Neutral Citation: [2025] UKFTT 00867 (TC)

Case Number: TC09585

FIRST-TIER TRIBUNAL
TAX CHAMBER

Taylor House

Appeal reference: TC/2018/07925

CAPITAL GAINS TAX – taxpayer owning properties but living in his parent's home and having an employment contract to provide care to his father – claim by the taxpayer to the principal private residence exemption from capital gains tax in respect of each property on the basis that the taxpayer's parent's home was job–related accommodation and the taxpayer intended in due course to occupy the relevant property as his only or main residence – concluding that the taxpayer had made good his claim for at least part of the period over which he had owned each property and that, on that basis, the entire gain on three of the properties qualified for the exemption and, although part of the gain on the fourth property did not, that part was within the taxpayer's annual exemption for the tax year of disposal – consequently, the taxpayer was not liable to capital gains tax in respect of any of the properties and the appeal against the closure notice and discovery assessments (and the related penalties for failure to notify liabilities to tax) would be upheld

Heard on: 1 and 2 July, 2025
Judgment date: 15 July 2025

Before

TRIBUNAL JUDGE TONY BEARE
DR PHEBE MANN

Between

MARK CAMPBELL

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Mr Keith Gordon and Ms Siobhan Duncan, instructed pro bono via Advocate

For the Respondents: Ms Laura Inglis of counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs

DECISION

INTRODUCTION

Background

1. This decision relates to the tax liabilities of the Appellant in respect of four residential properties (the "Properties") which he sold between 2012 and 2016. The Properties were as follows:

(1) 10 Woodhouse Close, purchased on 17 December 2010 for £80,000 and sold on 24 April 2012 for £116,000;

(2) 28 Bramshill Close, purchased on 12 October 2012 for £95,000 and sold on 22 January 2015 for £125,000;

(3) 2 Bramshill Close, purchased on 8 February 2013 for £100,000 and sold on 17,18 or 20 June 2014 for £147,000; and

(4) 8 Wigshaw Lane, purchased on 12 or 17 June 2015 for £95,000 and sold on 31 March 2016 for £245,000.

The reason for the alternative dates in paragraphs 1(3) and 1(4) above is that the bundle for the hearing refers to the relevant dates in different places. However, nothing turns on those differences in this decision.

2. The appeal to which this decision relates has had a somewhat convoluted history.

3. On 29 August 2017, Officer Malcolm Weir of the Respondents wrote to the Appellant asking him to submit a self-assessment return for the tax year 2015-16. Officer Weir said that the Respondents were in receipt of information that the Appellant had disposed of a property which was not his main residence, being 8 Wigshaw Lane.

4. The Appellant responded on 1 September 2017 to say that, whilst he had owned 8 Wigshaw Lane, that property was the only property that he owned and that he was living at home with his parents because he was a full–time carer for his father.

5. On the same day, Officer Weir wrote to the Appellant to say that it was not appropriate to assume that, because 8 Wigshaw Lane was the only property that the Appellant owned during his period of owning that property, the gain on the property was necessarily free of tax. It was perfectly possible that the gain might have been subject to income tax or capital gains tax ("CGT"), particularly in light of the fact that the Appellant appeared to have made profits or gains on other properties. Officer Weir urged the Appellant to complete a tax return for the tax year 2015/16 and to consider whether profits or gains on the other properties needed to be disclosed.

6. On 17 October 2017, Officer Weir wrote to the Appellant to remind him that the Respondents had still not received his tax return for the tax year 2015/16 and to reiterate that the Appellant ought to consider whether the profits or gains which he had made on his other properties needed to be disclosed.

7. Following further correspondence between Officer Weir and the Appellant's agent, Officer Weir agreed to defer the due date for the tax return in respect of the tax year 2015/16 to 10 December 2017 and the Appellant filed the tax return on 20 November 2017. In the course of that correspondence, the Appellant (through his agent) maintained that the gain which he had realised on 8 Wigshaw Lane was not liable to CGT as it qualified for the principal private residence exemption from CGT. More specifically, the Appellant maintained that that exemption was available because he was residing in job–related accommodation, or "JRA", as discussed further below, and intended in due course to occupy the relevant Property as his only or main residence.

8. On 19 December 2017, Officer Weir wrote to the Appellant disputing that the principal private residence exemption from CGT on the above basis was available. On the same day, Officer Weir opened an enquiry in relation to the tax return in respect of the tax year 2015/16 which resulted in the issue of a closure notice (the "Closure Notice") under Section 28A of the Taxes Management Act 1970 (the "TMA") on 18 July 2018. The Closure Notice assessed the Appellant to additional tax of £35,963.35 on the profit assessed of £131,438.00.

9. In addition to the above, Officer Weir engaged in correspondence with the Appellant in relation to the other three Properties referred to in paragraph 1 above and issued a request for further information. On 17 July 2018, Officer Weir issued discovery assessments (the "Discovery Assessments") in respect of the tax years 2012/13 and 2014/15 under Sections 29 and 36 of the TMA in relation to the three Properties in question. The Discovery Assessment for the tax year 2012/13 assessed the Appellant to additional tax of £8,043.25 on the profit assessed of £27,110.00 and the Discovery Assessment for the tax year 2014/15 assessed the Appellant to additional tax of £23,925.69 on the profit assessed of £63,089.00.

10. Each of the Closure Notice and each Discovery Assessment was issued on the basis that the Appellant had disposed of the Properties in the course of carrying on a trade and was liable to income tax on the profits arising from the disposals or, in the alternative, to CGT on those profits on the basis that the principal private residence exemption from CGT was not available.

11. On 10 August 2018, Officer Weir also issued penalties to the Appellant under Schedule 41 of the Finance Act 2008 ("Schedule 41") for a deliberate failure by the Appellant to notify his liability to tax (the "Penalties"). The Penalties were as follows:

Tax year	Penalty
2012/13	£3,659.67
2014/15	£10,886.18
2015/16	£25,923.85
Total	£40,469.70

12. On 6 December 2018, the Appellant notified the First-tier Tribunal (the "FTT") of his wish to appeal against the Closure Notice, the Discovery Assessments and the Penalties.

The FTT Decision

13. The FTT (Judge Natsai Manyarara) dealt with the appeals described above on the papers and issued its decision on 8 February 2022 under neutral citation [2022] UKFTT 00046 (TC) (the "FTT Decision"). It will be necessary to consider parts of the FTT Decision in some detail in due course but, for the moment, we would note only that, in the FTT Decision, the FTT concluded that:

> (1) the Appellant had not disposed of the Properties in the course of a trade and therefore he was not liable to income tax on the profits which he had made from the disposals;
>
> (2) as regards CGT:
>
> > (a) there were two possible ways in which the Appellant might have qualified for the principal private residence exemption from CGT in relation to some or all of the gain on a Property. Those were that, at any time in his period of ownership, either:

(i) the relevant Property had been his only or main residence; or

(ii) he was residing in JRA and intended in due course to occupy the relevant Property as his only or main residence;

(b) none of the Properties had been the Appellant's only or main residence at any time;

(c) the place where the Appellant had been residing throughout the time when he had owned each Property– the Appellant's parent's home – had not been JRA; and

(d) therefore, the principal private residence exemption from CGT did not apply to any of the disposals;

(3) each Discovery Assessment had been validly issued and the Appellant had not discharged the burden of proving that the quantum of tax assessed in either Discovery Assessment was incorrect;

(4) the Closure Notice had been issued in the correct amount;

(5) as regards the Penalties, the Appellant's failure to notify his liability had been deliberate; and

(6) the Penalties should be upheld.

14. The Appellant appealed to the Upper Tribunal (the "UT") on the basis that the FTT had made errors of law in concluding that:

(1) the principal private residence exemption from CGT based on his residing in JRA was inapplicable ("Ground 1");

(2) the Discovery Assessments had been validly made ("Ground 2");

(3) the Appellant's failure to notify his liability had been deliberate ("Ground 3")

and that the FTT had erred in law by failing to consider whether the Respondents' decision in relation to the quantum of the Penalties was flawed and in not mitigating the Penalties in full (Ground 4").

15. The Respondents cross–appealed on the basis that the FTT had erred in law in concluding that the Appellant had not disposed of the Properties in the course of a trade.

The UT Decision

16. The UT (Judges Thomas Scott and Guy Brannan) issued its decision on 3 November 2023 under neutral citation [2023] UKUT 00265 (TCC) (the "UT Decision").

17. The UT began by addressing the Respondents' cross–appeal because, if that were to succeed, it would have significant ramifications for the Appellant's grounds of appeal. In relation to the cross–appeal, the UT determined that the FTT had made no error of principle in concluding that the Appellant had not disposed of the Properties in the course of a trade. It therefore dismissed the cross–appeal – see paragraphs [37] to [50] of the UT Decision.

18. The UT then turned to the Appellant's grounds of appeal.

19. In relation to Ground 1, the UT noted that the Appellant had not appealed against the FTT's conclusion that none of the Properties had been his only or main residence at any time. Instead, the Appellant was claiming that the principal private residence exemption from CGT was available in relation to each Property because he had been living in JRA. In order to succeed in that claim in relation to a Property, the Appellant needed to establish that:

(1) his parent's home, where he had been residing while he owned the relevant Property, had been JRA (the "JRA Condition"). Satisfaction of the JRA Condition required that:

(a) the accommodation in question was provided by reason of employment; and

(b) his residence at the accommodation in question was necessary for the proper performance of the duties of the employment; and

(2) he intended in due course to occupy the relevant Property as his only or main residence (the "Intention Condition").

20. The UT concluded that the FTT had wrongly conflated the first and second elements of the JRA Condition (referred to in paragraphs 19(1)(a) and 19(1)(b) above). It had failed to direct itself to the correct tests and had taken into account irrelevant factors – see paragraphs [68] to [83] of the UT Decision.

21. As regards the Intention Condition, the UT concluded that, whilst the FTT had considered the Appellant's intentions as regards each Property when it was dealing with the multi–factorial question of whether or not the relevant Property was the Appellant's only or main residence, it had not considered the Appellant's intentions as regards each Property when it was considering the applicability of the principal private residence exemption based on the existence of JRA. In the latter case, the Intention Condition required the Appellant's intentions as regards the relevant Property to be considered in isolation and not intermingled with other findings in relation to whether or not the relevant Property had been the Appellant's only or main residence. Thus, the FTT's findings in relation to the Appellant's intentions as regards each Property in the context of determining that none of the Properties qualified for the principal private residence exemption from CGT based their being the Appellant's only or main residence could not be safely transposed for the purposes of considering the Intention Condition in the context of the principal private residence exemption from CGT based on JRA. In addition, it was sub–optimal that the appeal had been dealt with on the papers without a hearing because that meant that the witnesses could not be examined or cross–examined – see paragraphs [84] and [85] of the UT Decision.

22. The UT considered that the errors of law described above were material so that the FTT's decision in relation to the applicability of the principal private residence exemption based on the existence of JRA should be set aside.

23. It went on to say that the issue to which Ground 1 related should be remitted to a differently–constituted FTT, which should determine, in the light of the law as expressed by the UT and on the basis of the findings of primary fact found by the FTT in the FTT Decision (although not inferences drawn from those primary facts) and the evidence adduced by the parties at the further hearing, in relation to each Property, whether:

(1) the accommodation in which the Appellant had resided when he owned the relevant Property had been provided by reason of his employment;

(2) it was necessary for the proper performance of the duties of the employment that the Appellant should reside in the accommodation; and

(3) the Appellant had intended in due course to occupy the relevant Property as his only or main residence

– see paragraphs [86] to [92] of the UT Decision.

24. The UT remitted the appeal on the above basis in relation to all four Properties, even though it recognised that, in the hearing before the FTT, the Appellant had conceded that 2 Bramshill Close had never been his only or main residence and had not sought to rely on the existence of JRA to justify the application to that Property of the principal private residence exemption from CGT. The UT took that approach because it considered it to be sensible and in accordance with the overriding objective – see paragraphs [55] and [89] of the UT Decision.

25. In relation to Ground 2, the UT concluded that the FTT had made no error of law in relation to the validity of the Discovery Assessments and dismissed the appeal under Ground 2 – see paragraphs [93] to [107] of the UT Decision.

26. In relation to Ground 3, the UT concluded that the FTT had made a material error of law in concluding that the Penalties should be upheld on the basis of deliberate behaviour. The three reasons which the FTT had given for reaching that conclusion were insufficient to justify that conclusion. Accordingly, it set aside the FTT's decision on that issue – see paragraphs [108] to [120] of the UT Decision.

27. In relation to Ground 4, the UT concluded that the FTT had simply described the bases on which the Respondents had assessed the Penalties without considering whether the Respondents' approach was flawed and without giving any reasons for upholding the Penalties in the amounts assessed. That was a material error of law which justified setting aside the FTT's decision – see paragraphs [121] to [127] of the UT Decision.

