Neutral Citation Number: [2020] EWHC 2083 (Admin)

Case No: CO/2952/2019

**IN THE HIGH COURT OF JUSTICE**
**QUEEN'S BENCH DIVISION**
**ADMINISTRATIVE COURT**

Birmingham Civil Justice Centre
Bull Street, Birmingham B4 6DS

Date: 10/08/2020

**Before** :

**HHJ DAVID COOKE**

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**Between :**

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|---|---|
| **Noel Broderick** | **Appellant** |
| **- and -** | |
| **Coventry City Council** | **Respondent** |

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**Alexandra Itari Wills** (instructed by the Bar Pro Bono Unit) for the **Appellant**
**Annette Cafferkey** (instructed by **Coventry City Council Legal Services**) for the **Respondent**

Hearing date: 23 June 2020

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# Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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HHJ DAVID COOKE

## HHJ David Cooke:

1. Mr Broderick appeals against the decision of the Valuation Tribunal for England dated 18 June 2019, by which the Tribunal dismissed his appeal against the determination of the Respondent Council that he was responsible for council tax at 66 Lindley Rd, Stoke, Coventry as the resident owner of that property. There was no dispute that Mr Broderick was the freehold owner of the property; his contention however was that he had let it to a Mr Jonathan Hartopp and was not resident there himself so that Mr Hartopp alone was liable for the council tax. Ms Wills, who appeared for Mr Broderick before the Tribunal, also represented him on the appeal. Ms Cafferkey appears for the Council, adopting and relying on a skeleton previously filed by Mr John McCafferty of counsel. The appeal hearing was conducted remotely by way of Skype for Business.

### Relevant Law

2. The appeal is brought pursuant to Regulation 43 of the Valuation Tribunal for England (Council Tax and Rating Appeals) Regulations 2009 and by para 43(1) is limited to an appeal on a point of law arising from the Tribunal's decision. At the opening of the hearing I ruled that it should proceed notwithstanding it was issued outside the four week period from the date of the decision provided by Regulation 43(2). I also ruled against allowing Mr Broderick to rely on further evidence in the form of a brief witness statement from Mr Hartopp, on the grounds I was not satisfied that it could not with reasonable diligence have been put before the Tribunal or that, if it had been, it would have been likely to have had an important influence on the outcome.

3. The central issue on the appeal is Mr Broderick's challenge to the Tribunal's finding that the appeal property was his main residence during the periods charged. That is a finding of fact. Ms Wills submitted that it was open to the court on this appeal to review the evidence that was before the Tribunal in order to come to its own conclusion, and allow the appeal if the court's conclusion differed from that of the Tribunal. But that is not the law; Ms Wills herself referred me to *Gill v Fenland District Council* [2018] EWHC 3105 (Admin), a decision of Mr Phillip Mott QC cited by Ms Cafferkey, which includes the following:

> "3 In accordance with ordinary principles where there is a challenge on a question of law, it is for the appellant to show that the tribunal made an error of law on the material before it. This court is not looking at the evidence to make a fresh decision, and no fresh material may be placed before the court in an attempt to undermine findings of fact by the tribunal.
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> 4 It is not strictly right to assert, as it is in the respondent's skeleton argument, that there can be no appeal against findings of fact. But on such a challenge the appellant must show that no reasonable tribunal could have come to that conclusion on the evidence before it. Only if this hurdle is surmounted can the decision be challenged as an error of law."

4. That is of course correct, and well established in innumerable cases. Ms Wills nonetheless maintained that this court could substitute its own decision on the facts, by virtue of Regulation 43(3) which provides that "The High Court may confirm,

vary, set aside, revoke or remit the decision or order [of the Tribunal] and may make any order the Tribunal could have made". But that provision simply sets out the powers of the court if it allows the appeal; it does not mean that the court considers afresh the matters that were before the Tribunal.

5. Ms Wills submitted in the alternative that the evidence was such that no reasonable tribunal could have reached the decision in question. That is the only basis on which Mr Broderick can succeed.

6. There is one other point of law to mention at the outset; Ms Wills submitted that the council had to demonstrate to the tribunal that the subject property was Mr Broderick's "sole and main residence" and that as the freehold owner he was only liable as a last resort if no person with a higher place in what is referred to as the council tax hierarchy could be identified.

