupation, purpose is relevant but motive is not.

29. Finally, and notwithstanding the previous point, intention can be relevant in some cases in determining whether there is occupation. This has been evident in cases where a property is not in current active use and it has been necessary to decide whether it has (in effect) been abandoned and on that basis not occupied, whether it is being kept or prepared with a view to potential future use, or whether it is in fact being used as contemplated. Examples are *R v Melladew* [1907] 1 KB 192 (warehouse available for storage held to be in occupation); *Associated Cinema Properties Ltd v Hampstead BC* [1944] 1 KB 416 (property leased in case it was needed held not to be occupied); *Arbuckle Smith & Co. Ltd. v Greenock Corporation* [1960] AC 813 (alterations to vacant warehouse to make it suitable for use as a bonded store held not to amount to occupation); *Minister of Transport v Holland* (1962) 14 P&CR 259 (property blighted by a bypass plan and left by the owner held not to be occupied, despite some chattels being left that were not worth removing). This is an area where there can clearly be difficulties at the margin. No doubt in recognition of that difficulty, section 65(5) of the 1988 Act deems a

hereditament to be unoccupied where it would otherwise be treated as occupied by reason of plant, machinery or equipment not having been removed after last use.

Legislative purpose

30. Tucker LJ's statement of the four ingredients in *Laing* was made at a time when there was no liability to rates in respect of unoccupied property. The changes made from 1966, outlined above, imposed liability on the owners of unoccupied property, subject to exceptions.

31. Lord Briggs and Lord Leggatt explained the purpose of those changes in *Rossendale* at [22]-[27]. In essence, and in the context of what was recognised in 1966 as a scarcity of property and a concern to reduce the waste of accommodation, the aim is to deter owners from "leaving property unoccupied for their own advantage and encouraging them to bring empty property back into use for the benefit of the community at large" (*Rossendale* at [25]). Further, the exceptions listed in regulation 4 of the 2008 Regulations, and a separate scheme for charities and amateur sports clubs, reflect this aim. As Lord Briggs and Lord Leggatt also explained at [25]:

> "The thrust of the exceptions is to exclude properties where, for varying reasons, the owner either (i) may be unable to bring the property back into occupation, or (ii) may be regarded as having a reasonable excuse for not doing so, or (iii) may be making some other valuable contribution to society by being the owner, in lieu of paying rates."

(The imposition of rates on unoccupied property also reflects the fact that empty properties benefit from some local services, such as police and fire services: *Rossendale* at [24].)

32. Allowing a temporary period of exemption of three months (or six months for industrial property) is consistent with the legislative aim described in *Rossendale* at [25]. It recognises that, in the normal course of events, there is likely to be some level of void period after a tenant leaves before premises can in practice be relet.

The "box shifting" line of cases

33. *POLL v Trafford* is not the only High Court case to consider "box shifting" or other arrangements that seek to take advantage of the six-week reset period.

34. In *Makro Properties Ltd v Nuneaton and Bedworth BC* [2012] EWHC 2250 (Admin), [2012] RA 285 ("*Makro*"), boxes of documents had been placed in an otherwise empty warehouse for a six-week period by Makro Self Service Wholesalers Ltd ("MSSWL"), a company in the same group as the owner Makro Properties, followed by a six-month vacancy, relying on the longer period for industrial premises in regulation 4(b). HHJ Jarman QC held that this amounted to occupation and that the district judge had been wrong to rely on the *Ramsay* principle (specifically, *Furniss v Dawson* [1984] 1 AC 474) to conclude otherwise. He observed at [46] that the district judge had found as a fact that the "documentation was of value which MSSWL was bound by law to retain" so that "it cannot properly be said that the storage was of no practical benefit", even though storage could have occurred elsewhere. He also commented at [56] that the court is "not a court of morals", and it was for the legislature to determine whether further reform was needed.

35. A different arrangement was considered in *Sunderland CC v Stirling Investment Properties LLP* [2013] EWHC 1413 (Admin), [2013] RA 411 ("*Sunderland v Stirling*"), where the deployment by a marketing company of a Bluetooth transmitter in an otherwise empty warehouse owned by the respondent and leased to the marketing company for 43 days was held by Wilkie J to amount to occupation notwithstanding that no more than a "minute fraction" of the space was used ([72]). Wilkie J considered that it was not relevant that the nature of the use was different to that described in the rating list ([74]).

