

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

**CASE REFERENCE NUMBER: NIVT 7/22**

**William Irwin – APPELLANT**

**AND**

**DEPARTMENT OF FINANCE – RESPONDENT**

**Northern Ireland Valuation Tribunal**

**Chairman: Francis J. Farrelly**

**Members: Timothy Hopkins and Brian Reid**

**Date of hearing: 18<sup>th</sup> October 2022**

**DECISION**

The unanimous decision of the tribunal is that this appeal is Dismissed.

**REASONS**

**Introduction**

1. This is a reference under Article 12B of the Rates (NI) Order 1977 (as amended) (the 1977 Order).

**The Law**

2. The 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) (NI) Order 2006 (the 2006 Order). Article 31A (12B) enables a person to appeal to the tribunal against the result of a review by the Department (the respondent in this appeal) of a decision that a person is not entitled to a rate rebate for a property with a special facility for a person with a disability. This is referred to as DPA.

**The Tribunal's Decision**

1. Mr Irwin owns 1 Liffock Park, Castlerock. He had been living there on his own and received the Lone Pensioners allowance on his rates bill.
2. His daughter, Ms Perry, lives in Yorkshire. She has been appointed by the Office of Care and Protection as her father's attorney for the purposes of the Enduring Powers of Attorney (Northern Ireland) Order 1987 with general authority to act on his behalf.
3. Mr Irwin became unwell and was admitted to the Causeway Hospital. As per Ms Perry's letter of 31 July 2022 he was transferred to a care home in Ballymena in August 2020. His continued to deteriorate and he was admitted the following day as an emergency into Antrim Area Hospital. When his

condition became more stable, he was discharged to Leabank nursing home, Ballycastle on 5 October 2020. This was at the height of the Covid restrictions. Mr Irwin was anxious to return home, but an adequate care package was not available. He continued to reside in the nursing home. Meantime, his condition unfortunately continued to deteriorate, and he is no longer mobile. The respondent has now removed the loan pensioners allowance effective from the move on the basis he is no longer living in his home.

4. The appellant's home remains unoccupied. His possessions are there. Ms Perry would stay in the property on occasion when she comes to Northern Ireland to visit her father. Initially, the hope was that Mr Irwin would be able to return to his home.
5. There is a letter dated 3 March 2022 from the respondent to the appellant stating that he is no longer entitled to the lone pensioners allowance as he is no longer residing in the property. Following representations from his daughter the respondent reviewed the decision but did not change it. The Department did refer to the possibility of applying for a discretionary exclusion for a limited period on the basis the property is unoccupied and does not contain furnishings. Mrs Perry has not pursued this, advising her father's possessions are in his home and she uses it from time to time. In letters dated 10 April 2022 and 2 May 2022 she stated he remained hopeful of returning.
6. Mr Irwin has appealed the respondent's decision and chosen to have it heard on the papers. The time for appealing was extended by order of the Valuation Tribunal President on 30 May 2022 We have a bundle of papers prepared by the respondent.
7. The removal of the allowance was prompted by an annual review pro forma sent by the respondent. In that, a change of circumstances had been indicated.
8. The Care Home have confirmed that Mr Irwin was began to stay there on 5 October 2020. The respondent cancelled his allowance from then.
9. The Rate Relief (Loan Pensioner Allowance (Regulations) Northern Ireland 2008 allows for a rebate of 20% in certain circumstances. Paragraph 3(1) states:

. ... The relevant authority shall each year grant to a person who has attained the age of 70 years a rebate from the rates chargeable in respect of a dwelling house which is occupied solely by them.

There is a Schedule to the regulation which refers to certain limited disregards in relation to the issue of sole occupation. For instance, a carer also occupying the property is disregarded provided, amongst other things attendance allowance for the high-rate care component of disability living allowance is in payment. There is also provision for disregarding someone who is residing in a nursing home or residential care home. This reference is in the context of individuals who can be disregarded in relation to the sole occupation issue. There is nothing in the legislation as to what is meant by 'occupied.'

10. We have considerable sympathy for the appellant and his daughter. He was admitted to hospital initially for what was thought to be a urinary infection. Unfortunately, his condition deteriorated to the point where he went from being someone living independently on their own to being unable to mobilise. His property is unoccupied, and he is not getting the benefit of any services. He is now having to meet the considerable cost of a nursing home.
11. The respondent has taken the view that when he moved into the second nursing home he could no longer be considered as occupying his home. We have not been referred to any authorities by the respondent as to what is meant by occupation.
12. It is our view that occupation can have different meanings in different contexts. In the context of domestic property, we apply the notion of physical presence. The person does not need to be on the property continuously to occupy. For instance, they may leave the house to go on holiday, but they still occupy the house. It seems however that there must be some notion of ongoing occupation.
13. We cannot be prescriptive, but we take the date of the move to the nursing home as significant. Whilst the appellant may have intended to return home this has not happened. Therefore, our conclusion is that when he transferred to the Nursing home, he ceased to occupy what had been his home. We have been influenced by the length of time he had been out of his home, why he had been out of his home and the fact he has not returned to live in his home.
14. Our sympathy is cold comfort to the appellant and his daughter in the circumstance. However, we are required to consider if the respondent's decision is in accordance with the law. So far as we can tell it does comply with the terms of the legislation and therefore the appeal does not succeed.

**Chairman: Francis J. Farrelly**

**Northern Ireland Valuation Tribunal**

**Date decision recorded in register and issued to the parties: 01 February 2023**