7. That hierarchy is established by s 6 Local Government Finance Act 1992 which provides as follows:

> "6.— **Persons liable to pay council tax**.
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> (1) The person who is liable to pay council tax in respect of any chargeable dwelling on any day is the person who falls within the first paragraph of subsection (2) below to apply, taking paragraph (a) of that subsection first, paragraph (b) next, and so on.
>
> (2) A person falls within this subsection in relation to any chargeable dwelling and any day if, on that day—
>
> (a) he is a resident of the dwelling and has a freehold interest in the whole or any part of it;
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> (b) he is such a resident and has a leasehold interest in the whole or any part of the dwelling which is not inferior to another such interest held by another such resident; …
>
> or
>
> (f) he is the owner of the dwelling.
>
> …
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> (5) In this Part, unless the context otherwise requires—
>
> … "resident", in relation to any dwelling, means an individual who has attained the age of 18 years and has his sole or main residence in the dwelling."

8. It was as I say not disputed that as freeholder Mr Broderick was the "owner" for purposes of sub-para (2)(f). But by virtue of that interest he would be in the first line of the hierarchy under sub-para (2)(a) if he was also "a resident" of the property (not necessarily the sole resident) and any last resort liability arising purely by of ownership alone under sub-para (2)(f) would arise only if neither he nor anyone else was residing there. He would be "a resident" if the property was his sole or main

residence, it need not be his "sole and main residence" as Ms Wills submitted. The conjunctive expression would in any event be a nonsense; a person can only have a "main" residence if he resides at more than one place and so does not have a "sole" residence.

**The case before the Tribunal**

9. It was Mr Broderick's contention on the facts that he was not resident at the property at all. He had he said let it to Mr Hartopp on 15 October 2012 pursuant to a written Assured Shorthold Tenancy agreement at a time when he was facing repossession because of mortgage arrears and since then he had not lived at the property but had been "sofa surfing" staying with friends and relatives including his ex-wife. The tenancy agreement entitled Mr Hartopp to exclusive possession of the property and provided that he was to be responsible for council tax and other outgoings, and Mr Broderick criticised the council for not taking any steps to bill Mr Hartopp and recover the tax from him.

10. It was not disputed that the tenancy agreement had been entered into on the date it stated, nor was it contended by the council that it was for any reason not legally effective. On the face of it therefore it entitled Mr Hartopp to exclusive possession of the property. But the question before the Tribunal was whether as a matter of fact Mr Broderick actually resided at the property notwithstanding that agreement and if so whether it was his main residence after 15 October 2012 (it was not suggested it was his sole residence). The question was not whether Mr Broderick was legally entitled to reside there or whether Mr Hartopp could have prevented him from doing so if he chose.

11. The Council's submission to the Tribunal was based on the reasons it gave in its letter to Mr Broderick of 25 October 2017 by which it decided that he was liable. I summarise that as follows:

    i) Mr Broderick was the owner and had not provided any other address that was his sole or main residence.

    ii) He continued to be registered to vote at the property.

    iii) He had given the property as his address when claiming benefits since 2009 and continued to do so after 2012 when making appeals for the restoration of benefit, including giving that as his address on a visit to the council offices on 5 June 2013 when he asked for a reconsideration of benefit decisions.

    iv) The tenancy agreement gave the property as his address.

    v) Mr Hartopp himself had contacted the council in September 2013 and advised them that he was living at the property with a friend, which the council evidently took to be Mr Broderick himself.

    vi) A process server seeking to serve documents on Mr Broderick on 23 June 2013 had been told by an unnamed person that Mr Broderick continued to live at the property.

12. The council also pointed to various other documents which it said supported the conclusion that Mr Broderick was living at the property and argued that, in the

absence of proof that he was resident elsewhere it was reasonable to find that he resided at this property. The council evidently were suspicious that the claimed tenancy agreement might not reflect the true picture, partly because, on its evidence, although Mr Broderick had told them of the tenancy in 2012, despite their enquiries he had not provided a copy of the tenancy agreement until October 2017. That was disputed before me; Mr Broderick provided a copy letter dated 2012 stating that it was enclosing a copy, but the council said no such letter had been received.