36. The next case is *POLL v Trafford*. It is common ground that the scheme with which we are concerned is materially the same as that considered by Kerr J in that case and, as here, the case proceeded on the basis that the only value derived from occupation was its rating consequences. However, unlike this case no reliance was placed on the *Ramsay* principle (see at [76]).

37. Kerr J accepted at [116] that the earlier case law did not determine whether "occupation for its own sake" was sufficient. At [117]-[118], he indicated that *Ramsay* was not relevant because the transactions were genuine and produced the legal results for which they provided. That is incorrect: see *Rossendale* itself, where the leases in question were accepted as creating genuine legal rights and obligations, and the discussion of that point in the *Emeraldshaw* case referred to at [46] below, at [84]-[85].

38. Kerr J concluded that there was beneficial occupation by POLL. The critical passage is as follows:

> "122. In the present case, the business of the putative occupier is the business of occupation. The purpose of the occupation is not to store goods; it is, so to speak, to plant the occupier's flag; to populate the premises to whatever extent is required to occupy it in law and fact. The reason why that is done – the motive, if you prefer – is rates avoidance for the landlord, but the morality of that is neither here nor there.
>
> 123. Let it be assumed, as is likely in most cases of this kind, that the first, second and fourth elements of occupation in *Laing* (actual occupation, exclusivity for the possessor's purposes, and occupation that is not too transient) are all present. Is the third element – that possession is of some value or benefit to the possessor – present where the value or benefit is the occupancy itself? That is the question to be decided.
>
> 124. Having reflected on this, I cannot 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. The verb 'occupy' and the nouns 'occupation', 'occupancy' and 'occupier' are, in the end, ordinary English words. Their meaning has developed in case law to give them a sensible construction, but they have not been given technical statutory definitions.
>
> 125. I prefer the submissions of the claimant company to those of the billing authority because they better fit the ordinary meaning of occupation. I find no concept within the meaning of the word requiring a purpose or motive beyond that of the occupation itself. The question is in each case whether the four elements in the *Laing* case are present. The third is sufficiently present

> where the intention is to occupy for reward, without any further commercial or other purpose."

39. Kerr J revisited the topic in *R (Secretary of State for Health and Social Care (on behalf of Public Health England)) v Harlow DC* [2021] EWHC 909 (Admin), [2021] 4 WLR 65 ("*PHE v Harlow*"). In that case Public Health England ("PHE") intended to use the premises as its future headquarters, but before that occurred moved crates of documents in for a period of six weeks and then out for three months, before repeating the process. There was evidence that the documents were ones that PHE needed to retain, or might on review decide that it needed to retain, pursuant to its document retention policy. Kerr J found that the items were created in the exercise of PHE's functions and that PHE had not yet determined whether they could be safely disposed of ([9] and [61]). Kerr J went on:

> "62. I reject the proposition that no benefit accrues to a possessor motivated by the prospect of rates exemption, until the occupation has ceased. The reasoning is casuistic. Rateable occupation is, indeed, determined under the legislation on a day by day basis; but that same legislation aggregates days of occupation into periods of occupation. That an occupier must wait until its exemption crystallises does not stop current occupation conferring the present benefit of notching up another day of the period that will produce the exemption.
> …
> 64. In my judgment, [PHE's] proposition of law is correct: actual use of the property, even minimal use as in this case, combined with an intention to occupy it is sufficient for occupation, whether the motive is rates mitigation or any other motive. The use need not be substantial, as the cases show. It need not be legally required. It may be whimsical or eccentric. It must serve a purpose of the occupier but that purpose can be obtaining a future rates exemption."

40. Kerr J added that this was subject to two caveats, namely that upkeep and development of the property were insufficient, as was leaving abandoned goods ([65]). It made no difference whether occupation was out-sourced or kept in-house ([69]).

Rossendale

41. *Rossendale* concerned different forms of scheme designed to avoid liability for NDR, under which special purpose vehicles ("SPVs") were granted short leases and were either put into liquidation or dissolved. Practical control of the property remained with the landlord. The schemes relied on the SPVs being treated as the "person entitled to possession" (see [11] above). The Supreme Court held that they were not.

