Case No: CO/8215/2009

Neutral Citation Number: [2010] EWHC 1873 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26 July 2010

Before :

HH Judge Anthony Thornton QC

- -

Between :

The Queen on the application of Katia Goremsandu	**Claimant**
- and -	
The London Borough of Harrow	**Defendant**

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(Transcript of the Handed Down Judgment of
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Mrs Goremsandu acting as a Litigant in Person
Mr Adrian Davis (instructed by **The Legal & Governance Services, London Borough of Harrow**) for the **Defendant**

- -

Judgment

Judge Anthony Thornton QC:

Introduction

1. This judgment relates to the appeal brought by the appellant, Mrs Katia Goremsandu, against the decision of the London (North West) Valuation Tribunal dated 23 June 2009. The respondent to the appeal is the London Borough of Harrow ("LBH"). The appeal is brought pursuant to regulation 32(1) of the Council Tax (Alteration of Lists and Appeals) Regulations 1993. This permits appeals as of right on a question of law from the Valuation Tribunal to the Administrative Court and, on appeal, the Administrative Court may confirm, vary, set aside, revoke or remit the decision of the Valuation Tribunal or make any order that the Tribunal could have made.

2. The Valuation Tribunal was itself hearing an appeal brought by Mrs Goremsandu from a decision of the LBH dated 13 February 2009 which had decided that Mrs Goremsandu had been liable to pay Council Tax on house that was owned by her, 85A Whitchurch Lane, Edgware, Middlesex, HA8 6LN ("the house") from 3rd April 2002 until 18th February 2008 on the basis that that property, which had been let to three tenants under a series of annual shorthold tenancies since 1st January 2002, was, during that period, a House in Multiple Occupation ("HMO") and, as such, Mrs Goremsandu was liable to pay Council Tax as its owner. Until that date, the LBH had treated the house as being let to the tenants under a single tenancy that covered the entire house so that, on that basis, the tenants were liable for Council Tax. The tenants had paid some, but not all, of the sum chargeable for Council Tax in the relevant period and the effect of the LBH's decision was that Mrs Goremsandu was liable to pay the balance due over the whole period, a sum of £11,035.79 less the sums previously paid by the tenants plus bailiff's costs and other disbursements. The precise sum Mrs Goremsandu has already paid towards this HMO liability was not proved in evidence so that, if Mrs Goremsandu succeeds in this appeal, the precise sum that the LBH will have to repay her will need to be established or agreed.

3. The LBH raised two preliminary procedural issues which, if successful, would prevent the appeal from being brought. The first was that the appeal was brought out of time, since the appeal was filed in the Administrative Court on 28 July 2009, 35 days after the LBH received the decision of the Valuation Tribunal on 24 June 2009, the decision being dated 23 June 2009. The relevant regulation provides that Mrs Goremsandu had 28 days to bring her appeal from the date she was notified of the Valuation Tribunal's decision.

4. There was no evidence as to when Mrs Goremsandu received the Valuation Tribunal's decision but since the LBH received its copy of the decision on the day following the decision being published, it is to be inferred that it was sent out to the parties by the Valuation Tribunal by first class post on 23 June 2009. If two clear days is allowed, being the normal period provided for by the Rules of the Supreme Court between dispatch of a notice by post and its presumed receipt, Mrs Goremsandu is to be taken to have received the Valuation Tribunal's decision on 25 June 2009 and should have filed her notice of appeal on 22nd July 2009, four weeks later. Thus, the notice was filed six days late on 28 July 2009. No evidence was provided by Mrs Goremsandu to explain the delay in lodging her appeal and until counsel representing the LBH filed his skeleton about four weeks before the hearing of this appeal, no point had been taken by the LBH that the appeal had been lodged out of time.

