

THE VALUATION TRIBUNAL FOR ENGLAND



Council Tax Liability - Severally Mentally Impaired discount and exemption – Local Government Finance Act 1992 – The Council Tax (Exempt Dwellings)(Amendment) Order 1999 - The Council Tax (Discount Disregards) Order 1992 (as amended) – Doctors certification – must be in receipt of certain benefits/awards – did appellant meet requirements of legislation – backdating of exemption/discount – Valuation Tribunal Decisions Smith v Nottingham City Council [2013] 3060M96352/037C and S v Leicester City Council [VTE 2465M142876/037C 11 August 2015] - appeal allowed

Re: 705 The Maltings, Penwortham, Preston, PR1 9FL and

5 Long Moss Meadows, New Longton, Preston, PR4 4RZ

APPEAL NUMBER: VT00000792

BETWEEN:	Mr A Singleton	Appellant
	and	
	South Ribble Council	Respondent
	(Billing Authority)	

BEFORE; Dr J Johnson

CLERK: Mr A Jolly

REMOTE HEARING Monday 22 February 2021

APPEARANCE: Mr A Singleton (appellant)
Mr K Parkinson representing South Ribble Council (respondent)

Summary of decision

1. Appeal allowed. Mr Singleton entitlement to Severely Mental Impairment (SMI) exemption/discount be backdated to 14 February 2005.

Introduction

2. This appeal has been brought in respect of the following: A Notice of Appeal dated 1 December 2019 against the Billing Authority's determination dated 6 November 2019 backdating the SMI exemption/discount to 1 April 2013.
3. The President of the Valuation Tribunal for England (VTE) is required to make sure arrangements are in place and make such statements and Directions so as to ensure that business before the Tribunal is conducted in accordance with The Local Government Finance Act 1988, Schedule 11, Part 1, paragraph A17(1) and The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 and by virtue of Part 2 regulation (5)(arrangement for appeals) and regulation (6)(3)(g) (appeal management powers) the VTE may determine the form of any hearing.

4. Therefore, in pursuance of Regulation (6)(3)(g) the VTE has incorporated “remote hearings” as part of that definition and for the time being as the default option until it is safe to return to normal working. The Tribunal’s Consolidated Practice Statement has been amended to reflect this.
5. This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that all of the evidence presented was fully considered by myself before coming to its decision. Consequently, the absence of a reference to any statement, or evidence, should not be construed as it having been overlooked.
6. Due to the unavailability of a second member I sat alone as Chairman as provided for under paragraph 11 of the Valuation Tribunal for England’s Tribunal Business Arrangements:-

HEARINGS WHERE A MEMBER IS UNABLE TO SIT

Where a panel member is unable to sit for any reason or fails to attend they will be replaced by another member wherever possible. However, a hearing will proceed with a Senior Member alone where necessary, to avoid postponing the hearing.

Issues

7. Whether or not Mr Singleton qualified for the Severely Mentally Impaired exemption from 14 February 2005 until 5 September 2011 and the Severely Mentally Impaired discount from 6 September 2011. The Billing Authority had awarded the discount from 1 April 2013.
8. On Thursday 18 February 2021 the clerk email both parties advising that he would be quoting decisions from the former President of the Valuation Tribunal for England and that comments would be invited from both parties at the hearing in relation to those decisions.

