



## UNITED KINGDOM – July 2021

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### ***Unequal Council Tax ‘dividing the country’ – with £50m London mansions paying less than terraced houses***

Parliament must urgently address the “divided society” caused by unequal Council Tax charges which leaves a terraced house in Workington paying almost as much as a 12-bed mansion in central London, a Labour peer has said.

Former MP for Workington Dale Campbell-Savours will on Thursday publish his report into “one of the most blatant examples of unequal treatment” in the UK – the allocation of Council Tax banding.

Through his research into discrepancies in London and parts of the North West he found fees in Westminster – one of the wealthiest boroughs and home to the Houses of Parliament – are a fraction of council tax rates payable in Cumbria.

The upper limit of tax in Westminster is £1,655 – meaning homeowners and tenants pay almost £200 less than someone in a £235,000 property in Penrith.

A 12-bedroom £54 million Grade II listed mansion on Upper Grosvenor Street, complete with a spa, roof terrace and indoor pool, would be charged just £75 more than a £70,000 council house in Workington.

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Whereas the levy cannot exceed £1655 in Westminster, the highest band of Council Tax in parts of Cumbria can amount to over £4000.

People on these bands are therefore paying more than two-and-a-half times the highest charges levied on million-pound homes in Westminster.

Westminster, followed by Wandsworth, has long been the lowest charging borough for council tax despite being one of the wealthiest. They are the only boroughs in the UK to charge under £2000 for the most expensive properties in the area.

Only one London borough – Kingston-upon-Thames – charges more than £4000 for the highest band.

In contrast, large parts of the North West, Yorkshire, North East, Manchester, Liverpool and the Midlands have some of the highest band charges.

The same applies to rural areas like Devon, Sussex, Surrey and Cornwall where tenants pay upward of £4000 for Band H.

Lord Campbell-Savours said: “These gross inconsistencies don’t only benefit the London boroughs they are to be found in other areas of the country and in particular in southern England.”

He said blaming the difference on inefficiency in local government administration ignores “wider structural failures” in the Council Tax system caused by varying levels of government support and the ability of councils to raise revenue.

“The truth is we have created a truly divided society much exacerbated by a refusal by Parliament to agree a reform,” he said. “Cuts in public services and reductions in financial support are only serving to aggravate the position as annual percentages increase under a national formula. These combine to penalise parts of the country with higher and higher council taxes.”

His report was published ahead of a question in the House of Lords on the introduction of the higher rate bands for Council Tax.

An MHCLG Spokesperson said: “Decisions on council tax levels are a matter for local authorities, no matter where they are in England. The Government has no plans to make fundamental changes to the council tax system, which could result in increases to bills for many households.

### ***UK must fix business rates or risk more shop closures***

The owner of music and entertainment chain HMV said it was planning to open 10 new stores this year but warned there would be many more vacant shops on UK high streets unless the government fixed business rates.

The music and film retailer, which is celebrating its 100th anniversary this month, said online sales had more than doubled over the past year, with sales tripling in some weeks, but Doug Putman, the toy entrepreneur who bought 100 HMV stores out of administration in 2019, said overall sales for the group were “heavily down” as stores had been forced to temporarily close during the Covid-related high street lockdowns.

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He said HMV, which has 107 stores, was keen to return to putting on events, with Ed Sheeran booked in to mark the group's new sponsorship of the redeveloped Empire venue in Coventry with a free concert for 700 people next month. Putman said HMV wanted to offer something different from its big rival Amazon and to "add value".

Outside of the illness, when you look at people's lives a big part of that is walking outside and going to the high street and doing some shopping. When you see bookstores and coffee shops and HMVs closed and everything online it is not as much fun as it used to be. Hopefully people have seen this world where everything is Amazon and it is not all that great."

The retailer opened its first HMV shop on Oxford Street, London, a century ago. Its landmark store on the street closed as part of the administration process, but Putman said he would like to find a location for a new flagship store in London.

He said the government needed to urgently fix business rates, which are based on property rents but take years to adjust to reflect the actual levels paid. This has resulted in many retailers and other high street outlets continuing to pay high business rates despite rents in most places falling as competition from the internet has increased. Online retailers, meanwhile, pay lower business rates because they operate from fewer properties and are able to base their warehouses in cheap locations.

"If the government don't fix the rates, high streets are going to see a lot more vacancies. Business rates just don't make much sense," Putman said. "You can pay zero rent and not make a profit on a store as rates are too high."

