

Council Tax Liability (Who Has to Pay and Why)

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Who has to pay and why

Determined by 2 things:-

1. The property

Whether it is a “chargeable dwelling” or not.
(Basically if it isn’t “exempt” – it’s chargeable)

2. Residency or ownership

Interest in the property held by it’s residents or owners
(Hierarchy of Liability)



Local Government Finance Act 1992 (LGFA 1992)



s.1(1) - each billing authority shall levy and collect council tax in respect of dwellings situated in its area.

s.2(1) - a billing authority is defined as a District Council or London Borough Council, the Common Council or the Council of the Isles of Scilly.

s.4(1) - Council tax shall be payable in respect of any dwelling which is not an exempt dwelling.

s.2(1) Council tax is determined on a daily basis and the state of affairs at the end of the day is assumed to have lasted all day i.e. 1st day of residence is chargeable but not the last.



The Liable Person (s.6 LGFA 1992)

The liable person (s) is whoever comes **first** in the hierarchy of categories below:

- a) **Residents** who have a **freehold interest** in the whole or any part of the dwelling;
- b) **Residents** who have a **leasehold interest** in the whole or any part of the dwelling;
- c) **Residents** who are **statutory or secure tenants** of the whole or any part of the dwelling;
- d) **Residents** who have a **contractual licence** to occupy the dwelling or any part of it.
- e) **Residents**, or
- f) **Owners**.



The Liable Person (s.6 LGFA 1992)



s.6(5)

- Resident is a person over the age over 18 who is “solely or mainly” resident in the dwelling.
- (*Under 18's cannot hold a legal estate – Law of Property Act 1925*)
- Owner is a person with a “material interest” in the whole or any part of a dwelling which is not subject to an inferior material interest.
- (*A material interest is a freehold interest or a leasehold interest of six months or more*)



The Liable Person (s.6 LGFA 1992)



• Joint and Several Liability

• **s.8(4)** where two or more persons are resident and have an equal interest in the dwelling as per the hierarchy, they will be jointly and severally liable.

• **s.9** a partner of a liable person who is resident but not on the same level of hierarchy will still be jointly and severally liable; this applies to couples married or living together or in a civil partnership.

• However...joint and several liability does not apply to anyone who is severely mentally impaired or, from 1st April 2004, is a student.



Sole or Main Residence



The primary legislation does not give a definition of “sole or main residence”.

A person may have more than one place of abode and a decision has to be made as to which is considered to be the “main” residence.

A number of factors can be taken into account including a persons lifestyle, family ties, relevant interest in the property and intention to return, security of tenure, where the majority of possessions are kept and length of stay. (No one factor should be given greater weight than others).

The length of time someone spends in a dwelling does not determine residence in itself.



Sole or Main Residence



Guidance can be taken from the decisions made by the courts in cases brought before them, including decisions made in relation to community charge.

Several cases have been heard by the High Court, which have established the following principles:-

Residence implies a degree of permanence;

Temporary presence at an address does not make a person resident; and

Temporary absence does not deprive a person of residency.

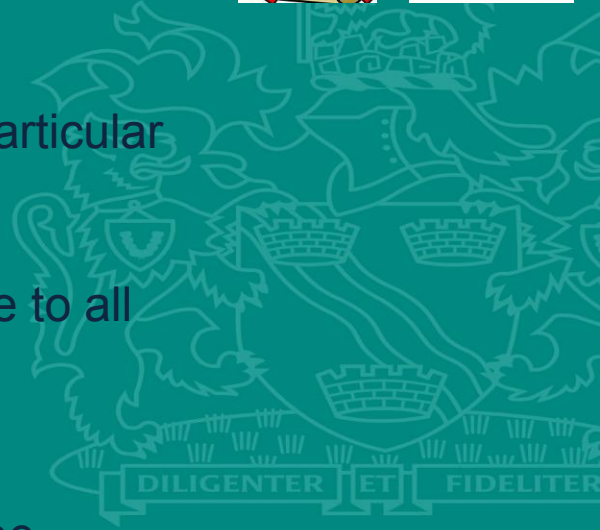
Ultimately, a person's main home is the place where they live in the sense of normal day-to-day domestic life.