13. The tenancy agreement provided that the rent payable by Mr Hartopp was £403.25 pm, which was the same as the payments due under Mr Broderick's mortgage of the property. It was Mr Broderick's contention that Mr Hartopp had in fact paid all such instalments since 15 October 2012, and in support of that he produced documents obtained from his mortgagor; firstly an account record showing notes made by the mortgagor's staff of contacts with the borrower during the relevant period and secondly transcripts of phone calls relating to the account. The Tribunal said this did not show clearly who was making the payments.

14. At paras 26-7 of its decision, the Tribunal said that having examined all the evidence it determined that the rent was below market value for a 3 bed house in its location, and that the tenancy was unusual because normally a landlord would expect a return over his mortgage payments, and furthermore would not normally entrust a third party with direct payment of his mortgage, in view of the risk of repossession.

15. The Tribunal noted at para 28 that although the AST gave the property as Mr Broderick's own address it was described as a "C/o" or "care of" address. It said however that the use of a "care of" address did not necessarily mean he was not usually resident and might be because he was temporarily absent "or used to disguise the fact that the appellant was still living there as no alternative address was cited. It was also noted that Mr Hartopp advised the billing authority in September 2013 that he had moved to the appeal dwelling and was living there with a friend. The panel took the view this suggested Mr Hartopp was moving in as a lodger."

16. Mr Broderick had provided very brief witness statements from a neighbour and his ex wife, but the Tribunal placed little weight on these as the witnesses had not attended for cross examination.

17. In relation to the contention that Mr Broderick was sofa surfing, at para 30 the Tribunal said that, in the context of the other evidence, that was not sufficient, noting that Mr Broderick was the freeholder and had provided no evidence that any other property was his main residence and no correspondence showing any other address although he said he had been living from time to time in a caravan or at other family addresses.

18. At para 31 the Tribunal said it found an email to the council benefits office of 23 March 2017 was "compelling" as in it Mr Broderick confirmed the property was his address, and was supported by a form signed by Mr Broderick on 6 June 2013 in the presence of a benefits officer.

19. At paras 32-3 the Tribunal stated its conclusion that after considering all the evidence it was persuaded that the appeal property was Mr Broderick's main residence; the evidence derived from the benefits office proved he was residing there and he could not "evade responsibility for council tax by stating he was sleeping elsewhere." It said it paid particular regard to the fact Mr Broderick had been unable to supply any

alternative address at which he had any kind of permanent residence, noting that if he had done so this might have shown a liability for council tax at that address or had an impact on liability of the friends he was staying with, if they were claiming discounts. The terms of Mr Hartopp's tenancy would result in a loss for the landlord as he would be liable for repairs and insurance. Mr Hartopp was in reality a lodger.

**The grounds of Appeal**

20. There are two stated grounds of appeal, but each has a number of sub paragraphs. Ground 1 is that "the Record is inaccurate and/ or incomplete, including in the following respects:". The "Record" referred to is the Tribunal's written statement of reasons. The three matters referred to are:

i) "It does not record the fact that the Appellant's witnesses were going to attend and the Respondent agreed to dispense with their attendance to which the Tribunal agreed, recording that their written evidence would suffice". This is aimed at the statements Mr Broderick relied on from two witnesses, a neighbour Mr Jordan and his former wife. The tribunal hearing was adjourned on the day initially listed (1 March 2019) and reconvened on 3 May 2019. The decision notes that Mr Broderick told the Tribunal at the reconvened hearing that his witnesses were unable to attend, but their statements "were accepted as admissible evidence". In the end the Tribunal said it placed little weight on those statements as the witnesses had not been available for cross examination. Ms Wills submitted that it had been the Council that had agreed the witnesses need not attend, suggesting that this meant their evidence was agreed not to be challenged or could not properly be disregarded by the Tribunal. But this is strongly denied by the Council and I have no evidence that it made any such agreement before the hearing as a result of which witnesses who would otherwise have attended did not do so. All that the decision shows is a correct statement of the law by the Tribunal in that the statement of a witness who does not attend is in principle admissible as evidence nonetheless, but that it has the status of hearsay and it is for the tribunal to give it such weight as it considers appropriate. The statements of the two witnesses are extremely brief and offer no surrounding detail or corroboration of any kind for what are little more than assertions in support of Mr Broderick. The Tribunal was fully entitled to treat them as it did.