Putman rescued HMV in the UK out of administration after doing the same for its Canadian division and merging it with his chain Sunrise Records. Sunrise had just five stores when he bought it from the elderly owner in 2014. Putman took over his family's business, Everest Toys, which is North America's largest toy and games distributor, at the age of 23 before getting into music retail.

### ***Is This The Alternative To Stamp Duty?***

There's gathering momentum to do 'something' about the unfairness of council tax and stamp duty.

This isn't new in principle. Agents have for years been advocating the end of stamp duty with solid arguments suggesting its positive impact on the economy (but as someone once exclaimed, they would say that wouldn't they?).

Meanwhile a council tax based on 1991 house prices has been widely regarded as unfair, with successive governments shying away from revaluation for fear of upsetting... well, literally millions of taxpayers.

Now there seems to be momentum gathering for an alternative - a reform of council tax and stamp duty together, by levying a tax on a proportional basis linked to house values.

Interestingly, the running is being made by Conservatives and cross-party groups rather than opposition politicians, with charities now coming alongside. One can imagine there's still only an outside chance that this will be adopted by Chancellor Rishi Sunak, but support is growing - agents might want to consider what it would mean for future sales.

The Social Market Foundation, the free-market supporting Centre for Policy Studies, the 'Tory lite' Bright Blue Group and others support the proportional property tax idea, with the main charity backing it being the Fairer Share Campaign.

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This is how they say a Proportional Property Tax would work.

PPT would be based on the current value of a home and levy an annual property tax at 0.48 per cent: the rather clunky 0.48 figure is proposed because it would, across the nation, raise much the same as the current council tax.

As the PPT revenue would be collected by national government, the theory is that it would then be dispersed to local councils to use as now - so councils would not lose out.

On the plus side for politicians, many advocates of PPT claim this would mean bills lower than the current council tax for as many as three quarters of households - and immediately raising the downside, of course, than a quarter would pay more than today.

This would also mean that holiday home owners would probably pay more tax than now and if - as some suggest - PPT was applied to land, it would probably incentivise developers not to sit on plots after planning consent had been given, and instead build quickly.

The plus sides of having PPT instead of stamp duty are obvious - first time buyers would have a slightly lower hurdle to surmount when purchasing, and the disincentives for downsizers and reluctant movers would be reduced too.

So what are the downsides? Put bluntly, most are political rather than financial or ethical.

Earlier this year the Daily Mail, citing unnamed government sources, said a version of the PPT was under consideration by the Treasury but then abandoned when it was discovered that the quarter of households paying higher bills were predominantly in Tory heartlands in the south of England.

This is despite the fact that in parts of northern England now represented by the 'Blue Wall' of Tory MPs replacing 'Red Wall' Labour, many households would be on average £660 a year better off with a PPT.

There's one final element to note about PPT - its popularity amongst Conservative MPs remains tiny, but it is growing.

Kevin Hollinrake, the founder of Hunters and now Tory MP for Thirsk and Malton and chair of the Property Research Group, says: "The time is right to put fairness back at the heart of how we tax property. Replacing stamp duty and council tax with a proportional property tax would ensure homes are taxed at their current value. It would also boost transactions throughout the market, creating huge economic output at a time when we most need it."

It isn't going to happen soon, but momentum is building slowly. Watch this space...

### ***MPs call for 'long overdue' reform of council tax property values in England***

*Tax is becoming increasingly regressive to the detriment of more deprived areas, committee says*

MPs are urging the government to carry out a "long overdue" reform of council tax property values in England.

The housing, communities and local government committee said the tax was becoming increasingly regressive to the detriment of more deprived areas.

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The committee said change should be part of a wider programme of reform to set local government finances on a sustainable footing.

Town hall budgets, it said, had been strained since the coalition government's austerity cuts in 2010, with three councils – Northampton, Croydon and Slough – having to admit they had run out of money.

The single biggest threat to the financial resilience of local government, it said, was the continued failure to properly fund adult social care, although the government has promised to bring forward proposals for reform before the end of the year.

But the committee said giving councils greater fiscal autonomy and widening their funding base could also improve the situation.

It said councils should be allowed to retain 75% of business rates from 2022 and council tax should be reformed with the revaluation of properties and the introduction of additional bands.

In the longer term it said the government should consider replacing council tax and business rates with a new “proportional” property tax.