42. In reaching that conclusion Lord Briggs and Lord Leggatt first considered the *Ramsay* principle, as restated in *Barclays Mercantile Business Finance Ltd v Mawson* [2004] UKHL 51, [2005] 1 AC 684 ("*Barclays Mercantile*") and *UBS AG v Revenue and Customs Comrs* [2016] UKSC 13, [2016] 1 WLR 1005 ("*UBS*"). At [9] and [10] they made it clear that the principle is not limited to tax legislation, as it is based on the modern purposive approach to statutory interpretation. They went on:

"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. As Judge Learned Hand said in *Gilbert v Comr of Internal Revenue* (1957) 248 F 2d 399, 411, in a celebrated passage cited (in part) by Lord Wilberforce in *Ramsay* [1982] AC 300, 326 :

> '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 the liabilities that it sought to impose.'

See also *Collector of Stamp Revenue v Arrowtown Assets Ltd* (2003) 6 ITLR 454, paras 112-113 (Lord Millett NPJ).

12. Another aspect of the *Ramsay* approach is that, where a scheme aimed at avoiding tax involves a series of steps planned in advance, it is both permissible and necessary not just to consider the particular steps individually but to consider the scheme as a whole. Again, this is no more than an application of general principle. Although a statute must be applied to a state of affairs which exists, or to a transaction which occurs, at a particular point in time, the question whether the state of affairs or the transaction was part of a preconceived plan which included further steps may well be relevant to whether the state of affairs or transaction falls within the statutory description, construed in the light of its purpose. In some of the cases following *Ramsay*, reference was made to a series of transactions which are 'pre-ordained': see e g *Inland Revenue Comrs v Burmah Oil Co Ltd* [1982] STC 30, 33 (Lord Diplock); *Furniss v Dawson* [1984] AC 474, 527 (Lord Brightman). As a matter of principle, however, it is not necessary in order to justify taking account of later events to show that they were bound to happen—only that they were planned to happen at the time when the first transaction in the sequence took place and that they did in fact happen: see *Inland Revenue Comrs v Scottish Provident Institution* [2004] 1 WLR 3172, para 23, where the House of Lords held that a risk that a scheme might not work as planned did not prevent it from being viewed as a whole, as it was intended to operate.

13. The decision of the House of Lords in the *Barclays Mercantile* case made it clear beyond dispute that the approach for which the *Ramsay* line of cases is authority is an application of general principles of statutory interpretation. Lord Nicholls of Birkenhead, delivering the joint opinion of the Appellate Committee (which also comprised Lord Steyn, Lord Hoffmann, Lord Hope of Craighead and Lord Walker of Gestingthorpe), identified the "essence" of the approach (at para 32) as being:

> '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 (which might involve

> considering the overall effect of a number of elements intended to operate together) answered to the statutory description.'
>
> Lord Nicholls also quoted with approval (at para 36) the statement of Ribeiro PJ in *Arrowtown*, para 35, that:
>
> 'the driving principle in the Ramsay line of cases continues to involve a general rule of statutory construction and an unblinkered approach to the analysis of the facts. The ultimate question is whether the relevant statutory provisions, construed purposively, were intended to apply to the transaction, viewed realistically'."

43. Lord Briggs and Lord Leggatt emphasised at [14] that the scope of the *Ramsay* doctrine was not limited to transactions and could cover such matters as status. As Lord Nicholls said in *MacNiven v Westmoreland Investments Ltd* [2003] 1 AC 311, 320, para 8, "The paramount question always is one of interpretation of the particular statutory provision and its application to the facts of the case". They continued:

> "15. In the task of ascertaining whether a particular statutory provision imposes a charge, or grants an exemption from a charge, the *Ramsay* approach is generally described—as it is in the statements quoted above—as involving two components or stages. The first is to ascertain the class of facts (which may or may not be transactions) intended to be affected by the charge or exemption. This is a process of interpretation of the statutory provision in the light of its purpose. The second is to discover whether the relevant facts fall within that class, in the sense that they "answer to the statutory description" (*Barclays Mercantile* at para 32). This may be described as a process of application of the statutory provision to the facts. It is useful to distinguish these processes, although there is no rigid demarcation between them and an iterative approach may be required.
>
> 16. Both interpretation and application share the need to avoid tunnel vision. The 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.
>
> 17. Likewise, the facts must be also be looked at in the round…"

