NORTHERN IRELAND VALUATION TRIBUNAL
THE RATES (NORTHERN IRELAND) ORDER 1977 (AS AMENDED) AND THE VALUATION TRIBUNAL RULES (NORTHERN IRELAND) 2007

CASE REFERENCE NUMBER: 26/19

EB19 - APPELLANT
AND
DEPARTMENT OF FINANCE - RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr James Leonard, President

Members: Mr H McCormick MRICS and Dr P Wardlow.

Belfast, 7 December 2020

DECISION

The unanimous decision of the tribunal is that the appeal is not successful for the reasons provided below and the appeal is accordingly dismissed by the tribunal.

REASONS

Introduction

1. This is a reference under Article 12B of the Rates (Northern Ireland) Order 1977, as amended ("the 1977 Order"). In view of the nature of this appeal the tribunal has sought to redact the identity of the appellant (who is hereinafter referred to as “EB19” or “the appellant”) and also identifying details of the hereditament under consideration. The appellant, EB19, after having initially requested in his Form of Appeal an oral hearing, subsequently confirmed that he was content for his appeal to be determined without a hearing and on the basis of the documentary evidence placed before the tribunal. There was no objection to this course by the Department of Finance (“the Department”) as respondent. The appellant appealed against the outcome of a review of a decision of the Department that the appellant was not entitled to claim Disabled Persons’ Allowance (“DPA”).

The Law

2. The relevant statutory provisions are to be found in the 1977 Order. Article 31A (12B) of the 1977 Order was inserted by Article 17(8) of the Rates (Amendment) (Northern Ireland) Order 2006 (“the 2006 Order”). Article 31A (12B) enables a person to appeal to the Northern Ireland Valuation Tribunal against the result of a review by the Department (the respondent to this appeal) of a decision that a person is not entitled to a rate rebate for a premises with a special facility for a person with a disability. This is referred to as Disabled Person's Allowance ("DPA").

3. As it is agreed in this case, as confirmed expressly in writing on behalf of the Department, that the appellant who resides in the premises under discussion meets the relevant criterion as being a person who has a disability, the tribunal's essential focus is upon the premises and the tribunal is accordingly not required to address the statutory provisions regarding whether the appellant has or has not a qualifying disability, nor is residence an issue, save to confirm that these statutory criteria have been met by the appellant. There is, however, a necessity for the purposes of this decision to provide a little detail concerning the nature and extent of the appellant's qualifying disability as this has some relevance to the arguments advanced by the appellant in the appeal.

4. Article 17 of the 2006 Order (amending the 1977 Order) provides for rate rebates for certain hereditaments with special facilities for persons with a disability. Article 17 insofar as material to this appeal provides—

" (2) This Article applies to—

(a) a hereditament in which there is a facility which is required for meeting the needs of a person who resides in the hereditament and has a disability, including a facility of either of the following descriptions—

(i) a room, other than a kitchen, bathroom or lavatory, which is wholly or mainly used (whether for providing therapy or for other purposes) by such a person;or

(ii) an additional kitchen, bathroom or lavatory; and

(b) a hereditament in which there is sufficient floor space to permit the use of a wheelchair used by and required for meeting the needs of a person who resides in the hereditament and has a disability.

(3) In paragraph (2)—

(a) …..

(b) subject to paragraph (3A), references to a facility or a wheelchair being required for meeting the needs of a person who has a disability are references to its being essential or of major importance to that person's well-being by reason of the nature and extent of the disability.

(3A) a wheelchair is not required from meeting a person's needs if he does not need to use it within the living accommodation comprising or included in the hereditament."

Article 17 further provides that any person who is aggrieved by a decision of the Department may apply to the Department for a review by the Department of its decision and if that person is dissatisfied with the result of the review, they may appeal to the Northern Ireland Valuation Tribunal.

The Evidence

5. Part of the evidence in the case is non-contentious and is clearly agreed between the appellant and the respondent Department. However, there are a number of discrete issues were there exists a conflict in regard to the evidence between the appellant and that of the Department's officials, as is clear from the papers. The Tribunal shall first detail some of the facts emerging from the less contentious evidence and then address the Tribunal's determination, as necessary, of the facts concerning those elements of the evidence which are rather more contentious.