Successive governments have shied away from significant changes to council tax – introduced in 1993 after the debacle of Margaret Thatcher's poll tax – fearing a backlash from the people who would lose out.

Committee chair Clive Betts said: “Council budgets have been stretched for several years and the social care funding crisis is at the heart of financial pressures for many councils.

“Covid-19 has also hit councils hard and, while the government responded to the pandemic with substantial financial support, they now need to come forward with a long-term sustainable way of funding councils and the services they provide.”

### ***MPs call for 'long overdue' council tax revaluation for England***

*The Commons Housing, Communities and Local Government Committee said change should be part of a wider programme of reform.*

The Government is being urged by MPs to carry out a “long overdue” revaluation of council tax property values in England

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### ***Valuation Office Agency accused of laying groundwork for delay to business rates revaluation***

The agency said it had been writing to businesses since early last year, but had paused from March to October to acknowledge the disruption of the pandemic

The Valuation Office Agency has been accused of using retailers as a “scapegoat” for a possible delay or fudging of the next business rates revaluation.

The VOA this week expressed concern not enough businesses were submitting rent information needed for the next adjustment to the tax, due in 2023, to properly reflect the impact of the pandemic.

The agency said it had been writing to businesses since early last year, but had paused from March to October to acknowledge the disruption of the pandemic. It said it was now concerned businesses that closed in lockdown may not realise they needed to respond.

However, Colliers head of rating John Webber accused the agency of looking for a “scapegoat” to blame as its own processes faced disruption from the government postponing the revaluation, which will be based on rent values collected in 2021 instead of 2020.

“The valuation date was 1 April this year and I haven’t heard of anybody sitting on information,” said Webber. “Most big retailers will be supplying information through a well-trodden route of their agents sending it in bulk.

“This sounds to me like the VOA is looking for an excuse to either delay the revaluation – which would be disastrous for retail – or getting it badly wrong.

“If they’re really worried, they’d write to every agency in the country. This just smacks of looking for a scapegoat. Otherwise they wouldn’t have gone to the press, they’d come to people like us, or the BRC.

“The people who head the leisure sector at the VOA have contacted people [at agencies] directly, not only to get rental information but also a flavour for how the market has moved from pre-pandemic to today.”

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BRC property policy advisor Dominic Curran also said he was not aware of the issue described by the VOA.

The VOA did not put a number on the shortfall in rent information from businesses but said evidence was building anecdotally withing the agency it was a concern.

“We know the pandemic has had a significant impact on many businesses,” said VOA chief valuer, Alan Colston. “So we need to do everything we can to make sure this is reflected at the 2023 revaluation and we have as much evidence as possible about the property market.

“That’s why it’s really important that businesses submit their up-to-date rental information to make sure their rateable value and the business rates they’re charged are accurate.”

Responding to Webber’s comments, a VOA spokeswoman said: “We are not suggesting that businesses are purposely sitting on information. A normal part of raising awareness around a revaluation is reminding businesses of the need to supply up-to-date rental information to us to make sure their rateable value and the business rates they’re charged are accurate.

“This is particularly important for many smaller businesses who aren’t represented by agents.”

### ***Charitable At £80 A Month? Nuffield Health Gyms And Business Rates In UK***

Most of you reading this will know that charities have to be established (a) for the pursuit of a charitable purpose and (b) for the public benefit. Public benefit is a tricky issue that resurfaces in the courts every so often, most notably in recent years in *Independent Schools Council v Charity Commission*, and a 2011 reference from the Attorney-General on benevolent funds. 2021 has now seen its own addition to this body of law, in the form of the Court of Appeal judgment in *Nuffield Health v London Borough of Merton*.

To a large extent, public benefit has been a vexed question because parliament has declined to define it. It considered doing so in the run-up to the Charities Act 2006 (now consolidated in the Charities Act 2011) but ultimately decided that the potato was too hot, so threw it to the Charity Commission, directing it to produce guidance on the concept. Guidance to which charity trustees must now – by statutory force – have regard.

So, then... what do we mean by public benefit? It has two senses: first, that the relevant purpose must actually be beneficial, and second, that the benefits must flow to a sufficient section of the public. The first sense is often straightforward enough to assess. With a new medical treatment, for example, evidence can be adduced as to its effectiveness. Or with a historic building, the National Heritage List for England is often a starting point in demonstrating genuine merit and significance (though preservation alone, without education, is not sufficiently beneficial). But the second sense of public benefit can be much more challenging, and this is where the courts have had to get involved.