5. I was asked to extend time for lodging the notice of appeal by Mrs Goremsandu, who represented herself at the hearing as she had before the Valuation Tribunal. The period of the extension requested, between 22nd July 2009 and 28th July 2009, is a period of four working days. The LBH could point to no prejudice that it had suffered by this delay and had taken no point about it until it was referred to in its counsel's skeleton a few days prior to the hearing of the appeal. In fairness to the LBH, counsel was not instructed to oppose an application to extend time. Since Mrs Goremsandu was representing herself and had a highly arguable question of law to put forward on this appeal, I granted her the extension of time that she sought.

6. The LBH also pointed to a failure by Mrs Goremsandu to identify the question of law arising on this appeal, as required by the Council Tax (Liability for Owners) Regulations 1992. Although it is the case that Mrs Goremsandu failed to identify with any precision the relevant questions of law in the Statement that the 1992 Regulations require to be served by an appellant who is appealing a Council Tax issue, her appeal documentation identified what could clearly be identified as questions of law, namely the true meaning and effect of the relevant regulation, whether that regulation was correctly applied to the facts found by the Valuation Tribunal and whether the Valuation Tribunal erred in law in failing to give effect to the provisions of the relevant tenancy agreements under which the tenants had occupied the house.

Relevant facts

7. Mrs Goremsandu has owned the house for many years. The house is a detached bungalow with a conservatory attached to the rear. It is located in a small garden and was let out on annual furnished shorthold tenancies by Mrs Goremsandu from 21 October 1999 until the last of these tenancies which she granted on 1 January 2007 which expired on 31 December 2007. The first three tenancies were granted to four tenants, Messrs Abraham, Fletcher, Herrity and Parravani. The third of these tenancies was surrendered on 1 January 2002 and a new shorthold tenancy was granted to Messrs Abraham, Fletcher and Herrity. When the group of four tenants moved into the house, they did not wish to use the furniture that was let out to them with the furnished shorthold tenancy and they agreed with Mrs Goremsandu that this furniture would be stored in the conservatory which they also did not wish to use. The glass door at the rear of the bungalow was locked as was the door from the conservatory into the garden, solely to ensure the security of the furniture. This arrangement continued from 21 October 1999 until 31 December 2001 and from 1 January 2002 without interruption until the three remaining tenants moved out on about 1 February 2008, having occupied the house pursuant to six successive shorthold tenancies in identical terms. The last of these tenancies expired on 31 December 2007 and the tenants had then held over for a short period before vacating the house.

8. Mrs Goremsandu had built a new two-room extension at the back of the bungalow which connected with the back of the conservatory. This extension was completed at about the time that the three tenants moved out and Mrs Goremsandu and her son then moved into the bungalow with its extension. It would appear that Mrs Goremsandu took possession of the rear extension on about 15 January 2008 halfway through the four week period during which the three tenants held over by agreement. Their last tenancy agreement came to an end on 31 December 2007 and, with the agreement of Mrs Goremsandu, they held over until 1 February 2008. The Valuation Tribunal made

no finding as to whether the rear extension was first occupied by Mrs Goremsandu before the three tenants moved out or soon afterwards. However, if Mrs Goremsandu began to occupy the extension prior to the three tenants moving out, the longest period that the house was occupied by the three tenants in the bungalow simultaneously with the rear extension being occupied by Mrs Goremsandu was fourteen days at the very end of the three tenants' period of occupancy of the house.

9. Throughout their occupation of the house from 1999, the four or three tenants were billed for Council Tax by the LBH and such payments as they made were paid by them to the LBH. It was only after the three tenants had left that the LBH learnt of the arrangement whereby Mrs Goremsandu's furniture was stored in the locked conservatory and, based on that knowledge and statements from two of the tenants, the LBH decided that the house had been occupied under an HMO arrangement since 1 April 2002. This, if correct, had the effect of making Mrs Goremsandu liable for Council Tax rather than the three tenants who had previously been sent demands for the entire Council Tax liability relating to the occupancy of the house.

