Neutral Citation Number: [2026] EWHC 151 (Admin)

Case No: AC-2025-LON-000877

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
DIVISIONAL COURT
ON APPEAL FROM THE CITY OF LONDON MAGISTRATES' COURT
DISTRICT JUDGE LAW

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30/01/2026

Before :

LORD JUSTICE HOLGATE
MR. JUSTICE MOULD

- -

Between :

THE MAYOR AND COMMONALTY AND CITIZENS OF THE CITY OF LONDON	**Appellant**
- and -	
ROBINSON WEBSTER (HOLDINGS) LIMITED	**Respondent**

- -
- -

Timothy Morshead KC and Kate Traynor (instructed by **The Comptroller and City Solicitor, City of London**) for the **Appellant**
Richard Glover KC and Cain Ormondroyd (instructed by **Gunnercooke llp**) for the **Respondent**

Hearing date: 11 December 2025

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Approved Judgment

This judgment was handed down remotely at 4pm on 30 January 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Holgate and Mr Justice Mould:

Introduction

1. This is an appeal by way of case stated under s.111 of the Magistrates' Court Act 1980 brought by the City of London ("CoL") against the decision of District Judge Law in the City of London Magistrates' Court on 28 November 2024. The judge decided that the respondent, Robinson Webster (Holdings) Limited ("RWHL") was not liable to pay non-domestic rates ("NDR") under s.45 of the Local Government Finance Act 1988 ("LGFA 1988") on an unoccupied shop comprising the basement and ground floor, 44 Bow Lane, London EC4M 9DT ("the shop") for the period 1 April 2021 to 31 March 2024.

2. The central issue is whether the judge erred in law in deciding that the effect of the company voluntary arrangement ("CVA") made in respect of RWHL under Part 1 of the Insolvency Act 1986 ("IA 1986") was that RWHL ceased to be the "owner" of the shop for the purposes of s.45(1)(b) of the LGFA 1988 and therefore was not liable to pay NDR on the unoccupied premises.

3. The freehold of the shop was owned by two companies, CEP CBRE UK Property Nominee 1 Limited and CEP CBRE UK Property Nominee 2 Limited ("CBRE"). On 7 February 2017 a CBRE company granted to RWHL a lease of the shop for a term of 10 years commencing on 5 September 2016.

4. RWHL occupied the shop trading under the name "Jigsaw". In 2019 the premises formed part of a portfolio of 84 shops operated by the company under that brand. But by then RWHL had identified the shop as loss-making. Subsequently, during the Covid-19 pandemic RWHL closed all of its Jigsaw shops.

5. CoL is the billing authority under the LGFA for its administrative area. It is responsible for sending notices requiring payment of the NDR due in respect of each hereditament shown on the local rating list for that area and for taking proceedings to recover any unpaid rates. A notice is sent to the rateable occupier of each *occupied* hereditament for NDR due under s.43 of the LGFA 1988 and to the owner of each *unoccupied* hereditament for NDR due under s.45.

6. On 13 August 2020, the directors of RWHL made a proposal for a CVA under s.1 of the IA 1986. The proposal was sealed by the High Court on the same day. It stated that the ability of RWHL to continue to trade was conditional upon the CVA being approved by the requisite majorities of the company's creditors and shareholders. Without those approvals RWHL would no longer be able to trade as a going concern and it was likely that the company would go into administration.

7. The objectives of the CVA included rationalising RWHL's leasehold obligations and restoring the viability of the business. That involved compromising a number of financial obligations. The CVA applied to the 74 retail stores then remaining. Following a review of the performance of the stores, the directors divided the retail leases into four categories, which may be summarised as follows:

> Category A – financially viable stores which would remain open and trading and for which rent obligations would be met;

> Category B – stores which could be financially viable if rents were to be reduced, involving an element paid as a percentage of net sales, and a compromise on arrears of rent;
>
> Category C – significantly underperforming stores which would be potentially viable only if greater reductions in rent and arrears were to be made;
>
> Category D – the remaining stores which RWHL would "exit" with effect from 3 September 2020, the date on which the CVA itself came into effect, with rent arrears to be compromised and released in full on that date, in return for RWHL paying around 8% of those arrears.

8. The lease of the shop fell within category D.

9. On 23 November 2021 RWHL's solicitors wrote to CoL claiming that RWHL's right to occupy the shop had ended on 3 September 2020. On 1 September 2022, CoL issued a summons against CBRE for unpaid NDR as the freehold owner of the premises. On 28 September 2022, CBRE's solicitors responded to CoL that a CVA could not determine a proprietary interest and so RWHL's lease continued to subsist. They enclosed a copy of a letter which they had sent to RWHL on 21 September 2020 making it clear that CBRE had not accepted, and would not accept, a surrender of RWHL's lease.

10. After taking legal advice, CoL decided to withdraw the summons against CBRE and instead served demand notices on RWHL. On 27 July 2023, CoL issued a summons against RWHL seeking a liability order for unpaid NDR totalling £220,364.58 for the period 1 April 2021 to 31 March 2024. RWHL disputed liability and the matter came before the judge on 14 October 2024.

Statutory framework

Rating legislation

11. Section 42 of the LGFA 1988 deals with the contents of a local rating list. Section 42(1) provides:

> "(1) A local non-domestic rating list must show, for each day in each chargeable financial year for which it is in force, each hereditament which fulfils the following conditions on the day concerned—
>
> (a) it is situated in the authority's area,
>
> (b) it is a relevant non-domestic hereditament,
>
> (c) at least some of it is neither domestic property nor exempt from local non-domestic rating, and
>
> (d) …"

A "relevant hereditament" is one which consists of lands and other specified types of property (s.64(4)).

12. Section 42(4) provides that for each day on which a hereditament is shown in the list, it must also show that hereditament's rateable value.