Evidence and submissions

9. Mr Singleton stated that from when he first became a council tax payer he had claimed both Council Tax and Housing Benefit with an officer of the Billing Authority visiting to assist him. He stated that he had informed the officer that he suffered from Post-Traumatic Stress Disorder (PTSD) from 1986 following an Industrial Accident in 1985 but at no time was he informed that he may be eligible for SMI exemption or discount.
10. He stated that he only realised that he may be eligible for an exemption or discount following the Martin Lewis Money Programme. As soon as he realised, his carer contacted the Billing Authority where one person stated that he would not be eligible for the SMI discount but another person stated that he was entitled. He completed the necessary forms and his Doctor completed a Certificate saying that he suffered from SMI since 1986. Following receipt of the Certificate he was awarded SMI discount which was backdated to 1 April 2013. He sought the backdating of the discount to 6 September 2011 and for the exemption to apply from 14 February 2005, the date he first became a Council Tax payer and was the sole resident, to 5 September 2011.
11. Mr Singleton confirmed that he was in receipt of the High Rate Disability Allowance since before 2005 and therefore met the criteria to be awarded the SMI exemption/discount from when he first became a Council Tax payer.

12. Mr Parkinson stated that the issue concerned at what point did Mr Singleton become eligible for the discount /exemption. Whilst he accepted that there was a medical certificate stating that Mr Singleton had suffered PTSD since 1986 he considered the Billing Authority had sufficiently backdated the award to 1 April 2013.
13. He stated that the definition of SMI for Council Tax purposes was contained within Schedule 1 of the Local Government Finance Act 1992. He stated that he had difficulty believing that Mr Singleton should be exempt from Council Tax from 2005 as between 2005 and 2013 the appellant had personally dealt with council tax matters and therefore he considered Mr Singleton did not meet the criteria laid out in the legislation.
14. The clerk introduced the former President of the Valuation Tribunal for England decisions in relation to *Smith v Nottingham City Council [2013] 3060M96352/037C* and *S v Leicester City Council [VTE 2465M142876/037C 11 August 2015]*. In the Billing Authority's evidence they had submitted a number of Council Tax Bills and Leaflets that accompanied the Bills and in paragraph 24 of the decision *Smith v Nottingham City Council [2013] 3060M96352/037C* the president had stated:
24. 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.
15. The Billing Authority noted that in the Smith decision the president had backdated the claim for Single Persons Discount to only six years from the date of claim which he considered supported the Billing Authority's contention. The clerk informed the Billing Authority that *S v Leicester City Council [VTE 2465M142876/037C 11 August 2015]* superseded the Smith decision and that the President had allowed the backdating to the date when the appellant was first eligible for the discount despite not applying for it sooner as the appellant was unaware of the discount.

Decision and reasons

16. The appeal before me concerned whether the appellant was eligible for the Severely Mental Impairment exemption from 14 February 2005 to 5 September 2011 and the Severely Mental Impairment discount of 25% from 6 September 2011 to date. The Billing Authority had granted the discount from 1 April 2013 but had refused, in their determination, to backdate the discount and exemption before that date.
17. I first considered the legislation surrounding the awarding of any discount for Council Tax and therefore had regard to paragraph 2 of Schedule 1 of the Local Government Finance Act 1992 and Council Tax (Discount Disregards) Order 1992 (as amended) which introduced the discount for Severely mentally impairment. Which state as follows:

Para 2 of Schedule 1 of the LGFA 1992

The severely mentally impaired

2(1)A person shall be disregarded for the purposes of discount on a particular day if—

(a) on the day he is severely mentally impaired;

(b) as regards any period which includes the day he is stated in a certificate of a registered medical practitioner to have been or to be likely to be severely mentally impaired; and

(c)as regards the day he fulfils such conditions as may be prescribed by order made by the Secretary of State.

(2)For the purposes of this paragraph a person is severely mentally impaired if he has a severe impairment of intelligence and social functioning (however caused) which appears to be permanent.

(3)The Secretary of State may by order substitute another definition for the definition in sub-paragraph (2) above as for the time being effective for the purposes of this paragraph.

The Council Tax (Discount Disregards) Order 1992 (as amended)

The severely mentally impaired

3.—(1) The condition prescribed for the purposes of paragraph 2(1)(c) of Schedule 1 to the Act is that the person in question is entitled to one of the qualifying benefits listed in paragraph (2) below.

