

VALUATION TRIBUNAL FOR ENGLAND



Council tax liability appeal; backdated claim for Single person discount (SPD); Limitation Act 1980, s.9; previous Valuation Tribunal decisions; before the former President of the Valuation Tribunal for England, Professor Graham Zellick QC; Arca v Carlisle City Council; Singh v Leicester City Council;; Smith v Nottingham City Council; found that criteria for backdating SPD disregard met. Decision: Appeal allowed.

RE: 1 Roe Park Mow Cop Stoke on Trent ST7 3PW

APPEAL NUMBERS: M0258955

BETWEEN:	Mr M Barnett	Appellant
and	Cheshire East Council	Respondent

PANEL: Mr A Khurram (Chairman) (Sitting Alone)

SITTING AT: Britannia North Stafford Hotel, Station Road , Stoke on Trent
ST4 2AE

ON: 10 December 2019

APPEARANCES: Mr M Barnett (Appellant)

Summary of decision

1. Appeal allowed. A council tax disregard for single person discount (SPD) is applicable to the appellant for the period from 1 April 1996.

Introduction

2. Under the Valuation Tribunal for England's Business Arrangements, a Chairman can sit and determine an appeal sitting alone.

3. The Billing Authority requested a hearing in its absence and had submitted its case prior to the tribunal hearing in accordance with the Tribunal's standard directions, which was placed before me.
4. The absence in this decision of a reference to any statement or item of evidence placed before me by the parties should not be construed as having been overlooked.
5. The appeal was made by the appellant and centres on the issue of an application for backdated SPD for the period beyond 6 years from the date of his application on 15 January 2019 under the Limitation Act 1980, s.9. This application has been declined by the Billing Authority (BA) on the basis that the period claimed for is from more than six years ago.
6. The BA's submission confirms that its acceptance that the eligibility to a discount is not disputed, having received a written application on 15 January 2019 following a telephone call from the Appellant on 14 January 2019. However the BA have declined the application on the basis that any claim is limited to six years by way of its local policy ie 15 January 2013. Moreover, the BA has also stated that backdating was declined on the basis that *Arca v Carlisle City Council* [2013] RA 248 and several VT cases (4415M136193/254CAD; 5560M233494/284C and 3615M97533/084C support its position regarding the 6 year limit on backdating. The BA sought dismissal of the appeal.
7. The Appellant informed me that he had been in sole occupation of the appeal property from 1996 as a tenant and as the owner from 2001. It was the Appellant's contention that the SPD should be applicable from April 1996 and the BA's policy should not apply as he had at no time prior to January 2019 been informed that he may be eligible to a SPD. The Appellant conceded that there had been very little contact with the BA up until a Charging Order had been obtained covering the period from 2001/2 -2015/16 in December 2015 which was eventually paid by the Appellant as he had been in a longstanding dispute with the BA regarding the lack of services provided to the appeal property. This had resulted in recovery action and ultimately in payment of the substantial arrears. However, he had evidence from documentation from a County Court hearing at Stoke on Trent on 10 February 2017 that identified that the address for service of documents was at Mow Cop in Congleton and not Mow Cop Stoke on Trent during the period of recovery action .
8. The Appellant requested the panel to allow the appeal and determine the SPD disregard be backdated to 1 April 1996.

Decision and reasons

11. In the current case, the BA contends that there is a six year limit on the action by way of s.9 of the Limitation Act 1980 which was embodied in its local policy regarding the backdating of and implementation of discount disregards for council tax and was supported by Valuation Tribunal decisions. I noted that the well-known case of *Arca v Carlisle City Council* [2013] RA 248 was submitted as the leading case in this respect but that case was not on all fours with the issue me. *Arca* concerned an application for a reduction in band by a disabled person in accordance with regulation 3(1) of the Council Tax (Reduction for Disabilities) Regulations 1992. This states that in order to qualify for a banding reduction the Appellant must make an application during the year claimed:

“... a person is an eligible person for the purposes of these Regulations if – ...

(b) as regards the financial year in question, an application is made in writing by him or on his behalf to that authority.”