13. Section 43 of the LGFA 1988 deals with the liability to pay NDR on occupied hereditaments. Where a hereditament is shown in a local non-domestic rating list, a person who is in occupation of all or part of the hereditament is liable to pay NDR to the billing authority for each chargeable day (s.43(1) and (7)). Generally, in relation to local rating lists coming into effect on 1 April 2020, the amount payable for any chargeable day is the rateable value shown for the hereditament in the rating list multiplied by the national non-domestic rating multiplier (s.43(4)). Rateable value is based on annual letting value.

14. Section 45 of the LGFA 1988 deals with the liability to pay NDR on unoccupied hereditaments. By s.45(1) and (7) a person is liable to pay to the billing authority NDR for any day of the financial year on which a hereditament is shown in the local non-domestic rating list, it falls within a class prescribed by regulations (see s.45(1)(d)), none of the hereditament is occupied, and that person is the "owner" of the whole of the hereditament. Generally, in relation to local rating lists coming into effect on 1 April 2020, the amount payable is the same as that which would have been payable if the hereditament had been occupied (s.45(4)).

15. Section 65(1) of the LGFA 1988 defines the "owner":

> "(1) The owner of a hereditament or land is the person entitled to the possession of it."

16. Thus, the liability to pay NDR arises on a daily basis. For an occupied hereditament that liability is imposed on the occupier of that property. For an unoccupied hereditament the liability is imposed on the owner of that property.

17. The Non-Domestic Rating (Unoccupied Property) (England) Regulations 2008 (SI 2008 No. 386) ("the 2008 Regulations") determine which types of hereditament qualify for NDR on unoccupied property under s.45 of the LGFA 1988. Regulation 3 provides that the class of non-domestic hereditaments prescribed for the purposes of s.45(1)(d) consists of all "relevant non-domestic hereditaments other than those described in regulation 4".

18. Regulation 4 contains a list in paras. (a) to (m) of hereditaments excluded from NDR on unoccupied properties. Some of the exclusions of a hereditament are expressed in terms which relate to the property itself. For example, para.(a) excludes a hereditament which (subject to reg.5) has been unoccupied for a "continuous period not exceeding three months". But other paragraphs in reg.4 exclude a hereditament by reference to a defined characteristic of its owner. For example, para.(h) excludes a hereditament "whose owner is entitled to possession only in his capacity as the personal representative of a deceased person".

19. The exclusions in paras.(i), (k), (l) and (m) relating to a bankruptcy order, the winding-up of a company, a company in administration, or a property in the possession of a liquidator, all fall into that second category. The exclusion is defined by reference to a characteristic of the owner of the hereditament:

> "(i) where, in respect of the owner's estate, there subsists a bankruptcy order within the meaning of section 381(2) of the Insolvency Act 1986;
>
> [...]
>
> (k) whose owner is a company which is subject to a winding-up order made under the Insolvency Act 1986 or which is being wound up voluntarily under that Act;
>
> (l) whose owner is a company in administration within the meaning of paragraph 1 of Schedule B1 to the Insolvency Act 1986 or is subject to an administration order made under the former administration provisions within the meaning of article 3 of the Enterprise Act 2002 (Commencement No. 4 and Transitional Provisions and Savings) Order 2003;
>
> (m) whose owner is entitled to possession of the hereditament in his capacity as liquidator by virtue of an order made under section 112 or section 145 of the Insolvency Act 1986."

It will be noted that Parliament has not provided for the exclusion of a hereditament owned by a company the subject of a CVA.

20. It is helpful to summarise relevant features of the statutory schemes for bankruptcy in relation to individuals and for administration, liquidation, and CVAs in relation to companies.

Bankruptcy of an individual

21. The exclusion in reg.4(i) of the 2008 Regulations from liability for NDR on an unoccupied hereditament applies where a bankruptcy order subsists in respect of the estate of the owner of that hereditament.

22. When such an order is made, a trustee in bankruptcy is appointed. The bankrupt's estate vests immediately in the trustee (s.306 of the IA 1986), including freehold or leasehold property (subject to certain exceptions). The function of the trustee is to get in and realise the bankrupt's estate and to distribute it to creditors in accordance with the legislation.

23. Under the statutory scheme the bankrupt loses the right to alienate property which is vested in the trustee and, generally loses the right to occupy commercial property.

24. A trustee in bankruptcy is able to alienate the property vested in him (subject to compliance with the terms of any alienation clause in a lease). He is also able to disclaim onerous property, including leaseholds (see ss.315-321 of the IA 1986). The trustee is liable for the rent due under a lease and other obligations of the lessee unless and until he disclaims that lease. A disclaimer terminates the rights and obligations of landlord and tenant under the lease. Otherwise, a trustee has no power unilaterally to terminate or modify a lease.

Liquidation of a company

25. Where an order is made under s.145 of the IA 1986 vesting a lease in a liquidator, or an order is made under s.112, so that as "owner" the liquidator is entitled to possession of that property, the effect of reg.4(m) of the 2008 Regulations is that there is no liability for NDR under s.45 of the LGFA 1988.

26. The exclusion in reg.4(k) of the 2008 Regulations from liability for NDR on an unoccupied hereditament applies where the property is owned by a company which is subject to a winding-up order or is being wound up voluntarily under the IA 1986. A voluntary winding-up may be instigated by its creditors or, in the case of a solvent company, by its members.

27. A liquidator will be appointed. The directors will either cease to hold office or lose their powers. In contrast to a bankruptcy, the property of the company is generally not vested in a liquidator. Instead, a liquidator assumes custody and control over the company's property (ss.144, 165 and 166 of the IA 1986).

28. A liquidator is responsible for realising the company's assets and distributing the proceeds to creditors and then members. He or she may dispose of property, including a lease (subject to compliance with the terms of any alienation clause). A liquidator may disclaim onerous property, including a lease (ss.178 and 179 of the IA 1986). Here again, a disclaimer terminates the rights and obligations of a landlord and tenant under the lease. Otherwise a liquidator has no power unilaterally to terminate or modify a lease.