28. It went on to say that the issue to which Grounds 3 and 4 related should be remitted to a differently–constituted FTT, which should determine, in the light of the law as expressed by the UT and on the basis of the findings of primary fact (although not inferences drawn from those primary facts) found by the FTT in the FTT Decision and the evidence adduced by the parties at the further hearing whether:

> (1) the Respondents had discharged the burden of establishing that the Appellant's failure to notify for the relevant tax years was deliberate; and
>
> (2) the Respondents' decision in relation to the Penalties should be affirmed or substituted with another decision because the Respondents' decision was flawed

– see paragraphs [128] to [130] of the UT Decision.

INTRODUCTION TO THE ISSUES

29. This decision relates to the matters which the UT directed should be remitted to a differently–constituted FTT. It follows an oral hearing at which the parties were able to provide additional evidence on those matters and make further submissions.

30. It can be seen that the matters remitted to us fall into two distinct categories as follows:

> (1) matters relating to the availability of the principal private residence exemption from CGT based on the existence of JRA ("Issue One"); and
>
> (2) matters relating to the Penalties ("Issue Two").

31. We will deal with each of those two issues in turn and in the following format:

> (1) first, the legislation applicable to the issue in question;
>
> (2) secondly, the terms on which the issue in question has been remitted to us by the UT;
>
> (3) thirdly, the findings of primary fact (but not inferences drawn from those primary facts) made by the FTT in the FTT Decision in relation to the issue in question;

(4) fourthly, the evidence provided to us at the remitted hearing in relation to the issue in question;

(5) fifthly, our findings of primary fact (and the inferences which we have drawn from those findings of primary fact and the findings of primary fact made by the FTT in the FTT Decision) in relation to the issue in question, based on that evidence; and

(6) finally, our conclusions in relation to the issue in question, in the light of the law as expressed by the UT in the UT Decision and on the basis of:

(a) the findings of primary fact (although not inferences drawn from those primary facts) made by the FTT in the FTT Decision; and

(b) our findings of primary fact and the inferences which we have drawn from those findings of primary fact and the findings of primary fact made by the FTT in the FTT Decision.

ISSUE ONE – THE PRINCIPAL PRIVATE RESIDENCE EXEMPTION

Introduction

32. We start by dealing with the issue described in paragraph 30(1) above – which is to say, the availability of the principal private residence exemption from CGT based on the existence of JRA.

The legislation

33. The questions which we have to address in connection with that issue arise out of provisions in the Taxation of Chargeable Gains Act 1992 (the "TCGA").

34. In relation to the first of the four disposals which are relevant to this decision, the disposal of 10 Woodhouse Close in the tax year 2012/13, the relevant provisions were as follows:

"222 Relief on disposal of private residence

(1) This section applies to a gain accruing to an individual so far as attributable to the disposal of, or of an interest in—

(a) a dwelling–house or part of a dwelling–house which is, or has at any time in his period of ownership been, his only or main residence

…

(8) If at any time during an individual's period of ownership of a dwelling–house or part of a dwelling–house he—

(a) resides in living accommodation which is for him job–related, and

(b) intends in due course to occupy the dwelling–house or part of a dwelling–house as his only or main residence,

this section and sections 223 to 226 shall apply as if the dwelling–house or part of a dwelling–house were at that time occupied by him as a residence.

(8A) Subject to subsections (8B), (8C) and (9) below, for the purposes of subsection (8) above living accommodation is job-related for a person if—

(a) it is provided for him by reason of his employment, or for his spouse

or civil partner by reason of the spouse's or civil partner's employment, in any of the following cases—

(i) where it is necessary for the proper performance of the duties of the employment that the employee should reside in that accommodation;

(ii) where the accommodation is provided for the better performance of the duties of the employment, and it is one of the kinds of employment in the case of which it is customary for employers to provide living accommodation for employees;

…

223 Amount of relief

(1) No part of a gain to which section 222 applies shall be a chargeable gain if the dwelling–house or part of a dwelling–house has been the individual's only or main residence throughout the period of ownership, or throughout the period of ownership except for all or any part of the last 36 months of that period."

35. In relation to the disposals of the other three Properties, which took place in the tax years 2014/15 and 2015/16, the provisions set out above took the same form except that, in Section 223(1) of the TCGA, the period of deemed ownership for the purposes of calculating the portion of the capital gain which could qualify for exemption was reduced from 36 months to 18 months by Section 58(2)(a) of the Finance Act 2014. (It has subsequently been further reduced to 9 months in relation to disposals made on or after 6 April 2020 by Section 24(3) of the Finance Act 2020 but that has no relevance to the appeal).

The terms of the remittance

36. The issues which we have been directed to address by the UT pursuant to the UT Decision are as follows:

"The application of section 222(8) is to be determined by the FTT in relation to all four properties in question, including 2 Bramshill Close.

We instruct the FTT to determine, by way of oral hearing (either in person or remote, as the FTT decides), whether Mr Campbell was exempt from CGT on any or all of the relevant disposals under section 222(8) TCGA, and in so doing to determine :

(a) Whether the accommodation in which Mr Campbell resided was provided by reason of his employment as carer for his father, applying the test summarised above.

(b) Whether the accommodation fell within section 222(8A)(a)(i) TCGA, taking into account the medical evidence before the FTT at the original hearing, and

(c) Whether section 222(8)(b) TCGA was satisfied….

The reconsideration shall be on the basis of the findings of primary fact made in the Decision, although not inferences drawn from primary fact. Each party has permission to adduce further evidence."

37. By way of a footnote to paragraph (b) above, the UT added that the Appellant did not have permission to argue that Section 222(8A)(ii) of the TCGA was satisfied. It had previously explained in paragraph [72] of the UT Decision that this was because that alternative means of satisfying the second limb of the JRA Condition had not been raised at the original hearing before the FTT.

Findings of fact in the FTT Decision

38. Before setting out the relevant findings of primary fact in the FTT Decision, we should describe the primary facts on which the parties are agreed. These are as follows:

(1) the Appellant's father suffers from a serious medical condition for which he requires considerable care and assistance. At the original hearing before the FTT, the Appellant adduced evidence to that effect from a number of medical practitioners and from the Appellant's mother – see paragraphs [88] to [92] of the FTT Decision. The medical evidence confirmed the diagnosis, prognosis and needs of the Appellant's father and is summarised in paragraphs 43 and 44 below;

(2) the Appellant had a contract of employment with his mother dated 5 April 2010 to provide care for his father – see paragraph [70] of the UT Decision. The terms of that contract are summarised in paragraph 45 below; and

(3) at all times when he owned the Properties, the Appellant was residing in his parent's home – see paragraphs [90] and [91] of the FTT Decision.

39. Turning then to the findings of primary fact in the FTT Decision relating to this issue which we are required to take into account in our decision, this is not a straightforward process for a number of reasons as follows:

(1) first, the FTT Decision contains no single identifiable section in which the FTT sets out its findings of primary fact. Instead, at various places in the decision, the FTT prefaces certain statements with the words "I find that…";

(2) secondly, in many of those cases, the finding which the FTT then goes on to express is simply to the effect that it has seen insufficient evidence of a particular assertion of fact made by the Appellant. This is particularly significant given:

(a) the UT's statement in paragraph [85] of its decision to the effect that it was sub–optimal that the FTT Decision was a determination on the papers; and

(b) the UT's direction in paragraphs [92] and [132] of its decision to the effect that both parties had permission to adduce further evidence at the remitted hearing.

It seems to us that, on that basis, where the FTT concluded in the FTT Decision that it had seen insufficient evidence of a particular assertion of fact made by the Appellant, we are entitled to, and indeed required to, consider whether any of the evidence which was provided to us in the course of the oral hearing before us gainsays that conclusion;

(3) thirdly, some of the findings which the FTT goes on to express after the words 'I find that…" are not findings of primary fact but instead inferences drawn by the FTT from its findings of primary fact or conclusions of law, neither of which falls within the scope of the UT's instruction; and

(4) finally, as the UT made clear in its analysis of the Intention Condition at paragraph [84] of its decision, the finding of primary fact at paragraph [109] of the FTT Decision – to the effect that the Appellant did not intend any of the Properties to be his main residence – was made in the context of the FTT's determining the multi–factorial

question of whether any of the Properties was the Appellant's only or main residence for the purposes of Section 222(1) of the TCGA and not the question which we are here addressing of whether the Appellant satisfied the Intention Condition for the purposes of Section 222(8) of the TCGA. That, taken together with the two points set out in paragraphs 39(2)(a) and 39(2)(b) above, means that we consider that we are not bound to treat the finding of primary fact in paragraph [109] of the FTT Decision as binding on us in addressing this issue.

40. Taking the above reservations into account, we think that we have identified the following findings of primary fact in the FTT Decision relating to this issue which we are required to take into account in our decision, subject always to the fact that they might be negated by the evidence provided to us at the oral hearing:

(1) the Appellant was very active in the property market over a relatively short space of time but was not a professional property developer – see paragraphs [67] and [77];

(2) as regards 10 Woodhouse Close:

(a) the Appellant spent time modifying the Property;

(b) there was no documentary evidence to support the proposition that the Appellant intended to live at the Property with his girlfriend or showing any dealings or correspondence with an insurance company; and

(c) there was no evidence in the form of Land Registry documents to show that the Appellant's girlfriend had any interest in the Property

– see paragraphs [68], [69], [110] and [117];

(3) the Appellant purchased 28 Bramshill Close and 2 Bramshill Close within months of one another and within months of selling 10 Woodhouse Close – see paragraph [70];

(4) 2 Bramshill Close was purchased with the help of a mortgage although the evidence of that mortgage – the Appellant's bank statements – did not shed any light on the length of the mortgage term – see paragraph [71];

(5) 28 Bramshill Close was modified before being sold relatively quickly after 2 Bramshill Close was sold – see paragraph [71];

(6) the Appellant had provided no evidence of the actual expenditure required in order to make 8 Wigshaw Lane habitable – see paragraphs [72] and [73];

(7) the Appellant's parents would not have required the Appellant to leave their home if he had had nowhere else to reside – see paragraph [93];

(8) by his own admission in his email to Officer Weir of 1 September 2017, the Appellant considered his residence in his parent's property to be residing "at home" – see paragraph [94];

(9) the Appellant did not intend any of the Properties to be his main residence – see paragraph [109]; and

(10) the Appellant did not change his correspondence address to any of the Properties – see paragraphs [110], [117] and [127].

The evidence

Introduction

41. The evidence provided in connection with the principal private residence exemption took the form of:

(1) documentary evidence; and

(2) witness evidence.

The documentary evidence

Introduction

42. The documentary evidence was as follows:

(1) the medical evidence referred to in paragraph 38(1) above;

(2) the contract of employment between the Appellant and his mother referred to in paragraph 38(2) above;

(3) an email sent by the Appellant to Officer Weir on 1 September 2017 in response to Officer Weir's initial letter to the Appellant of 29 August 2017;

(4) a statement by the Appellant which was attached to an email sent by his agent, Hunter Healey ("HH"), to Officer Weir on 1 February 2018; and

(5) photographs provided by the Appellant in relation to the Properties.

The medical evidence

43. The medical evidence in relation to the Appellant's father was as follows:

(1) a letter dated 10 October 2012 from Dr Rhys Davies, a consultant neurologist at the Walton Centre NHS Foundation Trust;

(2) a second letter from Dr Davies dated 6 February 2013;

(3) a third letter from Dr Davies dated 23 October 2013;

(4) a letter dated 2 May 2018 from Senior Nurse Practitioner Tracy Clarke of the North West Boroughs Healthcare NHS Foundation Trust who has been extensively involved with the Appellant's father's care from the start of his illness; and

(5) a letter dated 9 May 2018 from Dr D A Royle of Birchwood Medical Centre.

44. The key points arising from the medical evidence were as follows:

(1) the Appellant's father first displayed symptoms of his illness, which is progressive, in 2007;

(2) the nature of his illness was confirmed in 2010;

(3) the Appellant has been employed as his father's carer since April 2010 as his father refused care from anyone else. According to Nurse Clarke, due to the nature of his illness, "it [was] necessary for [the Appellant's father] to receive full–time, around–the–clock care. The provision of temporary care and outside carers was initially considered, and [the Appellant's father] secured a place at Hollins Park, however he did not respond well on arrival and became anxious at the thought of being away from his family. A decision was subsequently taken for the care services to be provided at the family home, and [the Appellant] was employed as [the Appellant's father's carer";

(4) in order to carry out the required care, it was necessary for the Appellant to live in his parent's home while that care was provided. The Appellant could not properly perform his caring duties if he lived away from his parent's home;

(5) the Appellant's mother also suffered from medical disabilities, could not always hear when her husband required assistance in the night and, when she could, was often physically unable to help;

(6) in the months preceding his consultation with Dr Davies on 6 February 2013, the Appellant's father had had a torrid time, suffering the death of his mother, a boiler fault at home, the death of his cat and an admission to hospital following a seizure; and

(7) the symptoms had worsened between his visit to Dr Davies on 6 February 2013 and his visit to Dr Davies on 23 October 2013.