44. Lord Briggs and Lord Leggatt then turned to the rating legislation and its historical background, making the observations referred to at [31] above, before considering the meaning of "entitled to possession" and the facts of the case. They concluded that, while in a normal case the person who has the immediate legal right to actual physical possession is entitled to possession:

> "48. In the unusual circumstances of this case, however, identifying 'the person entitled to possession' in section 65(1) of the 1988 Act as the person with the immediate legal right to possession of the property would defeat the purpose of the legislation. As we have explained, the schemes were designed in such a way as to ensure that the SPV to whom a lease was granted had no

> real or practical control over whether the property was occupied or not and that such control remained at all times with the landlord.
>
> 49. In our view, Parliament cannot sensibly be taken to have intended that 'the person entitled to possession' of an unoccupied property on whom the liability for rates is imposed should encompass a company which has no real or practical ability to exercise its legal right to possession and on which that legal right has been conferred for no purpose other than the avoidance of liability for rates. Still less can Parliament rationally be taken to have intended that an entitlement created with the aim of acting unlawfully and abusing procedures provided by company and insolvency law should fall within the statutory description."

At [51], Lord Briggs and Lord Leggatt emphasised that their conclusion was not founded on the motive for granting the leases, but their effect.

45. At [60] and [61] Lord Briggs and Lord Leggatt addressed the issue of uncertainty, observing that there was force in that point by reference to the appellant authorities' proposed test of "genuine and real commercial entitlement as owner", but that:

> "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."

46. *Rossendale* was considered by this court in *R (Emeraldshaw Ltd) v Sheffield Magistrates' Court* [2025] EWCA Civ 1601, [2026] 1 WLR 1640, which also turned on the concept of "owner" for rating purposes. That case confirmed that the approach in *Rossendale* is not confined to cases involving unusual circumstances such as abuse of insolvency or company law. In that case a lessee charity was held not to have been the "owner" of premises which were being substantially redeveloped, in circumstances where the landlord could and did terminate the charity's tenancy when the works were complete in order to lease the premises to the new commercial tenants it had lined up ([77]).

The Judgment

47. Turning to the decision in this case, the Judge described the critical issue as whether, on a purposive construction of the legislation, the placing of boxes in the Premises for six weeks amounted to "occupation" ([21] and [22]). After summarising the legal framework, he considered *POLL v Trafford* and CoL's challenge to it, both in the light of *Rossendale* and by reference to the *Laing* ingredients. The Judge adopted Kerr J's summary of the earlier case law in *POLL v Trafford*, before turning to Kerr J's consideration of more recent case law on the statutory regime and the argument that there was no occupation on the facts. The Judge also considered Kerr J's subsequent decision in *PHE v Harlow* and referred to *Sunderland v Stirling*, before turning to *Rossendale*.

48. The Judge rejected CoL's submissions based on *Rossendale* for the reasons given at [79]-[97], which he summarised at [97] as resting on an overly simplistic reading of the purpose of the regime which paid "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". In reaching that conclusion the Judge placed reliance on observations of Norris J in *Secretary of State for Business, Innovation and Skills v*

PAG Management Services Ltd [2015] EWHC 2404 (Ch), [2015] BCC 720 ("*Secretary of State v PAG*") and on the approach taken in the 2024 Regulations and the process leading up to them.

49. The Judge also rejected CoL's submission that the third of the Laing ingredients, that occupation was "beneficial", was not met, for the reasons given at [112]-[133]. In summary, he agreed with Kerr J's analysis. To amount to occupation, use of premises had to serve a purpose, but that could be the purpose of obtaining a future rates exemption; it was sufficient that the "value is the occupancy itself" ([114]). The Judge again referred to the process leading to the 2024 Regulations. In any event, judicial comity required the Judge to follow *POLL v Trafford* unless convinced it was wrong, and he was far from being so convinced.