Company in administration

29. The exclusion in reg.4(l) of the 2008 Regulations from liability for NDR on an unoccupied hereditament applies where it is owned by a company in administration under sched.B1 of the IA 1986 (or is the subject of an administration order).

30. The purpose of an administration is to provide a company with an interim period of protection during which the administrator appointed may manage the company's affairs, business and property with a view to achieving one or more of the statutory objectives: rescuing the company as a going concern; achieving a better result for the company's creditors as a whole than would be likely if the company were to be wound up; or realising property to make a distribution to secured or preferential creditors (para.3 of sched.B1 of the IA 1986). An administrator acts as agent for the company (para.69 of sched.B1).

31. The IA 1986 imposes a moratorium on landlords and creditors taking certain types of enforcement action against the company or its property without either the consent of the administrator or permission of the court (para.43 of sched.B1).

32. Rent payable under a lease during an administration is provable as a debt in that administration. But if the administrator uses demised premises for the purposes of the administration, the rent attributable to that period of use is payable in full to the landlord as an administration expense.

33. During an administration a lease held by the company continues to be vested in that company. The landlord may rely upon a forfeiture clause in the lease, but only with the administrator's consent or the court's permission. The administrator may exercise the company's rights of alienation in accordance with the terms of the lease.

Company Voluntary Arrangement

34. Part 1 of the IA 1986 deals with CVAs. Part VIII of the IA 1986 provides a similar scheme in relation to voluntary arrangements for individuals ("IVAs").

35. By s.1(1) of the IA 1986, the directors of a company (other than one in administration or being wound up) may make a proposal to the company and its creditors for:

> "a composition in satisfaction of its debts or a scheme of arrangement of its affairs".

This is referred to as a "voluntary arrangement". A proposal must provide for a qualified insolvency practitioner, referred to as "the nominee" to act either as a trustee or "otherwise for the purpose of supervising" the implementation of the CVA (s.1(2)).

36. Where the nominee is not the liquidator or administrator of the company, he must submit a report to the court stating *inter alia* whether he considers the proposed CVA to have a reasonable prospect of being approved and implemented and should be considered by a meeting of the company and by the company's creditors (s.2(1) and (2)). The nominee must organise a company meeting and the procedure for the creditors to decide on the proposed CVA (s.3). By s.4(1) and (1A) the shareholders and creditors may approve the proposed CVA with or without modifications. Section 4(3) and (4) excludes certain types of proposals in relation to secured and preferential creditors. Section 4A provides for a CVA which has been duly approved by the members of the company and the creditors to have effect. This then engages s.5, by which the CVA binds every person who was entitled to vote in the procedure by which the creditors decided to approve the CVA, or would have been so entitled if he had had notice of it, as if he were a party to the agreement (s.5(2)).

37. Section 7 deals with the implementation of a CVA. When a CVA comes into effect, the person who is carrying out the functions of the nominee is from then on referred to as "the supervisor of the voluntary arrangement". A creditor or any other person dissatisfied with any decision, etc. of a supervisor may challenge the same on application to the court (s.7(3)). The supervisor may apply to the court for directions regarding anything arising under the CVA, or for a winding up or administration order (s.7(4)).

38. The relationship between the supervisor and the company and its directors will to some extent depend upon the terms of the CVA agreed by the shareholders and the creditors, subject to any orders or directions of the court. So, for example, in *In re NT Gallagher & Son Limited* [2002] EWCA Civ 404; [2002] 1 WLR 2380 the Court of Appeal accepted that according to the CVA in that case the supervisors held (a) the assets in their hands and (b) contributions received from the company for distribution to creditors, as trustees for the CVA creditors (see [29] and Emmet and Farrand on Title at 11.357 to 11.360).

39. We gratefully adopt the more detailed exposition of Part 1 of the IA 1986 by Zacaroli J (as he then was) in *Lazari Properties 2 Limited v New Look Retailers* [2021] EWHC 1209 (Ch); [2021] Bus. L.R. 915 at [46]-[58].

40. It is well-established that, while a CVA may make an arrangement or composition as between a company and its creditors (that is their rights *inter se* as debtor and creditor), a CVA cannot remove or vary a proprietary right, such as the right to forfeit of a company's landlord. Accordingly, a CVA may reduce the rent payable under a lease, but may not alter the landlord's right of re-entry in the event of, for example, non-payment of rent (*Discovery (Northampton) Limited v Debenhams Retail Limited* [2019] EWHC 2441 (Ch); [2020] B.C.C. 9 at [83]-[99]).

41. Those principles were applied by Zacaroli J in *In re Instant Cash Loans Limited* [2019] EWHC 2795 (Ch) in relation to a scheme of arrangement between a company and its creditors under Part 26 of the Companies Act 2006. He accepted that the relevant provisions in Part 26 were not materially different from those governing CVAs. Such a scheme cannot impose a surrender of a lease on the landlord, because that would interfere with a proprietary interest. While a lease subsists, it is the tenant, not the landlord, who has exclusive possession of the property. That may have important consequences for obligations to third parties in relation to the property. Such obligations, based on property ownership, environmental liabilities and liability for NDR on an unoccupied property, fall on the tenant while a lease subsists, but on the landlord if the lease is terminated by a surrender. A surrender is not an arrangement between the tenant and the landlord *qua* debtor and creditor, but an alteration in their proprietary relationship. Such an alteration brought about by a surrender could not be said to be simply parasitic upon a compromise of the landlord's rights *qua* creditor (see [6]-[25]).

42. In *Lazari* the CVA reduced the rent payable for two categories of lease and gave the landlords concerned a right to terminate the leases on certain break dates. The tenant was given a so-called "termination right", namely it could offer to relinquish any right of occupation, which the landlord was not required to accept. But the tenant would in any event be released from all liabilities for rent, service charge, insurance and other covenants under the lease (see [18]-[28]).