ii) The decision did not record that the Tribunal had asked why the Council had not billed Mr Hartopp or made any enquiry about him, given that he had himself said to the Council that he was living at the property. This shows no error on the Tribunal's part; the decision did not have to record every aspect of the hearing and it was not the Council's case that Mr Hartopp was not living at the property. The fact that he was did not preclude Mr Broderick also residing there or necessarily oblige the council to bill Mr Hartopp, since if Mr Broderick was also residing there he would be higher in the tax hierarchy and so liable rather than Mr Hartopp.

iii) The decision did not record that the council could not identify the person who had informed its process server that Mr Broderick still lived at the property. This shows no error on the Tribunal's part; it did not rely to any extent on the statement of the unknown person.

21. Ground 2 alleges errors by the Tribunal "in law and in fact" in four respects. As stated above, the appeal court is only entitled to have regard to errors of law, and a disagreement with its factual conclusions only amounts to an error of law if no reasonable tribunal on the evidence before it could properly have reached those conclusions. The four aspects said to show error were:

    i) Failure to "take into proper account" the legal significance of the tenancy agreement and the fact it provided for exclusive possession by Mr Hartopp and that he would be responsible for council tax. As to the last point, liability in law for council tax is determined by the legislation and cannot be altered by contract between an occupier and anyone else. The Tribunal correctly considered whether Mr Broderick was liable in law, and if Mr Hartopp had agreed with him that Mr Hartopp would pay that would be a private matter between them.

    ii) The decision failed to take in to account the weight of the evidence in favour of Mr Broderick's case

    iii) The preponderance of the evidence favoured Mr Broderick's case

    iv) The decision failed to take in to account Mr Broderick's rights protected by the Human Rights Act. This was not elaborated.

22. The first three of these points criticise the Tribunal's evaluation of the evidence and the weight it gave to different aspects of that evidence. Such evaluation and weight are however matters for the Tribunal itself and cannot be interfered with by an appeal court unless they go so far as to amount to an error of law on the basis I have described. Ms Wills attacks all of the findings I have noted on the basis they were either not open to the Tribunal on the evidence, or provide no basis for the conclusions it reached about residence. I turn now to her criticisms of those conclusions.

23. It is important to note at the outset that, given that the test is whether the property was Mr Broderick's "main residence" it was not necessary for the Tribunal to find that he resided there all the time. It would be sufficient if he did so for part of the time, or from time to time, as long as he had no other property that had become his main residence. That was the approach the Tribunal took, and it was undoubtedly right in law to do so. Mr Broderick gave no evidence that he had any other address that was his main residence; indeed it was his case that he had no residence at all and so was not liable for Council tax at 66 Lindley Rd or anywhere else.

24. Ms Wills submitted that since it was not suggested the AST was not legally effective, it was conclusive evidence that Mr Hartopp was the exclusive occupier of the property and it was not open to the Tribunal to find otherwise. But that is plainly not right; it is a commonplace that people enter into written agreements that, whether deliberately or otherwise, do not reflect, to a greater or lesser degree, either what they have in fact agreed or what they thereafter actually do. The Tribunal's task was to determine by evaluating the evidence what had actually happened. It was plainly alive to the possibility that the written agreement might be an attempt to disguise that reality. It was not necessary to find that the AST was a sham or otherwise legally invalid for it to reach a conclusion that the reality departed from its terms.

25. Ms Wills submitted there was no basis for the conclusion that the rent was below a market value. There was no expert valuation evidence before the Tribunal, and looking at the rent alone ignored the facts that Mr Broderick had been facing repossession and that in addition to the rent the tenant had paid over £5,000 to clear Mr Broderick's arrears and had to complete extensive renovation work at the property before he moved in because it was in a poor state.