6. The tribunal first noted matters introduced into documentary evidence by the appellant, EB19. Such evidence included copies of a number of medical and other reports. Further and specific details of these shall, as necessary, be mentioned below. However, in brief these included a Clinical Psychology Report prepared by Dr Michael C Paterson OBE dated 18 September 2013, a Medical (Psychiatric) Report prepared by Dr Paul W Miller, Consultant Psychiatrist, dated 12 October 2016, a report dated 24 April 2018 from Angela McLaughlin, Cognitive Behavioural Therapist, a report dated 23 October 2019 from Dr E Murphy of Corran Surgery, Larne, County Antrim (which had attached to it a copy of the foregoing report from the Cognitive Behavioural Therapist, Angela McLaughlin), copy of an email dated 14 May 2020 from Velma Irvine, an Outreach Case Worker of WAVE Trauma Centre, Ballymoney, County Antrim, copy of a letter dated 9 June 2020 from a Team Leader of Lifeline (a Regional Suicide Prevention Helpline Service, identified by signature as Julie Quail), and copy of a report dated 23 June 2020 from Dr Volodmir Bezulowsky MD, Associate Specialist Psychiatrist/Consultant EMDR Europe Therapist (with associated letter from Dr M Hopkins of Corran Surgery, Larne, County Antrim). Also included was a body of literature concerning the topic of "mindfulness" including that from organisations called "mindful.org", "calmmoment.com" and "verywellmind.com".

7. The corresponding documentary evidence submitted on behalf of the respondent Department included that from Mr Damien Campbell, an official from Application Based Rate Reliefs of the Department. Matters introduced into evidence also related to the Department's officials Mrs Angela Devlin, Ms Cushla Braniff, Mr Mark McKenna and Mr Thomas Scallan. There was a Presentation of Evidence from the Department which included a timeline of relevant events and which contained matters of evidence on behalf of the Department. The tribunal also had before it a copy of the appellant's application for DPA dated 14 June 2019, some documentation regarding the appellant's entitlement to Disability Living Allowance from November 2012 onwards, Mr Thomas Scallan's property assessment dated 18 September 2019 (declining the appellant's application) and correspondence between the Department and the appellant dated 20 September 2019 confirming that the appellant's application for DPA had been unsuccessful. A copy of the assessment on review by Mr Damien Campbell dated 30 October 2019 was also provided and a copy of correspondence dated 12 of November 2019 from the Department confirming the outcome of the appellant's application for a review, to the effect that the decision remained unchanged. The respondent Department also provided a copy of a Council Tax Liability appeal case dated 18 January 2017 from the Valuation Tribunal for England, Appeal Number: 0540M191153/037C which determination it was submitted on behalf of the Department had relevance to this appeal. The

tribunal also had sight of various items of correspondence between the Office of the Tribunal and the appellant and respondent and copies of some photographic evidence introduced by the appellant, together with written submissions on behalf of both parties to the appeal. All of this documentary evidence was carefully considered by the tribunal. If any items of documentation submitted by the parties are not expressly referred to, or if any part of the contents of such items of documentation is not alluded to in this decision, it is not to be taken that any such was disregarded by the tribunal in reaching a determination in the case. Accordingly, a considerable volume of documentary information and evidence was placed by the appellant before the tribunal for consideration; all of that has been fully considered.

8. There is no doubt, in summary, that the appellant has had a regrettably lengthy and complex medical history attributable to work-related and occupational matters, as a result of which he has been diagnosed by a number of medical practitioners with Post Traumatic Stress Disorder ("PTSD"). It is unnecessary for the tribunal to reference the nature of the appellant's former occupation and how this PTSD arose in this determination. None of this latter is in any doubt. These matters are fully accepted by the respondent Department, without issue. On account of the foregoing, the respondent Department accepts that the appellant has a qualifying disability for the purpose of the statutory provisions which are now under consideration in this appeal. For this reason, a large part of the medical and other evidence provided did not need to be considered in detail by the tribunal. However there were some discrete issues which did require detailed consideration by the tribunal in the task of applying the relevant law to the facts. It is therefore appropriate that the Tribunal confines the factual determination set out below only to those matters of direct relevance to the legal regime provided under the statutory provisions now considered.

