

Public Safety Charitable Trust v Milton Keynes Council; Public Safety Charitable Trust v South Cambridgeshire District Council; Cheshire West and Chester Borough Council v Public Safety Charitable Trust [2013] EWHC 1327 (Admin) (High Court of Justice, Queens Bench Division, Administrative Court, Sales J, 14 May 2013)

These were three appeals from Magistrates' Court decisions concerning the test for relief from non-domestic rates for charities. The appeals constituted a test case for charitable relief from non-domestic rates.

The Public Safety Charitable Trust (PSCT) is a registered charity. It functions by leasing a large number of premises within the UK on which it might ordinarily be liable for payment of non-domestic rates. The premises are unoccupied, and leased for peppercorn or nominal rents. The PSCT then arranges for a broadcasting transmitter or transmitters, each similar in size to a domestic broadband box, to be placed at the premises. This equipment is the only thing placed in the premises and is connected to the existing power supply. The equipment provides free wireless internet access (wifi) to anyone within range of the transmitter or transmitters, and also broadcasts Bluetooth messages on crime prevention and public safety related themes to willing recipients who are in range and have a Bluetooth enabled mobile phone.

The leases to PSCT are subject to a short notice period (e.g. seven days), and the landlord pays the PSCT a 'reverse premium' in respect of its occupation. In this way, the saving in terms of relief from liability for non-domestic rates is shared between the landlord and the PSCT, the loser being the public purse. Milton Keynes and South Cambridgeshire Councils had obtained orders for payment of rates against the PSCT. Cheshire and Chester Council had been unsuccessful in a similar case.

The PSCT claimed that it was not liable for rates on the basis that it was a charity in occupation of the relevant hereditament (i.e. the unit of property used for rating purposes) and the hereditament was 'wholly or mainly used for charitable purposes': section 43(6)(a) of the Local Government Finance Act 1988 (LGFA).

The main issue was whether the premises were wholly or mainly used for charitable purposes. There were differing views in the courts below – whether to judge the use of the premises on the extent of their use for charitable purposes, which would be minimal given the only 'occupant' was a wifi box, or to use a purpose test. Was the use to which the premises were put a charitable one, regardless of the automated nature of the machine 'occupant', and its minimal use of the leased space?

His Honour said that the issue had been decided recently in *Kenya Aid Programme v Sheffield City Council* [2013] EWHC 45 (Admin). The correct interpretation of section 43(6)(a) of the LGFA was based on an 'extent of use' test, rather than a purpose test. His Honour said (at [34]):

In the context of this legislation and having regard to the language used, it is reasonable to infer that Parliament intended that the substantial mandatory exemption from rates for a charity in occupation of a building should depend upon the charity actually making extensive use of the premises for charitable purposes (i.e. use of the building which is substantially and in real terms for the public benefit, so as

to justify exemption from ordinary tax in the form of non-domestic rates), rather than leaving them mainly unused.

Therefore, since the extent of use of the premises by the PSCT for charitable purposes was minimal, the Councils were successful in enforcing their orders for the payment of rates.

The case may be viewed at: <http://www.bailii.org/ew/cases/EWHC/Admin/2013/1237.html>

Implications of this case

There was argument in this case about the advance in technology which allowed the work of the charity to be done by a small automated machine, where once it might have required an office full of people. Did this affect the nature or size of the hereditament? For example, could the wifi box be said to be the hereditament itself? His Honour had no qualms in dismissing this argument (at [50]). The space leased (with its attendant wifi network) was the hereditament. The fact that it was only occupied by a small machine operated by the charity was not relevant to the rating scheme.

Further to this case, the Public Safety Charitable Trust was wound up in insolvency on 8 July 2013. In addition, the Charities Commission has launched an inquiry into the former charity.