The applicable law

10. The liability for the payment of Council Tax is imposed on the resident or owner in a hierarchy of liability unless the property is an HMO (section 6 of the Local Government Finance Act 1992). If it is an HMO, the residence requirements are displaced by the provisions of regulation 2 of the Council Tax (Liability for Owners) Regulations 1992, SI 1992 No. 551 as amended by SI 1993 No. 151 and 199 No. 620. These impose liability on the owner of the dwelling. The material provisions of this collection of SIs is as follows:

> "The following are the classes of chargeable dwellings prescribed for the purposes of section 8(1) of the of section 8(1) of the [LGFA]-
>
> Houses in multiple occupation, etc
>
> Class C a dwelling which
>
> (a) was originally constructed or subsequently adapted for occupation by persons who do not constitute a single household; or
>
> (b) is inhabited by a person who, or by two or more persons each of whom either-
>
> (1) is a tenant of, or has a licence to occupy, part only of the dwelling; or
>
> (2) has a licence to occupy, but is not liable (whether alone or jointly with other persons) to pay rent or a licence fee in respect of the dwelling as a whole."

Decision of the Valuation Tribunal

11. The decision of the Valuation Tribunal contained the following relevant findings of fact.

12. "(1) … the 30 March 2004 letter from Mr Parravani, in addition to the letter from the appellant, dated 18 December 2005, indicate that each tenant was responsible for a separate rent charge in respect of the appeal dwelling."

13. The first letter referred to was written by Mr Parravani to the LBH in connection with the payment of Housing Benefit in a letter written from 85A Whitchurch Lane. This states that he wished to appeal against a recently imposed Housing Benefit restriction of £61.68 per week given that he was currently paying 69.24 per week which he considered to be a reasonable rent and very good value for such a bungalow as he was then occupying. Mr Parravani had ceased to be a tenant of Mrs Goremsandu on 31 December 2001 but there was evidence that he remained in occupation of the house in a different capacity until sometime in 2005 when he vacated the house. This was provided by Mr Parravani in this letter when providing details of the bungalow which he was occupying. These details were of the bungalow as a whole. Thus, this evidence suggests that Mr Parravani was a sub-tenant or licensee of the three tenants following the change of tenants from the group of four to the group of three and that his changed status had been accepted as such by Mrs Goremsandu. His sub-tenancy or licence clearly extended to the whole of the house and any payment that he made as rent was made in reduction of the three tenants' liability to pay Mrs Goremsandu £1,200 per month. Thus, his tenancy or licence did not relate to part only of the bungalow and his rent payment to the three tenants, or to Mrs Goremsandu on their behalf clearly related to the house as a whole. It follows that this letter is not evidence of the house being an HMO at any time during which Mr Parravani occupied it after 31 December 2001.

14. The second letter referred to was written by Mrs Goremsandu and was addressed to "Whom it may concern" and a copy this letter was sent to the LBH on 18 December 2005. It read:

> "This letter is to confirm that Peter Fletcher remains a tenant at the below address and continues to pay "£300 rent per calendar month to myself. There has been no break in the tenancy since 1999 including from 3 September 2005 until the present date. Other permanent tenants include Kieran Herrity and Abe Abraham who still live at the property and have done so since 1999. Gary Parravani left the property on 10 October 2005."

15. That letter confirms that Mr Fletcher, Mr Herrity and Mr Abraham were tenants pursuant to a tenancy which had been in existence since 1999. They were, in other words, joint tenants under a single tenancy agreement. As is common with a group of single joint tenants, each appears to have entered into an arrangement with Mrs Goremsandu, their landlord, to pay her directly their "share" of the rent. However, the formal tenancy was to be found in the tenancy agreement, which provided for a single rent per month for the bungalow of £1,200 which each of the three joint tenants was jointly and severally liable for. Thus, the payment of £300 per month referred to was a payment that related to Mr Fletcher's entitlement to occupy the entire bungalow.