Most significant over the last few years was the *Independent Schools Council* case in 2011. That involved the Charity Commission getting something of a bloody nose through judicial review proceedings, and having to withdraw chunks of its statutory guidance on public benefit, essentially because the ISC had shown that legally it was for charity trustees and not the Commission to determine what is adequate in terms of public benefit in the second sense. The court found that provision by fee-charging charities for those who cannot afford the fees (described somewhat unfortunately as ‘the poor’) must be more than minimal or tokenistic, but that beyond that baseline, the degree of provision was a matter for the trustees to assess, acting (of course) in line with their general duties. Trustees should keep in mind that, per the revised guidance: “‘the poor’ does not just mean the very poorest in society and can include people of modest means”.

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Enter *Nuffield Health* as a further judgment in favour of charities, this time relating to rates relief. Readers will probably know that where premises are used wholly or mainly for charitable purposes by the occupying charity, that charity is entitled to a mandatory 80% relief from rates, with local authorities sometimes – though less frequently these days – granting a further element of discretionary relief.

It was not in dispute that Nuffield Health was a registered charity. Its purposes are clearly beneficial, being to: “advance, promote and maintain health and healthcare of all descriptions and to prevent, relieve and cure sickness and ill health of any kind, all for the public benefit”. The issue was that Merton council felt that the relevant Nuffield Health gym was not operated so as to provide sufficient public benefit in the second sense. Merton's view was that ‘the poor’ could not afford the subscription of around £80 per month, and no meaningful provision was made for them to benefit in other ways from the activities at the relevant premises. According to Merton, only the activities on this particular site needed to be taken into account for the purposes of determining whether mandatory rates relief applied, and not Nuffield Health's wider nature or activities, whether or not those involved greater provision for ‘the poor’.

Lord Justice David Richards in the Court of Appeal agreed that Nuffield Health's use of the Merton premises would not deliver sufficient public benefit if viewed in isolation. The level of fees was, he felt, more than ‘the poor’ could reasonably be expected to afford. It was also very relevant that other gyms in the area provided equivalent services at significantly lower cost. These were points not sufficiently considered by the first instance judge, Mr Stuart Isaacs QC, against whose judgment Merton had appealed.

However, this did not ultimately mean that Merton Council won the day. While the Court of Appeal was not satisfied with the first instance judge's reasoning on some points, it agreed (by majority, with Lord Justice David Richards dissenting) that he had been right in his finding that the analysis of whether mandatory rates relief is available should not be conducted on a site by site basis.

Under the Charities Act 2011, Nuffield Health, being registered with the Charity Commission, is “conclusively presumed” to be a charity. Accordingly, as Mr Stuart Isaacs QC had said, “the requirements for it to be a charity are conclusively presumed to have been met, namely that it is established for purposes which are within [the relevant section of the] 2011 Act and that the purposes in question fulfil the public benefit requirement”. Lord Justice Nugee put it nicely, saying that Nuffield Health needed only to make the following statement: “I am a registered charity. My purposes, namely the advancement of health, are therefore (conclusively presumed to be) exclusively charitable [including that they are for the public benefit]. I am using Merton Abbey for those purposes. That is sufficient.”. He also felt there was some weight in Nuffield Health's argument that, in practical terms, it must be preferable for the question of what is charitable (and for the public benefit) to be determined once-and-for-all by the Charity Commission, rather than by each rating authority separately in respect of a charity's various premises.

On public benefit and rates, then, charities win again. But Lord Justice Peter Jackson gave a very interesting P.S. in his judgment, as follows: “I would only add this. Nuffield Health may have succeeded under the rating legislation, but its failure, on our unanimous view, on Ground 3 [essentially meaning that the public benefit requirement would not have been satisfied in respect of the premises, if the court had had to rule on that] may not be without consequences in the context of charity law. Its trustees are obliged to satisfy themselves in good faith that its provision is for the public benefit. If the situation at the Premises is replicated across its several hundred fitness centres and gyms, the organisation may face scrutiny through the Charity Commission and ultimately through the courts, as occurred in the ISC case.”

Where next, then, for public benefit? It will be fascinating to see whether the Charity Commission (having perhaps recovered somewhat from the ISC case) decides to look again, and harder, at the delivery of public benefit by some fee-charging charities.

