OUTER HOUSE, COURT OF SESSION

[2025] CSOH 76

P215/25

OPINION OF LORD BRAID

In the Petition by

DUNSTON DUNFERMLINE NOMINEES LIMITED

Petitioner

for

Judicial Review of a decision of Fife Council to treat the petitioner as liable to pay non-domestic rates in respect of Units 1B, 2, 5,18 and 19 Dewar House, Enterprise Way, Dunfermline for the period from 6 November 2023 to 31 March 2024

Petitioner: Thomson KC, Tosh; Addleshaw Goddard (HBJ Gateley)
Respondent: Byrne KC, Middleton; Harper Macleod LLP (Edinburgh)

12 August 2025

Introduction

[1] This is another petition to reach this court in which the efficacy of anti-rates-avoidance legislation, and local authorities' application thereof, has come under scrutiny, in the context of a scheme apparently designed to secure exemption from paying rates by taking advantage of the exemption available for premises used for the purpose of religious worship.

[2] The petitioner is the owner of premises at Units 1B, 2, 5, 18 and 19 Dewar House, Enterprise Way, Dunfermline. By leases dated 4 May 2023, it let each of the premises to Room for Faith Ltd, which in turn sub-let each of them to Local Faith Ltd. The rent in each

case was £1, in addition to which the petitioner retained liability to pay for utilities. In May 2023, Local Faith Ltd wrote to the respondent stating that the premises would be used as a meeting place for local worship and claiming 100% rates relief.

[3] Following sundry procedure under the Non-Domestic Rates (Miscellaneous Anti-Avoidance Measures) (Scotland) Regulations 2023, made under the Non-Domestic Rates (Scotland) Act 2020, on 6 October 2023 the respondent sent the petitioner a final notice in terms of those regulations, intimating that the petitioner, as owner, was to be treated as liable to pay non-domestic rates in respect of the premises with effect from 6 November 2023. Demand notices were issued on 29 November 2023, claiming payment of non-domestic rates for each of the premises for the period from 6 November 2023 to 31 March 2024. The petitioner appealed the notices under section 238 of the Local Government (Scotland) Act 1947 on the ground that it had been improperly charged. Following a hearing on 25 November 2024, at which the petitioner was represented by counsel, the respondent issued its decision on 4 December 2024, determining that the petitioner had been properly charged rates in respect of the premises.

[4] In this petition for judicial review, the petitioner seeks to reduce (quash) that decision on the grounds (a) that being unsupported by any evidence, the decision is unlawful and irrational and (b) that the decision was unsupported by adequate reasons. This petition throws into sharp focus how the 2023 regulations fall to be interpreted, and, in particular, whether they provide a stand-alone test for determining whether a rates-avoidance arrangement is artificial, or whether the tests laid down by the 2020 Act must also be met.

The statutory framework

Non-Domestic Rates (Scotland) Act 2020

[5] Section 37 of the 2020 Act provides:

> **"37 Anti-avoidance regulations**
> (1) The Scottish Ministers may by regulations ('anti-avoidance regulations') make such provision as they consider appropriate with a view to preventing or minimising advantages (see section 38) arising from non-domestic rates avoidance
> arrangements that are artificial (see sections 39 and 40).
> (2) The Scottish Ministers may not make anti-avoidance regulations unless they consider that it is appropriate to do so.
> (3) Anti-avoidance regulations—
> (a) may modify any enactment (but not this Part)…"

[6] Section 38 provides, insofar as material:

> **"38 Meaning of 'advantage'**
> (1) An 'advantage', in relation to non-domestic rates, includes in particular—
> ...
> (c) relief (or increased relief),
> ...
> (2) In determining whether a non-domestic rates avoidance arrangement has resulted in an advantage, regard may be had to the amount of non-domestic rates that would have been payable in the absence of the arrangement."