16. The conclusion to be drawn is that each tenant was responsible, at least in the first instance, for a separate rent charge in respect of the appeal house but, given the definition of an HMO, that did not make the house a multiple occupation dwelling since the rent charge related to the tenancy and joint occupation of the whole of the bungalow including the conservatory.

17. "(2) … the plans of the appeal dwelling indicate that both the conservatory and subsequent extension of the house were capable of occupation along with the rest of the house. However, the Tribunal notes that the appellant restricted access to this part of the dwelling, that she did not allow the tenants to use the extension area and the conservatory area before that was constructed as part of their occupation of the subject property."

18. This finding relates to the conservatory and the rear extension. It is a confused finding because the first sentence refers to the "subsequent extension of the house" whereas the second sentence refers to the appellant restricting access to use the "extension area" and the "conservatory area before that was constructed". It is clear, however, that the Valuation Tribunal was referring to the restriction on the tenants' access to the conservatory throughout their tenancy that the finding states was imposed by Mrs Goremsandu and to the additional restriction on their access to the extension once it had been constructed.

19. It also appears from this finding that the Valuation Tribunal were erroneously concluding that Mrs Goremsandu had restricted access to the extension area for an appreciable period of time and that both areas had been used by Mrs Goremsandu to store her furniture. It is clear from Mrs Goremsandu's evidence to the Valuation Tribunal, supported by the evidence of each of the three tenants that the construction of the extension was only completed when, or only a few days before, the three tenants vacated the bungalow on 1 February 2008. Mrs Goremsandu's evidence was recorded as part of the LBH's case which repeated the information that she had given to the LBH on 20 February 2008 to the effect that she had completed a two room rear extension on 15 January 2008. This date was accepted by the LBH at the hearing of this appeal as being the date that the extension was completed. The error made by the Valuation Tribunal arose because the presenting officer, in opening the LBH's case, stated that the completion date had been 15 January 2002, repeating an error made in a Customer Counter Receipt by the note-taker when noting a discussion between Mrs Goremsandu and an Enquiry Counter clerk in February 2008. Thus, there is only minimal evidential value to be drawn from the fact that Mrs Goremsandu first occupied the newly completed extension on 15 January 2008 since the tenants moved out on 1 February 2008.

20. The crucial finding was that Mrs Goremsandu restricted access to, and did not allow the tenants to use, the conservatory. The Valuation Tribunal then found that, in consequence, the tenants only had a licence to occupy part of the dwelling. This finding was based on the evidence of the three tenants set out in written form. Although this was not expressly referred to, the Valuation Tribunal must have rejected the evidence of Mrs Goremsandu. The decision recorded her evidence as being that the conservatory area was used for the storage of her property. It was not a living space but merely contained decorative plants. Mrs Goremsandu also gave evidence that the three tenants were occupying the property pursuant to the series of

tenancy agreements and that they were the named tenants in those agreements. The agreements covered the whole bungalow including the conservatory.

21. The three tenants' evidence may be summarised as follows:

(a) **Mr Herrity**. Mr Herrity, in a letter to the LBH dated 20 February 2009, stated that between January 2002 and the middle of 2007 he, Mr Fletcher and Mr Abraham had a joint tenancy agreement as one household. He personally collected the money to pay the bills including Council Tax and paid that tax to the LBH on time. He also stated:

> "I also wish to mention that we had access to all parts of the house including the back room which was used as a storage area. We could access the storage room via all internal doors which were unlocked."

The Valuation Tribunal dismissed this evidence because Mr Herrity, in using the expression "back room" did not detail specifically whether this was the conservatory area or some other part of the property. However, this is a wholly unreasonable conclusion to draw from the use of that expression. Mr Herrity had occupied the bungalow for many years during which time there was no extension attached to it since this had not been built during his period of occupancy. The bungalow, as is clear from other evidence before the Valuation Tribunal, comprised four bedrooms, a lounge, a large kitchen and two toilets with showers and a sauna. The conservatory was attached to the back of the bungalow and was not a living area but was used for plants. This is the only possible area that Mr Herrity could be referring to by his expression "back room", as is confirmed by the layout of the bungalow and his subsequent reference to "the storage room". It follows that this evidence, from the tenant who appears to have been responsible for the administration of the tenants' tenancy obligations, provides clear and firm support for Mrs Goremsandu's evidence.