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### ***Retailers face high business rates bills over failure to respond to revaluation***

The VOA fears businesses that closed in lockdowns may mistakenly think they do not need to submit rental information

Retailers could end up paying over the odds on business rates after the next adjustment to the tax, because not enough are engaging with a revaluation process.

The Valuation Office Agency, which collects information on shop rents used to calculate rates, has expressed concern that too few businesses are providing details.

It's worried it could mean rates bills from 2023, when the adjustment takes effect, will not reflect the impact of the pandemic on rent values, and is urging more businesses to respond.

The agency began writing to businesses to collect rental information for the latest revaluation early last year but paused between March and October in acknowledgement of disruption caused by the pandemic. It now fears businesses that closed in lockdowns may mistakenly think they do not need to respond.

The VOA did not provide the response rate to the revaluation exercise but said evidence was building anecdotally within the agency that it was low.

"We know the pandemic has had a significant impact on many businesses," said VOA chief valuer Alan Colston.

"We need to do everything we can to make sure this is reflected at the 2023 revaluation and we have as much evidence as possible about the property market.

"That's why it's really important that businesses submit their up-to-date rental information to make sure their rateable value and the business rates they're charged are accurate."

Businesses are given 56 days to respond to a VOA request for rental information, after which a penalty can be imposed. Reminders are also issued.

Business rates have been repeatedly slammed as a disproportionate burden in the pandemic because rental values have plummeted since the last revaluation, in 2015. The tax is calculated at about 50p on every £1 of rent, but in May this year British Land told The Grocer rates had become the biggest property expense for many shopkeepers.

Last week, property agency Colliers also said business rates had become a bigger burden than rent for many retailers, citing an ex-Debenhams store offered for rent at £100,000 per year but with a £350,000 per year rates bill attached.

According to recent figures from the British Property Federation, retail rents outside London had already fallen by about 30% over the decade before the arrival of the pandemic, which has driven values down further amid soaring shop vacancy rates.

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Colliers puts the decline in rental values at 50% in the past two decades, and estimates one in three UK shops are currently vacant, producing no income or occupied on very short-term arrangements.

### ***Hospitality firms risk collapse despite 19 July opening up, MPs hear***

*Select committee told of £10bn debt built up over pandemic and lack of guidance on easing of Covid rules*

More pubs, bars, hotels and restaurants could be facing collapse, despite restrictions easing from 19 July, having built up almost £10bn in debt during the pandemic.

Hospitality, retail and property business leaders told MPs on Tuesday there was an urgent need to revamp business rates, kick off arbitration on rent debts and extend payment terms for government-backed loans, as the government hands over responsibility on Covid protection measures to individual businesses.

Almost a quarter of landlords and tenants have yet to reach agreement on £6.5bn in unpaid rent bills ahead of the end of a moratorium on evictions for vulnerable businesses in March next year, the British Property Federation told parliament's business select committee. Hospitality businesses are more likely to be facing difficulties than retailers.

The government has announced plans to resolve these rent debts with a binding arbitration process but details of the scheme have yet to be announced.

Kate Nicholls of trade body UKHospitality urged the government to finalise the process before parliament breaks for the summer. She said pressure on businesses was increasing since support measures such as business rates relief and furlough payments began to unwind at the beginning of the month.

Hospitality businesses racked up £6bn in government-backed loans and £1.5bn in tax and private debts, as well as over £2bn in unpaid rent, during the pandemic, she said. "We have managed to keep bankruptcies and business failure to a relatively low level but I do think we will see that picking up."

The concerns emerged as nightclubs, bars and retailers called on the government to provide more clarity for English businesses on new rules for controlling Covid-19 from 19 July, saying the official plan caused confusion for businesses and the general public.

Detailed guidance for businesses ahead of the latest stage in reopening the economy has still not been published, almost a day after it was expected, and the broad government guidelines posted online on Tuesday leave room for interpretation.

"There is a lot of confusion," said Michael Kill, head of the Night Time Industries Association, which represents hundreds of bars, nightclubs and pubs, some of which have been closed for months.

"The narrative seems to be that [using the NHS Covid pass] will not be mandatory but if cases rise and the virus is not being controlled in certain spaces then they may well mandate it."