The grounds of appeal

50. There are two grounds of appeal. The first relates to the Judge's failure to apply *Ramsay* principles to conclude that the "reset" was not engaged. The second is that, in any event, the Judge erred in concluding that the *Laing* ingredients were satisfied in circumstances where that conclusion was dependent on the benefit of the regulation 4(a) exemption sought by the scheme.

51. As will become apparent from the discussion below, I would not draw a distinction between these two grounds.

Discussion

52. *Rossendale* makes clear that we must apply normal principles of purposive interpretation to rating legislation. As with other legislation, this includes the *Ramsay* principle as explained in *Barclays Mercantile* and subsequent cases. The essence of that principle was encapsulated by Ribeiro PJ in *Collector of Stamp Revenue v Arrowtown Assets Ltd* (2003) 6 ITLR 454 at [35], in a statement that bears repeating:

> "The ultimate question is whether the relevant statutory provisions, construed purposively, were intended to apply to the transaction, viewed realistically."

Another way of putting this is that the court must construe the legislation purposively to determine what "class of fact" is intended to fall within the relevant charge or exemption, and determine whether the facts in issue "answer to the statutory description" (*Rossendale* at [15], citing *Barclays Mercantile* at [32]).

53. The *Ramsay* principle has in appropriate cases allowed transactions to be disregarded where they have a sole aim of avoiding tax. The rationale for this is that "it is not generally to be expected that Parliament intends to exempt from tax a transaction which has no purpose other than tax avoidance" (*Rossendale* at [11]). *Rossendale* has made clear that this rationale applies equally to rating: see in particular at [49]. The *Ramsay* principle is also not limited to transactions but may cover matters such as status (*Rossendale* at [14]).

54. The purpose of the legislation that imposes NDR on unoccupied property was explained in *Rossendale*: see [31] above. Mr Kolinsky did not submit that anything said on that topic in *Rossendale* was wrong. Although he did suggest that it was incomplete I do not

consider that any of the points that he made in that connection (for example, in relation to the legislative history regarding industrial premises) impacted on the substance of what was said or its relevance for this appeal. In short, the purpose or aim of the legislation is to deter owners from leaving property unoccupied and to encourage them to bring empty property back into use. There are some exceptions to this where there are good reasons to provide them, to which Lord Briggs and Lord Leggatt applied the shorthand of a "reasonable excuse".

55. If POLL is correct, then the charge that the legislature has seen fit to impose on unoccupied property with a view to achieving that aim is, as to two thirds of it, optional. The placement of boxes and (it is to be inferred) their redundant or worthless contents for a six-week period is to be regarded as amounting to occupation even though it has no commercial or business purpose save for rate mitigation and the sole benefit of the "occupation" is the claimed rate saving. Further, if POLL is right it appears that the owner has no need of a third party lessee. They can just move boxes of (in effect) rubbish in and out themselves, on the basis that that is sufficient to "plant the occupier's flag" (*POLL v Trafford* at [122]).

56. I do not agree that the placement of items in this way amounts to occupation for the purposes of the NDR legislation, such as to allow the reset to be triggered. The legislature cannot sensibly be taken to have intended that sections 45(1) and 65(2) of the 1988 Act and regulations 4(a) and 5 (or 4(b) and 5) of the 2008 Regulations should have the effect that the temporary placement of items in an otherwise unoccupied hereditament amounts to occupation where the sole aim of doing so is to generate occupation for the purposes of those provisions, there is no commercial or business purpose save for rate mitigation, and the putative occupation is "beneficial" only due to the claimed rate mitigation benefits. Rather, any such "occupation" – which for convenience I shall refer to below by the shorthand "pure rate mitigation occupation" – is not to be treated as occupation. It is not within the class of facts that is intended to amount to occupation for the purposes of the statutory scheme.

57. Section 65(2) of the 1988 Act provides that the question of occupation "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". That can only be a reference to the common law principles which had by then been summarised as the four *Laing* ingredients: see *Cardtronics UK Ltd v Sykes (VO)* [2020] UKSC 21, [2020] 1 WLR 2184 at [13], per Lord Carnwath. POLL relies on section 65(2) to support its argument that pure rate mitigation occupation would amount to occupation under those case law principles, it being of no moment that it may now be ratepayers who have an incentive to claim that there is occupation, rather than rating authorities. As Mr Kolinsky submitted, the rules cannot change just because parties' interests have.