(b) **Mr Abraham**. Mr Abraham, as recorded in a customer counter receipt dated 14 July 2008, stated that the conservatory was not accessible to the tenants because furniture was stored there and the conservatory was locked.

(c) **Mr Fletcher**. Mr Fletcher, as recorded in a note of a telephone conversation with him, stated that the conservatory was only used to store the landlord's belongings. It remained locked throughout the tenancy and the tenants had no access. He confirmed this evidence in answers given to a questionnaire emailed to him by the LBH on 13 May 2009 save that he added that the tenants had no access to the key to the conservatory.

22. This potentially conflicting evidence had to be considered along with the terms of the leases. These were in common form and were drafted as shorthold tenancies. The Landlord was stated to be Mrs Katia Goremsandu and the Tenants Mr Herity, Mr Abraham and Mr Fletcher. The house that was let was stated to be "85A Whitchurch Lane, Edgware, Middlesex, HA 6LN". The rent was stated to be "£1,200 per month renewable". The tenancy was a furnished tenancy and the agreement provided that the landlord agreed to let and the tenant agreed to take the property and contents for the

term and at the rent payable. The tenants were jointly liable for the entire rent so that if any tenant defaulted in paying Mrs Goremsandu his share of the overall rent, she could have claimed that part of the rent from either or both of the other tenants. The tenants were also required to leave the contents at the end of the tenancy in approximately the same places in which they were positioned at the commencement of the tenancy. These contents were those listed in the inventory. These terms were dismissed by the Valuation Tribunal as providing any indication of who occupied the property. The decision recorded their view that these terms did not, in this instance, provide definitive evidence of whether the subject property fell within the definition of an HMO set out in the relevant legislation. However, no explanation was given as to why the terms of the lease could be disregarded in this way and why it was open to the Valuation Tribunal to find that the tenants only had a licence to occupy part of the building.

23. The finding also recorded that Mrs Goremsandu restricted the tenants from using the conservatory. This finding is clearly correct in relation to the factual position whereby the tenants could not use the conservatory whilst it remained clogged with the furniture they had rented but did not wish to use and whilst it remain locked with no access to the key. However, there was no evidence that Mrs Goremsandu had imposed a variation of the terms of the tenancy agreements on the tenants or that she had unilaterally torn up those agreements and imposed a licence in different terms upon them. Thus, the factual description of the state of the conservatory had to be considered against the terms of the tenancy agreements. It was an error for the Valuation Tribunal to find, without explanation or evidence, that the storage of furniture in the conservatory had created a situation in which the tenancy agreements were discarded or rendered of no effect as a result or that these agreements had been replaced by licences to occupy the house less the conservatory.

24. (3) "… the tenants were liable to pay an individual rent charge for their occupation of the subject dwelling."

25. The three tenants were subject to a contractual liability to pay £1,200 per month to Mrs Goremsandu. Each had agreed with each other that they would pay a proportion of that sum and their respective sums were collected by Mr Herrity and forwarded by him to her. Mr Parravani's rent payment was, presumably paid in this way until he ceased to be a tenant whereupon he continued to occupy the entire house paying the same weekly or monthly figure in the same way as before. The only difference was that he was no longer a tenant of Mrs Goremsandu and was no longer directly liable to her for his payments since he no longer had a contractual relationship with her. Out of convenience, and presumably in agreement with the three tenants, he paid Mrs Goremsandu his "rent", presumably through Mr Herrity. This rent was the sum that he actually owed to the three tenants for his continued shared occupation of the whole house.