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Helen Dickinson, chief executive of the British Retail Consortium, said: “We are awaiting the detailed guidance and it is vital the government is as clear as possible as to how they expect people to act after 19 July. There has been a big rise in violence and abuse against retail workers during the pandemic and colleagues cannot be put in the firing line because of this change in policy.”

The government’s basic plan published this week says that from 19 July it will “encourage” organisations in “higher risk settings” to use the NHS Covid pass, which lets people share their vaccination status, as a condition of entry.

Wearing face masks will no longer be mandatory but the government guidelines say it “expects and recommends that people wear face coverings in crowded areas such as public transport”.

It also continues to suggest that people “meet outdoors where possible and let fresh air into homes or other enclosed spaces”.

While 70% of nightclubs have said they do not plan to monitor vaccine status on the door, many are mulling their options as the government said it “reserves the right to mandate certification in certain venues at a later date if necessary”.

It also said businesses would be “encouraged” to continue to display QR codes and support the use of the NHS test-and-trace app.

Pressure on businesses to implement these measures will be driven by a legal duty on employers to manage risks – including the risk of Covid-19 infection – for people affected by their business.

Stuart Glen, owner of the 1,000 capacity club The Cause in London, who is self-isolating after catching Covid despite being vaccinated, said he was keen to fully reopen but unsure how to govern matters after 19 July. “We are looking at how to open as safely as possible. We could ask people to use the [NHS app] but our research shows that people don’t want to.

“If we do an event and 300 people then have to take 10 days out of their lives [having come into contact with someone with Covid] and some then can’t work after that, are they going to come back?”

He said the lack of clear guidance from the government would make it difficult to enforce any social distancing or other measures to protect staff and customers.

### ***Government plans could make it more difficult to appeal business rates***

Forecourt owners could find it more difficult to appeal their business rates if proposals contained in a Government consultation are carried out.

Under the plans, revaluations of non-domestic properties would take place every three years instead of the current system of five to ensure they better reflect changing economic conditions.

The proposals set out in a government consultation will form one part of its Fundamental Review of Business Rates, which will be published later this autumn.

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“The PRA is concerned that the move will be detrimental to members on the assessment of their businesses valuation and make for a more bureaucratic appeals process. This could then make it more difficult for members to appeal their business rates,” said Gordon Balmer, executive director of the PRA.

“While we support the move to more frequent revaluations and streamlining the complex business rates appeals system, we are concerned the Valuation Office Agency (VOA) will not have the capacity to deal with the proposed changes.

“We are currently in discussions with members on how these reforms will affect their businesses and will be responding further to the proposals in due course.”

Announcing the consultation, financial secretary to the Treasury Jesse Norman said: “As our economy is recovering, we are supporting businesses to build back better.

“Proposals set out in this consultation would mean that valuations more quickly reflect how the economy is performing, making the business rates system more accurate and responsive, while balancing the burden for ratepayers.”

### ***Can special-purpose vehicle leases be used to avoid empty rates?***

The recent Supreme Court judgment in *Hurstwood Properties v Rossendale Borough Council* has clarified that the burden of paying empty rates should fall on the person who has the practical ability to bring unoccupied property back into use.

This business rates mitigation scheme involved the grant of short leases of unoccupied properties to special-purpose vehicles (SPVs) with the intention that they became the ‘owner’ of the properties and liable for business rates. The SPVs were then either wound up or struck off from the register of companies and thus avoided paying any business rates.

Both the High Court and Court of Appeal found in favour of the landowners that the SPVs were liable. However, Rossendale Borough Council and Wigan Council appealed on the basis that: (1) the leases were pre-arranged tax-avoidance schemes and the relevant statute should be interpreted accordingly; or (2) the corporate veil should be lifted and the SPVs ignored.

The Supreme Court disagreed, signalling an intention to apply the policy behind the legislation, which it said was to encourage owners to bring empty properties back into use for the benefit of the community.

The Justices unanimously held that the entitlement to possession remained with the landowners as they had the practical ability to decide whether to leave the property unoccupied. They added that the SPVs’ legal right to possession was conferred for no purpose other than the avoidance of rates liability. Their decision changes the principle that a tenant under a valid lease is the person entitled to possession, such that a tenant’s entitlement to possession depends (or may depend) on its practical ability to exercise the right.

The case has been returned to the High Court for a decision at trial. While we await that decision, we expect to see an increase in claims for the recovery of non-domestic rates. Rate-payers using or looking to use these types of schemes will be seriously considering whether they will still have the desired effect.