58. There are two answers to this submission, which in my judgment are closely linked.

59. First, it takes no account of the *Ramsay* principle, as now applied in *Rossendale*. That principle has the effect, in appropriate cases, that something done for no purpose other than the avoidance of liability for rates will be ineffective in achieving that purpose (see *Rossendale* at [49]). The *Ramsay* principle is itself a "rule" of purposive interpretation that would have "applied for the purposes of the 1967 Act had [the 1988 Act] not been passed".

60. Secondly, the common law is in any event not frozen in time. It has to develop, not least to address new situations and previously unanswered questions. Further and importantly, it must operate consistently with legislation. Indeed, it is worth bearing in mind that the concept of occupation has never been divorced from legislation. Its case law meaning developed because the courts had to determine whether premises were occupied for the purposes of rating legislation. There is no prohibition on its continuing development in a way that ensures that legislation continues to be correctly construed and applied.

61. Prior to the imposition of rates on unoccupied property there would have been no reason to attempt to create occupation in order to reduce a rates bill, rather the reverse. The question simply did not arise. But that fact does not prevent the courts determining now whether, consistently with the present statutory scheme, "occupation" undertaken for rate mitigation purposes is to be treated as occupation for the purposes of section 65(2), section 45(1) and regulations 4(a) and 5, or 4(b) and 5.

62. I have explained at [27] above that the third *Laing* ingredient requires occupation to be "beneficial", in the sense that it has some use, value or benefit. Leaving to one side the "box shifting" line of cases referred to above, the authorities that have considered that concept have all concerned activity that has some utility, value or benefit independently of rating legislation. Generally this will be obvious, although I accept that eccentric or whimsical use can amount to occupation. What matters is the utility, value or benefit of the activity from the perspective of the particular occupier. So, for example, the storage of items that others may regard as having no intrinsic value, but which an occupier wishes to retain for his own reasons, has a utility or benefit for that occupier. Occupation is for the purpose of storing the items in question.

63. Pure rate mitigation occupation has no such utility, value or benefit independently of the statutory scheme. The items temporarily placed in the otherwise empty premises are not there to be stored or for any other purpose apart from achieving "occupation" after a period of non-occupation, with a view to allowing further non-occupation without the consequences that the legislature intended to impose. Any benefit would, if available, arise from the operation of the legislation itself.

64. Further, while the activity of placing items temporarily is carried out in the hope that a rate-saving will be achieved by a reset of the three-month period in regulation 4(a), any saving is entirely dependent on 1) the existence of "occupation" for a six-week period, 2) the expectation that this will be followed by a further period during which the property is unoccupied, and 3) the scheme being accepted as effective.

65. In my judgment, this reinforces the conclusion that such activity cannot amount to beneficial occupation that satisfies the third *Laing* ingredient. The saving is not only conditional on future events but, importantly, depends on a circularity of reasoning, under which the "beneficial" nature of the occupation is entirely dependent on the activity being treated as occupation for the purposes of the legislation. In my judgment, "occupation" for, in effect, the sake of it, and which has no use, value or benefit other than rate saving does not amount to occupation for the purpose of the statutory scheme.

66. There is force in Ms Lean's submission that, if pure rate mitigation occupation amounted to occupation for the purposes of the legislation, the third *Laing* ingredient would, in effect, be redundant. This is because some level of actual occupation satisfying the first ingredient would be sufficient, provided that it was exclusive and not too transient. But

the authorities make clear that the third ingredient is an additional requirement: see for example *Lambeth v LCC* at p.630 and *Winstanley* at p.12.

67. I do not agree that this approach wrongly introduces a motive test, being the aim of mitigating rates. On the contrary, POLL's own case requires motive to be taken into account, because it relies on occupation being "beneficial" by reference to that very aim, and nothing else. Activity which is intrinsically of no utility, value or benefit – which is what is being done – is claimed to be of value or benefit only by reference to why it is being done (see [28] above, referring to *Wimborne v Brayne* at p.239).