[7] Section 39 provides:

> **"39 Non-domestic rates avoidance arrangements**
> (1) An arrangement (or series of arrangements) is a non-domestic rates avoidance arrangement if, having regard to all the circumstances, it would be reasonable to conclude that obtaining an advantage is the main purpose, or one of the main purposes, of the arrangement.
> (2) An 'arrangement' includes any agreement, transaction, undertaking, action or event (whether legally enforceable or not)."

[8] Section 40 provides:

> **"40 Meaning of 'artificial'**
> (1) A non-domestic rates avoidance arrangement is artificial if Condition A or B is met.
> (2) Condition A is met if the entering into or carrying out of the arrangement is not a reasonable course of action in relation to the non-domestic rates provisions in question having regard to all the circumstances, including—
> (a) whether the substantive results of the arrangement are consistent with—

(i) any principles on which those provisions are based (whether express or implied), and

(ii) the policy objectives of those provisions,

(b) whether the arrangement is intended to exploit any shortcomings in those provisions.

(3) Condition B is met if the arrangement lacks economic or commercial substance.

(4) Each of the following is an example of something which might indicate that a non-domestic rates avoidance arrangement lacks economic or commercial substance—

(a) the arrangement is carried out in a manner which would not normally be employed in reasonable business conduct,

(b) the legal characterisation of the steps in the arrangement is inconsistent with the legal substance of the arrangements as a whole,

(c) the arrangement includes elements which have the effect of offsetting or cancelling each other,

(d) transactions are circular in nature,

(e) the arrangement results in an advantage that is not reflected in the business risks undertaken.

(5) The examples given in subsection (4) are not exhaustive.

(6) Where a non-domestic rates avoidance arrangement forms part of any other arrangements, regard must also be had to those other arrangements."

Non-Domestic Rates (Miscellaneous Anti-Avoidance Measures) (Scotland)

Regulations 2023

[9] Regulation 4, insofar as material, provides:

"4. Circumstances in which owners must be treated as liable for non-domestic rates

(1) This regulation applies where—

(a) non-domestic rates are payable in respect of lands and heritages and,

(b) by virtue of a tenancy or other arrangement entered into on or after 1 April 2023, the occupier of those lands and heritages would, but for this regulation, be liable to pay non-domestic rates in respect of them.

(2) Subject to regulation 5(3), a local authority must treat the owner of lands and heritages as liable to pay non-domestic rates in respect of them where the local authority is satisfied, in all the circumstances, that the tenancy or other arrangement—

(a) has as its main purpose, or one of its main purposes, the gaining of an advantage within the meaning of section 38 of the 2020 Act, and

(b) is an artificial non-domestic rates avoidance arrangement within the meaning of sections 39 and 40 of the 2020 Act.

(3) In determining whether the condition in paragraph (2)(a) is met, the local authority may have regard to the amount of non-domestic rates that would

have been payable in respect of the lands and heritages in the absence of the tenancy or other arrangement.

(4) A local authority may only be satisfied that the condition in paragraph (2)(b) is met where a tenancy or other arrangement was entered into on or after 1 April 2023 and at least one of the following applies—

(a) the tenancy or other arrangement on the basis of which the lands and heritages are occupied is considered not to be on a commercial basis (see paragraph (6)),

...

(6) For the purposes of this regulation, a tenancy or other arrangement may only be considered by a local authority not to be on a commercial basis where at least one of the following applies—

...

(d) the rent charged for the lands and heritages is significantly below the level of the rent which could reasonably have been obtained for the lands and heritages on the open market at the time the tenancy or other arrangement was entered into..."

The facts

[10] The material background facts can be stated briefly. The leases in question were all entered into on 4 May 2023. On 5 May 2023, the respondent received letters on behalf of Local Faith Ltd advising it of the sub-leases and that 100% religious relief was being claimed. In August 2023 and March 2024 respectively, the petitioner entered into licence agreements with third parties in respect of Units 1B and 2, providing for licence fees of £11,924 and £5,500.