26. There was evidence before the Tribunal that Mr Broderick was facing the threat of eviction because of mortgage arrears; indeed a possession order had been made and enforcement was only avoided because a payment of £5029 was made on 11 October 2012. Ms Wills referred me to the lender's account record (entry 2949) which states that a call was received from the father of the borrower, who put on the phone a woman friend whose name is redacted. The friend then made a payment by debit card. She was asked for information about the source of funds, but her answer is not shown on the documents I have, as the next page is missing.

27. Ms Wills submits the caller cannot have been Mr Broderick's father, as he had died some years before. It must have been Mr Hartopp, she said, and this showed Mr Hartopp had paid the £5,029. It is not apparent whether this submission was made to the Tribunal as it is not specifically referred to in its decision, but I assume in Mr Broderick's favour that it was, and is one of the matters that led the Tribunal to say it was not clear who had made payments. But, as Ms Cafferkey pointed out, Mr Hartopp is not named in this entry and it cannot be assumed he was the caller. It is more likely that whoever called stated (wrongly) that he was Mr Broderick's father than that whoever took the call was told something different and wrongly recorded the call as from the father. There is nothing to indicate that this person must have been Mr Hartopp; it could equally have been Mr Broderick or any other person through whom he had arranged a payment. The payment was not actually made by the caller, and there is no indication from the record whether the woman who paid regarded herself as doing so on behalf of Mr Broderick or anyone else.

28. Nor is there anything in the tenancy agreement recording such a payment as having been made by Mr Hartopp, although that was dated a few days later and could have referred to it. It states that the deposit is "£0", so the £5029 was clearly not regarded as a deposit.

29. Nor is it clear whether that the Tribunal was told of any repairs done by Mr Hartopp on moving in. Mr Broderick's witness statement stated that he had let to Mr Hartopp "on the basis that he would be responsible for repairs", but it does not appear he presented any evidence of significant work having to be done.

30. The Valuation Tribunal is of course itself an expert tribunal in matters of valuation. Insofar as it is said that it must have taken into account its own view of market rents for 3 bed houses in the area, it seems to me it was perfectly entitled to do so. Even if it had not made that finding, it was entitled to find that the tenancy was unusual for the reasons it gave, and to rely on that finding. It was plainly entitled to take into account the fact that rents would normally be expected to exceed mortgage payments, since otherwise the landlord would probably make a loss. Even if I assume in Mr Broderick's favour that submissions were made about Mr Hartopp having paid arrears, the Tribunal was entitled to find that this was not demonstrated by the evidence. If I likewise assume that submissions were made about Mr Hartopp having made repairs on taking the tenancy, the lack of detail means it simply cannot be said that no

reasonable tribunal could have concluded otherwise than that this was sufficient to explain the unusually low rent.

31. Ms Wills submitted that contrary to the Tribunal's finding, the account notes and telephone transcripts showed that Mr Hartopp had paid all the mortgage instalments since October 2012. There are indeed many entries showing that payments were made by Mr Hartopp, but also others showing payments made by a Mr Lee Fleckner, sometimes referred to by Mr Hartopp when calling as his "friend". There is, as Ms Cafferkey points out, no evidence who Mr Fleckner is, and no evidence whether if he made payments he did so on behalf of Mr Hartopp or Mr Broderick.

32. Ms Wills referred to letters written to the council by Mr Broderick stating that he was no longer resident at the property and it was Mr Hartopp who should be billed. I have no doubt the Tribunal took these into account, but they are self-serving and it cannot be said they are conclusive or so persuasive that no reasonable tribunal could have looked beyond them.

33. In relation to all the occasions on which it was said Mr Broderick had given the property as his address he had, Ms Wills said, given it as a "care of" address. That was no evidence that he was actually living at the property and indeed showed that he was not. But the Tribunal was undoubtedly entitled to consider, as it did, whether this might be an attempt to disguise the real position. As Ms Cafferkey points out, there was evidence from which it might have been concluded that at some times Mr Broderick had used that address in circumstances that indicated it was his actual address and not just a "care of" address from which he could collect mail:

    i) On 5 June 2013 he attended the Council office and spoke to a benefits officer to request a reconsideration of it decision to cancel his Council tax benefit from 2009. A form was completed, stating Mr Broderick's address to be "66 Lindley Rd" (without reference to "care of") and signed by Mr Broderick. It does appear likely that the writing on this form is that of the benefits officer rather than Mr Broderick, so it might have been explained away as his having failed to record accurately what Mr Broderick had said. But if that explanation was put forward it would be for the Tribunal to assess, and although in principle it could have accepted such an explanation, it cannot be said that no reasonable tribunal would have failed to do so.