The Facts and some Contentions in Regard to the Facts

9. On the basis of the evidence and information, the tribunal determined, upon balance of probabilities, the following material facts. The tribunal also mentions below some of the arguments made in regard to matters of fact. The hereditament under discussion consists of a single-storey dwellinghouse situated at [***address redacted by tribunal***] County Antrim ("the premises"). The appellant is the ratepayer and he is the sole resident of the premises. As mentioned, he has a qualifying disability. There have been no external physical adaptations made to the premises. Internally, the premises consists of the following accommodation: kitchen/dining room, three "bedrooms" (one of which consists of the room specifically under discussion in this case), one bathroom and two reception rooms. It is contended on behalf of the Department (apparently uncontroverted) that these latter two reception rooms could not be accessed at the time of inspection due to the storage of materials and the appellant accordingly does not dispute this. So these two reception rooms are used for storage only. These may be discounted for consideration of use in any other manner by the appellant. Regarding the third "bedroom" specifically alluded to above, the focus of the tribunal must be specifically upon this room. For ease of reference, this shall be referred to as "the subject room". Much of the evidence and the arguments in this case thus relate to the subject room.

The Appellant's Contentions regarding the Subject Room

10. The appellant contends that the subject room fulfils the necessary criterion set forth in Article 17 (2) (a) (i) of the 2006 Order. He thus argues that there is evidence of the necessary elements, as follows: firstly, "*a hereditament in which there is a facility which is required for meeting the needs of a person who resides in the hereditament and has a disability*…" and, secondly, "a *room, other than a kitchen, bathroom or lavatory, which is wholly or mainly used (whether for providing therapy or for other purposes) by such a person*….". In regard to this argument, the facts appear to suggest that the subject room is not "*a kitchen, bathroom or lavatory"* and so the "*other than"* requirement seems to be attained, in this instance.

11. The following two qualifying elements therefore need a factual and legal determination: (1) firstly, whether there is a*, "facility which is required for meeting the needs of a person who resides in the hereditament and has a disability"* and, (2) secondly, whether the subject room is, "*wholly or mainly used (whether for providing therapy or for other purposes) by such a person" (*as the appellant). As a matter of relevant fact, the appellant has, incontrovertibly, a qualifying disability and, furthermore, the appellant resides in the hereditament in which the subject room exists. The tribunal shall return to the "requirement" issue below. The tribunal must determine the issue of whether the subject room is wholly or mainly used (whether for providing therapy or for other purposes) by the appellant. These are central issues of contention between the appellant and the respondent Department and require to be resolved, both in fact and in law, by the tribunal.

12. From the appellant's perspective, he contends that the subject room has been set aside or specifically designated as a room used by him for "Mindfulness and general relaxation techniques". He states that he practices these daily, as advised by his counsellor, Angela McLaughlin. This is stated in an email dated 9 June 2020 sent by the appellant to the tribunal Secretary. Attached to this email are six coloured photographs. These photographs are, firstly, a photograph of what appears to be a door (presumably, in context, the outside of the door leading into this subject room) upon door is a sign stating, "DO NOT DISTURB". The second photograph is of a number of books which appear to be on the subject of "mindfulness" and also what appears to be an electronic device, possibly a portable CD player. The third photograph is of an armchair located inside a window and, on the floor, some books and a small standard lamp upon which appears to be hanging a set of headphones. There also seems to be a small electric heater in the room. In the fourth photograph can be observed these latter together with what seems to be a folded rug on the floor and a large cardboard box upon which sits a wooden box. This box appears to have a Perspex or frosted glass front. The tribunal believes this to be a light box. On this sits two candles in glass jars. The fifth photograph shows substantially the same view from a slightly different angle. Again, one can observe the cardboard box, the lightbox and also a tall potted plant, like an ornamental tree with a variegated leaf pattern and which appears to be approximately 1½ m in height. The final photograph shows from a different angle the arm of the armchair, the small standard lamp with a set of headphones and the books on the floor below that. There do not appear to be any other things of note contained within this room save for a framed picture or print on the wall, the subject matter of which is not clearly identifiable. The appellant's evidence is that there is a light box in this room which he uses to deal with "SAD" (seasonal affective disorder) and that the electronic device visible in the photographs is a CD player which he uses to listen to mindfulness and relaxation recordings. There is no television set apparent in the subject room and indeed the appellant's

evidence is that he did have a television set in his bedroom but that he had ceased to watch television and indeed had taken recent steps to cancel his television licence.