43. Zacaroli J reiterated that a CVA which purports to provide for the surrender of a lease without the landlord's agreement would fall foul of the rule that a CVA cannot interfere with the proprietary rights of a landlord ([278]). But the termination rights in *Lazari* did not do that. A landlord had a choice as to whether or not to accept the tenant's offer to surrender a lease. Furthermore, the release of the tenant from all liability to pay rent and to comply with other obligations under its leases did not amount to a surrender by operation of law. The minimum essential legal requirements for a tenancy or lease would still remain ([280]-[281]). For example, a lease need not require the lessee to pay rent. Here none of the landlords affected were required to accept a surrender of a lease. Unless and until a landlord did so, the lease subsisted and it was accepted that the tenant remained liable for *inter alia* NDR ([282]).

The CVA in this case

44. Clause 3.1 on p.65 of the CVA provided that during the CVA the affairs, business and assets of the company (including future assets) would be managed by the directors in

the ordinary course of business. By clause 3.2 the directors were under no obligation to put the supervisors into possession of any of the assets of the company, save to make payments to the supervisors in respect of the "compromised creditors payment fund" and their costs. The directors proposed that the company would pay £1.5m into that fund by monthly instalments over 2 years (clause 2.3 on p.26). RWHL, acting through its directors, was to remain solely liable for the conduct of the future trading of its business (clause 3.4) and the supervisors were not to have any involvement in, or personal liability for, any ongoing trading activities or trading debts of RWHL (clause 3.5).

45. Clause 30 on pp.99 to 101 of the CVA dealt with the functions and powers of the supervisors. Their function was essentially to supervise the implementation of the CVA, which included agreeing the CVA claims of "compromised creditors" and administering the "compromised creditors' payment fund" (clause 30.2). The supervisors were not to assume any fiduciary or other special duties to the creditors (clause 30.6). Clause 30.7 reiterated that it was not the duty of the supervisors to oversee the business and affairs of the company. Clause 30.9 required RWHL to give the supervisors monthly access to such information as the latter considered necessary to carry out their functions.

46. Once the supervisors were satisfied that the arrangements in the CVA had been fully implemented, they were to send a notice of completion to that effect to various parties, including "the compromised landlords" (clause 38.1 on p.104 of the CVA).

47. Clause 14 (on pp.88-89 of the CVA) dealt with the effect of the CVA on category D landlords and leases:

> "**14 THE EFFECT OF THE CVA ON CATEGORY D LANDLORDS**
>
> 14.1 The Company shall exit the Category D Premises with effect from the Effective Date.
>
> 14.2 Any amounts which remain due and owing to the Category D Landlords for Rent Arrears will be compromised and released absolutely by the Category D Landlords for the payment from the Compromised Creditors' Payment Fund to that Category D Landlord of a sum equivalent to approximately 8% (eight per cent) of the determined value of the Rent Arrears.
>
> 14.3 Any amounts which are due and owing to the Category D Landlords for Dilapidations will be compromised and released as at the Effective Date in return for the payment from the Compromised Creditors' Payment Fund to that Category D Landlord of a sum equivalent to approximately 8% (eight per cent) of the Dilapidations Allowance.
>
> 14.4 With effect from the Effective Date
>
> (a) all of the Company's rights, obligations and Liabilities (whether past present or future) pursuant to the Category D

> Lease shall end and any sums payable under or in relation to the Category D Lease, other than any sums which have already accrued and are due under the terms of this CVA shall be reduced to nil;
>
> (b) the rights and obligations of the Category D Landlord in respect of the Company pursuant to the Category D Lease shall end;
>
> (c) the Category D Landlord shall not take action of any sort including but not limited to bringing a claim against the Company in relation to any sums falling due or otherwise seek to enforce any obligations or Liabilities owed by the Company under or in respect of the Category D Lease;
>
> (d) the Company shall be deemed to offer to relinquish any right of occupation and will execute any document required to effect a surrender or termination of the Category D Lease;
>
> (e) the Company shall be obliged only to deliver up the fixtures, fittings and chattels to which, pursuant to the terms of the relevant Category D Lease, the relevant Category D Landlord is entitled and not, for the avoidance of doubt, any additional fixtures, fittings or chattels;
>
> (f) the Company shall be permitted (but not required), as soon as reasonably practicable, to retrieve and remove from the relevant Category D Premises:
>
> > i all signage and items on which the Brand is displayed; and
> >
> > ii all computer equipment located at the relevant Category D Premises and used to facilitate the operations of the relevant Category D Premises, and
>
> (g) Third Party Suppliers shall, as soon as reasonably practicable, be permitted access to the relevant Category D Premises to retrieve and remove any of their Third Party Property.
>
> 14.5 The Category D Landlords shall be entitled to participate in the Profit Share Fund in relation to all CVA Claims that are Allowed CVA Claims."

The district judge's judgment

48. The judge referred at [DJ8] to the decision of the Supreme Court in *Rossendale Borough Council v Hurstwood Properties (A) Limited* [2021] UKSC 16; [2022] AC 690 ("*Rossendale*") at [47] in which it was decided that ordinarily "owner" in s.65(1) of the LGFA 198 refers to the person who as a matter of the law of real property has the

immediate legal right to actual physical possession of the property. Thus where the freeholder of a property grants a lease, the lessee is the "owner" of the property for the purposes of s.65(1) [DJ9]. It was common ground that RWHL had not surrendered its lease to CBRE [DJ10].

49. The judge said that *Rossendale*, however, had decided at [59] that, on a purposive interpretation, the words "entitled to possession" in s.65(1) are concerned with a real and practical entitlement carrying with it either the ability to occupy the property in question, or to confer a right to its occupation on someone else, and thereby to decide whether or not to bring it back into occupation [DJ11]. According to the judge [DJ12], the issue was whether RWHL no longer had a real and practical entitlement to possession in the relevant period because of the CVA, applying the purposive interpretation in *Rossendale* at [59].