The arguments presented to the appeal hearing

[11] Counsel for the petitioner argued that regulation 4(6)(d) was not met, because in order to determine whether the rent was significantly below the level of rent which could reasonably be obtained on the open market at the relevant time, it had first to identify the level of rent which could reasonably have been so obtained and then assess whether the actual rent was significantly below that figure. No relevant comparators had been produced

to prove the open market rent, and only comparators from the same time that the leases were entered into could legitimately be considered. Additionally, even were the respondent satisfied that regulation 4(6)(d) was met, before it could be satisfied that the arrangement was artificial it must also be satisfied that either condition A or condition B of section 40 was met; in other words, even if the rent was considered not to be commercial, the council still had to prove artificiality. Faced with the options of no tenant and a completely empty property, having a tenant on a nominal rent of £1 was still commercially realistic.

[12] For the council, reference was made to the licence fees which had been obtained; and also to the fact that in August 2024, Units 5, 18 and 19 were being marketed for lease, the rent sought being £8,800, £15,170 and £14,400 respectively, all significantly higher than the £1 being charged. The council also referred to the rates mitigation or avoidance scheme advertised by the Verity Group on its website, submitting that the aim of the 2023 regulations was to give local authorities the framework to prevent such avoidance. It pointed out that Local Faith Ltd's address appeared to be the same as Verity's, that there was no sign of Local Faith Ltd at Dewar House, and that a google search for "rooms for religious worship in Fife" brought back no results for Local Faith Ltd or Dewar House.

The decision

[13] The salient part of the respondent's decision of 4 December 2024 is as follows:

> "The Committee were satisfied that a lease for £1 per annum with the landlord retaining responsibility for all outlays was strong evidence towards satisfying regulation 4(6)(d). They also accepted that while the licences were not exactly contemporaneous with the lease in questions (*sic*) they were still sufficiently close in time and could be considered as evidence of open market rent. Especially as they related to two of the exact units under consideration. In all the circumstances the Committee decided the requirements of regulation 4(6) had been satisfied. The rent was significantly lower than the level which could be reasonably obtained on the open market at the same time. Therefore, it concluded the leases in question were

> artificial non-domestic rates avoidance arrangements within the meanings of sections 39 and 40 of the Act."

Submissions

Petitioner

[14] Senior counsel for the petitioner submitted that there was, before the committee, no evidence of the rent which could reasonably have been obtained on the open market at the time the arrangement was entered into. There were three elements to that, which he termed the valuation, marketability and temporal requirements. The valuation requirement was not satisfied, because there was no evidence of the open market rent for any of the premises at the material time, as distinct from the rent later obtained for two of them. There was also a material difference between the rents obtained. The respondent failed to acknowledge those distinctions. The marketability requirement was not satisfied, because there was no evidence that an open market rent could reasonably have been obtained at the material time. On the contrary it was self-evident that rent at any higher level could not be obtained, because the petitioner had not done so. The respondent failed to take that factor into account. The temporal requirement was not satisfied, because there was no evidence to support the inference that there was sufficient proximity in time to satisfy that requirement. There was no finding as to what level of rent could reasonably have been obtained (nor could there have been, because there was no evidence to that effect). Accordingly, the decision was both unlawful and irrational: *De Smith's Judicial Review* (9th Edn, 2023), paragraph 6.039. Insofar as there was such evidence, the respondent focussed on it to the exclusion of contrary evidence and in so doing, erred in law: *R (on the application of Bukartyk)* v *Welwyn Hatfield BC* [2020] HLR 19 at [48]. If a higher rent had been available, the petitioner would have leased the premises at that higher rent.