The contract of employment

45. The key terms of the contract of employment between the Appellant and his mother were as follows:

(1) the Appellant was employed as a residential care giver and personal assistant – see part 1 clause 1;4;

(2) the Appellant's usual place of work would be the employer's home address and employment accommodation would be provided free of charge to the Appellant at the employer's home due to the high level of care needed for the patient – see part 2 clause 1;2;

(3) the accommodation was being "provided for the better performance of the employees [sic] duties and is necessary in this type of employment when providing such high levels of care and flexibility for a patient needing 24–hour support and supervision.

Flexibility is a must due to the patients [sic] needs and for security reasons. It is impossible to say what time of the day or night you will be asked to work each week as it will depend on the health of the patient and the employer. Some weeks you may be asked to work several nights" – see part 2 clause 1;2;

(4) the Appellant would be paid £9.15 for every hour he worked – see part 2 clause 2;1;

(5) the number of hours of work required were not specified in the contract but the contract provided that these might vary from week to week. "There is a requirement for flexibility and these hours may be changed according to needs. In addition, you may be expected to work reasonable additional hours at the employers [sic] request… You may be required to work through the night, evenings and weekends" – see part 2 clause 3;1;

(6) the Appellant's post was funded subject to the employer's assessed funded care needs at the time of the contract, which were subject to change by the employer – see part 2 clause 3;2;

(7) the Appellant's annual holiday entitlement was 5.6 weeks and, for that purpose, a week was described as "the equivalent of the number of hours/days usually worked per week" – see part 2 clause 6.1;

(8) once the Appellant had been employed for a minimum of three months, if the Appellant's father were to be admitted into hospital, the Appellant would be paid 100% of his standard contracted hours for a maximum of four weeks in any twelve–month period from 1 April to 31 March – see part 2 clause 11;2; and

(9) the Appellant agreed that:

(a) in times of emergency, he might agree to work additional paid hours as agreed with the employer; and

(b) for the purposes of the Working Time Regulations 1998, he would work for longer than the maximum weekly working time limit of 48 hours when necessary for the requirements of the employment

– see the working hours opt–out schedule.

The Appellant's email

46. As we have previously noted in describing the history of the present proceedings at the start of this decision, the Appellant wrote to Officer Weir on 1 September 2017. In his email, which is reproduced below exactly as it was written, the Appellant said as follows:

"I write in reference to a letter I received from you this morning concerning the sale of my bungalow in 2015–16 which was the only property I owned.

I bought this property without having a survey and unfortunately it was a big mistake, The property had suffered water damage below which meant all floors needed removing which also meant that the kitchen and bathroom would also have to be removed, making it uninhabitable due to how the property was made with wooden floors it meant all the electrics where below and pipe work, so they all needed to be removed for concreate floors laying to prevent it from happening again.

While the work was being carried out I decided to have a fence fitted to the front and side as every day the neighbour was complaining about mess on his side of the drive etc, including grass blowing on his side from the first time I cut the lawn, I even had the fence fitted more on my side to try and placate him dispite his garage being built part on my land. (it didn't work) since getting the fence fitted he would park blocking my drive access and as it was on a main road it would create a lot of trouble with other drivers keep stopping traffic trying to get in drive, It was at that point I decided I couldn't live there with years of hassel day in day out. So I decided to have the kitchen and bathroom fitted as I was informed it would be unmortgagable with out them, and made other improvements to make it more sellable.

Whilst owning the property I owned NO other property and was living at home with my parents. I am a full time carer for my farther as my tax records will show,

If I can be of any further assistance please don't hesitate to contact me."

The Appellant's statement

47. The Appellant's statement, which was sent to Officer Weir by HH on 1 February 2018, described his father's illness and the background to his acquisition of the Properties. Its content is largely replicated in the Appellant's witness evidence summarised in paragraph 50 below and, for that reason, we do not set it out here. The only meaningful point to note in the present context is the sentence to the effect that the Appellant decided to acquire 2 Bramshill Close "[within] a few weeks" of acquiring 28 Bramshill Close.

The photographs

48. We were shown various photographs relating to the four Properties. These included:

(1) in relation to 10 Woodhouse Close, photographs of the kitchen on 20 December 2010 and 20 March 2011, before and during the renovation of the Property, and photographs of a bedroom and the hall on 10 April 2011 and 2 May 2011, showing the renovated decor;

(2) in relation to 28 Bramshill Close, undated photographs of the living room, bathroom and kitchen, showing the Appellant with his pets and furniture and red tiles in the kitchen; and

(3) in relation to 8 Wigshaw Lane, undated photographs showing:

(a) the level of disrepair at the Property beneath the floors in the kitchen, living room and master bedroom before the Property was renovated;

(b) the back garden both before and after the renovation; and

(c) the Appellant and his parents in the Property after it was renovated, several of which included "New Home" cards on the table next to the Appellant.

The witness evidence

Introduction

49. The witness evidence was provided by:

(1) the Appellant;

(2) the Appellant's mother, Mrs Karen Campbell; and

(3) Officer Weir.

The Appellant's evidence

50. The evidence of the Appellant was follows:

General

(1) between turning 18 on 19 February 2001 and the start of his employment contract on 5 April 2010, he had lived in his parent's home at all times apart from:

(a) when he was living elsewhere in order to carry out work under his contracts as a mechanical engineer or staying on after a contract was completed in case further work became available;

(b) living with his grandmother at 278 Dragon Lane, Prescot at times when his grandmother needed support; or

(c) a brief period of between six months to year in 2007 and 2008 when he went to stay with a relative in Wales;

(2) it was fair to say that, throughout that period, he regarded his parent's home as his default address. It was the place to which he returned when he wasn't living elsewhere;

(3) he had given up work as a mechanical engineer in around 2007 when his father became ill because his mother was disabled and unable to care for her husband herself. Thereafter, although he still went back and forth between his parent's home and 278 Dragon Lane when his grandmother needed him to be with her – and was in fact staying with his grandmother at the time when he signed the employment contract – his parent's home remained his default address throughout that period;

(4) in 2010, when his father's health had worsened and full–time care had become essential, consideration had been given to obtaining outside care for him. However, his father had reacted badly to this proposal and Nurse Clarke had asked him to consider becoming his father's paid care–giver. It was this which led to the employment contract of 5 April 2010;

(5) at the start of his employment contract, the local health authority in Warrington agreed to pay for 24 hours of care per week. This rose to 38 hours of care per week in the tax year 2012/13 and has more recently risen to 78 hours of care per week. The Appellant considered that any hours above the limit for which he was paid were voluntary;

10 Woodhouse Close

(6) he was in a relationship at the time when he decided to buy 10 Woodhouse Close and move into it with his girlfriend in December 2010. The idea was that, because his hours of caring for his father fluctuated both because of his father's needs from time to time and the amount of care which could be provided by his mother, he and his girlfriend would have a home to live in independently when he did not have to live in his parent's home. The Property in question was chosen for its proximity to his parent's home and was purchased with his own savings;

(7) unfortunately, shortly after the Property had been purchased, frozen pipes caused the boiler and water tank to explode and brought down the kitchen ceiling. Due to the slowness of his insurers in dealing with the ensuing claim, the damage at the Property became worse. In addition, the repairs took longer than expected as a result of delays by his contractor. The result was that, by the time that the Property was in a habitable condition, his relationship with his girlfriend had ended;

(8) at that point, he was not in the right state of mind to move into the Property because:

(a) his father's condition had worsened and, with the consequent stress, he didn't feel comfortable moving away from his parent's home at that time;

(b) the Property had been decorated to his ex–girlfriend's taste and not to his own; and

(c) the Property was a constant reminder of his ex–girlfriend and their failed relationship;

(9) accordingly, in September 2011, he decided to sell the Property and completed that disposal in April 2012;

28 Bramshill Close and 2 Bramshill Close

(10) he subsequently decided to purchase a new home to live in and identified 28 Bramshill Close for that purpose. This was in close walking distance of his parent's home so that he could live there when his father's condition permitted it and still provide support and help at short notice. In addition, the proximity of the Property to his parent's home and the fact that the Property was a bungalow meant that it would be possible for his father to visit when well enough to do so;

(11) unfortunately, in the week that he had purchased the Property, his father's mother died and his father's condition worsened as a result of the consequent emotional stress. Soon afterwards, at Christmas 2012, the boiler at his parent's home broke down. That led to his father's having a seizure and having to spend two nights in hospital;

(12) nevertheless, he started to redecorate 28 Bramshill Close to his own taste, which he recognised did not necessarily conform to tastes in general. In addition, he chose bright red wall tiles for the kitchen to please his father who was a Liverpool fan. He also decided to replace and relocate the existing boiler and, because the Property would be uninhabitable while that work was done, he had decided to refit the kitchen and bathroom;

(13) shortly after he had acquired 28 Bramshill Close, another house in the same close – 2 Bramshill Close – had become available for purchase. 2 Bramshill Close was a preferable place to live in comparison to 28 Bramshill Close given that it was detached, unlike the latter, and it offered more space. In addition, it was on a large corner plot with a bigger garden. He was a keen gardener and the Property had a large tree on it for his cats to climb;

(14) since the asking price for 2 Bramshill Close was only £5,000 more than the asking price for 28 Bramshill Close had been, he decided to buy it as soon as it came on the market – which was only a month or so after he had completed the acquisition of 28 Bramshill Close – and offered the full asking price. He completed the purchase in February 2013. However, since he had used up all his savings in acquiring 28 Bramshill Close, he had to take out a mortgage to fund the purchase;

(15) unlike 28 Bramshill Close, 2 Bramshill Close had no heating and that needed to be added. In addition, he had decided to redecorate 2 Bramshill Close to his own taste in the same way as 28 Bramshill Close, as described in paragraph 50(12) above;

(16) even though he had decided to live in 2 Bramshill Close and dispose of 28 Bramshill Close, the latter Property proved difficult to sell despite his leaving it unoccupied at the suggestion of the estate agent (so that the new kitchen and bathroom remained unused) and despite reducing the asking price on a number of occasions. Since 28 Bramshill Close was not selling and he needed to clear the mortgage and get rid of his obligation to meet the overheads on at least one of the Properties, he had decided to put both Properties on the market at the same time to see which of them sold first;

(17) as it transpired, 28 Bramshill Close proved the more difficult to sell and therefore he had moved into 28 Bramshill Close from March 2014, disposed of 2 Bramshill Close in June 2014, and taken 28 Bramshill Close off the market;

(18) in September 2014, the Appellant and his neighbours were made aware of the fact that a paedophile who had recently been released from prison had moved into a nearby property in the close. This had caused a lot of tension and arguments in the close. Consequently, he had put 28 Bramshill Close back on the market and reduced the price again. He had continued to live at the Property until he disposed of it in January 2015;

8 Wigshaw Lane

(19) despite his disappointing experiences in attempting to find a property to live in when he wasn't living in his parent's home, the Appellant had tried again. Once again, the criteria were that it needed to be a bungalow in close proximity to his parent's home. To that end, he had purchased 8 Wigshaw Lane in June 2015. However, he had done so without having a survey done and he very much regretted that;

(20) when he arrived to take possession of the Property, he found that there was no meter there and that the floorboards in both bedrooms and the living room, which had been covered by carpets when he viewed the Property, had now been exposed and had completely rotted away. He had also discovered a survey report at the Property, which he assumed to have been obtained by a previous owner, or someone interested in acquiring the Property, and this revealed that water from below had caused a significant amount of damage to the floorboards throughout the Property. This necessitated a significant amount of repair to the Property, including the removal of all the floorboards, the replacement of the drainage system and the replacement of the electrical wiring and pipework. This in turn meant that everything which was sitting on the floorboards (including the kitchen and bathroom) also needed to be replaced and that the patio and lawns had to be dug out;

(21) a dispute arose with his next–door neighbour during the building work and, although the Appellant did eventually move into the Property for a brief time after the work was completed, the dispute soon escalated and led the Appellant to decide to sell the Property in December 2015;

(22) the sale of 8 Wigshaw Lane had been completed in March 2016 and, following that disposal, the Appellant had acquired another bungalow at 109 Portico Lane in early 2017. He had been living there ever since then, in addition to living in his parent's home. He had decorated 109 Portico Lane in the same way as 28 Bramshill Close, 2 Bramshill Close and 8 Wigshaw Lane; and

(23) the Appellant's brother also lived in the Appellant's parent's home although his circumstances were very different from those of the Appellant. He suffered from serious mental health issues and had a difficult relationship with both the Appellant and his father which meant that the Appellant's mother had her hands full in looking after him as well as her husband.