The Respondent's Contentions regarding the Subject Room

13. From the respondent Department the evidence and consequent submission was that the subject premises were visited and inspected on two occasions by Departmental officials. The first of these occasions was when a home visit was carried out by Mr Scallon on 18 September 2019. From Mr Scallon's report completed on that date, Mr Scallon has identified the issue of whether a room, other than a kitchen, bathroom or lavatory is or is not wholly or mainly used by the person with a disability and has assessed this room as not meeting the statutory requirements. Mr Scallon has noted the appellant's contention made at the time that the appellant uses the room for mindfulness therapy, that he sits on a chair and uses headphones. Mr Scallon has noted, "*books/music/calm room*", but after that observation he has noted "(*other stuff in room – Xmas trees, guitar, clothes*)". Mr Scallon's assessment was accordingly confirmed in a letter of 20 September 2019 to the appellant is that the premises did not have any of the qualifying facilities.

14. The Department's Presentation of Evidence records a telephone conversation between the appellant and the Department's Ms Devlin stating that Ms Devlin had spoken with the appellant on 26 September 2019. It was recorded that other items were being stored in the room. The appellant had agreed that there were Christmas items, a guitar and clothes in the room. Ms Devlin had informed the appellant that the Department would class this as storing items which meant that the room was not being used solely for the purpose of the disability and, further, it was recorded that the appellant accepted this. The appellant is also recorded as having said to Ms Devlin that he would remove items from the room and that he would request a review.

15. A review assessment visit was then conducted by Mr Campbell, accompanied by Ms Braniff, on 30 October 2019. The assessment report completed by Mr Campbell and signed by him and dated 30 October 2019, in the copy seen by the tribunal, has not had completed any of the appropriate tick-boxes in the pro-forma. However, the following have been noted: "*PTSD - Therapy Room - lightbox in room – chair. Bedroom Bathroom Kitchen + Therapy room on the ground floor – 2 other rooms not used as full of stuff*." Mr Campbell has also noted what appears to be a contemporaneous representation made by the appellant to him as follows, "*therapist advised to have a room as a safe place therefore therapy room needed*". In respect of this room (the subject room) Mr Campbell has then added a further note, "*Girlfriends "wee boy" uses room also when visits* - ". The outcome of this review visit was confirmed in a letter to the appellant dated 12 November 2019 determining that the original decision should remain unchanged. The appellant was advised of his entitlement to appeal to the tribunal.

16. There is a matter of contention which arises from the foregoing review assessment visit. Both Mr Campbell and also Ms Braniff in the documentary evidence available to the tribunal make the case that the appellant, on the occasion of this review visit, clearly stated that his (now former) girlfriend's "wee boy" used the subject room. The assertion was made by the appellant to Ms Devlin in a telephone conversation of 5 December 2019 that Mr Campbell in this review visit was "stand offish" and not

interested in the appellant's circumstances, that Mr Campbell did not enter the room and that he was in the hall at all times. In that conversation the appellant raised with Ms Devlin what he alleged to be a "lie" on the part of Mr Campbell to the effect that the appellant had stated that his girlfriend's "wee boy" would use the room when he came around. The appellant asserted that this child knew not to use the room. After this telephone call had concluded, the documentation records that Ms Devlin spoke with Ms Braniff, the latter confirming that Mr Campbell had stood in the doorway to the subject room from where, Ms Braniff states, he would have had full sight of the room from his position. It is further recorded that Ms Braniff informed Ms Devlin that the appellant did say that his girlfriend's son used the room and that she clearly remembered this as she was aware that, because of that comment, the Department could not make the award. Accordingly, the recording of Ms Braniff's evidence is quite specific in that respect. It corroborates the version provided by Mr Campbell that the appellant did say to the two officials that the child did use the room. However, this is vehemently denied by the appellant. He describes it as being a "lie". However, absent from the evidence is any information as to the extent or frequency of such visits to the premises by the girlfriend and her son nor indeed the precise circumstances of any visits. The tribunal shall, as necessary, resolve the foregoing conflict in evidence in the determination set out below.

17. Any available evidence indicates that the appellant had, on account of issues alluded to in the medical evidence, become something of a recluse, going out seldom and then only on occasions when he did not come into contact with members of the public and he tended to avoid crowded places. The uncontroverted evidence is that he spent a considerable part of the day within the premises. He used only in any daily activities the subject room, one bedroom, one kitchen and one bathroom. The appellant describes difficulty in sleeping. He spent time in his bedroom watching television. However, he indicates that he had more recently ceased watching television and has now taken steps to cancel his television licence.