Sole or Main Residence



- Depends on factors that are unique to each individual's particular circumstances at a particular time
- Impossible to give a definition of “main residence” suitable to all circumstances.
- Apply “reasonable onlooker” test :–
what would a reasonable onlooker, with knowledge of the material facts regard as that person's home at the material time?



Sole or main Residence - Case Law



Bradford Metropolitan Borough Council v Anderton (1991)

(House remained settled and usual abode, a Merchant ship cannot be sole or main residence, and long absence for work did not change usual abode).

Ward v Kingston upon Hull City Council (1993)

(Family home still sole or main residence whilst working in Saudi Arabia)

Codner v Wiltshire Valuation and Community Charge Tribunal (1994)

& Cox v London (South West) Valuation and Community Charge Tribunal and Poole Borough Council Community Charge Registration Officer (1994)

(Family home sole or main residence even when only there at weekends)

Doncaster Borough Council v Stark and Stark (1997)

(RAF Corporal; family residence still usual abode not service accommodation)

Mullaney and Clayton v Watford Borough Council and Hertfordshire Valuation Tribunal (1997)

(Sole or main always a question of fact and degree; weigh up nature and extent of the relationship between individuals)



Sole or main Residence - Case Law



R (on the application of Navabil) v Chester le Street District Council (2001)

(Unfurnished property can still be main residence)

R (on the application of Wright) v Liverpool City Council (2002)

(No equal or greater security at alternative addresses; no permanent or enduring residence elsewhere)

Williams v Horsham District Council (2004) & Bennett v Copeland Borough Council (2004)

(Sole or main residence must relate to premises in which taxpayer actually resides).

Parry v Derbyshire Dales District Council (2006)

(Landlord living & working in Spain not resident in cottage he owned when tenant vacated. Main residence only when he returned to live there)



So What Does This Mean in Practice?

Mrs & Mrs Goode live in a nice detached house, Costa Fortuna, with their 17 year old son Max and 16 year old daughter Missy.

Mrs Goode is the joint owner of the property with her brother, Mr Nice as they inherited the property from their parents.

Mr Nice comes to stay quite often, and has his own room, but lives in Spain.

Who is liable for Council Tax?



So What Does This Mean in Practice?



Mrs Goode decides she has had enough of the damp British weather, so packs her bags and moves to Spain to live near her brother.

Mr Goode has to stay behind for work purposes.

Missy decides to go with mum as she loves the sun too.

Who is liable for Council Tax?



So What Does This Mean in Practice?



After a while, Mr Goode decides it makes more sense for him to move into town, closer to work, and quicker to get to the airport to fly out for weekends with the family.

He buys himself a nice new pad close to all the cafes and bars, but this leaves 17 year old Max in the house, as it is only a short walk to college.

Who is liable for Council Tax?



So What Does This Mean in Practice?



17 year old Max decides he wants to change the course he is studying, which means he will need to attend a different college.

Some mates have rented a house close to his new college and have a spare room, so he decides to pack up and moves in with them.

The house is now empty and up for sale.

Who is liable for Council Tax?



The Exception to the Rule - Liability of Owners

s.8 Local Government Finance Act 1992

Provision for owners to be liable rather than residents.

- The Council Tax (Liability for Owners) Regulations 1992 **SI 1992/551**;
- The Council Tax (Liability for Owners) (Amendment) (England) Regulations 1993 **SI 1993/151**;
- The Council Tax (Liability for Owners and Discount Disregards) (Amendment) Regulations 1995 **SI 1995/620**;
- The Council Tax (Liability for Owners) (Amendment) Regulations 2003 **SI 2003/3125**.



Liability Of Owners

•Six categories:

- Class A** – Care homes and certain hostels providing care and support;
- Class B** – Dwellings inhabited by religious communities;
- Class C** – Houses in multiple occupation;
- Class D** – Dwellings occupied by resident staff;
- Class E** – Dwellings occupied by ministers of religion;
- Class F** – Dwellings provided to asylum seekers.



