

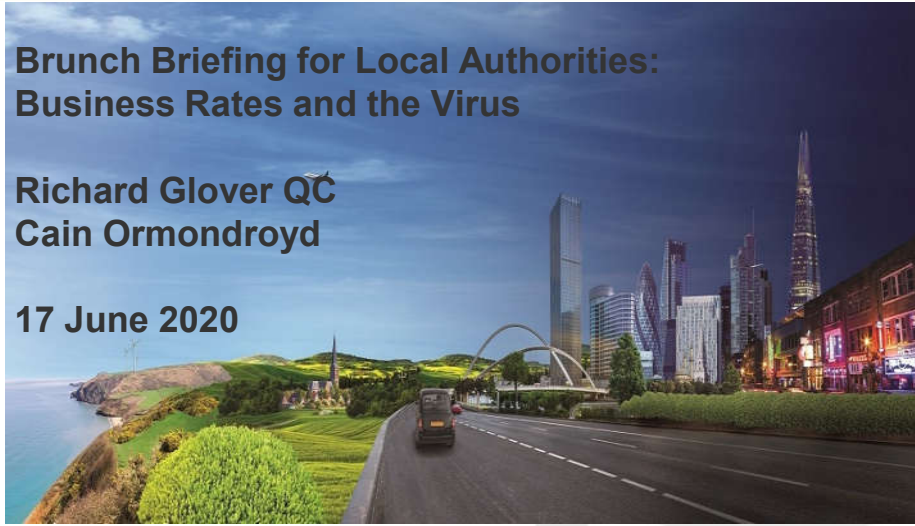


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## Brunch Briefing for Local Authorities: Business Rates and the Virus

Richard Glover QC  
Cain Ormondroyd

17 June 2020



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## Parish Notices

- The Technology
- FTB on-line: the webinar programme
- FTB on-line: brunch briefings



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## Unoccupied premises

Some relevant principles:

- Intention to re-occupy is insufficient: *Associated Cinema Properties v Hampstead* [1944] KB 49 and 414;
- Stored items may give rise to occupation: *Southend-on-Sea Corp v White* (1900) 65 JP 7



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## Unoccupied premises

### Statutory disregard

- LGFA 1988, s65(5)
- Disregard plant, machinery or equipment—
  - (a) used in or on hereditament when last in use, or
  - (b) intended for use in or on hereditament.
- Apply 'but for' test: *Sheafbank v Sheffield* [1988] RA 33
- Scope – includes furniture? (ibid., p41-42)

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## Exemption for unoccupied premises

- (c) owner prohibited by law from occupying/allowing ocpr;
- (d) kept vacant by reason of action taken by or on behalf of the Crown or any local or public authority with a view to prohibiting the occupation of the hereditament

Occupation not prohibited where an alternative use is allowed: *Hailbury Investments Ltd v Westminster* [1986] 1 WLR 1232

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## Exemption for unoccupied premises

- Provisions sufficiently stringent to prohibit occupation directly or by necessary implication
- Query whether relief applicable given
  - Potential for alternative uses
  - Specific exemptions (e.g. for broadcasting from closed theatres; use of hotels for homeless accommodation)

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## Reliefs & Grants - England

### Reliefs

- Expanded retail discount
- Nursery discount

### Grants

- Small business grant fund
- Hospitality & leisure grant fund
- LA Discretionary grant fund

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## Relief - England

- No new legislation
- BA (not Govt) to grant relief – s. 47 LGFA 1988
- Reimbursement grant – s. 31 LGA 2003
- 100% discount for 2020/21
- No rateable value limit on the relief



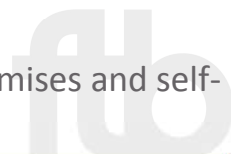
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## Relief – England: Criteria

- **Occupied** by providers on Ofsted's Early Years Register and **wholly or mainly used** for the provision of the Early Years Foundation Stage
- **Occupied** and **wholly or mainly used**
  - a. as shops, restaurants, cafes, drinking establishments, cinemas and live music venues,
  - b. for assembly and leisure; or
  - c. as hotels, guest & boarding premises and self-catering accommodation



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## Grants – small business

- £10,000
- Allied to Small Business Rates Relief (SBRR) or Rural Rates Relief Scheme (RRR)

### SBRR

- S. 43(4B)(a) LGFA 1988 applied **on 11/03/20**
- Value of E in *Non-Domestic Rating (Reliefs, Thresholds and Amendment)(England) Order 2017* > 1
- Business not in liquidation

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## Grants – small business: SBRR

### S. 43(4B)(a)

- Occupied
- Prescribed condition – rateable value < £51,000

### E > 1

- rateable value < £15,000
- Rp occupies only one hereditament

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## Grants – small business: RRR

- S. 43(6B) LGFA 1988 applied **on 11/03/20**
  - Identified settlement
  - Rateable value limits
  - Particular classes of hereditament
  - Only one in the settlement
- One grant per hereditament



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## Grants – hospitality & leisure

- Rateable value < £51,000,
- Would, on 11/3/20, have been eligible for Expanded Retail Discount Rates Relief (had it been in force)
- Not in receipt of SBF grant (see above)
- Not occupied for personal use
- Business not in liquidation
- Not car parks or parking spaces
- One grant per hereditament



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## Rating List Changes - FAQ

Any changes to the rating list after 11 March 2020, including changes which have been backdated to this date, should be ignored for the purposes of eligibility.