[15] As regards artificiality, senior counsel submitted that in effect the respondent had treated regulation 4(4) as a deeming provision, when, properly construed, it was not. If the respondent found that the condition in regulation 4(6) was satisfied, it nonetheless had to go on to consider whether the test in section 40 of the Act was also met, and in particular whether condition A or condition B was satisfied. If its finding that regulation 4(6) was satisfied was the sole reason for its decision, then the respondent would have erred in law. However, its decision failed to explain whether it was the sole reason or not. The respondent had failed to address the issues that arose in any logical sequence which made clear that it had considered each of the discrete statutory conditions that required to be satisfied, and so the reasons were inadequate: *A* v *Secretary of State for the Home Department* 2024 SLT 1306, at [17] and the authorities therein cited (*Wordie Property Co Ltd* v *Secretary of State for Scotland* 1984 SLT 345; *South Bucks District Council and another* v *Porter (No 2)* [2004] 1 WLR 1953, Lord Brown of Eaton-under-Haywood at [36]). The reasons must do more than restate a statutorily prescribed conclusion. They must identify the material findings of fact and address the principal arguments advanced by the parties: *De Smith's Judicial Review*, above, paragraphs 9-136 to 9-141. As it was, the informed reader was left in real and substantial doubt as to why the respondent found that the leases were artificial non-domestic rates arrangements within the meaning of section 40; and whether, and if so why, the respondent rejected the petitioner's argument that it was neither unreasonable nor lacking in commercial or economic substance for a commercial landlord to let premises to a tenant at a rent of £1 per year when the alternative was no tenant and no rent. The decision should be reduced and, in the exercise of the court's discretion, the case remitted to a differently constituted committee: *Chief Constable, Lothian and Borders Police* v *Lothian and Borders Police Board* 2005 SLT 315 at [70], [75] and [76]. A number of factors favoured that

approach, as opposed to remitting to the same committee to provide reasons: the committee was comprised of laymen rather than professional judges; a substantial period of time had elapsed since the decision was made; and there was room for concern that any reasons now put forward may be influenced by the existence and nature of these proceedings. If the court did remit to the same committee to amplify its reasons, the petition should be continued: *Chief Constable*, para [32]. *English* v *Emery Reimbold & Strick Ltd* (below) relied upon by the respondent was concerned with a failure to provide adequate reasons for judicial rather than administrative decisions and was of limited assistance.

Respondent

[16] Senior counsel for the respondent submitted that the evidence before the respondent's committee was sufficient to entitle it to conclude as it did. The rent achieved or sought for analogous properties could be considered as evidence of the open market rent at the material time, the temporal difference merely raising a question as to what weight should be attached to that evidence. The committee was entitled to draw the inference that rent of £1, with the petitioner retaining responsibility for the utilities, was essentially a cost to the petitioner, and was significantly lower than the rent which could be achieved on the open market. The committee was also entitled to have regard to the fact that this was a brazen rates avoidance scheme.

[17] As for how the regulations fell to be construed, regulation 4 provided the means by which the object of sections 39 and 40 were achieved, and created a scheme whereby local authorities could decide, by reference to the regulations alone, whether an arrangement was an artificial avoidance scheme. If regulation 4 were worked through, there was no need for the authority then to consider section 40. There was therefore no need for the respondent's

committee to have considered whether condition A or condition B was satisfied and in any event the circumstances found by the committee fell within either condition. If that was wrong, the fact that it was held to be an arrangement which lacked commercial substance made it plain that the committee was operating under condition B. The petitioner had suffered no prejudice by any lack of clarity in the reasons given by the respondent, which had made clear the basis of its decision. If the court considered the reasons to be inadequate, the case should be remitted to the same committee to give adequate reasons, there being no reason to remit to a differently constituted committee: *English* v *Emery Reimbold & Strick Ltd (Practice Note)* [2002] 1 WLR 2409, Lord Phillips of Worth Matravers, MR.