Class A – Care Homes etc.

Refers to:

(a) care homes within the meaning of the Care Standards Act 2000, in respect of which a person is registered in accordance with Part 2 of the Act;

(b) buildings or parts of buildings in which residential accommodation is provided under section 21 of the National Assistance Act 1948, and

(c) hostels within the meaning given by paragraph 7 of Schedule 1 of the Local Government Finance Act 1992.



Class B – Religious Communities



A dwelling occupied by a religious community where the principal occupations are:

- Prayer;
- Contemplation;
- Education; and
- The relief of suffering, or any combination of these.



Class C – Houses in Multiple Occupation

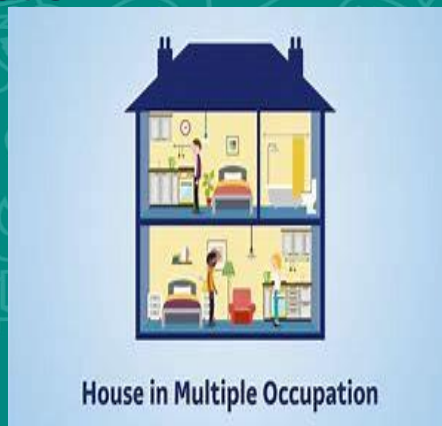


With effect from 1st April 1995, any dwelling which, either;

(a) was originally constructed or subsequently adapted for occupation by persons who do not constitute a single household, or

(b) each person who lives in it is either;

- a tenant or licensee able to occupy only part of the dwelling; or
- a licensee liable to pay rent or a licence fee on only part of the dwelling.



Class D – Resident Staff



A dwelling where at least one resident is solely or mainly resident there to be employed in domestic service, and any other residents are so employed or part of that persons family.

- They live in the dwelling in order to maintain it for occasional occupation of the employer.



Class E – Ministers of Religion



A dwelling which is inhabited by a minister of any religious denomination, from which to perform the duties of their office.

If the dwelling is owned by the minister themselves, they will be liable, unless they are a minister of the Church of England and in receipt of a stipend in which case the Diocesan Board of Finance is liable.



Class F – Asylum Seekers



This class refers to any dwelling which is provided to an asylum seeker under, or under arrangements made under, **section 95 of the Immigration and Asylum Act 1999**.

Has applied since 3rd April 2000.



Caravans and Boats



Caravans and boats are “chattels” and are not, in themselves, subject to council tax.

Liability arises by virtue of the land (pitch) on which a caravan stands or a mooring by which a boat is attached to the land.

So, caravans and boats, on a permanent pitch or mooring, that are someone’s sole or main residence will be liable for council tax.

s.7(2) LGFA 1992 – liability will fall on the owner of the caravan or boat unless he is not resident, and another person is, in that case liability will rest on the resident.



Identifying The Liable Person

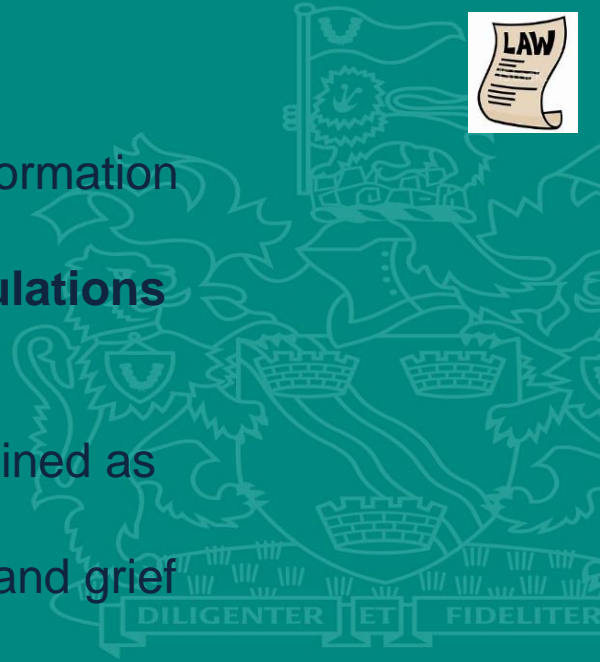
In order to establish liability, billing authorities may obtain information using the powers prescribed under:

The Council Tax (Administration and Enforcement) Regulations 1992 SI 1992/613.

