

THE VALUATION TRIBUNAL FOR ENGLAND



*Council tax liability appeal; discretionary reduction under section 13A(1)(c) of the Local Government Finance Act 1992; S.C. v East Riding of Yorkshire Council, C.W v Same [2014]; appeal dismissed.*

Re: The Bungalow, Mowhills, Bedford MK43 7EB

APPEAL NUMBER: VT00002876

BETWEEN:	Mr David Glennie	Appellant
	and	
	Bedford Borough Council	Respondent
	(Billing Authority)	

PANEL: Mr M Smith (Chairman)  
Prof. P Catterall

CLERK: Mrs C McAvoy

REMOTE HEARING No.1 on 27 April 2021

APPEARANCES:

Mr D Glennie (The Appellant)

Mrs A Panesar (On behalf of the Billing Authority)

---

**Summary of decision**

1. Appeal dismissed.

**Introduction**

2. The Valuation Tribunal for England received an appeal brought by the appellant under Section 16 of the Local Government Finance Act 1992 (the '1992 Act'). The appellant is aggrieved by the decision of the responding

billing authority (BA) to refuse discretionary relief under section 13A(1)(c) of the 1992 Act.

3. The appellant, in capacity of one of the appointed executors to his late mother's estate, was held liable for the council tax at the appeal dwelling, for the period of 21 February 2016 until 25 July 2019. An exemption was awarded for the period of 21 February 2016 to 29 March 2017. Following the expiration of the exemption, the property was charged in accordance with its status of unoccupied and substantially unfurnished. This included the application of a long-term empty premium with effect from 30 March 2019.
4. The appellant had received advice regarding the limitations in respect of making an appeal against the BA's determination to charge a long-term empty premium. In accordance with section 66 of the 1992 Act, this can only be questioned by way of judicial review. Following this advice, the appellant applied for a discretionary reduction. The application was dated 3 August 2019 and sought a reduction for the period of 30 March 2017 until 25 July 2019.
5. 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.
6. 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.
7. 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 the panel 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.
8. With the agreement of the parties the panel varied the procedure outlined in the Consolidated Practice Statement PS8 - Model Procedure and invited the respondent to present their evidence first to assist the unrepresented appellant.

### **Preliminary matter**

9. The Tribunal clerk informed the panel that the BA had partially failed to comply with the Tribunal's directions. In accordance with the standard directions, at least six weeks before the hearing date, the responding BA must provide the appellant with its full case in response to the appeal. The

appellant can then provide his case to the respondent four weeks before the hearing, with the respondent then sending both cases, together with a rebuttal, to the Tribunal two weeks before the hearing. The BA's submission was not issued to the appellant until the BA had received the appellant's case at the directed four weeks.

10. In considering whether to allow the evidence, the panel had regard to *Simpsons Malt & Others v Craig Jones (VO) & Others* [2017] UKUT 0460. In this case, the Upper Tribunal's guidance to tribunal panels was that the three-stage test as outlined in *Denton v TH White Ltd* [2014] WLR 3926 should be undertaken before considering whether or not to impose a sanction. Stage one requires the Tribunal to determine the significance and seriousness of the breach: if the breach is neither, then relief should usually be granted. At stage two the Tribunal must consider the reasons why the failure and default occurred: if the defaulting party has good reasons to explain what happened, relief should usually be granted. Finally, at the third stage, the Tribunal must have regard to all of the circumstances of the case, the need for litigation to be conducted efficiently and at proportionate costs, that the failure to grant relief may leave an incorrect liability and the need to enforce compliance with the rules, directions and orders of the Tribunal.
11. The panel decided that it was a minor breach of the directions because, in the panel's opinion, Mr Glennie had not been prejudiced by the respondent's failure. He had still provided his case to the BA and had the opportunity to review and comment on the BA's submission prior to the two-week disclosure to the Tribunal. When asked, Mr Glennie expressed that the delay had not affected his ability to present his case.
12. In view of the foregoing, the panel allowed the full evidence pack, which included Mr Glennie's additional comments, to be admitted and for the BA to present its case.

## **Issue**

13. The issue before the panel was to determine if the Billing Authority had reached the correct decision in refusing discretionary relief for the disputed period of 30 March 2017 until 25 July 2019.

## **Evidence and submissions**

14. The BA's submission included a copy of Mr Glennie's application form for discretionary relief, together with an extract from the BA's policy and the reasons for its decision. The BA submitted that they had refused discretionary relief on the grounds that; no financial hardship had been evidenced, the council tax instalments have all been met, resulting in nil balance on the account, and the property had been sold on 25 October 2019 for the sum of £425,000. The BA considered that the circumstances presented did not justify a deviation from its policy. The relevant law was referred to together with details of the premium charge in which the BA had resolved to set.