68. I also consider that it does not assist the ratepayer that any rate saving would not be made directly by the putative occupier, but rather would be shared under a contractual arrangement (see the reference in *POLL v Trafford* at [125] to "occupy for reward", [38] above). It is still a matter of motive. The putative occupier hopes for a financial reward for its otherwise inexplicable actions.

69. Mr Kolinsky placed significant reliance on the fact that the provisions on which POLL relies are included in secondary rather than primary legislation, which the Secretary of State could choose to amend at any time but has chosen not to amend in a way that precludes box shifting. For example, it would have been open to the Secretary of State to use a concept other than occupation, or to impose additional conditions beyond occupation in regulation 5 of the 2008 Regulations. Instead, and despite the consultation process having referred to box-shifting schemes and considered various options for reform, the only change made by the 2024 Regulations was to extend the period in regulation 5 from six to thirteen weeks. There was also a live issue as to whether to introduce a form of general anti-avoidance rule, as has been done in Wales. Where to draw the line was a matter of legislative choice with which the courts should not interfere.

70. There are a number of points to make in response.

71. First, the requirement to apply a purposive construction, including where relevant by reference to the *Ramsay* principle, applies to all forms of legislation. There is no proper basis to confine that approach to primary legislation, whether because primary legislation may be more difficult to amend or for any other reason. In each case it is necessary "to give the statutory provision a purposive construction in order to determine the nature of the transaction to which it was intended to apply" (*Barclays Mercantile* at [32]).

72. Secondly and in any event, what is now regulations 4(a) and 5 of the 2008 Regulations was originally reflected in primary legislation, in the form of section 21(1) and (4) of the Local Government Act 1966.

73. Thirdly, the legislative purpose of imposing rates on unoccupied property was to deter owners from "leaving property unoccupied for their own advantage and encouraging them to bring empty property back into use for the benefit of the community at large" (*Rossendale* at [25], see above). Nothing in the legislative history indicates that this altered when the legislation was restructured and the provisions on which POLL relies moved to secondary legislation. Indeed, it is trite that the Secretary of State would be required to exercise their regulation making power, like other forms of discretion, in a way that promotes the policy and objects of the Act in question: *Padfield v Minister of Agriculture, Fisheries and Food* [1968] AC 997, 1030. POLL's interpretation runs

directly contrary to that purpose because, as already indicated, it in effect makes two thirds of the charge optional.

74. Fourthly, what the Secretary of State did or did not choose to do when making the 2024 Regulations is not a legitimate guide to the interpretation of the 2008 Regulations, and the Judge erred in proceeding on the basis that it was. The general rule is that assumptions that may (or may not) have been made when enacting later legislation about the meaning or effect of earlier legislation are simply not relevant to the interpretation of that earlier legislation. Interpretation is a matter for the courts.

75. There is an exception to this where the earlier legislation is genuinely ambiguous and the later legislation is regarded as "fixing" the proper interpretation. This exception is derived from *Attorney-General v Clarkson* [1900] 1 QB 156. It was discussed in *Comr of Inland Revenue v Hang Seng Bank Ltd* [1991] 1 AC 306 at pp.323-324 and more recently in *R (N) v Walsall Metropolitan Borough Council* [2014] EWHC 1918 (Admin), [2014] PTSR 1356 at [52]-[59]; see generally *Bennion, Bailey and Norbury on Statutory Interpretation*, 9th ed. at 24.18. However, this is not a case where there is any such ambiguity. Furthermore, even if there was ambiguity I can see nothing in the 2024 Regulations or the process leading up to them that could properly be treated as a form of legislative signal that box-shifting schemes generally, still less in their pure rate mitigation occupation variant, should be regarded as effective. This is so irrespective of the additional point that it would in any event not be open to the Secretary of State to enact regulations affecting the definition of occupation in the primary legislation. In short, the meaning of occupation has not been "fixed" so as to compel the court to accept that there was occupation by POLL in this case.

76. Mr Kolinsky also relied, as the Judge did, on comments made by Norris J in *Secretary of State v PAG*.

77. That case concerned a petition to wind up a company involved in a rate mitigation scheme of one of the kinds considered in *Rossendale* (see *Rossendale* at [31], [44] and [45]). Norris J held that the company should be wound up on just and equitable grounds for abuse of insolvency legislation, but rejected a broader argument that winding up was justified because the rate mitigation scheme was contrary to the public interest.