It is essential that adequate and accurate information is obtained as this makes collection easier and more efficient.

Spending time getting it right at this point will save you time and grief further down the line.

No statutory obligation for a resident/owner or managing agent to give information on residency unless you have asked for it. It is the request under these regulations that creates the duty to provide the information.



Identifying The Liable Person



REGINA v D – COURT OF APPEAL CRIMINAL DIVISION 5th February 2019

The defendant is and at all relevant times since 1998 has been the registered legal owner of a property. Her name also appears on the council electoral records as being at that address.

STATEMENT OF OFFENCE

FRAUD BY FAILING TO DISCLOSE, contrary to sections 1 and 3 of the Fraud Act 2006.

PARTICULARS OF OFFENCE

[D] between 23rd day of May 2008 and 24th day of December 2015, committed fraud in that you dishonestly failed to disclose to Hertsmere Borough Council information, namely that you lived at 45 Dacre Gardens, Borehamwood, Hertfordshire, WD6 2JR, which you were under a legal duty to disclose, intending to make a gain for yourself or a loss to another, namely by avoiding to have (sic) to pay Council Tax."



Identifying The Liable Person



The question... is whether she was under a legal duty so to notify the council of the fact, as is alleged, of her own continued residence.

The original trial judge said:

"I have asked Mr Dennis...to point me to any legislative provision imposing such a duty. He has not sought or today been able to do so. I am surprised if it is the case that there is no provision imposing such a duty, but none is advanced

The prosecution in short say that it is obvious that there is such a legal duty, that it is ludicrous to contend otherwise. Every household, they say, has an obligation to tell the local authority if they are residing in a property otherwise how would any local authority have the necessary information to collect council tax? ...it would surely be a great surprise to everybody if there was no legal duty to give a local authority that information. I remain surprised that I have not been taken to a provision or a document evidencing such a duty. The fact is, however, that I have not been."



Identifying The Liable Person



Court of Appeal Judge

“There can be no real doubt that on the assumed facts...she would have been legally obliged to *pay* the due amount of council tax... But that cannot of itself, as we see it, connote that she was obliged in law to *notify* the council of her continued residence. It is quite wrong to equate a liability to pay with a liability to notify. It may be, as the judge thought, that one might have expected to find such a provision as to notification in the statutory scheme. But that was a matter for Parliament to decide. The fact is, as we have said, that such a provision simply is not there, either within the primary legislation or in subordinate legislation made pursuant to the provisions of the 1992 Act itself.

...a conclusion that such an implied duty of notification does not arise under the statutory scheme relating to payment of council tax by no means leaves a local authority without remedy. A local authority is in a good position to get the information which it needs.”



Identifying The Liable Person



Reg 3 CT(A&E) Regs 1992 - Information From Residents

A person who appears to be a resident, owner or managing agent of a dwelling shall supply to the authority, **upon written request**, information for the purposes of identifying the liable person in relation to that dwelling.

This information shall be supplied within 21 days of request.

- “Resident” – person liable for council tax.
- “Owner” – can be an owner occupier or a Landlord
- “Managing agent” – person authorised to arrange lettings.