50. The judge said that because NDR is a daily charge, it was necessary to look to the reality of the position during the relevant charging period and not to what had happened previously. Although in 2016 CBRE had disposed of the entitlement to possession by granting the lease to RWHL, the question was whether that still held good in a "real and practical" way during the period for which CoL sought to make RWHL liable for NDR [DJ25].

51. At [DJ26] the judge said:

> "26. A consideration of the purposive interpretation of the Act set out by the Supreme Court requires looking at whether finding one or other party liable for business rates would lead to *maximising the incentive to bring* the premises back into occupation. On the one hand you have a company in a CVA that cannot afford to pay the rent or rates and has abandoned the premises. On the other hand you have a freeholder which believed it was exempt from business rates because of the nominal existence of the lease with a consequent reduced incentive to ensure the premises were occupied by setting a sufficiently attractive rent. …" (emphasis added)

52. At [DJ27]-[DJ29] the judge said:

> "27. It seems to me the fact that CBRE took pains to preserve the lease in no more than a nominal way and at their discretion to accept surrender at any moment should a willing new lessee come forward is a clear indication that they had in mind the potential liability for rates. Indeed the strategy of keeping the lease in existence appeared initially successful because when COL took proceedings against them in this court they were subsequently abandoned. While I appreciate COL had received legal advice about taking that course it might have been preferable, given the judgment in *Rossendale*, to bring proceedings against both CBRE and RWHL to maintain the ability to attach liability to a party before the court.

> 28. The fact is that the premises remained vacant for three years. The outcome is plainly in my judgment contrary to the purpose of the Act. In my view it is obvious that a freeholder who was subject to business rates (and knew they were) where their leaseholder was subject to a CVA and had offered surrender of a lease would be keen to accept surrender and bring the premises back into occupation.
>
> 29. The court in *Rossendale* made it clear that its purposive interpretation of the Act was not limited to tax avoidance schemes. In my view the *"normal case"* they referred to at [47] was one in which the *"tenurial chain"* they refer to at [50] was clear and not clouded by any other factors. I note that the court placed emphasis in formulating its test at [59] on "*in particular the ability either to occupy the property in question, or to confer a right to its occupation on someone else, and thereby to decide whether or not to bring it back into occupation*." In my judgment it is plain that in the disputed period RWHL had neither the ability to occupy nor confer a right to occupation on someone else in both legal (due to the terms of the CVA) and practical (the keys having been handed over). It is no part of the test formulated by the Supreme Court to look to why that was the case in other words what had caused it. The test urges me to look to the reality on the ground during the disputed period. That analysis compels me to prefer the submissions on behalf of RWHL that it did not have a *"real and practical entitlement"* to possession during the disputed period and was accordingly not the owner."

53. The judge concluded at [DJ30] by saying:

> "30. In my judgment applying the construction of the words *"entitled to possession"* set out in the decision in *Rossendale* at [59] the person with the ability to occupy the premises itself or confer a right to its occupation on someone else (by accepting surrender) and person *best able to decide* whether or not to bring it back into occupation was CBRE during the disputed period." (emphasis added)

Grounds of appeal

54. In the Case Stated the judge posed the following question for this court:

> "Whether on the evidence I was entitled to decide that RWHL did not have a *"real and practical entitlement"* to possession following the Supreme Court decision in *Rossendale BC v Hurstwood Properties* [2021] UKSC 16 and was therefore not the *"owner"* of the premises within s.45 (1) of the Local Government Finance Act 1988 during the disputed period?"

55. The grounds of appeal are as follows:

> "Ground 1: the Magistrates' Court erred in law in its construction of s.45(1)(b), Local Government and Finance Act 1988 and as to the effect of *Rossendale BC v Hurstwood Properties (A) Ltd*, in concluding upon the evidence that RWHL did not have a *'real and practical entitlement'* to possession; and it was wrong to conclude that RWHL was not the *'owner'* of the property within s.45(1) of the 1988 Act during the disputed period.
>
> Ground 2: the Magistrates' Court erred in law in concluding that a CVA unilaterally displaces the tenant's right of possession or control."

56. We are grateful to counsel for both parties for their helpful written and oral submissions on the issues in this appeal.

The *Rossendale* decision

57. On 9 December 2025, shortly before the hearing of this appeal, the Court of Appeal handed down judgment in *R (Emeraldshaw Limited) v Sheffield Magistrates' Court* [2025] EWCA Civ 1601 and a copy was supplied to the parties in this case.

58. One of the main issues in *Emeraldshaw* was the effect of the decision in *Rossendale*. Holgate LJ (with whom Sir Andrew McFarlane P and Falk LJ agreed) analysed that decision at [32] to [47]. We adopt that analysis. Paragraph [43] of the judgment set out the ratio of *Rossendale*:

> "Thus, the ratio of *Rossendale* is that the "owner" of a hereditament for the purposes of s.65(1) of the LGFA 1988 is the person who has the immediate legal right to actual physical possession of that property, unless, in the circumstances of the case, he or she has no real or practical ability to exercise that right, so as to bring the property back into use, and has only been granted that right for the purpose of avoiding liability for NDR (see also [60] and [61])."

Discussion

Rossendale – the effect of the lease

59. The word "owner" in s.65(1) of the LGFA 1988 refers ordinarily to the person who as a matter of the law of real property has the immediate legal right to actual physical possession of the relevant property (*Rossendale* at [47]). The Act requires the "owner" to be identified as the person who has not disposed of that right, starting with the freeholder and working down the tenurial chain [50].

60. But the Supreme Court read down that property law meaning of " owner" so as to exclude a party with such a right to possession, but without any real or practical ability to exercise it, where that right was conferred for no purpose other than the avoidance of liability for rates (see also [59]-[61]).

61. The focus is on the grant of the right to possession. Thus, at [60] the Supreme Court rejected the test suggested by the billing authorities that an owner should have a "genuine and real commercial entitlement as owner" as being "amorphous". They then continued:

> "But a recognition that section 65(1) is speaking of an entitlement to possession which *vests* in the person concerned a real and practical ability either to occupy the property or to put someone else into occupation of it, is a purposive interpretation which achieves some coherence between the language of the statute and its purpose in identifying the "owner" of an unoccupied non-domestic property as the person who is liable for business rates." (emphasis added)

So, applying that purposive interpretation, the issue in the present case is whether RWHL, as lessee, had *vested* in it a real and practical ability to occupy the property or to put in another occupier.