78. In rejecting that argument Norris J referred to evidence from a director of a scheme user to the effect that rate mitigation schemes lowered the cost of refurbishments and "gave the landlord the confidence to go ahead" ([59]), and commented that on that evidence:

> "… it is not possible to find that [rate mitigation schemes] are contrary to the public interest (though they may be): nor would it in principle be right for the court in one case to resolve what is essentially a far-reaching economic and political question that is properly the province of Parliament"([60]).

Norris J then referred to the judgment of HHJ Jarman in *Makro*.

79. Norris J's comments were in the different context of a winding up petition, and the different question of whether winding up should be ordered because the scheme was contrary to the public interest. They are not a guide to the application or otherwise of *Ramsay* principles in this case, any more than they affected the approach of the Supreme Court in *Rossendale* itself, or the subsequent decision in *Wigan Council v Property*

Alliance Group Ltd [2025] EWHC 2336 (Ch), [2025] RA 361 where HHJ Cadwallader applied *Rossendale* to the facts. If – as suggested before us – the legislative scheme, without scope for rate mitigation schemes of the kind employed in this case, has an effect contrary to its legislative purpose of encouraging property to be brought back into use because it may (for example) make refurbishment less economic, then that is a matter for the legislature to address, not the courts.

80. In deference to the able submissions of Ms Lean, and those of Mr Wilcox in response, I should briefly mention CoL's reliance on *S Franses Ltd v Cavendish Hotel (London) Ltd* [2018] UKSC 62, [2019] AC 249 ("*Franses v Cavendish*"). That case concerned a landlord's opposition to the grant of a new business tenancy on the grounds of an intention to carry out works, pursuant to section 30(1)(f) of the Landlord and Tenant Act 1954. The Supreme Court held that, in order for that provision to apply, a firm and settled intention was required. In that case the landlord intended to do the works only if that proved necessary to get the tenant out of the premises, and it was common ground that the works had no practical utility. A conditional intention of that kind was held to be insufficient, because the intention to do works had to exist independently of the tenant's claim to a new tenancy, the "acid test" being "whether the landlord would intend to do the same works if the tenant left voluntarily": see at [18] and [19], per Lord Sumption. It was unnecessary to deal with an alternative submission based on the *Ramsay* principle ([22]).

81. While I understand that an analogy may be drawn with *Franses v Cavendish* because, effectively, the intention existed by reference to the statutory scheme rather than being self-standing, I have found that authority of limited assistance. It concerned a different statutory test and a different question, namely the nature of the intention required to do works in the future for the purposes of section 30(1)(f) of the 1954 Act. Further, the Supreme Court did not find it necessary to consider the *Ramsay* principle.

82. What I have said so far relates to what I have termed a pure rate mitigation occupation scheme. That is what this case relates to, and Mr Forsdick rightly made it clear that CoL are not seeking to challenge other forms of box shifting scheme in this litigation, such as those considered in *Makro* and *PHE v Harlow*. As to that I will confine myself to one comment, which is this. It is a well-established part of the *Ramsay* principle that a commercially irrelevant contingency or condition included in a scheme in order to secure a fiscal advantage can be ignored: see *Inland Revenue Comrs v Scottish Provident Institution* [2004] UKHL 52, [2004] 1 WLR 3172 at [23] (referred to in *Rossendale* at [12]) and *UBS* at [85]. The potential application of this aspect of *Ramsay* outside a tax context will need to be considered in due course.

Conclusion

83. In conclusion, I would allow the appeal and overrule *POLL v Trafford*. Section 45(1) of the 1988 Act and regulations 4(a) and (b) and 5 of the 2008 Regulations do not have the effect that the placement of items in an otherwise unoccupied hereditament amounts to occupation where the sole aim of doing so is to generate occupation for the purposes of those provisions, there is no commercial or business purpose save for rate mitigation, and the putative occupation is "beneficial" only due to the claimed rate mitigation benefits.

Lord Justice Holgate:

84. I agree.

Lord Justice Bean (Vice-President of the Court of Appeal, Civil Division):

85. I also agree.