Decision

The lawfulness/rationality challenge

[18] The first question which the respondent had to consider, under regulation 4(6)(d), was whether the rent charged for the premises was significantly below the level of rent which could reasonably have been obtained on the open market at the time the tenancy was entered into. One adminicle of evidence was the licence fees actually charged for two of the units which were the subject of the appeals at a point in time after the leases were entered into. On any view, that is clearly *a* factor which the committee was entitled to take into account when assessing (a) what rent could have been achieved at the material time for those units and (b) what rent could have been achieved for the other units. Of course, it was not the only factor, and other factors, such as the passage of time and possible fluctuations in the market were matters of weight, for the committee to consider. Although not mentioned in its decision letter, there was also evidence of rentals sought for other units, which the committee would also have been entitled to take into account. An additional adminicle of

evidence was the fact that the actual rent charge of only £1 was on any view only a nominal amount. It is likely to take little in the way of additional evidence to entitle a decision-maker to conclude that a nominal rent was significantly less than the rent which could reasonably have been achieved on the open market, bearing in mind that even a rental figure significantly less than the licence fees achieved, or than the rent at which other units were being advertised, might nonetheless be significantly more than a nominal rent. There is no substance to the petitioner's argument that the respondent failed to consider the difference between the licence fees obtained for Units 1B and 2, since even the smaller amount is significantly more than £1. The petitioner's argument that had a higher rent been available, it would have leased the premises at that higher rent is no more than superficially attractive. As senior counsel for the respondent submitted, that argument proceeds on the premise that the arrangement was not an artificial one, which is the wrong starting point. Further, the petitioner's argument comes perilously close to arguing that the only evidence of the rent which could reasonably have been obtained on the open market is evidence of rent actually achieved for the premises in question, which would deprive the test of any meaningful content.

[19] For these reasons, the lawfulness and rationality challenge fails.

The reasons challenge

How do the 2023 regulations fall to be construed?

[20] The starting point is to consider how the 2023 regulations fall to be construed, and how they interact with sections 37 to 40 of the 2020 Act. Must local authorities adopt a two-stage approach, considering first the regulations and then the Act, as argued by the petitioner? Or, as the respondent counters, was the intention of the regulations merely to

provide a convenient mechanism – a ready reckoner, if you will – for local authorities whereby, if the tests set out in the regulations are met, the artificiality of an arrangement in terms of sections 38 to 39 of the Act is to be taken as, *ipso facto*, having been established?

[21] If the aim of the regulations was to make it simpler for a local authority to defeat, as artificial, a non-domestic rates avoidance arrangement, I am afraid that they signally fail in that ambition. In relation to whether an arrangement has as a main purpose the gaining of an advantage, paragraph (3) provides that the authority may have regard to the amount of non-domestic rates that would otherwise have been payable. Even that apparently straightforward provision is somewhat perplexing, since virtually identical wording appears in section 38(2) of the Act itself. That possibly lends some credence to the argument that the regulations were intended to supplant, rather than supplement, the Act, since otherwise why was it deemed necessary to repeat that provision? Or do the regulations simply provide a reminder to local authorities, lest they otherwise forget, of one factor which they may take into account in determining that issue, without precluding recourse to other factors, should they be relevant. Either way, regulation 4(3) neither adds nor subtracts from the statutory test out in the Act.

[22] However, insofar as it twice uses the word "only", regulation 4 appears to make it more, rather than less, difficult for a local authority to be satisfied that an arrangement is an artificial non-domestic rates avoidance arrangement within the meaning of sections 39 and 40, in that it narrows the ambit of discretion available to the authority. The authority may *only* be so satisfied where the arrangement was entered into on or after 1 April 2023 and at least one of three conditions applies, the relevant one for present purposes being that the tenancy or other arrangement on the basis of which the land is occupied is considered not to be on a commercial basis, under reference to paragraph (6). That paragraph then further

restricts the ambit of discretion by providing that the authority may *only* be so satisfied where at least one of seven conditions is satisfied, the relevant one here being that the rent charged for the land is significantly below the level of the rent which could reasonably have been obtained for the land on the open market at the time the tenancy or other arrangement was entered into. Thus, a local authority is specifically prevented from finding that a tenancy or arrangement is not on a commercial basis by reference to other, extraneous, factors not mentioned in the regulation. It is unclear why that should be so; nonetheless, the use of "only", whatever else it does, does not make regulation 4 a deeming provision. As the petitioner submitted, satisfaction of regulation 4 is, a necessary, but not a sufficient, condition which must be satisfied for a tenancy arrangement to be found to be artificial.