26. It follows that the individual rent charge paid each month by each tenant did not alter each tenant's status in the house. Each tenant occupied the entire house as did Mr Parravani until he moved out of the house sometime in 2005.

Discussion

27. Notwithstanding the Valuation Tribunal's conclusion that the three tenants were not tenants at all but were licensees of part of the house, the starting point in considering whether the house was an HMO during the period from 3 April 2002 until 18 February 2008 must be the series of shorthold tenancies in existence during all but the last six weeks of this period. The parties successively entered into six of these tenancies in identical terms in that period, they paid what they described as rent to Mrs Goremsandu and, in return for that rent, they were provided with exclusive occupancy of the entire bungalow including the conservatory and to exclusive use of all the furniture provided by Mrs Goremsandu and as described in the inventory. In fact, this arrangement had started in October 1999 and all that happened in January 2002 was that the original group of four tenants were replaced by the existing group less Mr Parravani who continued to occupy the entire bungalow and to pay "rent" as the sub-tenant or licensee of the three remaining tenants.

28. The evidence presented to the Valuation Tribunal shows that the furniture in the conservatory was made up of furniture provided at the outset of the first tenancy by Mrs Goremsandu to the tenants as part of their furnished tenancy. This furniture was of course owned by her. The furniture was not needed by the tenants so that it was stored in the conservatory which remained part of the house which had been demised to the tenants under the terms of their lease. The lease gave the tenants exclusive possession of the entire house including the conservatory. However, so much furniture was stored in the conservatory that no-one, including the tenants, could gain access into that area. The door into the conservatory was, or may have been, locked and the key was, or may have been inaccessible – the evidence is contradictory about this factual detail. However, the furniture was still being hired by the tenants as part of their furnished tenancy, they continued to have the right to use it or, if they could find other storage facilities for it, to store it elsewhere and use the conservatory as a conservatory rather than a storage area. If the conservatory was locked and they had no access to the key, they could at any time have called for the key in order to make use of any of the furniture or to relocate the furniture and use the conservatory.

29. This conclusion arising from an analysis of the facts as found in conjunction with the terms of the lease is confirmed by Mr Herity's evidence and it is consistent with a careful reading of the evidence of both Mr Abraham and Mr Fletcher. They stated that the conservatory was inaccessible and that it was full of Mrs Goremsandu's furniture, both of which statements are factually correct. They also stated that the conservatory door was locked with no apparent access to the key, which is possible. However, they were not asked, and expressed no opinion, as to whether they were still paying rent for the furniture and whether they could have insisted on using the furniture and, subject to clearing it, of using the conservatory. They never addressed the relationship between the demise and rent provided for by the tenancy agreements and their rights over the furniture and the conservatory since they were never asked about these matters.

30. These matters must, however, be considered as part of any consideration of the statutory provisions defining an HMO. The bungalow could only have been an HMO during the relevant period if one or other of these two statutory definitions applied:

(1) The bungalow was inhabited by a person who, or by two or more persons each of whom was a tenant of, or had a licence to occupy, part only of the dwelling; or

(2) The bungalow was inhabited by a person who had a licence to occupy it, but who was not liable (whether alone or jointly with other persons) to pay rent or a licence fee in respect of the dwelling as a whole.

31. The bungalow, including the conservatory, was occupied by the three tenants who, by the unvaried terms of their tenancy, were entitled to occupy the whole of the house including the conservatory. Thus, the first limb is not satisfied. The three tenants were also liable to pay rent in respect of the house as a whole, albeit that each paid a separate cheque for part of the rent. This was an arrangement of convenience which did not affect or diminish their overall liability for the rent in respect of the house as a whole. Thus the second limb is not satisfied.

32. The Valuation Tribunal found that Mr Parravani's occupancy created an HMO. Between 1 January 2003 and sometime in 2005, Mr Parravani was occupying the bungalow but not as a joint tenant of Mrs Goremsandu. He was however:

> "… currently paying £69.85 rent … for the bungalow and believe that this not only to be a reasonable rent but very good value for such a bungalow. … I enclose some details of the house …" (his letter to the LBH dated 30 March 2004).