18. Regrettably, the tribunal has been provided with little evidence or information concerning precisely how the appellant spends every day and in which locations within the premises. He would endeavour to have the trivial accept in this appeal that his use of the subject room is restricted to those particular activities specifically connected with mindfulness and relaxation techniques. The tribunal does not believe that the appellant is endeavouring to suggest to the tribunal that he engages in no activities routinely during the course of the day, other than those mindfulness and relaxation exercises. For that reason, the question must arise: how and in what location within the premises does the appellant spend the remainder of this time when he is not sleeping in the bedroom and engaged in other purely domestic activities, such as preparation of food and personal care? There is a regrettable dearth of information and evidence in respect of this. Again, the tribunal notes that most of the appellant's day is spent within the premises. This evidential deficit presents a difficulty for the tribunal which shall be further alluded to below.

The Submissions of the Parties to this Appeal

19. For the respondent Department, the case is made in the Presentation of Evidence and also from subsequent correspondence responding to submissions made on behalf of the appellant, that the appellant has confined his case to the statutory provisions of Article 17 (2) (a) (i) of the 2006 Order, as outlined above. The only issue for the Department is whether or not the subject room falls within the ambit of those statutory provisions. The Department contends that it does not do so for the

reasons indicated. These reasons include any evidence stemming from an admission made by the appellant to the two departmental review assessors that the appellant's girlfriend's young son used the room when visiting. Much has been made of this stated concession by the Department. However, this is strongly disputed by the appellant.

20. After the first assessment visit the appellant seems to have taken steps to remove some items, leaving the contents of the room as mentioned above. Whilst the Department does not dispute that the subject room is used for mindfulness and relaxation exercises, the Department's argument is that there are no specific adaptations made to the room nor is a room used solely for the indicated purposes. Further, whilst the appellant has contended that the stated use of the subject room follows medical advice, there is been no conclusive medical evidence submitted supporting this. For example the report from the General Practitioner (the report dated 23 October 2019 from Dr Murphy) merely recounts that the appellant has told the reporting doctor that he uses the subject room for therapy. In submissions, the Department relies on the English Council Tax Liability appeal case dated 18 January 2017, a decision of the Valuation Tribunal for England, Appeal Number: 0540M191153/037C. It is argued that this case has considerable relevance to this appeal.

21. In that case, the Valuation Tribunal for England ("VTE") notwithstanding addressing issues of Council Tax Liability, was dealing with the interpretation of statutory provisions which are framed in similar terms to the Northern Ireland provisions with which this tribunal is concerned. The case is made that this tribunal's interpretation should follow VTE's interpretation of equivalent provisions. It is perhaps worth mentioning, very briefly, some of the points emerging from that VTE case. The appellant in that case indicated that a room in the relevant property was needed as a "chillout room" when anxiety, depression and panic attacks occurred. Additionally, it was a place of rest when peace and quiet were needed, for medical reasons. The equivalent statutory provisions considered by the VTE were the Council Tax (Reductions for Disabilities) Regulations 1992 and the equivalent provision under scrutiny by the VTE was framed in these terms:

"(*i) a room which is not the bathroom, a kitchen or a lavatory and which is predominantly used (whether for providing therapy or otherwise) by and is required for meeting the needs of any qualifying individual resident in the dwelling;…*".

The VTE correctly identified the need for proper interpretation of those words. The VTE sought guidance from the decision in ***Howell Williams v Wirral Borough Council [1981] 79 L.G.R. 697 CA*** and cited various passages from that determination including the following:

"S*he needs the living room as such, merely in the way that anybody, whether disabled are not, needs a living room as part of ordinary life. She does not need the living room because of the nature and extent of her disability.*

"It cannot have been the intention of Parliament to grant a rebate merely because a living room is predominantly used by a disabled person; that is quite inconsistent with the language of the section. It seems to me that the user of the room must be related to the disability. Section 12 refers to both user and to the fact that the room must be required to meet the needs of the disabled person because of the disablement. The form of the paragraph is such that the two requirements are very closely related; that,

I think, is emphasised by the word "required"- the room must be required to meet the needs of the disabled person by reason of the disability."