    ii) There was much correspondence from the Council itself but also from other agencies such as HMCTS in relation to benefits appeals that was addressed to Mr Broderick at the property but not marked "care of". That indicated that those agencies had not been told it was a "care of" address. There is force in this point, it seems to me. Addresses used in such correspondence would be likely to be reproduced from records (such as those held by the court or tribunal dealing with a benefit appeal) and to include "c/o" if that had been part of the address as originally supplied. At the least, it cannot be said that any reasonable tribunal must have concluded that all such letters must have been erroneously addressed or failed to include relevant information Mr Broderick had provided.

    iii) The Tribunal relied on an email sent by Mr Broderick himself to the Council on 23 March 2017 which began "Can you confirm that I, Noel Broderick, 66 Lindley Rd CV3 1GY… was eligible for JSA payments to my Council tax for 2009-2010, 2010-2011, 2011-16-10-2012". That Ms Cafferkey says is a

statement of his actual address and not a "care of" address. Ms Wills points out that it relates to benefit claims in periods before the start of the tenancy and that the email goes on to say "Can you confirm my letter sent October 2012 that Jonathan Hartopp is now the tenant at 66 Lindley Rd…". I do not doubt that a tribunal could have accepted such an explanation, or that another tribunal might not have considered this email to be as persuasive as this Tribunal did, but it does not seem to me that it was an irrelevant consideration or that no reasonable tribunal could have taken it into account at all.

34. The Tribunal also referred to an Experian Credit report which it said indicated financial activity at the property address. That report was dated 7 January 2016, and presumably obtained by the Council. It shows Mr Broderick's address as 66 Lindley Rd, which is not stated to be a "care of" address. It records the persons registered to vote at that address, which include Mr Broderick himself from 1996 to 2003 and again from 2008 to 2012 and from 2013 to date. Mr Hartopp is shown as registered from 2013 to date. In each case the return has obviously been stated as at October of the relevant year. It appears that no return can have been filed for the year October 2012-13 as no registered voters are recorded, but that returns for 2013 and after named both Mr Hartopp and Mr Broderick.

35. 66 Lindley Rd is stated to be Mr Broderick's current address. Two other linked addresses are mentioned; 14 Manor Rd Stockton where the link is said to be "From C[urrent]" in May 2009 and 13 Hamilton Rd Coventry where the link is stated to be "To C[urrent]" in October 2012. There are details of 8 different financial accounts (such as credit cards or mobile phones) all of which are registered in respect of Mr Broderick at 66 Lindley Rd.

36. The Tribunal said that this indicated financial activity by Mr Broderick at that address. Ms Wills points out that the start date for each of the accounts is before October 2012 and so would have been correct at the time, but does not prove he continued to live there after that date. I agree, but all these records show that no other address has been provided to the creditors concerned for over 3 years since then, in circumstances in which they may well have been concerned to identify one as most of the accounts are stated to be in default, including some that fell in to default in 2014. Mr Broderick appears therefore to have at least maintained 66 Lindley Rd as his address for purposes of all such accounts, with no indication that he told any of the creditors it was a "care of" address or that he had any other address.

37. There was other evidence before the Tribunal capable of casting doubt on Mr Broderick's account and/ or supporting its conclusion that Mr Broderick resided at the property to an extent sufficient to make it his main residence.

    i) There is a note by a council employee (bundle p 52) dated 12 October 2012 recording that Mr Hartopp had been arrested (it is not stated why) and had told the court he was living at 66 Lindley Rd. The maker of the note is alerting a colleague to the fact that Mr Broderick is being billed for council tax at that address and claiming a single person's discount. It was no doubt that information that prompted the Council to write to Mr Broderick on 15 October 2012 stating that it had "come to our attention that… Mr Jonathan Hartopp has resided with you since 2009". This suggests that is what Mr Hartopp told the court.