[23] The respondent seeks to derive some support for its argument from the heading to regulation 4 – "Circumstances in which owners must be treated as liable for non-domestic rates" – but, in truth, the heading lends no real support to the argument but rather tends to undermine it, because on a natural reading it can be taken as referring to paragraph (2), which provides that (subject to regulation 5(3), which is irrelevant for present purposes) a local authority must treat an owner of land as liable to pay non-domestic rates where the local authority is satisfied that the arrangement has as its main purpose the securing of an advantage *within the meaning of section 38* and is an artificial arrangement *within the meaning of sections 39 and 40* (emphasis added); in other words, the local authority's attention is specifically drawn to the need to be satisfied that the arrangement is artificial within the meanings of those provisions (and if they are so satisfied, then in that circumstance they must treat the owner as liable to pay non-domestic rates).

[24] Another problem thrown up by the regulations is the variance between the phrases "lacks economic or commercial substance" (in section 40(4)), and "considered not to be on a

commercial basis" (in regulation 4(4)(a)). While it is true that many, perhaps most, arrangements which fall foul of one test will also fall foul of the other, that is not necessarily the case. In particular, lacking economic *or* commercial substance is wider than not being on a commercial basis: the reference to "economic" must have been intended to add something to the statutory test. Again, the regulations, which contain the narrower test, appear to restrict a local authority's ability to deem an arrangement artificial.

[25] In answer to that point, the respondent argues that the variance in wording is immaterial, and that the regulations merely prescribe the operational manner in which the objectives of the Act are to be construed. However, that does appear to involve holding that the regulations must have modified the Act. As senior counsel for the petitioner pointed out, section 37 of the Act under which the regulations were made specifically provides in subsection (3) that anti-avoidance regulations made under that section may modify any enactment other than that part of the 2020 Act.

[26] Notwithstanding these drafting infelicities[1] and that the regulations appear to restrict rather than expand the circumstances in which an arrangement may be found to be artificial, whether that was Scottish Ministers' intention or not, I have come to the view that the provisions in the regulations were intended to supplement those in the Act, and that both require to be satisfied. The Act defines the meaning of "advantage" (section 38), "arrangement" and "non-domestic rates avoidance arrangement" (section 39) and "artificial" (section 40), without stating what are to be the consequences of an arrangement being found to be an artificial non-domestic rates avoidance arrangement. For those

[1] There are others: see, for example, the apparent dissonance between regulation 4(2), which requires a local authority to be satisfied both that an arrangement has as its main purpose the gaining of an advantage *and* that the arrangement is artificial before it can treat an owner as liable to pay non-domestic rates; and regulation 5(6) which requires an owner to demonstrate *both* that the gaining of an advantage was not the main purpose *and* that the arrangement was not artificial if he is to be treated as not so liable. The latter "and" should surely be "or".

consequences one must turn to the regulations: the owner must be found liable for non-domestic rates. I therefore find that the Act and regulations must be read together, and that an authority must work through both before it can find an owner to be so liable.

[27] It further follows that if the respondent reached its decision solely on the basis that regulation 4(6) was satisfied, then it would have erred.

Reasons

[28] This leads to consideration of the standard required of reasons, and whether the reasons given met that standard. The neatest encapsulation of what is required is given by Lord Brown of Easton-under-Haywood in *South Bucks District Council and another* v *Porter (No 2)*, above, where he stated at para [36]:

> "The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the 'principal important controversial issues', disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in the dispute, not to every material consideration."