62. It is common ground that the lease granted to RWHL on 7 February 2017 was an arms length commercial transaction. The effect of the lease was to give RWHL the immediate legal right to actual physical possession of the hereditament and thus made that company the "owner" for the purposes of s.65(1) of the LGFA 1988. For a time the respondent traded from the shop and then it became unoccupied before the CVA was proposed and came into effect.

63. It is not, and could not be suggested that, before the CVA came into effect, RWHL lacked any real or practical ability to exercise its right to possession, or that it had only been granted that right for the purpose of avoiding liability for NDR. Applying the purposive interpretation of s.65(1) adopted in *Rossendale*, RWHL was the "owner" of the shop from the moment it entered into the lease.

Rossendale - the effect of the CVA

64. Accordingly, the issue is whether subsequently RWHL ceased to be entitled to the immediate legal right to actual physical possession of the shop during the relevant period for which CoL sought to recover NDR. Plainly, RWHL did not make any disposal of the right to possession to a sublessee. So the question is whether the immediate right to possession moved upwards by becoming revested in the freeholder, CBRE. RWHL's lease was not surrendered to CBRE. Thus, the appeal turns on the legal effect of the CVA on the application of s.65(1) of the LGFA 1988. How does that issue sit in the context of *Rossendale*?

65. Irrespective of whether RWHL's right to possess the shop was based on it acquiring the freehold or a leasehold, there was always the risk that RWHL would subsequently run into financial difficulties, whether external or internal or a combination of both. No one suggests that such difficulties could have formed part of a series of steps or a state of affairs which was pre-planned when the lease was entered into.

66. The position is no different with regard to the CVA set up to address the financial problems experienced by RWHL in 2020. The grant of the lease did not form part of a plan which sought to avoid liability for NDR in the future by relying upon a CVA. Nor

can it be said that, even when RWHL's financial difficulties arose, the purpose and effect of the CVA was to avoid liability for NDR.

67. For these reasons the rationale of *Rossendale* (see e.g. *Emeraldshaw* at [43]) did not apply in this case. It follows that there was no justification for reading down the property law meaning of an owner with an immediate legal right to possession. There was no need for the judge to embark upon an enquiry as to whether RWHL had a real and practical ability to exercise its right to possession during the relevant period.

RWHL's misplaced reliance on Rossendale

68. In fact, the sole reason for RWHL's reliance upon the purposive interpretation in *Rossendale* of "owner" is not to avoid *any* liability for NDR in respect of the unoccupied shop, but to determine whether CBRE as freeholder or RWHL as leaseholder is liable to pay that charge. But the decision in *Rossendale* was not concerned with that issue. It was based upon the application of the *Ramsay* principle. Although a transaction which is otherwise effective to achieve a tax advantage is not to be treated as ineffective simply because it was undertaken to avoid tax, the general expectation is that Parliament does not legislate to exempt from tax a transaction which has *no purpose* other than tax avoidance. The Supreme Court adopted its purposive construction of s.65(1) of the LGFA 1988 in that context (see [11] and [49]). The reasoning in *Rossendale* does not lend any support for RWHL's argument that NDR should be payable by one party rather than another (in this case, the freeholder rather than the leaseholder).

69. RWHL relied upon the passage in *Rossendale* at [51] where the Supreme Court stated that its approach to the interpretation of s.65(1) was not founded on the fact that in that case the freeholders' only motive in granting the leases had been to avoid paying NDR. If those leases had the legal effect that the lessees were not liable for NDR, then that motive was irrelevant. However, that passage has been misunderstood. It simply states that motive, in the sense of the *subjective* intention of the maker of a scheme or plan, is irrelevant. But the purpose, or *objective* effect, of a scheme or plan is relevant. Hence, the grant of a legal right to possession under a scheme whereby the grantee has no real or practical ability to exercise it (i.e. by occupying the property or bringing someone else into occupation) and which has no purpose other than the avoidance of liability for NDR does not fall within the true meaning of ownership for the purposes of s.65(1) of the LGFA 1988 (see [49]).

70. The Supreme Court recognised at [61] that factual circumstances may arise which could justify adjustment of their interpretation of s.65(1), although the example they gave (the letting of unoccupied business premises by a parent company to a wholly owned and controlled subsidiary) does not assist RWHL. We gave the respondent an opportunity to advance an argument based upon the circumstances of this case, that some other adjustment to the property law concept of an immediate legal right to possession is justified for the purposes of s.65(1). Plainly, it would have been necessary to define the adjustment sought and to justify it, taking into account the types of case said to fall either within or outwith the term "owner" as so adjusted. Mr. Richard Glover KC did not pursue that line of argument on behalf of RWHL.

71. For these reasons, RWHL's case before the judge that it was not the "owner" of the shop within the meaning of s.65(1) of the LGFA 1988 did not accord with the purposive

interpretation and reasoning of the Supreme Court in *Rossendale*. Notwithstanding the CVA, RWHL remained the lessee of the shop and entitled to the immediate right to legal possession of those premises. RWHL was the "owner" for the purposes of s.65(1) and a liability order should have been made against it. But it is nevertheless appropriate that we address some issues of principle which have been argued.

The judge's mistaken approach to Rossendale

72. At the hearing before the judge RWHL advanced the following submission:

> "… the facts of this case were that after the CVA came into effect the continued existence of the lease had no purpose other than that CBRE were attempting to avoid rates. That could have been the only reason it was refusing to accept surrender. CBRE ought to be the person reletting the empty premises but it had been attempting to shelter behind the existence of the lease."