Mrs Campbell's evidence

51. The evidence of Mrs Campbell was as follows:

(1) she confirmed that:

(a) she was disabled and unable to look after her husband on her own. Her own health issues would sometimes flare up and render her incapable of looking after her husband;

(b) consequently, it had been agreed that the Appellant would be employed as her husband's carer and would reside in her home. He would stay there every night unless she was available (and able) to provide the necessary care;

(2) however, the Appellant needed a home of his own to which he could escape when he was not needed to care for her husband and to which he could take her husband for a change of scene and to remain active when her husband's health permitted it. Consequently, she had always encouraged the Appellant to have his own home and she would not have been keen for the Appellant to live in her home if he no longer needed to look after her husband. That was not to say that she would prevent the Appellant from staying in her home if the Appellant's financial situation required it but, absent any such financial constraints, she would want him to have his own life in his own home;

(3) the Appellant had suffered a serious car crash when he was 17 which left him with substantial and potentially life–threatening injuries. During that period, she and her husband had moved into intensive care for a brief period to be with him and to provide care. As a result of that, the relationship between the Appellant and her husband was particularly strong and there were many times when only the Appellant could get through to her husband; and

(4) the Appellant's brother could not live alone both because he did not have the financial means to do so and because of his mental health issues.

Officer Weir's evidence

52. Most of Officer Weir's evidence related to the Penalties and not to the issue which we are presently addressing. However, Officer Weir did provide us with the average weekly working hours of the Appellant over the tax years in question and the tax years adjacent to them, which were as follows:

Tax year	Average hours per week
2010/11	21.91
2011/12	24.17

2012/13	37.25
2013/14	37.52
2014/15	37.69
2015/16	38.06
2016/17	38.62
2017/18	38.96

Our impression of the witnesses

53. Before setting out our findings of fact for the purposes of this decision, we need briefly to describe our impressions of the three witnesses.

54. We considered the Appellant on a couple of occasions to be a little too anxious to advance his case by:

(1) seeking to deny the obvious; or

(2) overstating the role which his caring responsibilities had played in his failure to live in the Properties.

55. As regards paragraph 54(1) above, the Appellant asserted at the hearing that he had chosen to have a kitchen and bathroom fitted at 8 Wigshaw Lane for his own use and not for the purposes of making the Property more saleable despite the clear statement in the third paragraph of his email to Officer Weir of 1 September 2017 to the effect that he had carried out those works only after making the decision to sell the Property and in order to make the Property more saleable – see paragraph 46 above.

56. As regards paragraph 54(2) above, the Appellant said in his witness statement in relation to each of 10 Woodhouse Close and 8 Wigshaw Lane that "the only thing stopping him from living in" the relevant Property as his home was his caring responsibilities whereas it was clear from the rest of his evidence that, in each case, there were other reasons why he had not been able to live in the relevant Property as his home.

57. Whilst the above matters inevitably affected our confidence in the Appellant, we are inclined not to be too hard on him in relation to them.

58. As regards the former, it is clear from the second paragraph in the email to Officer Weir set out in paragraph 46 above that, regardless of whether the Appellant wished to live in 8 Wigshaw Lane or simply to dispose of 8 Wigshaw Lane at a profit, the existing kitchen and bathroom at the Property needed to be removed in any event in order to carry out the necessary remedial works to the Property. It may thus be the case that, where, in the third paragraph of that email, the Appellant said that he had decided to have the kitchen and bathroom fitted in order to make the Property more saleable, he was doing no more than saying that, once he had decided to sell the Property as a result of the dispute with his next–door neighbour, he could have left the Property without any kitchen or bathroom but decided that it would be more marketable if he didn't do that.

59. As regards the latter, it is possible to construe the relevant statements in the Appellant's witness statement as saying no more than that the relevant Property would have been the Appellant's only or main residence were it not for the fact that he was required to reside in his parent's home in order to care for his father.

60. Despite these minor infelicities, looking at the Appellant's evidence as a whole, we were satisfied that the Appellant was generally an honest and credible witness and were inclined to accept most of his evidence at face value.

61. We considered Mrs Campbell to be honest and truthful and a reliable and compelling witness.

62. The same was true of Officer Weir although, as we have already noted, his evidence was of limited relevance to the issue which we are presently addressing.

Our findings of fact

Introduction

63. In the light of:

(1) the findings of primary fact made by the FTT in the FTT Decision, as set out in paragraph 40 above;

(2) the documentary and witness evidence described in paragraphs 41 to 52 above; and

(3) our views on the reliability of the witnesses, as set out in paragraphs 53 to 62 above,

we have reached the following relevant findings of fact for the purposes of this decision.

The reason for the Appellant's residence in his parent's home

64. Relevant finding – we find that, ever since his father first became ill in 2007, which, by definition, includes the whole of the period in which he owned the Properties, the Appellant was provided with living accommodation in his parent's home solely because he was caring for his father.

65. Reasons – in reaching this conclusion, we recognise (and have taken into account) the fact that:

(1) the Appellant had been provided with living accommodation in his parent's home before he started caring for his father in 2007;

(2) the FTT in the FTT Decision at paragraph [93] found as a primary fact that the Appellant's parents would not have required the Appellant to leave their home if he had had nowhere else to reside and Mrs Campbell, in her oral evidence before us, testified to precisely the same effect; and

(3) the Appellant's parents were content to allow the Appellant's brother to live in their home even though his brother was not providing care to his father.

66. However, the evidence of Mrs Campbell on this question was clear.

67. She said that the closeness between the Appellant and his father and the fact that the Appellant's brother was permitted to live in their home did not mean that family ties were the reason why the Appellant had been provided with accommodation in their home after 2007. The Appellant's situation was very different from that of his brother who, because of his financial status and mental health issues, was incapable of living away from their home. In contrast, the Appellant was perfectly capable of doing so and had the means to do so because of his qualification as a mechanical engineer. Mrs Campbell said that, after her husband became ill, had the Appellant not been required to live in her home in order to care for her husband, she would have wanted him to have his own home and he would have moved out.

68. We therefore conclude that, during the period in which the Appellant owned the Properties, the Appellant would not have been provided with living accommodation in his parent's home had he not been providing care to his father. We would add that this conclusion is entirely consistent with part 2 clause 1;2 of the employment contract, which specified that employment accommodation would be provided free of charge "due to the high level of care needed for [the Appellant's father]".

Was it necessary for the Appellant to stay in his parent's home in order to provide care to his father

69. Relevant finding – we find that the Appellant could not have carried out all of his caring responsibilities for his father unless he had living accommodation in his parent's home.

70. Reasons – we base this conclusion on the terms of the medical evidence and the testimony of the Appellant and Mrs Campbell. It is clear from that evidence that the Appellant's caring responsibilities were considerable, albeit highly unpredictable in terms of timing. The nature and extent of the Appellant's responsibilities at any time depended on how the Appellant's father was doing at that time and the extent to which Mrs Campbell was able to care for her husband herself. However, when those caring responsibilities are viewed as a whole, we consider that the Appellant would not have been able to carry out all of them without being able to live in his parent's home.

71. The conclusion we have reached above is not gainsaid by the fact that:

(1) the Appellant chose to purchase the Properties and claims that he intended to live in them;

(2) the Properties were selected in large part for their proximity to the Appellant's parent's home so that the Appellant could attend to his father at short notice from them; or

(3) the hours of care for which the Appellant was paid under the employment contract were a relatively small fraction of the hours in a week as a whole.

72. As regards the first of these, the mere fact that the Appellant decided to buy a Property in which to live at those times when his caring responsibilities under the employment contract allowed him to do so does not mean that he was not required to live in his parent's home in order to carry out those responsibilities as a whole. Those responsibilities did not take up all of his time and some of the responsibilities could be performed when he was not living in his parent's home. However, the mere fact that the Appellant was able to live in an alternative location for some of the time despite the existence of those responsibilities does not mean that there were no times when the Appellant's responsibilities required him to live in his parent's home. To pick up an analogy that was mentioned at the hearing, just as a housemaster at a boarding school who is necessarily required to live on the school premises when he is on duty can live in alternative accommodation when he is not performing his duties (such as during school holidays), so too the Appellant could necessarily be required to live in his parent's home when he was carrying out some of his caring responsibilities but able to live in alternative accommodation either when he was performing other caring responsibilities or not performing caring responsibilities at all.

73. As regards the second of these, the mere fact that the Appellant was able to carry out some of his caring responsibilities under the employment contract by being on call at a Property located nearby did not mean that his caring responsibilities under the employment contract, when viewed as a whole, did not require him to have accommodation in his parent's home. The critical question to ask is whether the Appellant would have been able to carry

out all of his caring responsibilities under the employment contract whilst living away from his parent's home and, in our opinion, it is clear from the evidence that he would not have been able to do so.

74. As regards the third of these, we do not think that the overall quantum of the hours for which the Appellant was paid under the employment contract is determinative of this question given the evidence which has been presented to us in relation to the nature and timing of the work which he was required to provide. This was not a case where the Appellant could "clock on" for a working shift with any sort of regularity like a hospital worker or a security guard. Instead, he needed to be available on short notice and on an ongoing basis to carry out his duties.

75. In short, the situation here was very different from that applicable to a night shift worker who lives away from his or her place of employment but works in that place of employment through the night. The evidence makes it clear that, whilst certain duties of the employment could be carried out when the Appellant was living away from his parent's home, he could not carry out all the duties of his employment on that basis.

76. We therefore conclude that the Appellant could not have carried out his caring responsibilities under the employment contract without having living accommodation in his parent's home. We would add that this conclusion is entirely consistent with part 2 clause 1;2 of the employment contract, which specified that the provision of the accommodation in his parent's home was "necessary in this type of employment when providing such high levels of care and flexibility for a patient needing 24 hour support and supervision".

The Appellant's intention to occupy

77. Relevant finding – we find that, when the Appellant acquired each Property, his intention was that in due course he would occupy the relevant Property as his only or main residence and that that intention continued:

(1) in the case of 10 Woodhouse Close, until the factors described in paragraph 50(8) above led the Appellant to decide that he no longer wished the Property to be his only or main residence;

(2) in the case of 28 Bramshill Close, until 2 Bramshill Close was placed on the market and the Appellant became aware that it was available to purchase;

(3) in the case of 2 Bramshill Close, until the date when the Appellant decided to place the Property on the market because he was unable to sell 28 Bramshill Close; and

(4) in the case of 8 Wigshaw Lane, until the date when the Appellant decided to place the Property on the market because of his dispute with the next–door neighbour.

78. Reasons – we have reached the above conclusions only on balance because we recognise that the Appellant acquired and disposed of the four Properties over a relatively short period and this inevitably raises the presumption that the Appellant:

(1) was simply engaging in property speculation; and

(2) had no intention of living in any of the Properties but merely wished to profit from acquiring and disposing of them.

However, based on the evidence presented to us and our views on the reliability of the Appellant and Mrs Campbell as witnesses, we are satisfied that that was not the case.

79. We say that because:

(1) the Appellant testified that, when he acquired each Property, his intention was not to profit from acquiring and disposing of the relevant Property but, instead, in due course to occupy the relevant Property as his only or main residence and, notwithstanding the points made in paragraph 54 to 60 above, we considered the Appellant to be a generally honest and credible witness who provided a reasonable explanation for his decision to acquire, and then subsequently to dispose of, each Property;

(2) Mrs Campbell also testified to that effect and we considered Mrs Campbell to be a reliable and compelling witness;

(3) each of the Properties was very close to the Appellant's parent's home and it seems to us that the most plausible explanation for that proximity was the one given by the Appellant – to the effect that it was so that he could get to his parent's home quickly and easily when he was living in the relevant Property and his father could visit when he was well enough to do so. If the Appellant's purpose in acquiring any Property had been to make a profit from the acquisition and disposal of the relevant Property and not in due course to occupy the relevant Property as his only or main residence, there would have been no need for proximity to his parent's home to have been a factor in choosing the Properties. Instead, the Appellant could have cast his net far and wide for those properties which offered the best opportunity for financial gain;

(4) a similar point can be made in relation to the fact that, of the four Properties, three of them – all bar 10 Woodhouse Close – were bungalows, in the same way that 109 Portico Lane (where the Appellant currently resides when he is not caring for his father) is a bungalow. The Appellant explained that he wanted to live in a bungalow so that he could entertain his father there when his father's health permitted it. If, in fact, the Appellant's purpose in acquiring the Properties had been to make a profit from the acquisition and disposal of the Properties and not in due course to occupy the Properties as his only or main residence, there would have been no need for him to confine his acquisitions to bungalows;

(5) it is plain from the evidence provided to us at the hearing that the Appellant had quite enough on his plate what with caring for his father, coping with the ill–health of his mother and dealing with the difficult circumstances surrounding his brother without voluntarily taking on the additional complexity of a time–consuming and costly sideline in property development. It seems to us to be much more likely that the acquisition of each Property was made with the intention in due course of living there and that the work which the Appellant carried out at each Property was required to meet that objective and not to increase the value of the relevant Property;

(6) we accept the Appellant's evidence that much of the work which was carried out to the Properties was both more expensive and more tailored to his own personal taste than it would have needed to be if a profit on disposal had been the Appellant's purpose in acquiring the Properties. The red tiles used to reflect his father's support of Liverpool are a case in point; and

(7) after the disposal of 8 Wigshaw Lane, the Appellant acquired another property – 109 Portico Lane – and has lived there now for over seven years. We recognise that this level of stasis might be attributable to the Appellant's being cautious about continuing to make regular acquisitions and disposals of properties given the nature of the dispute with the Respondents that has led to this appeal. However, we accept the Appellant's evidence that the reason for it is simply that the Appellant had been seeking to find an appropriate property to occupy in due course as his only or main residence since he

bought the first of the Properties but that, in the case of each of the Properties, supervening circumstances arose which meant that he decided to dispose of the relevant Property.