*Joseph Green is associate at Charles Russell Speechlys*

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## ***Staff shortages force restaurants and pubs to face ‘freedom day’ with fear***

*The end of Covid restrictions in England will allow hospitality venues to reopen fully. But many will not, because self-isolation rules could still close them down at short notice*

‘It will be like Christmas on steroids, but we’re not in a position to take advantage,’ says Paul Askew, chef-patron of the Art School restaurant in Liverpool.

On 19 July the government will sweep away restrictions on trading for pubs, restaurants and other hospitality businesses in England, with the hope of kickstarting the economy. But many will still struggle to benefit due to continuing Covid safety measures, staff shortages and supply issues.

The changes will enable the reopening of one in five hospitality businesses that must currently legally remain closed, including nightclubs, music venues and conference centres, and help pubs and restaurants too small to operate profitably under the current social-distancing rules. It could be a shot in the arm for businesses that have been subject to months of closures and are having to subsist on government support measures, such as a business rates holiday and furlough payments for staff, which have already begun to be reduced.

However, many restaurants, pubs and bars will continue to trade from fewer tables and keep protective measures such as face masks for staff, amid fears of being shut down by a Covid outbreak and difficulties in getting hold of enough workers to fully reopen.

Covid has only added to the problems caused by Brexit, which has made it tougher to bring in EU workers who make up a high proportion of the hospitality workforce. The trade body UKHospitality estimates that up to one third of the industry workforce are off work self-isolating at present, with numbers rising.

Askew says demand for tables at the Art School is high, as people want to step out for long-delayed celebrations of birthdays and anniversaries or treat themselves after a tough 15 months.

But the fine-dining restaurant is operating only 75% of its usual tables and capping bookings. That situation will continue after 19 July, with serving staff also continuing to wear masks, as he is short-handed and in fear of anyone getting sick or coming into contact with a Covid case.

He would normally have 35 staff but is currently operating with 25 and struggling to recruit after losing seven workers who returned home to France, Spain and elsewhere in Europe, while four others remain on furlough and are not ready to return.

On Father’s Day weekend last month, the restaurant had to turn away 300 booked diners, when it was forced to close for three days after key staff had to self-isolate.

‘I lost about £30,000 in revenue. You can’t do that too many times. The pressure is gigantic,’ says Askew.

‘We don’t have the capacity to bring in staff [if someone is sick or isolating]: we are too thin. There is nobody on the bench,’ he says.

‘It’s a constant conflict for many of us. We’re desperate to improve cash flow and revenue after the last 15 months but desperate not to lose our brilliant staff.’

The restaurant has already put up wages by 10% this year but says the number of applicants for jobs is much lower than usual; also, many are not experienced and balk at the work expected of them.

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The Art School is far from alone. More than half (51%) of hotel and catering firms were looking for new staff in the second quarter of the year, with about three-quarters of those reporting difficulties in recruiting, according to the British Chambers of Commerce's quarterly recruitment outlook survey.

Hospitality businesses have put up wages, opened summer schools and are even offering referral bonuses of more than £1,000 as they struggle to draw in enough workers, even before 19 July in England and the potential reduction of restrictions in Scotland on 9 August. Northern Ireland is set to ease restrictions on 26 July, while Wales has said it will review restrictions on 15 July.

The situation is not only affecting staff in dining and drinking establishments but also their supply chain, adding to the cost of restocking fridges and wine cellars. A shortage of delivery drivers, field workers and abattoir teams has only fuelled the inflation on food and drink coming from the EU caused by new bureaucracy related to Brexit.

Prices of wine, olive oil and specialist foods such as fish roe have risen more than 10% as a result of the new import rules, while supplies can prove volatile.

At the White Rabbit pub in Oxford they have been stockpiling food before the next phase of reopening to help offset any problems. "We didn't have a freezer 18 months ago but now we have four chest freezers to help deal with any supply issues," says Ed Whinney, the general manager.

Some operators have urged the government to provide more guidance for businesses in England to help keep customers and staff safe and happy, and ease visa restrictions on EU workers.

The government has mooted tweaking the NHS test and trace app so that fewer people in England get alerts and has pledged to change the rules from 16 August so that contacts of people in England who have tested positive for coronavirus will no longer have to self-isolate if they have received both vaccinations or if they are under 18.

Kate Nicholls, the chief executive of UKHospitality, has called on the government to make a change well before 16 August, allowing those who have a negative Covid PCR test to go back to work.