RWHL added that it "had given up possession of the premises pursuant to clause 14.1 of the CVA" and had handed in keys to CBRE. The latter had been marketing the premises as "to let" and had removed or covered Jigsaw's branding. While CBRE had not accepted RWHL's offer to surrender its lease, that could happen at any time, presenting legal and practical obstacles for RWHL to allow any other party to use the shop premises.

73. The judge accepted the thrust of RWHL's case. He said that *Rossendale* required him to consider whether finding one party or the other liable for business rates could lead to maximising the incentive to bring the premises back into occupation. It is plain that then influenced the approach the judge took to the factual findings he made. For example, he said that on the one hand there was a company subject to a CVA which was unable to afford to pay rent or rates and had abandoned the premises; on the other hand the freeholder regarded itself as exempt from NDR because of the nominal existence of RWHL's lease. The judge thought it was obvious that the freeholder was subject to NDR (and knew that it was) and should have been keen to accept the surrender offered by RWHL so as to bring the premises back into use. But CBRE took pains to preserve the lease in no more than a nominal way.

74. This was unfortunate. First, the issue raised by s.65(1) is whether a party has a legal right to immediate possession of the hereditament, subject to the purposive interpretation in *Rossendale* where a transaction has no purpose other than to avoid any liability for NDR. Second, the CVA was not set up for the avoidance of NDR nor did it form part of a plan for that purpose. Third, the purposive interpretation in *Rossendale* is not directed at resolving which of two or more parties ought to be liable to pay NDR. Fourth, neither the language of s.65(1) nor the principles in *Rossendale* are concerned with the court identifying which party is best able to decide on bringing a property back into use, or with the court choosing which party to make liable for NDR in order to maximise the incentive to bring premises back into use. For these reasons also, the judge's decision cannot stand.

75. In effect, the judge accepted RWHL's contention that the only purpose of CBRE's refusal to accept a surrender of the lease was to avoid liability for rates. But as Mr Timothy Morshead KC submitted for the appellant, it is legitimate for a landlord to

refuse to accept a surrender so as not to be responsible for the various liabilities of the lessee which may not be limited to NDR (see the analysis by Zacaroli J in *Instant Cash Loans* referred to at [41] above).

Clause 14 of the CVA

76. We have had the benefit of detailed submissions on the CVA in this case and the law relating to CVAs and other regimes for dealing with insolvency and the financial difficulties of companies and individuals. It appears that the judge did not have that advantage.

77. The effect of RWHL's CVA in relation to the category A, B and C leases is that RWHL retained an immediate right to legal possession, so that it could occupy those premises for retailing.

78. Is the position different for category D leases? Plainly RWHL was not able to trade from or use those premises. But how should the court approach its right to possession, given that the leases remained in effect?

79. Clause 14.1 made the ambiguous statement that RWHL would "exit" the premises demised by category D leases. What is meant by that loose drafting can only be gleaned from the provisions which follow. Certainly, it does not mean, as RWHL suggested to the judge, that RWHL gave up the right to possession (see [72] above). That would have been tantamount to a purported surrender. Clause 14.4(d) was carefully drafted so that RWHL only relinquished "any right of occupation".

80. The correct position is that RWHL's lease of the shop continued to subsist and RWHL remained entitled to exclusive possession of the premises. The lease was not vested in the supervisors under the CVA. If, for example, the property had been occupied by trespassers, RWHL, not CBRE, would have been the proper party to bring proceedings for possession. The right to exclusive possession meant that RWHL was entitled to exclude any other party from possession of the premises. That right would only be lost as and when RWHL's lease was surrendered or otherwise terminated.

81. It was submitted on behalf of RWHL that one effect of the CVA was that RWHL became unable to assign the lease of the shop to a new occupier. But an intrinsic characteristic of a lease is that it is alienable, subject to any prohibition by way of covenant in the lease. Here the CVA brought the rights and obligations of the parties to the lease to an end, including the qualified prohibition of alienation. On that basis it could be argued that the lessee, RWHL, remained able to alienate its lease by relying upon that intrinsic characteristic of that estate. However, we did not receive sufficient submissions to enable us to decide whether RWHL's submission is or is not correct and it is unnecessary for us to resolve this matter.

82. In any event, CBRE as the freehold reversioner did not have the ability to grant a lease with a right to immediate possession while RWHL's lease continued to subsist. In accordance with the case law referred to above, the CVA, correctly, did not provide for the surrender of the category D leases to be imposed on the landlords. Instead, by clause 14(d) RWHL was deemed "to offer to relinquish any right of occupation". RWHL also promised to execute any document required to effect a surrender or termination of its

lease. RWHL's promise was essential for CBRE to be able to let the shop to another party with vacant possession unencumbered by RWHL's lease.

83. Accordingly, the CVA did not alter the legal position that RWHL remained the lessee with the legal right to immediate possession unless and until a surrender took place. Applying *Rossendale*, there is no reason not to treat RWHL as the "owner" for the purposes of s.65(1) of the LGFA 1988 until it surrendered its lease.

The 2008 Regulations – legislative policy

84. This analysis is consistent with the legislative policy of reg.4 of the 2008 Regulations.

85. In *Rossendale* the Supreme Court considered the statutory exemptions from liability at [25]-[27]. It held that the aim of deterring owners from leaving property unoccupied for their own financial advantage and encouraging them to bring empty properties back into use is reflected in those exemptions. Their thrust is to exclude properties where, for various reasons, the owner (i) may be unable to bring the property back into occupation, or (ii) has 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 [25]. The court said that reg.4(h) to (m) excludes properties the owner of which is an office holder, such as a trustee in bankruptcy, liquidator or administrator, subject to duties, for example, to realise assets by sale, which may conflict with securing early occupation of vacant premises [26].

86. In the case of bankruptcy, a bankrupt's lease will be vested in his trustee in bankruptcy who will be able to alienate the lease or to disclaim it. The bankrupt individual has no interest in the property. The lessor has no ability to deal with the property unless the trustee disclaims the lease. While the lease remains vested in the trustee in bankruptcy, he would be potentially liable for NDR on unoccupied property, but reg.4(i) of the 2008 Regulations confers an exemption.