12. Therefore, in that appeal the onus was on the Appellant rather than the BA. The Appellant needed to make an application within six years of their first qualifying for entitlement in order for a backdated reduction to be awarded to the first date of entitlement, as the cause of action was the application. By delaying the application to much later, the President placed a six year restriction from the financial year the application was received in.
13. The clerk referred to a Valuation Tribunal case heard by the ex President of the Tribunal Professor Zellick of *Smith v. Nottingham City Council* [2013] which dealt with an application for a SPD to be backdated more than 6 years.
14. In *Smith v. Nottingham City Council* [2013] Professor Zellick considered the awareness of a discount by the claimant and the duty of the local authority to determine discounts, once an application had been made. At paragraph 11 Professor Zellick stated “I do not agree that the sole legal test for determining the answer to the question is the reasonableness of the respondent’s conduct; nor is it correct to assert that the taxpayer must make an application.” Furthermore, in paragraphs 15 to 26 of *Smith*, Professor Zellick looked at the legislation regarding the determination of discount entitlement and notably the wording of reg. 14 of the Council Tax (Administration and Enforcement) Regulations 1992 which provides that, “Before making any calculation ... of the chargeable amount in respect of any dwelling in its area, a billing authority shall take reasonable steps to ascertain whether that amount is subject to a discount, and if so, the amount of that discount.”
15. The BA highlighted in its submission that in accordance with Section 4 of Schedule 2 of The Local Government Finance Act 1992 , billing authorities are to ‘take reasonable steps to provide to the public, information relating to the discounts and exemptions available. Consequently, when the annual council tax bills are issued in March, for the forthcoming financial year, this information is enclosed with them and published on the Council’s website .’
16. It was the BA’s contention that as the Appellant was resident in the property since April 1996, he would have received leaflets regarding the appropriate discount documented from 2009/10 to 2019/20 (contained within its submission). The BA conceded that it could not source leaflet documentation earlier than 2009/10 but that it could confirm that ‘they too did include this information’. However, at paragraph 24 of *Smith* Professor Zellick states “I do not find that small print on the reverse of the bill, referring generally to discounts with no specific headings, can constitute a reasonable step; and this is not, in my view, cured by information contained in an accompanying leaflet or booklet.”
17. I accepted that based on the facts before me, *Smith v. Nottingham City Council* [2013] by Professor Zellick, was a more relevant case to take into consideration in the current case than ‘*Arca*’. It was clear that the Appellant had provided supportive evidence in the form of documentation from a County Court hearing relating to the action pursuant of the sale of the appeal property at Stoke on Trent on 10 February 2017. This evidence identified the address for service of documents, bills etc was at Mow Cop in Congleton, a different area and not Mow Cop Stoke on Trent and the case against the Appellant had been postponed because of this fact.
18. In this respect, importantly, it appears to me that in accordance with the principle laid out in *Smith v. Nottingham City Council* [2013] Professor Zellick, if the BA had been issuing demands/documentation to an address other than the appeal property then the BA had failed to take ‘reasonable steps’ to comply with its responsibility to provide information regarding discounts available to the Appellant as the appellant was not aware that a SPD was available during the period of liability going back to April 1996.

19. The Appellant also informed me that although there was contradictory information from the BA regarding him having a wife and a daughter, he clarified that his deceased wife had lived permanently in Portugal and his step daughter aged 17 came to stay with him at the appeal property for holidays and was not permanently resident here.
20. In conclusion, I found that following the clarification by Professor Zellick in *Smith v Nottingham*, the Appellant is therefore entitled to his SPD disregard being backdated to the initial date of eligibility on 1 April 1996. The appeal is therefore allowed.

Order

21. The Respondent Billing Authority is hereby ordered, pursuant to the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009. SI 2009 No. 2269, reg. 38(1)(c) and (d) and (9), to reverse its decision regarding the Appellant's SPD disregard and recalculate the amount of council tax payable back to 1 April 1996, within two weeks of the date of this Order.

Date: 9 January 2020

Appeal numbers: M0258955