80. As for the question of how long the relevant intention existed in the case of each Property, the findings of fact in paragraphs 77(1) to 77(4) above are based on the following evidence:

(1) the Appellant's intention in due course to occupy 10 Woodhouse Close as his only or main residence lasted from the date when the Property was acquired until September 2011, when the factors described in paragraph 50(8) above led the Appellant to decide that he no longer wished the Property to be his only or main residence – see paragraph 50(9) above;

(2) the Appellant's intention in due course to occupy 28 Bramshill Close as his only or main residence lasted from the date when the Property was acquired until the date when 2 Bramshill Close came on the market and the Appellant became aware that it was available to purchase – see paragraph 50(14) above.

The precise date on which 2 Bramshill Close came on the market is not entirely clear from the evidence provided to us. In his witness statement, the Appellant said that this was "shortly after" he had acquired 28 Bramshill Close (which was on 9 October 2012). In the statement by the Appellant which was sent by HH to Officer Weir on 1 February 2018, the Appellant said that this was "[within] a few weeks" of that acquisition. And, at the hearing, the Appellant said that it was "only a month or so" after that acquisition.

This is clearly not a perfect science but, given those statements and the fact that the Appellant did not complete his purchase of 2 Bramshill Close until February 2013, we think that it is reasonable to conclude that the date on which 2 Bramshill Close came on the market – and the Appellant's intention in due course to occupy 28 Bramshill Close as his only or main residence ended – was approximately one month after the Appellant acquired 28 Bramshill Close on 9 October 2012 and, hence, around 9 November 2012;

(3) the Appellant's intention in due course to occupy 2 Bramshill Close as his only or main residence lasted from the date when the Property was acquired until the date when the Appellant decided to place the Property on the market because he was unable to sell 28 Bramshill Close – see paragraph 50(16) above; and

(4) the Appellant's intention in due course to occupy 8 Wigshaw Lane as his only or main residence lasted from the date when the Property was acquired until the date when the Appellant decided to place the Property on the market because of his dispute with the next–door neighbour – see paragraph 50(21) above.

Concluding comments in relation to our findings of fact

81. We do not think that we are precluded from making any of the above three findings of fact by any finding of primary fact in the FTT Decision.

82. As regards the first two findings – to the effect that the Appellant was provided with living accommodation because he was caring for his father and that it was necessary for him to live in his parent's home in order to do so – it is true that they sit rather uncomfortably with the conclusion drawn by the FTT in the FTT Decision to the effect that the Appellant had not been provided with living accommodation by reason of employment but rather by reason of family ties. However:

(1) we consider that that conclusion was not a finding of primary fact but rather a conclusion of law;

(2) alternatively, even if it was not a conclusion of law but rather an inference of fact based on the primary facts found by the FTT, in remitting the case to us, the UT have instructed us to disregard inferences which were drawn by the FTT from the primary facts in the FTT Decision;

(3) furthermore, in remitting the case to us, the UT have given the parties permission to adduce additional evidence so that it follows that we are entitled, and indeed obliged, to take that additional evidence into account in making our findings of fact, even if our findings of fact contradict a finding of primary fact in the FTT Decision; and

(4) finally, in any event, the UT cannot have thought that the first two findings of fact which we have made were unsustainable in the light of the terms on which it has remitted the case to us because, had it considered that to be the case, that would have been determinative of the issue in relation to Section 222(8) of the TCGA and there would thus have been no need for the UT to have made that remission.

83. Our third finding of fact – to the effect that, when the Appellant acquired each Property, his intention was that in due course he would occupy the relevant Property as his only or main residence and that intention subsisted for a specified period of time – is much more obviously contrary to a finding of primary fact made by the FTT in the FTT Decision because, in paragraph [109] of the FTT Decision, the FTT found that the Appellant did not intend that any of the Properties would be his main residence. However, as we have already noted in paragraph 39(4) above, in paragraph [84] of the UT Decision, the UT noted that the finding of primary fact made by the FTT in paragraph [109] of the FTT Decision had been made in the context of the FTT's consideration of the exemption in Section 222(1) of the TCGA and that, whilst it appeared to be unhelpful to the Appellant's case in relation to the Intention Condition in Section 222(8) of the TCGA, the finding could not simply be read across from one exemption regime to the other. In addition, similar points to those set out in paragraphs 82(3) and 82(4) above can be made in relation to that third finding of fact. So far as concerns the point made in paragraph 82(3) above in this context, we note in particular the reservations expressed by the UT in paragraph [85] of the UT Decision as regards the determination by the FTT of the Appellant's intentions without an oral hearing.

84. For the reasons set out in paragraphs 82 and 83 above, we consider that we are entitled to make each of the three findings of fact set out above.

Discussion

Introduction

85. We now turn to the three questions of law which we are required to address by the UT. These are, in turn:

(a) whether the accommodation provided to the Appellant by his parents was provided by reason of employment?

(b) if so, whether it was necessary for the performance of the duties of his employment for him to live in that accommodation? and

(c) whether, in relation to each Property, at any point during his ownership of the relevant Property, the Appellant intended in due course to occupy the Property as his only or main residence?

By reason of employment

86. The definition of "employment" for the purposes of Section 222(8) is that given by Chapter 2 of Part 3 of the Income Tax (Earnings and Pensions) Act 2003 (the "ITEPA") – see Section 222(8D) of the TCGA. Under Section 66 of the ITEPA, "employment" broadly

means an employment the earnings from which are taxable as general earnings under the ITEPA.

87. It is common ground that, with effect from 5 April 2010, the Appellant had a contract of employment with his mother to provide care for his father.

88. The question which needs to be addressed in the present context is whether the accommodation which was provided to the Appellant by his parents on and after that date was provided by reason of that employment.

89. In the UT Decision, the UT said the following in relation to that question at paragraphs [77] et seq.:

"There are many decisions on the meaning of "by reason of employment" including in particular *Wicks v Firth* 56 TC 318. In *John Charman v HMRC* [2021] EWCA Civ 1804 ("*Charman*") the Court of Appeal said this about the test, at [47]:

47. There was little, if any, dispute between the parties as to the correct test to be applied to determine whether an interest is acquired "by reason of" employment. It is not necessary for HMRC to show that the interest was acquired by reason only of employment. Nor is the test a "causa sine qua non" or "but for" test. The test that has found favour in subsequent authorities (see *Mairs v Haughey* [1992] STC 495 at 525 (Hutton LCJ (NI)), *Wilcock v Eve* [1995] STC 18 at 29 (Carnwath J) and *Vermilion Holdings Ltd v Revenue and Customs Commissioners* [2021] CSOH 45, [2021] STC 1874 at [45]-[46] (Lord Campbell of Alloway dissenting) and [69] (Lord Doherty)) is that stated by Oliver LJ in *Wicks v Firth* [1982] 1 Ch 355 at 371:

"One is directed to see whether the benefit is provided by reason of the employment and in the context of these provisions that, in my judgment, involves no more than asking the question 'what is it that enables the person concerned to enjoy the benefit?' without the necessity for too sophisticated an analysis of the operative reasons why that person may have been prompted to apply for the benefit or to avail himself of it."

78. The test can give rise to difficult questions where there may be more than one causative effect of the relevant benefit.

79. In *Charman*, The Court of Appeal emphasised that the FTT's evaluation of this issue can only be challenged on appeal on limited grounds, at [46]:

46. The FTT's decision that Mr Charman acquired the Axis Capital Restricted Shares by reason of his employment can only be challenged by Mr Charman on the ground that the FTT erred in law. The correct approach to such an appeal was described by Mummery LJ in Kuehne + Nagel Drinks Logistics Ltd v Revenue and Customs Commissioners [2012] EWCA Civ 34, [2012] STC 840 at [34]: " … these appeals are confined to questions of law: it was for the judge in the FTT, entrusted by statute with the judicial function of finding the facts, to consider all the relevant documents and oral evidence and to make findings of primary fact and proper inferences of fact, to which he then had to apply the tax legislation, as interpreted by the courts. It follows that it is not the task of the UT, or of this court, to re-decide or second guess the primary facts, their proper function being limited to questions of law, such as whether the FTT misinterpreted the law, or misapplied it to the facts, or made perverse findings of fact unsupported by any evidence, or reached a conclusion that was plainly wrong."

There are numerous other authorities to the same effect.

80. On 25 October 2023, the Supreme Court released its decision in HMRC v Vermilion Holdings Ltd [2023] UKSC 37. Although the appeal was determined on a different ground, the decision does summarise at [11]-[12] the meaning of "by reason of employment"."

90. The UT went on to say the following at paragraph [82] of the UT Decision:

"If one approaches the question by asking, as suggested by Oliver LJ in *Wicks v Firth*, what it was that enabled Mr Campbell to enjoy the ability to reside in the family home, we do consider that the FTT was justified in considering whether this was merely a "family arrangement". However, we agree with Mr Gordon that there is nothing in the JRA condition which precludes accommodation in a family home from being provided by reason of employment."

91. Although the paragraphs from the UT Decision set out above appeared to us to provide comprehensive and clear guidance on how to approach this question, during the course of their submissions at the hearing, both parties took us to the Court of Appeal decision in *Wicks v Firth* 56 TC 318 ("*Wicks*") and Ms Inglis, on behalf of the Respondents, took us to the Supreme Court decision in *The Commissioners for His Majesty's Revenue and Customs v Vermilion Holdings Ltd* [2023] UKSC 37 ("*Vermilion*"). It became clear that the reason for this was that, in *Wicks*, the proper interpretation of the phrase "by reason of employment" was addressed by both Lord Denning MR and Oliver LJ but in slightly different ways.

92. Lord Denning MR was of the view that, in order to determine whether a benefit had been provided "by reason of employment", one needed to consider whether employment was one of the operative causes of the benefit's being provided, in the sense that it was a condition of the benefit's being provided – see *Wicks* at 363. In contrast, Oliver LJ was of the view that, in order to determine whether a benefit had been provided "by reason of employment", one needed to consider what it was that had enabled the person concerned to enjoy the benefit – see the extract from the UT Decision set out in paragraph 89 above and *Wicks* at 371.

93. The difference between the two approaches is that, in a case where the receipt of a benefit has multiple causes, only one of which is employment, Lord Denning MR's test would automatically be satisfied whereas Oliver LJ's test would require a more forensic analysis of the causation.

94. Be that as it may, it is clear from the extracts from the UT Decision set out above and paragraph [12] of the decision in *Vermilion* that, insofar as the two tests would produce different results in any case, it is Oliver LJ's test which is to be preferred.

95. With that in mind, we turn to consider whether, on the facts in this case, the Appellant's accommodation in his parent's home on and after 5 April 2010 was "by reason of his employment" in the sense described by Oliver LJ in *Wicks*.

96. In that regard, we have already found as a fact that that accommodation was provided because the Appellant was providing care to his father and not simply because of family ties – see paragraphs 64 to 68 above.

97. Ms Inglis submitted that, as:

(1) the care was provided from 2007, when the Appellant's father first became ill, and therefore well before the employment contract was executed; and

(2) even after the employment contract was executed, much of the care was provided voluntarily in that the contract made no provision for care in excess of the hours for which the Appellant was paid,

it was clear that the reason for the provision of the accommodation was either family ties or the fact that the Appellant was providing care but that, in any event, it was not because the Appellant had an employment contract which made provision for it.

98. In response to the first point, Mr Gordon, on behalf of the Appellant, said that, even though the Appellant was providing care and receiving accommodation in return for that care before the employment contract was executed and therefore, at that stage, the accommodation was self–evidently not being provided by reason of employment, the position changed once the employment contract was executed. This was because, at that stage, both the care and the accommodation began to be provided by reason of the employment contract.

99. In response to the second point, Mr Gordon said that Ms Inglis's interpretation of the employment contract was incorrect. Whilst the employment contract limited the payments which would be made to the Appellant in return for his provision of care to the amounts which were authorised by the local health authority from time to time, that was entirely unrelated to the extent of the Appellant's obligation to provide care. Clause 3 of the employment contract made it apparent that the Appellant's working hours were flexible and subject to his father's needs from time to time. It followed that, despite what the Appellant had said in his evidence – as to which, see paragraph 50(5) above – none of the Appellant's care was being provided voluntarily. It was all being provided under the employment contract.