87. Similarly where a company's lease has been vested in a liquidator who has exclusive possession as "owner", the company has no interest in the lease. The liquidator is able to alienate the lease. He or she will be potentially liable for NDR on unoccupied property, but reg.4(m) of the 2008 Regulations confers an exemption. Where a liquidator has custody and control over a company's property (instead of the lease being vested in the liquidator), he or she is able to alienate the property or to disclaim any lease. The company is unable to deal with its property. The exemption in reg.4(k) excludes the hereditament from s.45 of the LGFA 1988. Neither the liquidator nor the company can be liable for NDR on the company's unoccupied property.

88. An administrator manages a company's property for the purposes of the administration, acting as the company's agent. The administrator may exercise the company's rights of alienation of its property, not the company. The exemption in reg.4(l) excludes the hereditament from s.45 of the LGFA 1988. Neither the administrator nor the company can be liable for NDR on the company's unoccupied property.

89. The circumstances described in [86] to [88] above represent the extent to which Parliament has been willing to confer exemptions from liability for NDR on unoccupied property where an owner formerly in occupation is experiencing financial difficulties.

Parliament has not gone further so as to confer an exemption from NDR on, for example, unoccupied property owned by a company which is the subject of a CVA.

90. This is unsurprising. The circumstances and terms of a CVA may vary considerably. As the present case illustrates, a company subject to a CVA may be able to trade viably from one or more of its properties, but not others. A CVA may cover both categories of property.

91. Where a company is the subject of a CVA, we do not consider that, in terms of the legislative policy of s.45 and s.65(1) of the LGFA 1988, there is a distinction to be drawn, as a matter of principle, between a company's ownership of property as a freeholder or as a leaseholder. In both cases the company has the immediate right to exclusive possession.

92. A company in financial difficulties may carry on part of its business from a property of which it is the freehold owner. If that part ceases to be viable and occupation of the relevant property ceases, the company would be liable for NDR under s.45 of the LGFA 1988 as the "owner", even if a CVA is entered into. If the company held the relevant property by a lease would that make a material difference to liability for NDR?

93. Leasehold properties should be considered in the context that a CVA cannot require a landlord to accept a surrender of the lease. The lease subsists. The company remains the lessee with a right of exclusive possession, as in the case of a freehold. As and when a new occupier is found for the premises, the company's agreement to surrender its lease will be essential to enable the reversioner to sell the freehold or to grant a lease to that new occupier.

94. The fact that in order not to assume the various responsibilities of the tenant to third parties a landlord chooses not to take up a tenant's offer under the CVA to surrender the lease and to execute the necessary deed, does not justify the drawing of a distinction for the purposes of liability for NDR on unoccupied property. That remains the case where the CVA allows a landlord to market the premises and decide on the terms on which the property is to be reoccupied. The landlord still needs to obtain the lessee's right to immediate possession to be able to make a transfer or grant to a new occupier.

95. It is helpful to consider other situations where a property owner gets into financial difficulties and a third party has a legal right to obtain possession of that property. Unless and until a mortgagee enters into possession to enforce its secured loan and becomes entitled to the rents and profits of the land, the mortgagor remains entitled to possession (*Westminster City Council v Haymarket Publishing Limited* [1981] 1 WLR 677, cited in *Rossendale* at [29]). Accordingly, the mortgagor in that case remained liable to a rates surcharge for empty property *qua* owner. Similarly, a receiver under a debenture granted by a company is not in possession of that company's real property unless and until he exercises his power to enter into possession. He is not liable for NDR under s.45 of the LGFA 1988 before he takes possession of that property (*Brown v City of London Corporation* [1996] 1 WLR 1070 at 1082F-1083A, cited in *Rossendale* at [47]).

96. In the present case it was not enough to make CBRE the owner of the shop for the purposes of s. 45 of the LGFA 1988 that clause 14 of the CVA gave it the ability to take up an offer by RWHL to surrender the lease. That was insufficient to displace RWHL

from possession of the shop. The fact that the landlord was willing to hold a set of keys to the shop and to market the premises on the terms stated in its solicitors' letter to RWHL of 21 September 2020 did not affect the fundamental proprietary position, as the landlord's solicitors emphasised in that letter. Notwithstanding the terms of the CVA and the arrangements made as between the landlord and RWHL as creditor and debtor respectively, the lease subsisted. Unless and until surrendered, only RWHL remained immediately entitled to possession of the shop.

97. A line has had to be drawn somewhere for determining who is liable to pay NDR under s.45 on an unoccupied hereditament. Parliament decided that the sole test is that of ownership as defined in s.65(1). The touchstone is which party has the immediate right to exclusive possession of that property, working down the tenurial chain. The legally correct identification of the "owner" is not altered by the fact that another party has a right to obtain such possession in the future and is entitled to control the time at which it exercises that right, whether that party be, for example, a landlord affected by a tenant's CVA, a mortgagee, or a receiver. For the reasons already given, the rationale in *Rossendale* for reading down the ordinary property law concept of ownership (see [59]-[60] above) was not engaged by the establishment of the CVA.

98. Standing back, we see nothing unreasonable in this outcome. RWHL, not CBRE, is liable for NDR under s.45 of the LGFA 1988. Conversely, the CVA has relieved RWHL of its substantial liabilities under its lease to the landlord, including rent. The landlord's ongoing loss of rent is an incentive for it to obtain a new occupier, subject to market demand, and to accept a surrender of RWHL's lease at that point. In the meantime, it was reasonable for CBRE not to accept a surrender, thereby assuming responsibility for RWHL's other liabilities as lessee (whether actual or potential) to third parties.

Conclusion

99. For these reasons we allow the appeal. Our reasoning has addressed both the issues raised by the grounds of appeal and the question posed for this court in the case stated. The formal answer we give to that question is "No".