She says that 60% of hospitality staff are aged between 15 and 34 and so will not be double-jabbed by next month, and so are not affected by the planned rule change.

At the White Rabbit, Whinney is cautious about the change in regime after 19 July. The pub was recently forced to close for 10 days after several members of staff tested positive for Covid. He had to cancel more than 500 bookings and lost more than £50,000 in trade.

White Rabbit staff will continue to wear masks after 19 July and customers will be asked to use a face covering if they go to the bar, or to order via QR codes on tables.

"We have got to create a safe environment for staff and customers regardless of what the government think, and have to make sure they are OK and happy," Whinney says. "Losing a chef now is a real problem, as you cannot find another one."

### ***Business rates holiday starts winding down***

The extended 100% business rates holiday for retail, hospitality and leisure businesses in England came to an end on 30th June. From 1st July, relevant businesses will pay a third of rates until 31st March 2022.

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The business rates holiday has been one of the most effective COVID-19 support measures for the retail, hospitality and leisure sectors. Approximately 400,000 firms within the hospitality and leisure industries have benefitted from the 100% business rates holiday during the last 15 months, as part of the Treasury's coronavirus support package.

In the March 2021 Budget, the Government extended 100% business rates relief for eligible retail, hospitality and leisure properties in England until 30th June 2021. The Government also announced a transitional 66% relief will apply from 1st July 2021 to 31st March 2022. As a result of the reduction in support, local councils will begin billing hospitality and leisure businesses with rates payments from the start of July.

As well as business rate relief dropping to 66%, relief will also be subject to a cap. For the period from 1st April 2021 to 30th June 2021 there was no cash cap on the relief received. From 1st July 2021, relief will be capped at £105,000 per business, or £2 million per business where the business is in occupation of a property that was required, or would have been required, to close, based on the law and guidance applicable on 5th January 2021.

Businesses should contact their local authority with any questions they may have about these changes.

According to real estate adviser, Altus Group, the reduced relief package until April 2022 will require tens of thousands of small businesses to meet tax liabilities worth up to £5 billion. Any business affected by these changes will need to review their cashflow position, where they have not prepared for the change. With the UK Government continuing to cover a third of business rates commitments for eligible firms at a cost of £3.3 billion, this takes the Government's total financial support to £17.1 billion, said a spokesman for Altus Group.

### ***Business rates outstripping rent for retailers, says Colliers***

A rates bill of £350,000 a year - on top of £100,000 a year rent - proved a 'deal breaker' on a vacant Debenhams store, said Colliers' John Webber

Business rates have become a bigger burden than rent for many retailers, leading to empty shops as vacancy rates soar, according to Colliers.

Business rates are currently set as a proportion of rents payable in 2015, but because commercial property values have fallen so much, the tax bill has become wildly disproportionate, according to the property agency.

"We had a client looking at an ex-Debenhams store where they were able to negotiate a rent of £100,000 a year. However, the property had a rateable value of £700,000 which equates to a rate bill of £350,000 a year," said Colliers head of business rates John Webber. "Not surprisingly it was a deal-breaker for the potential occupier."

The Grocer revealed in May that British Land had said plummeting rents had left business rates the biggest property expense for many shopkeepers.

Rents have fallen by as much as 50% during the past two decades, according to Colliers. Meanwhile an estimated one in three UK shops are currently either vacant, not income-producing or occupied on very short-term arrangements.

Landlords desperate to keep shops occupied are offering sweeteners such as rent-free periods, but the rates bill, which is beyond their control, is still scuppering deals, Colliers said.

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The next business rates revaluation is set to take effect in 2023, based on 2021 property values. Under government proposals announced earlier this week, the revaluations are set to take place every three years instead of five.

Colliers is calling for a three-month extension of the 100% business rates holiday for retail and hospitality businesses, which ended on 1 July.

It also wants the tax burden lowered permanently as part of the government's ongoing 'fundamental review' of business rates, on which the government is due to report this autumn.

"This won't come at a moment too soon," said Webber. "The government needs to bark up the right tree. Unless it gets its business rates strategy right, space will not be re-occupied. It's why we've got so many voids.

"Gap has just announced it is closing all its 81 stores in the UK and Ireland. Two of those stores, Canada Place and Westfield, pay rates of over £500,000 a year. That's a big liability for another retailer to take on."

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