ii) Council records also show that Mr Hartopp contacted the council in 2013 and advised them he had moved in to the property in September 2013 and was living there with a friend. Ms Wills submitted that this obviously referred to Mr Lee Fleckner, the "friend" referred to by Mr Hartopp in his telephone calls to the mortgage lender. But there is no material to back up that assertion. I was not referred to any material showing that the Tribunal should have accepted that Mr Fleckner was living at the property, or that he was the only friend Mr Hartopp could have been referring to. No doubt this is an explanation that could have been given to the Tribunal and (if I assume in favour of Mr Broderick that it was) might have been accepted, but it is not possible to say that no reasonable tribunal could have failed to do so. The Tribunal could perfectly legitimately have taken the view that Mr Hartopp saying he was "living with a friend" was more indicative of Mr Hartopp living in the friend's house rather than the other way round, which many people would describe as "my friend living with me".

iii) As Ms Cafferkey points out there are clear indications in the telephone transcripts that Mr Hartopp told the mortgage company he was living at the property with Mr Broderick. The Appellant filed a bundle of documents for the appeal including the account records and transcripts that had been produced to the Tribunal. At p 99 of that bundle is a record beginning part way through a call that is evidently from Mr Hartopp. He has evidently said he is calling to pay on behalf of Mr Broderick and "I do it every month for him". He is asked to confirm Mr Broderick's address as a security check and says "it's 66 Lindley Rd" and goes on "Mine's the same, 66 Lindley Rd. I am staying with him at the moment". At p 102 of the same bundle in another call Mr Hartopp is asked for his relation to the account holder and says "I am a friend who's staying with him at the moment". At p 127 in another call Mr Hartopp is asked for his address and says "It's 66 Lindley Rd. I am at the address of the- where (inaudible) lives, Noel." Ms Wills submits that these might just be Mr Hartopp being cautious so as not to get Mr Broderick in trouble because of an unauthorised letting. Again that is an explanation that might have been put to and accepted by the Tribunal but it is not so obviously correct that these statements could not be taken as meaning what they said.

iv) The council recorded in a note dated 8 January 2015 that Mr Broderick had telephoned to say he had not lived at the property since 2013 and that Mr Hartopp had lived there and taken responsibility for mortgage payments. The date of Mr Broderick's moving out was recorded as being July 2013. Mr Broderick is recorded as being "not very forthcoming with information" and later telephoning back to say he "had realised that [Mr Hartopp] took over the property Sept 2012 and not July 2013". This does not suggest Mr Broderick was very sure of the date. Mr Broderick does not appear to have said that he had already sent the council a copy of the tenancy agreement, as he now says he had.

v) The council wrote on 23 January 2015 asking for evidence of Mr Hartopp's tenancy, which does not suggest they had already been provided with that evidence. I have not been referred to any reply to that letter objecting that the required evidence had been sent in 2012.

vi) A voter registration form signed by Mr Hartopp dated 14 January 2014 shows that he has deleted the pre-printed entry "Nobody Registered", which presumably reflected the fact that no return had been sent the previous year, and written in Mr Broderick's name (first) and his own. Ms Wills submitted that no weight could be given to this as it was not signed by Mr Broderick, but it constitutes a representation by Mr Hartopp, the claimed tenant, that Mr Broderick was also living at that address.

38. I have gone in to these details of the evidence before the Tribunal at more length than is strictly necessary, because of the length and passion of Ms Wills' submissions. But my conclusions can be stated briefly. Far from showing that the Tribunal erred in law and reached a conclusion that no reasonable tribunal could have done on the evidence, there was ample evidence before it to support its finding. Mr Broderick continues to dispute that finding; it cannot be ruled out that he could have persuaded a different tribunal that his account was correct, but neither of these is sufficient to found an appeal. There was no error of law in the Tribunal's evaluation of the evidence or its conclusions of fact.

39. Ms Wills did not expand further on the Human Rights said to have been infringed. That allegation adds nothing.

## Conclusion

40. For the above reasons, the appeal is dismissed. This judgment will be deemed handed down without a hearing, by release of electronic copies of the final version to the Parties and to BAILII. I invite parties to agree the order resulting and submit a draft by 12 noon the day before the handing down.