Accordingly, in the English VTE decision of January 2017, the VTE determined that the subject dwelling had not been adapted from meeting the needs of the appellant and that no room was specifically set aside for the purpose of providing therapy etc. The predominant use of the living room and the bedroom remained as a living room and a bedroom. There must be a causative link between the disabled person and the need for a room or a facility which must be essential or of major importance to the disabled occupier. The rooms were a living room and a bedroom, as opposed to a room that was required to provide therapy or other treatments. It was therefore held in the VTE case that there was not a room which met the criteria.

22. In this case the appellant contends that the subject room does indeed meet the statutory criteria. He has invited the tribunal to consider all of the medical and other evidence. He has provided a considerable body of literature on the topic of mindfulness. He has submitted the photographic evidence. The appellant states, particularly identifying the Cognitive Behavioural Therapist, Angela McLaughlin, that he has received professional advice to use the subject room as a therapy room. However he has not particularly identified any part of the documentary evidence, including any report from the Therapist, Angela McLaughlin, expressly stating that advice. Nonetheless, in the email sent to the tribunal dated 9 June 2020, the appellant has stated, "*Please find attached photos of the room I use for Mindfulness and general relaxation techniques that I practice daily as advised by my counciler Anglea McLouglin*" (sic). The tribunal also notes the copy email dated 14 May 2020 as provided to the tribunal by the appellant from Velma Irvine, an Outreach Case Worker of WAVE Trauma Centre, which contains the following: "*Mr [B] practices at home daily therapy for his PTSD called mindfulness*". However, the tribunal notes that the appellant has not submitted anything to the tribunal supporting or recommending the provision of such techniques, professionally. This latter is to be contrasted with the evidence of a number of professionals who have recounted that the appellant has *informed* them that he does engage in such therapy and this is quite a different issue.

The Tribunal's Determination

23. The statutory regime applicable is relatively clear. It requires a determination of the relevant facts and the proper interpretation and application of the relevant statutory provisions. The following matters need a factual and legal determination: (1) firstly, whether there is evidence of a*, "…facility which is required for meeting the needs of a person who resides in the hereditament and has a disability"* and, (2) secondly, whether the subject room is, "…*wholly or mainly used (whether for providing therapy or for other purposes) by such a person" (*as the appellant). The first of these matters is not in doubt. The appellant has a qualifying disability. He resides in the hereditament in which the subject room exists.

24. The tribunal's determination of the outstanding matters, for the reasons stated below, is as follows:

With the relevant elements highlighted, if the appeal is to succeed the tribunal must be satisfied that there is a ***room*** (in this case "the subject room") ***wholly or mainly*** used whether for ***providing therapy or for other purposes*** by the appellant, being ***essential or of major importance to the appellant's well-being*** by reason of the

nature and extent of his disability. A "kitchen, bathroom or lavatory" is expressly excluded from this latter focus by Article 17 (2)(a)(i) by inclusion of the words "other than" in reference to the room in question.

25. The following Northern Ireland Court of Appeal case is of binding authority upon the tribunal. The case is ***The Department of Finance v Mary Quinn [2019] NICA 41,*** a judgement delivered by the Court of Appeal on 4 September 2019. In the Court's judgment, after having conducted a review of the evolution and history of the Northern Ireland statutory provisions and any connection with equivalent legislation in England and Wales, this (selected) part of paragraph 33 of the judgement of Stephens LJ delivered in the case on behalf of the Court is instructive:

> *[33] … to resolve the meaning of the word "including" in Article 31A(2)(a) it is permissible to look to the purpose of the legislation and its historical context. We accept that the fundamental purpose of Article 31A is to provide rate relief where a dwelling's rateable value is increased by the facility which is required for meeting the needs of a person who resides in the hereditament and who has a disability. …... In short the purpose of Article 31A is to provide a rate rebate which must be referable to rates incurred as a result of the requirement of a facility. Furthermore the mischief that the DPA was designed to remedy was additional space and facilities that result in a higher valuation. …. . However, we consider that the purpose would be undermined if any facility falling within the natural and ordinary meaning of the preceding words gave rise to the obligation to grant a rebate. If that was so then, for instance a grab rail in the hallway of a dwelling which had no impact on the rateable value but which was a facility which was required for meeting the needs of a person who resides in the hereditament and who has a disability, could give rise to the obligation to grant a rebate of 25%. That would not be in accordance with the purpose of the legislation but rather would undermine that purpose. We consider that an exhaustive meaning of the word "including" secures the legislative purpose*.