15. The appellant submitted that together with his two brothers, he had cared for their parents and therefore were dealing with the emotional trauma of losing both parents in a relatively short space of time. Their late parents had resided in the property for over fifty years, which meant there was a huge amount of personal effects to deal with. Mr Glennie also fell ill during this period and underwent medical treatment which left him incapacitated until March 2017. He submits that these circumstances delayed the initial process of selling the property. The property was listed for sale in June 2017 and attracted its first buyer in July 2017. Solicitors were engaged but, due to issues surrounding the mortgage, the process was delayed, and the sale fell through in March 2018. Following this, four other sales fell through. He considers that, given the circumstances, the BA should have exercised its discretion to reduce the charge to nil or at the very least, remove the premium charge applied.

### Decision and reasons

16. Under Section 13A of the 1992 Act, the BA retain a general discretionary power to reduce the amount of council tax payable. Section 13A provides:

“Reductions by billing authority

(1) The amount of council tax which a person is liable to pay in respect of any chargeable dwelling and any day (as determined in accordance with sections 10 to 13)—

(a) in the case of a dwelling situated in the area of a billing authority in England, is to be reduced to the extent, if any, required by the authority’s council tax reduction scheme (see subsection (2));

(b) ...

(c) in any case, may be reduced to such extent (or, if the amount has been reduced under paragraph (a) or (b), such further extent) as the billing authority for the area in which the dwelling is situated thinks fit.

...

(6) The power under subsection (1)(c) includes power to reduce an amount to nil.

(7) The power under subsection (1)(c) may be exercised in relation to particular cases or by determining a class of case in which liability is to be reduced to an extent provided by the determination.

17. Therefore, in accordance with paragraph (1)(c) stated above, in any case, a taxpayer can make an application to reduce the amount of council tax and the BA can reduce the council tax to nil or as it thinks fit.

18. An appeal of this kind is to be heard by the Tribunal as it is brought under Section 16 of the 1992 Act, as stated by the former VTE President in *S.C. v East Riding of Yorkshire Council, C.W v Same* [2014]. Paragraph 25 of this decision details 16 observations designed to assist billing authorities, council taxpayers and tribunal members when dealing with this type of appeal. Prior to proceedings, the tribunal clerk informed all parties of this guidance.

19. Mr Glennie made an application for discretionary reduction which was received by the BA on 3 August 2019. He sought a reduction to nil for the period of 30 March 2017 until the liability ceased on 25 July 2019. In his appeal to the tribunal, he submitted that, as a minimum, he would request that the discretion was applied for the period in which a premium charge had been added (30 March 2019 until 25 July 2019).

20. The responding BA submitted that the decision not to award discretionary relief was made having reference to its policy. An extract from the policy was provided:

The Council will consider using its powers to reduce Council Tax liability for any Council Tax payer or class of payer. The Council will treat all applications on their individual merits and some or all of the following criteria should be met for each case:

- There must be evidence of financial hardship or personal circumstances that justifies a reduction in Council Tax liability.
- The taxpayer must satisfy the Council that all reasonable steps have been taken to resolve their situation prior to application. The taxpayer has applied for Council Tax Support (if the dwelling is the taxpayer's sole or main residence).
- The taxpayer has applied for all other eligible, discounts, reliefs and exemptions.
- The taxpayer does not have access to other assets that could be used to pay Council Tax.
- The taxpayer can demonstrate that the current circumstances are unlikely to improve in the following 12 months, making the payment of Council Tax extremely difficult.
- The Council's finances, taking into account the effect on Council Tax yield, allow for a reduction to be made.
- It is reasonable for the Council to award a reduction having regard to the interests of other local Council Tax payers.

21. Whilst a policy is not required by statute, the panel recognised that a policy is often used as a guide to assist an authority in exercising discretion. The BA's decision stated:

'The panel have reviewed your case and your request for discretionary discount is refused, as there is no evidence of financial hardship. The policy does allow for awards to be made outside of the normal policy guidelines, however, there would need to be exceptional circumstances that would justify a deviation from the normal policy. From the application and information available the panel cannot see that there are any circumstances that would warrant an award outside of the normal policy in this case.'

22. Mr Glennie stated that, following receipt of recovery notices from the BA, he had personally paid the council tax using his pension. However, the panel was not presented with any evidence to indicate that this had resulted in financial hardship.

23. During proceedings, discussions surrounding the executors benefiting from the sale of the property arose. In answer to the BA's question, Mr Glennie stated that there had been a financial benefit, however, he stated that the estate had paid all necessary taxes and charges. He considers the additional council tax added, in the form of a council tax premium, to be punitive. The panel were not persuaded by this contention, the fact that the estate had to pay other taxes does not negate this tax.

24. The panel gave due consideration to the circumstances described in Mr Glennie's submission and recognised that this would have been a very difficult time for him. However, the panel found that the BA had applied its policy and therefore found nothing erroneous with the BA's decision not to grant discretionary reduction. For the reasons stated, the appeal was dismissed.

**Date:** 4 May 2021

**Appeal number:** VT00002876