(2) The qualifying benefits for the purposes of paragraph (1) are—

(a)an invalidity pension under section 33, 40 or 41 of the Social Security Contributions and Benefits Act 1992(1);

(b)an attendance allowance under section 64 of that Act;

(c)a severe disablement allowance under section 68 of that Act;

(d)the care component of a disability living allowance under section 71 of that Act, payable at the highest rate under section 72(4)(a) or at the middle rate under section 72(4)(b) of that Act;

(e)an increase in the rate of his disablement pension under section 104 of that Act (increase where constant attendance needed);

(f)a disability working allowance under section 129 of that Act for which the qualifying benefit is one falling within subsection (2)(a)(i) or (ii) of that section, or is a corresponding Northern Ireland benefit;

(g)an unemployability supplement under Part I of Schedule 7 to that Act;

(h)a constant attendance allowance under—

(i)article 14 of the Personal Injuries (Civilians) Scheme 1983(2); or

(ii)article 14 of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983 (including that provision as applied, whether with or without modifications, by any other instrument);

(i)an unemployability allowance under—

(i)article 18(1) of the Personal Injuries (Civilians) Scheme 1983(3), or

(ii)article 18(1) of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983 (including that provision as applied, whether with or without modifications, by any other instrument).

18. I also considered The Council Tax (Exempt Dwellings)(Amendment) Order 1992 in which class U was inserted which stated:

In article 3 of the Council Tax (Exempt Dwellings) Order 1992(2), for Class U there is substituted—

“Class U:

(1) a dwelling occupied only—

(a) by one or more severely mentally impaired persons, where, but for this Order, either such a person, or a relevant person, would be liable to pay the council tax; or

(b) by one or more severely mentally impaired persons, together with one or more relevant persons.

(2) For the purposes of paragraph (1) above—

(a) “relevant person” has the meaning given by paragraph 2(a) of Class N above, and

(b) “severely mentally impaired” has the meaning given in paragraph 2 of Schedule 1 to the Act.”

19. In order to qualify the appellant must be severely mentally impaired, have a certificate from a registered medical practitioner to have been or to be likely to be severely mentally impaired and in receipt of a qualifying benefit. As there was a certificate completed by the appellant’s doctor stating that the appellant was severely mentally impaired due to PTSD from 1986 I was satisfied that the appellant did suffer from severe mental impairment for the period in question. I also noted that since at least 14 February 2005, the appellant was in receipt of a qualifying benefit.
20. Mr Singleton did not make the application until 18 September 2019 and therefore I had to consider whether I am able to back date the application to 14 February 2005. I was informed that the appellant only became aware of the SMI discount/exemption following a recent Martin Lewis television programme and had made his application following that programme and therefore the appellant had made the application almost as soon as he became aware of the discount/award. I am not restricted by s.9 of the Limitation Act 1980 as the application was made within six years from the cause of action that being the date he became aware of his possible eligibility and not the date from which he would have been eligible.
21. As I am satisfied that the appellant was eligible for the award and I am also satisfied that the award can be backdated to 14 February 2005, when the appellant first became a Council Tax payer. I was guided by the decisions, cited by the clerk, when arriving at my decision as bills and information leaflets were not a reasonable step in advising a person of the discounts and exemptions available and that the Limitation Act 1980 did not apply in this instance.
22. As I was satisfied that the appellant had been suffering from severe mental impairment from at least 14 February 2005 and therefore entitled to the SMI discount he, as the only resident at 705 The Maltings, Penwortham, was eligible for the Class U exemption from 14 February 2005 until 5 September 2011. From 6 September 2011 he was joint resident at 5 Long Moss Meadow and therefore was eligible for the 25% discount.
23. The appeal is allowed.

Order

24. 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 and apply the SMI discount for the period 6 September 2011 to date and to grant Class U exemption from 14 February 2005 to 5 September 2011, and to do so within two weeks of the date of this order.

Date: Thursday 4 March 2021

Appeal number: VT00000792