[29] Measured by that yardstick, the reasons given by the respondent in its decision letter of 4 December 2024, in relation to artificiality, fall short by some considerable margin. The reasoning focusses entirely on regulation 4(6)(d) (in respect of which, though brief, it is adequate), but, other than the concluding words, gives no indication that sections 39 and 40 have been considered. To the extent that those sections are referenced in the final sentence, the use of "Therefore" to introduce that sentence, which contains the respondent's conclusion, is strongly suggestive that the committee did regard the satisfaction of the

requirement of regulation 4(6) as being sufficient for it to make the conclusion it did; and there is, at the very least, substantial doubt as to whether it erred in law or not. On any view, the reasons do not contain the respondent's reasons as to why it considered sections 39 and 40 to have been satisfied. Additionally, the decision letter does not address two of the arguments advanced by counsel for the petitioner at the hearing. In that respect, too, the reasons are inadequate: *De Smith's Judicial Review*, paragraph 9-140.

[30] For these reasons, I consider that the reasons given by the respondent are inadequate. The question then arises as to what remedy should now be granted. The choice lies between quashing the decision and remitting either to the same committee, as the respondent proposes, or a differently constituted one, as the petitioner contends; or, if giving the same committee the opportunity to amplify its decisions, continuing the petition to enable that to be done, which is the petitioner's secondary position.

[31] In *Chief Constable, Lothian and Borders Police* v *Lothian and Borders Police Board*, above, Lord Reed carried out an in-depth review of the authorities on the duty to give reasons and the consequences of failing to do so, from which he derived a number of general propositions at para [70], one of which was that much may turn on the language used in the statute under consideration; another, that the court may in its discretion decline to quash a decision by reason of a failure to give reasons, for example where the person seeking reduction has no substantial interest in having the decision set aside; and another, that if the court does quash a decision as the result of a failure to comply with a duty to give reasons, it follows that the matter must be reconsidered, which, depending on context, may be reconsideration by the original decision maker, or the court may have a discretion to direct that the matter should be dealt with by a differently constituted body, which the court will order if it is considered appropriate in the circumstances.

[32] I do not consider it appropriate to afford the committee in this case another opportunity to state its reasons before deciding the petition. As counsel for the petitioner submitted, *English* v *Emery Reimbold & Strick Ltd,* above, is of no real assistance, since it was concerned with the failure of a judge to provide adequate reasons in the amplification of a decision after it was handed down, in the context of appellate proceedings, an entirely different scenario from the one here. The usual remedy for a failure to give adequate reasons (and I did not understand counsel for the respondent to dispute this proposition, so far it goes, the controversy between the parties being as to what should happen next) is to quash the unreasoned decision: *De Smith's Judicial Review* (9th Edn, 2023), paragraph 9.151. I will therefore grant decree of reduction of the decision of 4 December 2024 on the ground that it was unsupported by adequate reasons.

[33] Turning finally to the disputed question of whether the matter should be remitted to the same, or a differently constituted, committee, that is a matter for the exercise of my discretion. There are certain advantages to remitting to the same committee, not the least of which is that there would not require to be a rehearing on the matter on which I have held that they did give adequate reasons, namely, whether the test in regulation 4(6) was met or not, and the committee would be able to focus solely on the issue of artificiality in terms of sections 39 and 40. However, I also consider that there is a risk of reconstruction of reasons after the event, in light of this opinion. Further, the manner in which the reasons which were given were expressed is such as to give rise to a suspicion that the committee did in fact err in law in its approach. Those considerations, in my view, outweigh the inconvenience of convening a further hearing to consider the entire matter afresh, particularly where, as the petitioner points out, the original hearing was concluded in a few

hours. Accordingly, I consider that the case should be remitted to a differently constituted committee to consider the petitioner's appeal.

Disposal

[34] I have repelled the petitioner's first, second and fourth pleas-in-law (the last not being insisted in) and sustained its third plea, repelling the respondent's extant pleas, and reducing the decision of 4 December 2024, it being unsupported by adequate reasons. I have ordered the respondent to convene forthwith a further hearing of the petitioner's appeal before a differently constituted Rating Appeal Sub Committee. I have reserved all questions of expenses.