100. We have found this to be quite a difficult question to answer.

101. However, on balance, we have reached the conclusion that, on and after 5 April 2010, when the employment contract was executed, the accommodation provided to the Appellant by his parents was provided by reason of his employment. We say that for the following reasons:

(1) whilst it is clear that, in the period between 2007 and 5 April 2010, even though there was no employment contract, the Appellant was prepared to provide care and his parents were prepared to provide accommodation in return for that care, the period which we are considering is the period during which the Properties were owned and that period commenced after the employment contract was executed;

(2) this means that, adopting the words of Oliver LJ:

(a) we need to consider whether, after the employment contract was executed, it was the employment contract which enabled the Appellant to enjoy the benefit of the accommodation; and

(b) in answering that question, we must not adopt too sophisticated an analysis of the operative reasons why the Appellant may have enjoyed the benefit of the accommodation;

(3) there are two possible answers to the question posed in paragraph 101(2) above;

(4) the first is that:

(a) the Appellant was provided with the accommodation because he was caring for his father and that was the case both before and after the employment contract was executed; and

(b) moreover, if Ms Inglis's interpretation of the employment contract is correct – as to which, see paragraph 102 below – some of the care provided by the Appellant after the employment contract was executed was provided voluntarily and other than pursuant to the employment contract.

It follows that it was not the employment contract which enabled the Appellant to enjoy the benefit of the accommodation but instead simply the fact that the Appellant was providing care to his father;

(5) the second is that:

(a) the reason why the accommodation was provided was because the Appellant was providing care to his father; and

(b) even if Ms Inglis's interpretation of the employment contract is correct, after the employment contract was executed, the Appellant was providing at least some of that care under the employment contract;

It follows that, under the terms of the employment contract, the Appellant was obliged to provide care and the Appellant's mother was obliged to provide the Appellant with accommodation and therefore the accommodation was provided by reason of the Appellant's employment. Even if Ms Inglis's interpretation of the employment contract is correct, and some of the care was provided by the Appellant voluntarily and outside the terms of the employment contract, the Appellant's position in that regard was no different from that of a housemaster who is provided with accommodation under the terms of his employment contract but then carries out voluntary activities in addition to the activities which he is obliged to carry out under his employment contract; and

(6) we favour the second of the above answers. It seems to us that, once the employment contract was executed, the Appellant became contractually bound to provide care to his father and his mother became contractually bound to provide the Appellant with the benefit of the accommodation. It follows that, on and after 5 April 2010, the accommodation which had hitherto been provided by the Appellant's parents voluntarily was being provided by his mother by reason of his employment.

102. The conclusion we have reached in paragraph 101 above means that it is, strictly speaking, unnecessary to consider whether some of the care which the Appellant was providing on and after the employment contract was executed was being provided voluntarily outside the terms of the employment contract. As it happens, we think that that is quite a difficult question to answer. In our view, although it is not entirely clear, the better view of the employment contract, particularly when the terms of clause 6 in relation to holiday entitlement and clause 11;2 in relation to periods of hospitalisation are taken into account, is that the flexibility in hours to which clause 3 of the contract refers does not mean that the Appellant was contractually obliged to work for any more than the hours for which he was paid under clause 2 of the contract. On that basis, we agree with Ms Inglis that the care provided by the Appellant in excess of the hours for which he was paid was being provided voluntarily and not pursuant to a contractual obligation under the employment contract. Nevertheless, for the reason set out in paragraph 101 above, in our view that does not change the answer to this question.

103. For the reasons set out above, we consider that the accommodation which was provided to the Appellant in his parent's home on and after 5 April 2010 was provided "by reason of employment".

Necessary for the performance of the duties of the employment

104. The UT did not say much in the UT Decision about how to approach the second question in relation to this issue apart from noting in paragraph [82] that the medical evidence in relation to the Appellant's father was directly relevant to it.

105. We have already addressed this question in making the finding of fact set out in paragraphs 69 to 76 above. In our view, taking into account the evidence as a whole and the medical evidence in particular, it was necessary for the Appellant to live in his parent's home in order to perform his duties under the employment contract. The mere fact that, for some of

the time, he was able to live elsewhere and to perform some of those duties whilst doing so did not mean that he could perform all of his duties under the employment contract whilst living elsewhere. As long as it was necessary for the Appellant to live in his parent's home in order to carry out some of the duties of his employment – which is what we have found to be a fact – then that is sufficient to satisfy this test.

The Intention Condition

106. The conclusions set out in relation to the first two questions means that the Appellant has satisfied the JRA Condition. As for the Intention Condition, we have effectively already addressed this in making the findings of fact set out in paragraphs 77 to 80 above. In those paragraphs, we concluded that the Appellant acquired each Property with the intention, at the time of acquisition, that the relevant Property would in due course be his only or main residence and that that intention continued in each case for a specified period of time.

Conclusion

107. The conclusions which we have reached above means that the Appellant is entitled to the principal private residence exemption from CGT for a portion of the gain which he made on each Property. That portion is to be determined under the rules in Section 223 of the TCGA.

108. Section 223(2) of the TCGA specifies that the proportion of the gain which is exempt is to be determined by applying to the overall gain a fraction of which:

> (1) the numerator is the length of the period during which the Property was owned that the Appellant intended in due course to occupy the Property as his only or main residence and, in any event, the last 18 months (or, in the case of 10 Woodhouse Close, 36 months) of the period during which the Property was owned; and
>
> (2) the denominator is the length of the period during which the Property was owned.

109. Before applying that fraction to the gain made in the case of each Property, we should observe that, at the hearing, both parties proceeded on the basis that the Appellant's period of ownership of each Property should be determined by reference to the dates on which he completed his acquisition and disposal of the relevant Property and not the dates on which the contracts for the acquisition and disposal were executed, as would seem at first blush to be required by Section 28 of the TCGA. (That provision specifies that, for the purposes of CGT, where an asset is disposed of and acquired under an unconditional contract, the time at which the disposal and acquisition is made is the time of the contract and not the time when the asset is conveyed or transferred.) We were initially surprised that the parties had adopted that approach because there is nothing in Sections 222 et seq. of the TCGA which expressly precludes Section 28 of the TCGA 1992 from applying. However, the parties' approach is entirely consistent with the Court of Appeal decision in *Higgins v The Commissioners for Her Majesty's Revenue and Customs* [2020] All ER 451 ("*Higgins*") and we will therefore proceed on the same basis.

110. Turning then to the application of Section 223(2) of the TCGA in the present case to each Property other than 28 Bramshill Close, it is apparent that, as a result of the Appellant's intention at the point when he acquired each such Property in due course to occupy the relevant Property as his only or main residence, the entire gain on each such Property falls within the principal private residence exemption based on the existence of JRA. This is because:

> (1) the Appellant owned 10 Woodhouse Close for 16 months and the period which the Appellant was entitled by Section 223(2) of the TCGA to take into account as part

of the period of exemption for that Property (no matter how long that intention continued) was 36 months;

(2) the Appellant owned 2 Bramshill Close for 14 months and the period which the Appellant was entitled by Section 223(2) of the TCGA to take into account as part of the period of exemption for that Property (no matter how long that intention continued) was 18 months; and

(3) the Appellant owned 8 Wigshaw Lane for 9 months and the period which the Appellant was entitled by Section 223(2) of the TCGA to take into account as part of the period of exemption for that Property (no matter how long that intention continued) was 18 months.

111. The position is not as straightforward in the case of 28 Bramshill Close. This is because that Property was owned for a little over 28 months and the period which the Appellant was entitled by Section 223(3) of the TCGA to take into account as part of the period of exemption for that Property was only 19 months – the one month we have found that he actually had the intention in due course to occupy the Property as his only or main residence – see paragraphs 77(2) and 80(2) above – and the 18 months for which Section 223(2) of the TCGA provided no matter how long that intention continued.

112. The result of this is that, in the case of 28 Bramshill Close, only some part, but not all, of the gain falls within the exemption. That part amounts to a little under 19/27ths of the gain, leaving a little over 8/27ths of the gain as within the charge to CGT. (We say "a little under" and "a little over" because the Property was acquired on 9 October 2012 and disposed of on 22 January 2015 and therefore there were some 13 additional days between 9 January 2015 and the date when the Appellant ceased to own the Property. Having said that, it would seem from *Higgins* at paragraph [18] that computations made using months rather than weeks or days are acceptable to the Respondents in this context.) Even if the additional days are brought into account in this case, because the overall gain on the Property was £30,000, the amount of the gain which is not exempt is a little over £8,888.89.

113. It was common ground at the hearing that the only capital gains made by the Appellant in the tax years in question were the capital gains he made on the Properties. It follows that the capital gain described in paragraph 112 above falls well within the annual exempt amount for CGT purposes of £11,000 in the tax year in which the gain was made (the tax year 2014/15) – see Section 3(2) of the TCGA, as substituted by Section 8(1) of the Finance Act 2014.

114. For the reasons set out above, we determine Issue One in favour of the Appellant. We have concluded that none of the gains which were made by the Appellant on the Properties is subject to CGT and therefore that the appeal against the Closure Notice and each Discovery Assessment should be upheld.

ISSUE TWO – THE PENALTIES

Introduction

115. The conclusion set out in paragraph 114 above in relation to Issue One means that, strictly speaking, it is unnecessary for us to address the Penalties. This is because:

(1) the Penalties were charged for a failure to notify a liability to tax in respect of the Properties under Section 7 of the TMA and we have concluded that no such liability arose; and

(2) in any event, Schedule 41 requires a penalty for a failure to notify to be calculated by reference to the tax which is unpaid by reason of the failure and there is no such unpaid tax in this case.

116. Nevertheless, since the terms of the remittance were that we should address the issue and the parties made submissions in relation to it, we deal with it below, adopting the same structure as that set out above in relation to Issue One. In dealing with the issue, we will assume that, contrary to the conclusion we have just reached, the Appellant is liable to CGT in respect of the gain which he made on each Property and failed to notify the Respondents of that fact.

The legislation

117. Under paragraph 1 of Schedule 41, a penalty is payable for a failure to notify chargeability to tax under section 7 of the TMA, unless the taxpayer can show that the failure was not deliberate and he or she has a reasonable excuse for the failure. The penalty is expressed as a percentage of the potential lost revenue and varies depending on whether:

(1) the failure was "deliberate and concealed", "deliberate but not concealed", or neither deliberate nor concealed;

(2) there has been disclosure by the taxpayer;

(3) any such disclosure was prompted or unprompted and the quality of any such disclosure; and

(4) the Respondents became aware of the failure less than 12 months after the time when the tax first becomes unpaid by reason of the failure.

118. The Respondents also have a discretion to reduce a penalty for "special circumstances".

119. More specifically, in the present circumstances:

(1) paragraph 6(2)(b) of Schedule 41 provides that the standard penalty for a failure to notify which is deliberate but not concealed is 70% of the potential lost revenue;

(2) paragraph 6(2)(c) of Schedule 41 provides that the standard penalty for a failure to notify which is not deliberate is 30% of the potential lost revenue;

(3) paragraph 7 of Schedule 41 provides that the potential lost revenue is so much of the amount of CGT in respect of the relevant tax year as is, by reason of the failure to notify, unpaid on the 31 January following that tax year;

(4) paragraphs 12 and 13 of Schedule 41 set out a regime for a reduction in the penalty depending on the timing and quality of disclosure. They provide that:

(a) a person discloses a failure to notify by:

(i) telling the Respondents about it ("Telling");

(ii) giving the Respondents reasonable help in quantifying the tax unpaid by reason of the failure ("Helping"); and

(iii) allowing the Respondents access to records for the purpose of checking how much tax is unpaid ("Giving");

(b) a disclosure of a failure to notify is "unprompted" if it is made a time when the person making it has no reason to believe that the Respondents have discovered or are about to discover the relevant failure and, otherwise, is "prompted";

(c) in relation to disclosure, "quality" includes timing, nature and extent;

(d) where a person who would otherwise be liable to a penalty at the standard percentage for a failure to notify has made a disclosure, the Respondents must reduce the penalty to one that reflects the quality of the disclosure provided that:

(i) in the case of a prompted failure to notify which is deliberate and not concealed, the percentage cannot be reduced to less than 35%;

(ii) in the case of an unprompted failure to notify which is deliberate and not concealed, the percentage cannot be reduced to less than 20%;

(iii) in the case of a prompted failure to notify which is not deliberate, the percentage cannot be reduced to less than 10% of the potential lost revenue (in a case where the Respondents became aware of the failure less than 12 months after the time when the tax first becomes unpaid by reason of the failure) and, otherwise, 20% of the potential lost revenue; and

(iv) in the case of an unprompted failure to notify which is not deliberate, the percentage cannot be reduced to less than 0% of the potential lost revenue (in a case where the Respondents became aware of the failure less than 12 months after the time when the tax first becomes unpaid by reason of the failure) and, otherwise, 10% of the potential lost revenue;

(5) paragraph 14(1) of Schedule 41 provides that the Respondents have a general discretion to reduce the penalty if they think it right because of "special circumstances";

(6) paragraph 16(3) of Schedule 41 provides that a penalty assessment is to be treated for procedural purposes in the same way as an assessment to tax;

(7) paragraph 19(2) of Schedule 41 provides that, on an appeal against a penalty to the FTT, the FTT may either affirm the Respondents' decision or substitute for the Respondents' decision another decision which the Respondents had the power to make;

(8) paragraph 19(3) of Schedule 41 provides that, where the FTT substitutes for the Respondents' decision another decision which the Respondents had the power to make, it may rely on paragraph 14 of Schedule 41 to the same extent as the Respondents or, if it thinks that the Respondents' decision was flawed, to a different extent; and

(9) paragraph 20 of Schedule 41 provides that no liability to a penalty arises in the case of a failure which is not deliberate if the taxpayer satisfies the Respondents (or, on an appeal to the FTT, the FTT) that he or she has a reasonable excuse for the failure.