26. The case of ***The Department of Finance v Mary Quinn*** is binding upon this tribunal and is also of considerable assistance. This tribunal in its earlier decisions has followed the general guidance given in a number of legal authorities. As is clear from ***Quinn*** the purpose of the applicable law encompasses the notion of something additional to the norm. That is to be found in the proper interpretation of Article 17 of the 2006 Order as this amends the 1977 Order. In ***Howell Williams v Wirral Borough Council [1981] 79 LGR 697, CA,*** Fox LJ stated…, "*It cannot have been the intention of Parliament to grant a rebate merely because a room is predominantly used by a disabled person……It seems to me that the user of the room must relate to the disability*." The tribunal, further, notes the case of ***South Gloucestershire Council v Titley & Clothier [2006] EWHC 3117 (Admin)*** On the facts of that matter, Mr and Mrs Clothier were the parents of two Down's syndrome children, each of whom had a bedroom in the premises where he or she spent a great majority of time each day, alone. There was no physical adaptation made to the bedrooms. Mr and Mrs Clothier described each room as a "sanctuary". On appeal, the Court of Appeal in England (dealing with English statutory Council Tax provisions which are in the essential parts thereof expressed in broadly similar terms to the 1977 Order, as amended) observed that even if neither of Mr and Mrs Clothier's two children had

had any disability whatsoever but were still living in the same household as Mr and Mrs Clothier, each would have had their own bedroom anyway - neither bedroom was in any sense "additional". The Court of Appeal therein affirmed its earlier decision in ***Howell Williams***.

27. Here, after due consideration, the tribunal does not need to resolve the conflict between the appellant and Department about the issue of whether the appellant did or did not concede to the officials that his girlfriend's son used the subject room on visits, as the case can be determined without having to resolve this conflict. In any event the relevant circumstances, if any such are applicable, have not been clearly defined in evidence. More significant is the use of the premises and of the subject room within the premises by the appellant himself. In this regard the tribunal concludes as follows: Examining all of the evidence, the tribunal notes the absence of any evidence as to how the appellant spends his waking hours within the premises when he is not carrying out mindfulness or relaxation exercises. Such portion of time must, on the balance of probabilities, constitute a significant part of any normal day, as the tribunal understands that the appellant does not spend a large amount of time engaged in outside activities and he has no employment and it is highly improbable that the appellant spends his time doing nothing other than carrying out mindfulness or relaxation exercises. From the evidence, the only rooms in use in the premises (aside from for storage) consist of the kitchen/dining room, the bathroom, the bedroom and the subject room. There is no evidence supporting the use of any other rooms for normal day-to-day living purposes.

28. On balance of probabilities, the tribunal concludes that it is more probable than not that part of the appellant's use of the subject room is for normal day-to-day activities that are not connected to mindfulness or relaxation exercises. The use of the subject room is therefore not exclusively for such activities, nor mainly for any such. Thus the tribunal cannot conclude that the subject room is *"wholly or mainly"* used for a purpose connected to mindfulness or relaxation exercises. Rather, the room is probably used for a number of different purposes, with some use only being of that nature.

29. A further issue relates to the requirement that any therapeutic use must be of, "*essential or of major importance to the appellant's well-being by reason of the nature and extent of his disability"*. Again, there is no objective evidence of that mindfulness or relaxation use being of essential or of major importance to the appellant's well-being (apart from the appellant's own subjective view – which of course must be fully respected) that is evident from any of the medical reports or other documents available from any health professional.

30. As mentioned, in ***The Department of Finance v Mary Quinn*** the judgment of the Court of Appeal included the following: "*We accept that the fundamental purpose.. is to provide rate relief where a dwelling's rateable value is increased by the facility which is required for meeting the needs of a person who resides in the hereditament and who has a disability…..the mischief that the DPA was designed to remedy was additional space and facilities that result in a higher valuation. …. . However, we consider that the purpose would be undermined if any facility falling within the natural and ordinary meaning of the preceding words gave rise to the obligation to grant a rebate."*

31. For these reasons the tribunal's unanimous determination is that the appellant's appeal cannot succeed. The facts in this case do not disclose circumstances where the arrangements applying to the subject room (and to the premises generally) can bring the case within ambit of the statutory definition. That being so, the appeal is dismissed by the tribunal.

James Leonard

James Leonard, President

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to parties: 30 December 2020