Details of the bungalow are provided by him in the letter. Although these do not include the word "conservatory", the details he provided were not intended to be definitive (the letter says "some details" were enclosed). These details were, however, intended to detail the premises he was occupying and it is clear from that description that he was occupying the entire house and garden including the conservatory since it was an integral part of the house.

33. Thus, Mr Parravani was "inhabiting" the entire bungalow under either a sub-lease or a licence and was liable to pay either rent or a licence fee in respect of the dwelling as a whole. The fact that this was a different sum to that paid by any of the three tenants is immaterial. On his own admission, Mr Parravani was paying £69.85 in rent (or a licence fee) to enable him to occupy the entire house including the conservatory.

Error of law by the Valuation Tribunal

34. The Valuation Tribunal erred in law in not giving effect to the terms of the tenants' shorthold tenancies and in not applying the statutory definition of an HMO despite setting it out in their decision. In particular, they considered that individual rent charges gave rise to "multiple occupation", which is the wrong test to apply. The statutory test that they should have applied is whether the rent charges gave rise to a licence whereby they only occupied part only of the dwelling or whether they were paid in respect of part only of the dwelling. On analysis, the individual rent charges were all paid to allow each tenant to occupy the entire house, as provided for in the tenancy agreement, and each payment related to the occupation of the house as a whole.

35. The Valuation Tribunal also considered that the fact that Mrs Goremsandu's furniture was kept locked in the conservatory meant that the tenants did not occupy the conservatory. That factual finding was not sufficient since the statutory test that had to be applied was concerned with whether the tenant was a "tenant of part only of the dwelling". The tenants remained tenants of the conservatory even if factually they were unable to use or readily gain access to the conservatory. The only items of furniture that the conservatory was storing were items that the tenants were paying rent for and since the terms of the tenancy had not been varied, they were in law entitled to call for the key at any time and, if they chose to do so, to exclude Mrs Goremsandu from the conservatory and also to exclude her furniture from that area so long as they stored or used the furniture in another location. They were, therefore, tenants of the whole dwelling that included the conservatory.

Conclusion

36. The appeal will be allowed. Mrs Goremsandu is entitled to the following declarations:

    (1) 85A Whitchurch Lane, HA8 6LN was not a House in Multiple Occupation between 3rd April 2002 until 18th February 2008 for the purposes of regulation 2 of SI 1992 No. 551; and

    (2) Mrs Goremsandu is not liable for Council Tax for that house between those dates and is entitled to be repaid by the defendant all sums paid by her for or on account of such Council Tax liability and any bailiff's fees or other charges or disbursements referable to such Council Tax with interest at 6% from the date(s) of payment until repayment.

37. The LBH did not establish that the house was an HMO from 15 January 2008 until 1 February 2008, the period of a potential overlap between Mrs Goresmandu's occupation of the new extension and the departure of the three tenants. The evidence was equally consistent with Mrs Goremsandu moving her belongings into the new extension in that period and not actually occupying it. Thus, this period is to be treated in the same way as the other periods in question. Since the LBH has wrongfully claimed and been wrongfully paid Council Tax payments and related charges, it must repay the sums wrongfully paid and may not simply set these sums against future or unpaid Council Tax liabilities. The LBH should also pay interest at the judgment rate of 6% from the dates of the individual wrongfully demanded payments until the date of repayment.

38. The parties should attempt to agree the terms of the order to give effect to this judgment. Mrs Goremsandu is entitled to the relatively small sum in costs that she is entitled to as a successful litigant in person which should be agreed or summarily assessed when the judgment is handed down in open court. If the terms of the order can be agreed, the attendance of the parties at the handing down of this judgment is excused unless either party wishes to attend. Attendance will be necessary if the terms of the order cannot be agreed.