120. The above paragraphs describe the law in relation to the imposition of penalties which is applicable in the present case. However, in this case, it is also relevant to be aware that, although it is just a practice and does not have the force of law, the long–standing practice of the Respondents in reducing penalties for the quality of disclosure in any case is to:

(1) calculate the difference between the maximum and minimum penalty in that case;

(2) allocate up to 30% of that difference to each of "Telling" and "Giving" and up to 40% of that difference to "Helping"; and

(3) reduce the penalty by deducting the amount so calculated from the maximum penalty.

The terms of the remittance

121. In this case, the penalties were calculated by the Respondents on the basis that the failure to notify was deliberate but not concealed and that disclosure was prompted. The

issues which we have been directed to address by the UT pursuant to the UT Decision are as follows:

"We instruct the FTT to determine, by way of oral hearing (either in person or remote):

(d) Whether HMRC has discharged the burden of establishing that Mr Campbell's failure to notify for the relevant periods was deliberate, applying the law as we have summarised it above, and

(e) Whether HMRC's decision in relation to the amount of the Penalties should be affirmed or be substituted with another decision because HMRC's decision was flawed for the purposes of paragraph 19 of Schedule 41.

The reconsideration shall be on the basis of the findings of primary fact made in the Decision, although not inferences drawn from primary fact. Each party has permission to adduce further evidence."

122. However, following the remittance on those terms, the Respondents accepted, in their re–amended statement of case issued on 26 February 2025 (the "SOC"), that the Appellant might not have acted deliberately in failing to notify and therefore no longer sought to defend the Penalties on that basis. Observing that they had no power to amend the Penalties of their own volition – because paragraph 16 of Schedule 41, taken together with Section 30A(4) of the TMA, limited the circumstances in which a penalty assessment could be amended – they instead invited us to vary the quantum of the Penalties pursuant to our powers under paragraph 19(2) of Schedule 41 to those appropriate for a failure to notify which is not deliberate.

123. It follows that the direction in paragraph (d) above is no longer a live issue in the appeal and we need merely address the issue raised by the direction in paragraph (e) above.

Findings of fact in the FTT Decision

124. The FTT made no relevant findings of fact in relation to whether or not the Penalties should have been mitigated. That was because it did not address the question of whether the methodology applied by the Respondents in calculating the Penalties had been flawed. The UT noted that this was the case in paragraphs [124] to [126] of the UT Decision.

The evidence

Introduction

125. The evidence provided in connection with the Penalties took the form of:

(1) the correspondence which passed between the Appellant (and his agents) and Officer Weir in the course of the dispute;

(2) the explanation provided by the Respondents for the calculation of the Penalties; and

(3) the witness evidence of the Appellant and Officer Weir.

The correspondence

126. We have already described much of the correspondence between the Appellant (and his agents) and Officer Weir in the course of the dispute at paragraphs 3 to 12, 46 and 47 above. For present purposes we would add the following:

(1) on 26 January 2018, after the receipt of the Schedule 36 notice dated 24 January 2018, the Appellant sent an email to Officer Weir in which he said that, following Officer Weir's email of 19 December 2017, he had contacted HH and told them to send

Officer Weir the information and documents requested and that he had now contacted HH again to chase things up;

(2) on 1 February 2018, the Appellant wrote to Officer Weir once again, this time attaching an email exchange between the Appellant and HH in which:

(a) the Appellant had made it clear that he was dissatisfied with the service he was receiving from HH and wished to end their engagement; and

(b) HH sought to excuse their delay by reference to pressure of other work and said that they would be able to meet the deadline in the Schedule 36 notice for the provision of the requested information and documents.

The Appellant assured Officer Weir that he had been trying to resolve the dispute as soon as possible. To that end, he had retained HH and given HH the relevant information and documents months ago. Finally, he said that HH would be in touch with Officer Weir over the next two days;

(3) also on 1 February 2018, HH responded to Officer Weir's letter of 19 December 2017, enclosing the statement by the Appellant to which we have referred in paragraph 47 above, disagreeing with certain parts of Officer Weir's analysis and suggesting as a compromise that the Appellant be liable to CGT instead of income tax on the gain made on each of the Properties apart from 28 Bramshill Close;

(4) on 6 February 2018, wrote to the Appellant to explain why he had issued the Schedule 36 notice and to ask the Appellant for evidence to support both the computation of the gains and the view that neither income tax nor CGT was payable on them;

(5) on 12 February 2018, Officer Weir responded to the points made in HH's letter of 1 February 2018 and reiterated his request for information and documents;

(6) on 22 February 2018, HH wrote to Officer Weir, responding to the points which Officer Weir had made and enclosing a considerable amount of information and documents, including the Appellant's bank statements, but no invoices or receipts in respect of the expenditure which the Appellant had claimed to have incurred;

(7) on 28 March 2018, Officer Weir wrote to HH to say that, in the absence of any invoices or receipts, there was nothing for him to review. It was not possible for him to identify costs from the bank statements which had been sent to him because the costs were not referred to in those statements. Officer Weir informed HH that he was disappointed by the lack of information provided to support the Appellant's claim to have incurred the costs and that he wished to move the dispute forward and would be issuing assessments and penalties shortly after 27 April 2018;

(8) on 20 April 2018, Brabners wrote to Officer Weir to say that they had recently been instructed by the Appellant in place of HH and to ask for some additional time to review the correspondence before responding to Officer Weir's most recent letter;

(9) on 10 May 2018, Brabners wrote to Officer Weir to respond to the points made by Officer Weir in his most recent letter and to reiterate that the Appellant had not retained any invoices or receipts in relation to the costs incurred and that, in making his calculations, the Appellant had largely used estimated numbers from memory;

(10) on 30 May 2018, Officer Weir responded to Brabners' letter of 10 May 2018. He apologised for the delay in his response, set out his views on the points made by

Brabners and said that he could not allow costs for which no evidence had been produced;

(11) on 29 June 2018, Brabners emailed Officer Weir to respond to various points which Officer Weir had made in his most recent letter and to reiterate that the Appellant had nothing more to provide to evidence his costs; and

(12) on 13 July 2018, Officer Weir wrote to the Appellant to set out his final views on the matter and to explain that the Closure Notice, the Discovery Assessments and the Penalties would shortly be issued.

The explanation of the Penalties

127. In the SOC, the Respondents explained that they were now seeking to defend the calculation of the Penalties on the basis that:

(1) the failure to notify was not deliberate;

(2) the failure to notify was prompted;

(3) the penalty range was 10% to 30% in respect of the tax year 2015/16 and 20% to 30% in respect of the tax years 2012/13 and 2014/15;

(4) the discount to be applied for the quality of disclosure was 70% of the difference between the maximum and minimum in each case, which is to say 14% in the case of the tax year 2015/16 and 7% in the case of the tax years 2012/13 and 2014/15; and

(5) the reason for that figure of 70% was as follows:

"Telling 20/30

At the start of my enquiry you did not volunteer any information about the other properties you had bought and sold. You only referred to the last disposal and did not tell me about the other three. The reduction for disclosure is 20% (out of 30%).

Helping 25/40

You have not accepted that a tax liability arises. you still claim that you intended to live in the properties, even although the facts point to you acquiring the properties for the purpose of realising a gain. Your computations of the gains include deductions for expenditure that you could not have incurred. I asked you to explain where these figures came from or where you acquired the money to pay those expenses, but you have chosen not to respond. You claimed that you did not keep any documents, but have not attempted to obtain copies. The reduction for helping is 25% (out of 40%).

Giving 25/30

There were delays at the start of this check, but I put that down to the busy tax return period that affected your advisor, and I shall not attribute those delays to you. All in all you have given me access to all of the documents you say that you have, albeit you could have done more to verify the expenditure and obtain copies of the loan agreement. I shall allow a reduction of 25%."

The witness evidence

128. The Appellant testified that he had instructed HH, who were a local firm of accountants, as soon as possible after he became aware of the Respondents' enquiry. He thought that this would have been as soon as he received Officer Weir's letter of 29 August 2017 on the morning of 1 September 2017.

129. Officer Weir testified that:

(1) he had not re–visited the determination of the discount for disclosure after:

(a) it had been held by the FTT (and upheld by the UT) that the Appellant had not acquired the Properties in the course of a trade; or

(b) the Respondents had decided that the failure to file was not deliberate;

(2) he had awarded the Appellant only a 20% discount for "Telling" because the Appellant in his initial response of 1 September 2017 had not disclosed that he had previously owned the three Properties other than 8 Wigshaw Lane and did not do so until after he had been alerted by the terms of Officer Weir's email of later that day that the Respondents were aware of them. Officer Weir confirmed that the Respondents had known of the Appellant's ownership of the other Properties when he sent his letter of 29 August 2017 and he had followed the Respondents' practice of allowing the taxpayer to initiate disclosure; and

(3) he had awarded the Appellant only a 25% discount for each of "Helping" and "Giving" because the Appellant had provided the Respondents with hardly any of the information requested. He said that the Appellant could have made more effort to provide the information – for example, by obtaining copies of the missing invoices and receipts – although he accepted that he had not specifically asked the Appellant to do that.

Our findings of fact

130. We make the following findings of fact based on the evidence set out in paragraphs 3 to 12, 46, 47 and 125 to 129 above:

(1) the Appellant did not disclose to Officer Weir that he had acquired and disposed of the three Properties other than 8 Wigshaw Lane in addition to 8 Wigshaw Lane after receiving Officer Weir's letter of 29 August 2017 in relation to the latter Property. It was not until Officer Weir informed the Appellant on 1 September 2018 that he was aware that the Appellant had made profits or gains on other properties and reminded the Appellant of that fact on 17 October 2017 that the Appellant disclosed that that was the case;

(2) the Appellant did not keep appropriate records of the costs which he had incurred in relation to the Properties, with the result that he was unable to provide Officer Weir with the information required to support his claims for most of those costs; and

(3) subject to the above, the Appellant did all he could to help Officer Weir with the enquiries which Officer Weir was making. He instructed HH promptly as soon as he became aware of Officer Weir's enquiry. Whilst we think that this cannot have been immediately after he received Officer Weir's initial letter of 29 August 2017 on the morning of 1 September 2017 – given the terms of the Appellant's response at 14:55 on that day and the fact that Officer Weir did not send his email on that day until 17:00 – we find that the Appellant instructed HH very soon after he received Officer Weir's email. After that, the Appellant did all he could to ensure that HH responded promptly to Officer Weir's communications and provided whatever information they could, eventually replacing HH with Brabners. In consequence, the entire length of the enquiry from the date of Officer Weir's initial letter through to the issue of the Closure Notice, the Discovery Assessments and the Penalties took a little over 10 months, and that included a delay of over a month in February and March 2018 and a delay of twenty days in May 2018 in Officer Weir's responding to the Appellant's agent.

Discussion

Introduction

131. There were three strands to Mr Gordon's attack on the Penalties. These were that:

(1) the Appellant had a reasonable excuse for his failure to notify and therefore the Penalties should not have been assessed at all;

(2) the discount given by the Respondents in calculating the Penalties was insufficient and the Penalties should be reduced; and

(3) there were special circumstances in this case which meant that the Penalties should be reduced.

132. We will describe each of those arguments in turn below in greater depth.

Reasonable excuse

133. Mr Gordon said that the Appellant had a reasonable excuse for his failure to notify because he reasonably believed at the relevant time that no tax was due and no notification was necessary. That was an objectively reasonable belief for someone who was not a tax expert to have reached given:

(1) the complexity of the law in this area;

(2) the Appellant's intentions as regards each Property; and

(3) the emotional pressure on the Appellant by virtue of his caring responsibilities and his father's illness

– see the UT decision in *Perrin v The Commissioners for Her Majesty's Revenue and Customs* [2018] UKUT 156 (TCC) ("*Perrin*") at paragraphs [81] to [83].

The discount for disclosure

134. Mr Gordon made three separate points on this, as follows.

135. First, he said that, whilst he accepted that the Appellant's disclosure of the disposal of 8 Wigshaw Lane had been "prompted", by virtue of Officer Weir's letter of 29 August 2017, the Appellant's disclosure of the disposal of the other three Properties had been "unprompted" and therefore the correct range for any penalty in the case of the Appellant's failure to notify the gains on each of those three Properties was 10% to 30% – and not 20% to 30% – of the potential lost revenue.