Identifying The Liable Person

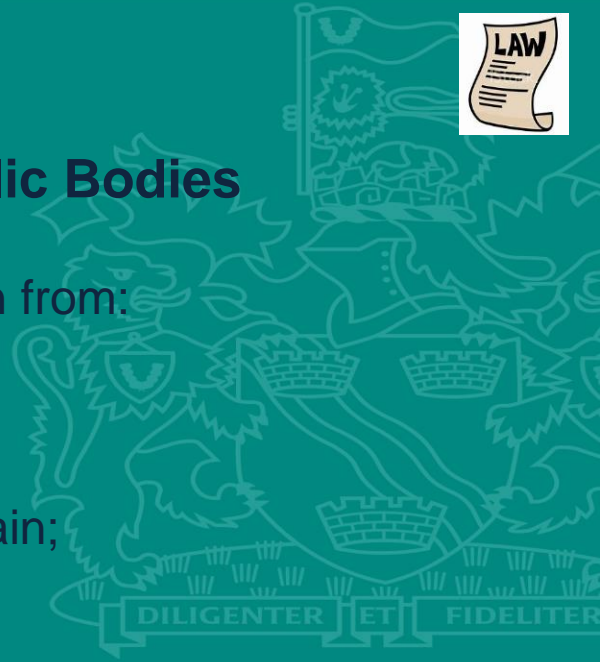
Reg 4 CT(A&E) Regs 1992 – Information from Public Bodies

A billing authority may request in writing relevant information from:

- a) Any other billing authority,
- b) Any precepting authority,
- c) Any levying authority,
- d) The electoral registration officer for any area in Great Britain;

Information shall be supplied within 21 days of request.

A billing authority may supply information to another billing authority even if it is not requested.



Identifying The Liable Person



Reg 4 CT(A&E) Regs 1992 – Information from Public Bodies

A billing authority may not request the following:

- a) Information obtained by a person or committee in their capacity as a police authority;
- b) Information obtained in its capacity as an employer;
- c) Information consisting of anything but name, address and any place of residence of any person and applicable dates of their period of residence.

Be mindful of the requirements of the Data Protection Act and General Data Protection Regulations – information must be accurate and not excessive for your purpose, and you must explain what you will use the information for.



Identifying The Liable Person



Reg 5 CT (A&E) Regs 1992 – Information Regarding Deaths

Within 7 days of the registration of the death of a person aged 18 years or over, the registrar of births and deaths shall supply to the billing authority concerned, information as to name, date of death, and the usual address of the deceased.

This information shall be supplied in writing or in a form that can be computer processed.



Identifying The Liable Person

Reg 6 CT (A&E) Regs 1992

An authority may use information obtained under any other enactment provided it is not obtained on behalf of a police authority

Penalties

For non compliance with written request or knowingly providing false information

S.14(2) and Schedule 3 Local Government Finance Act 1992.

A penalty of £70 may be imposed for failure to provide information or knowingly providing false information.

Failure to comply with further requests a further £280 penalty for each failure.



Appeals

s.16 Local Government Finance Act 1992.

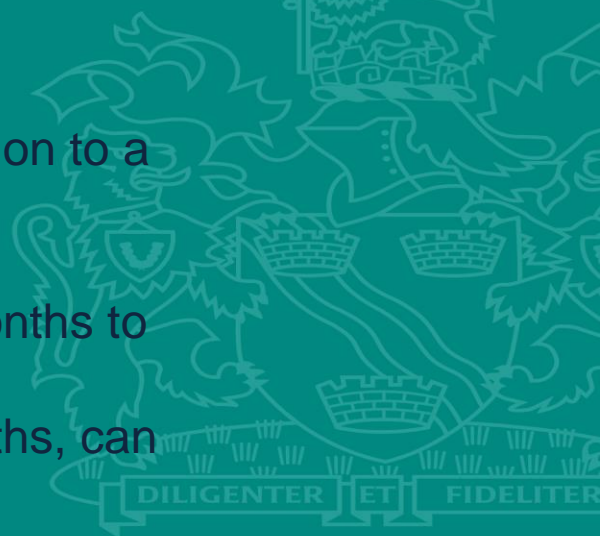
Can appeal against a decision of the billing authority in relation to a chargeable dwelling or liability;

Must appeal in writing to the billing authority; BA has two months to respond

If still dissatisfied with decision or no response within 2 months, can then appeal to the Valuation Tribunal;

Good practice to let taxpayers know about appeal rights other than just on annual leaflet.

Schedule 3 LGFA – Also have the right of appeal against penalties but can appeal directly to Valuation Tribunal.





Any Questions??

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