However, in cases where it was factually clear to the Local Authority on 11 March 2020 that the rating list was inaccurate on that date, Local Authorities may withhold or award the grant based on eligibility had the list been accurate. This discretion is only intended to prevent clear errors. Any decisions made after 11 March 2020 should not affect eligibility

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## Local Authority Discretionary Grants Fund

- Additional 5% of funding allocation
- Recipient not receiving other covid-related grant
- Primarily aimed at small businesses that have fallen through the other scheme's nets – eg office sharers, market traders. B&Bs that pay council tax
- Local knowledge, local discretion

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## Risks to authorities

- Relief is 'discretionary' but funded
- Grant of relief outside guidance may not be funded
- Cost of grant "in line with eligibility criteria" will be reimbursed
- Pressure to provide relief/grant quickly



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## Risks to authorities: State Aid requirements

- Compliance with State Aid requirements a condition of grant schemes
- General view of Govt and Cmn payments are State Aid
- For LA to decide whether grants are State Aid in particular case: may depend on recipient/activity
- If so, must not exceed *de minimis* (200k EUR/3 years) or temporary framework (800k EUR if not an 'undertaking in difficulty') limits



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## Risks to authorities: State Aid requirements

- LA will not know what other State Aid recipient has had
- Recipient to make declaration
- What if aid granted but no declaration given?
- No right to recover from Govt
- Query whether a right to recover from recipient in England (cf *AG for Scotland v John Gunn and Sons* [2018] CSOH 39 at [60])
- But Commission may theoretically direct recovery

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## Courts and Tribunals in Lockdown: VTE

- VTE hearings until 30.6.20 postponed
- No indication what will happen afterwards
- No amendment yet to VTE (Procedure) Regs 2009
- VTE required to avoid delay and seek flexibility: reg 3
- Certain appeals (mainly involving LA) being dealt with on papers, but only by consent

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## Courts and Tribunals in Lockdown: the UT

- Amendments to Tribunals Courts and Enforcement Act 2007 s29ZA allow broadcast of video proceedings
- Amendments to Tribunal Procedure (UT)(LC) Rules 2010 expands scope for private hearings and recording
- General pilot [practice direction](#) for six months from Mar
- UT [guidance](#)
- UT is clearly 'lockdown ready' with expectation that cases (save for highly complex ones) will proceed

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## Courts and Tribunals in Lockdown: the Mags Ct

- [Guidance](#) on criminal jurisdiction stresses:
  - need for flexibility but trials likely in person
  - listing a judicial function on case-by-case basis
  - priority to custody/sensitive cases
- Contested rating matters therefore a low priority
- Practice appears variable and ad hoc

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## The Tribunal in Lockdown

Some tips for remote hearings:

- Preparation – check technology
- Bundling and document control
- Consider multiple screens and a separate keyboard
- Establish a second means of communication for the team
- Brevity is a virtue



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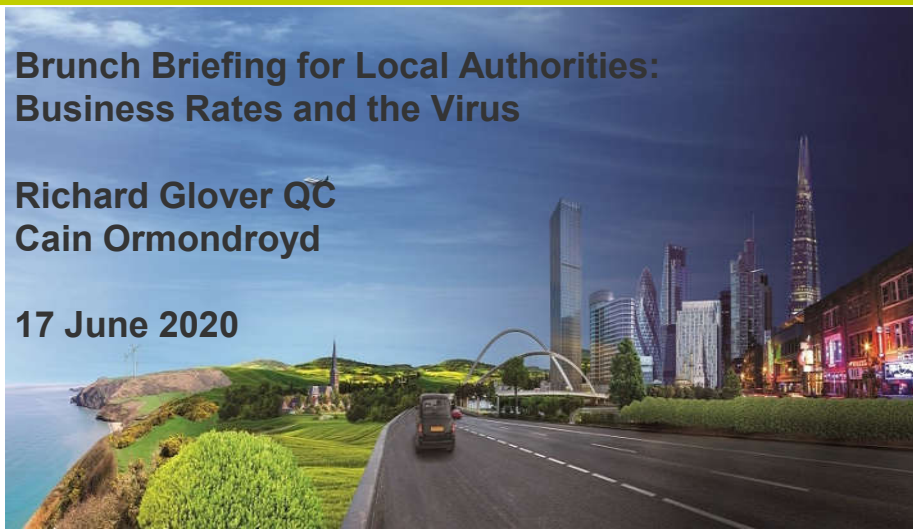


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