136. Secondly, he said that the practice of the Respondents described in paragraph 120 above, which was the one that had been adopted in this case in the SOC, was not in accordance with the terms of paragraph 13 of Schedule 41.

137. The way in which that paragraph operated was that:

(1) paragraph 13(1) of Schedule 41 provided that, where the person who would otherwise be liable to a standard penalty had made a disclosure, the Respondents were obliged to reduce the standard percentage to one that reflected the quality of the disclosure; and

(2) paragraphs 13(2) and 13(3) of Schedule 41 then provided that the standard percentage could not be reduced to a percentage below the minimum percentage.

138. The above meant that whatever percentage the Respondents considered to be appropriate to reflect the quality of the disclosure was required to be applied to the standard percentage and deducted from the standard percentage to calculate the percentage of the

penalty, subject only to the fact that that percentage could not be lower than the minimum amount specified in paragraphs 13(2) and 13(3) of Schedule 41.

139. In this case, the Respondents had indicated in the SOC that they considered 70% to be the appropriate discount for the disclosure which the Appellant had made. The method described in paragraph 138 above meant that that figure needed to be applied to the standard percentage (30% in this case) to give rise to a discount of 21% under paragraph 13(1) of Schedule 41 but then the discount needed to be reduced to 20% under paragraphs 13(2) and 13(3) of Schedule 41 so as to ensure that the penalty percentage was no lower than the minimum of 10%.

140. However, the Respondents had instead applied the discount to the difference between the standard and minimum percentages in each case and deducted the amount so calculated from the standard percentage. This led to an unreasonably high penalty percentage.

141. Finally, he said that, in any event, the percentage discount of 70% for the Appellant's disclosure was too low and that he was entitled to a discount of 100% due to the quality of that disclosure. The Appellant's disclosure had been full and prompt. He had answered the Respondents' questions, provided the Respondents with access to such records as he had and explained the reason for his failure to notify. The extent of the Appellant's co–operation had been such that, even allowing for the delays caused by his agent, the whole investigation had taken only a little over ten months. That level of co–operation deserved greater than the 70% discount provided by the Respondents.

142. In particular:

(1) one of the reasons given by the Respondents for reducing the "Helping" element of the discount for disclosure was that the Appellant had not accepted that tax liabilities arose and continued to maintain that he intended to live in the Properties. That was not an appropriate matter to be taken into account when determining the quantum of a penalty; and

(2) by his own admission, Officer Weir had not revisited the discount for disclosure after:

(a) it had been held by the FTT (and upheld by the UT) that the Appellant had not acquired the Properties in the course of a trade; or

(b) the Respondents had decided that the failure to file was not deliberate.

That was not appropriate.

Special circumstances

143. Mr Gordon accepted that the FTT's power to reduce a penalty by reason of special circumstances was slightly different from its powers in the other two cases described above.

144. In the case of an appeal against a penalty in respect of a failure to notify, the FTT had the power:

(1) to cancel the penalty if the failure was not deliberate and it considered that the taxpayer had a reasonable excuse for the failure; or

(2) to substitute for the Respondents' decision another decision that the Respondents had the power to make if it considered that the Respondents had imposed too high a penalty for one of the reasons articulated in paragraphs 134 to 142 above.

145. However, if it considered that there were special circumstances, the FTT was obliged to use the same percentage reduction as the Respondents had used in respect of the special

circumstances unless the FTT considered that the Respondents' decision in relation to special circumstances was flawed. In this case, since the Respondents had not made any reduction for special circumstances, we could make such a reduction only if the Respondents' decision in that regard was flawed.

146. Mr Gordon said that, although it was dealing with different penalty legislation, the UT decision in *Edwards v The Commissioners for Her Majesty's Revenue and Customs* [2019] STC 131 (TCC) at paragraphs [72] and [73] made it clear that the phrase "special circumstances" should not be given a narrow meaning. In those paragraphs, the UT had referred with approval to the dicta of Judge Vos in *Advanced Scaffolding (Bristol) Limited v The Commissioners for Her Majesty's Revenue and Customs* [2018] UKFTT 744 (TC) at paragraphs [99] to [102] ("*Advanced Scaffolding*") to the same effect. Later in his decision in *Advanced Scaffolding*, at paragraph [225], Judge Vos had said as follows:

"The right approach for the Tribunal is to look at all the relevant circumstances and consider whether, in the particular case in question those circumstances are special. I see no reason to limit this to circumstances which ... operate on the particular taxpayer in question as opposed to those which could affect a larger number of taxpayers. It is up to HMRC or, where relevant, the Tribunal to decide based on all of the facts of the particular case whether the circumstances in question are, in that case, special."

147. Mr Gordon said that, in this case, the special circumstances justifying a reduction were:

(1) the convergence of long–term serious personal hardship, the legal and practical restrictions on where the Appellant could live and the Appellant's continuous caregiving responsibilities;

(2) the Appellant's repeated good faith attempts to establish a primary residence, each of which was thwarted for unforeseen reasons; and

(3) the extent of his compliance with the Respondents' investigation, as mentioned in paragraph 141 above.

148. We have not set out the submissions of Ms Inglis on the above issues because, subject to the one point which we address in paragraph 149(6) below, we agree with them.

Conclusion

149. Our views on the issues described above are as follows:

(1) we would start by observing that each of the three areas on which Mr Gordon seeks to rely has a specific ambit.

The reasonable excuse defence is exclusively focused on the period prior to the commencement of the dispute. In this case, it requires us to identify the reasons why the Appellant failed to notify the Respondents of his tax liability and to consider whether, viewed objectively, those reasons amount to an objectively reasonable excuse for the failure, taking into account the experience and other relevant attributes of the Appellant (see *Perrin*). The Appellant's conduct during the course of the dispute is irrelevant.

In contrast, when we are considering the discount for disclosure, it is the Appellant's behaviour during the course of the dispute which we need to consider and the reasons why the Appellant failed to notify the Respondents of his liability are irrelevant.

The special circumstances defence is something of a hybrid of the first two in that it is all–embracing and therefore capable of being satisfied by reference both to events preceding the dispute and events in the course of the dispute. In this case, it requires us

to consider whether the Respondents' decision to the effect that the circumstances in this case were not sufficiently special to justify a reduction in the Penalties for special circumstances was flawed;

(2) turning then to the reasonable excuse defence, on the assumption which we are necessarily making for the purpose of addressing the issue of Penalties that the Appellant was liable to CGT in respect of the gains in question, we do not agree that the Appellant's failure to notify the Respondents of the liabilities was objectively reasonable on the basis described in *Perrin*. It would seem from the Appellant's initial response to Officer Weir of 1 September 2017 that the Appellant was at that stage unaware that he might be able to claim the benefit of the principal private residence exemption based on the existence of JRA and was under the impression that the exemption was available for a property as long as he intended to live in it and the relevant property was the only property that he owned.

Believing that he had had no liability to notify the Respondents of his gains on any of the Properties on that basis was not an objectively reasonable conclusion to have reached given that:

(a) he had owned two of the Properties – 28 Bramshill Close and 2 Bramshill Close – over a common period; and

(b) he had never lived in two of the Properties – 10 Woodhouse Close and 2 Bramshill Close;

Those facts, coupled with the number of properties that he had owned and the significant quantum of the gains that he had made on them should have led the Appellant to take professional advice (or to ask the Respondents) before concluding that the principal private residence exemption was available for each Property.

We do not consider that the pressure under which the Appellant was operating as a result of his caring responsibilities and his family circumstances in general affects that conclusion. The Appellant has shown by his actions that, notwithstanding those responsibilities and circumstances, he was perfectly capable of carrying out renovations to the Properties and consulting professional advisers when required. He should have taken the appropriate professional advice at the time;

(3) as for the level of the discount for disclosure, we do not agree with Mr Gordon that the Appellant's disclosure in relation to the first three Properties which he owned was "unprompted". Under paragraph 12(3) of Schedule 41, a disclosure of an act or failure made by a person when that person has reason to believe that the Respondents either have discovered, or are about to discover, the relevant act or failure is "prompted". In this case, it is plain from the correspondence which passed between the Appellant and Officer Weir that the Appellant did not disclose his ownership of those three Properties until after he received Officer Weir's email of 1 September 2017. In that email, Officer Weir revealed to the Appellant that the Respondents were aware that the Appellant had made gains on other properties. In saying that, Officer Weir gave the Appellant reason to believe that the Respondents had discovered his failure to notify his liability to tax in respect of those three Properties. Accordingly, his subsequent disclosure of that failure was "prompted". That means that the range of possible penalties for the failure to notify his liability to tax on the gain made on each of those Properties was 20% to 30%, which is the approach which the Respondents have taken in determining the Penalties in the SOC;

(4) in considering whether the discount that the Respondents then gave for the Appellant's disclosure during the dispute was correct, we do not agree with Mr Gordon's submission in paragraphs 136 to 140 above. If that submission were to be correct, then its effect would be that a taxpayer would be able to benefit from the maximum available discount in each case even where the taxpayer has scored considerably less than 100% on "Telling", "Helping" and "Giving". It seems to us that that, in and of itself, is an indication that the basis described by Mr Gordon is incorrect. The position should be that a taxpayer who scores 100% on "Telling", "Helping" and "Giving" should be subject to the minimum penalty and that a taxpayer who scores something less than 100% on those three measures should be subject to a penalty that exceeds the minimum by an amount that reflects the shortfall in disclosure.

Approaching the language in the legislation more technically, there is nothing in the language of paragraph 13(1) of Schedule 41 that requires the Respondents to apply the discount calculated in accordance with their three measures to the standard penalty. The paragraph merely specifies that the standard penalty is to be reduced to one that reflects the quality of the disclosure. In the circumstances, the Respondents are perfectly entitled to calculate the penalty by applying the discount percentage they calculate to the difference between the standard percentage and the minimum percentage. Indeed, we would say that they would be wrong to do otherwise given the illogical outcome to which we have referred in the paragraph immediately above;

(5) as for the scores which the Respondents gave to the Appellant for "Telling", "Helping" and "Giving", we agree with almost all of them. Specifically:

> (a) so far as the discount for "Telling" is concerned, although there appears to be an element of double counting in that the failure by the Appellant to tell the Respondents of his liabilities to tax before he became aware that the Respondents were aware of the gains in question was reflected both in the fact that his disclosure was deemed to be "prompted" and not "unprompted" and also reduced the discount for "Telling", that seems to us to be a general feature of the legislation – see the language in paragraphs 12(2)(a) and 12(3) of Schedule 41 – and therefore we agree that the Respondents were right to reduce the discount for "Telling" on that basis;
>
> (b) although we agree with Mr Gordon that the Appellant co–operated fully with the Respondents in relation to the dispute and that any delays in responding to Officer Weir were attributable to the Appellant's agent, HH, rather than the Appellant himself, the Respondents have largely reflected that co–operation in the discount which they have awarded. The fact remains that, despite that level of co–operation, the Appellant was claiming that he had incurred some £100,000 in costs on the Properties and was unable to provide either the invoices or receipts to support that claim. Some reduction in the discount was therefore entirely appropriate; and
>
> (c) since the discounts for "Telling", "Helping" and "Giving" are, by definition, referable to the conduct of the Appellant after the dispute commenced, we agree with Officer Weir that the issue of whether the gains made by the Appellant were subject to income tax or CGT and whether the failure to notify was deliberate or not deliberate did not affect the level of the discounts and therefore there was no reason to revisit them at either of those stages;

(6) having said that, we agree with Mr Gordon that it was not appropriate to reduce the discount for "Helping" simply because the Appellant, through his representatives,

continued to maintain that he was entitled to the principal private residence exemption. Disagreeing over the existence of the liability is not a lack of co–operation in making disclosure. Taking that into account, were the Penalties issue to be a live issue, we would be inclined to give the Appellant a 30% discount (instead of a 25% discount) for "Helping", taking the overall discount percentage to 75% from 70%; and

(7) finally, we do not see anything in the circumstances of this case which is sufficiently "special" to mean that the Respondents' decision not to apply a reduction in the Penalties for that reason was flawed. The mere fact that the Appellant had difficult personal circumstances does not mean that he was entitled to ignore his responsibilities in relation to tax.

150. For the reasons set out above, were the Penalties issue to be a live issue, we would reduce the Penalties to reflect the fact that the failure to notify was not deliberate and that the discount for disclosure should be 75% of the difference between the standard rate and the minimum rate in each case.

DISPOSITION

151. For the reasons set out above, we hereby uphold the Appellant's appeal against the Closure Notice, the Discovery Assessments and the Penalties.

152. It remains for us only to thank all counsel for their submissions and Mr Gordon and Ms Duncan for their agreement to represent the Appellant pro bono.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

153. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

Release Date: 17th JULY 2025