

THE VALUATION TRIBUNAL FOR ENGLAND



Council tax liability appeal; Council Tax (Discount Disregards) Order 1992; definition of student; V-S v Royal Borough of Kingston Upon Thames [2019]; Wirral Borough Council v Farthing [2008] EWHC 1919; appeal dismissed.

RE: 9 Downton Court, Telford, Shropshire TF3 2BT (“the subject property”)

APPEAL NUMBER: VT00010075

BETWEEN:	X W	Appellant
	and	
	Telford and Wrekin Council	Respondent
	(Billing Authority)	

PANEL: Mr S Levy (Presiding Senior Member)
Miss S Ballentine (Senior Member)

CLERK: Mrs A Sloan

HEARING: Remote hearing No.3 on 21 February 2023

APPEARANCES: X W (Appellant)
Miss C Dunbar (for the Respondent)

Summary of decision

1. Appeal dismissed. The panel found that the appellant was not eligible for exemption from council tax as a full-time student.

Introduction

2. This appeal was lodged on 25 January 2022 to challenge the Billing Authority’s (BA) decision of 17 December 2021, which refused to award an exemption from council tax on the basis that the appellant was a full-time student. The appeal was accepted by the Tribunal under Section 16 of the Local Government Finance Act 1992 (“the 1992 Act”).

3. Both parties attended the remote hearing via Microsoft Teams, but the appellant's camera was not functioning on the day. She could be clearly heard by those present at the hearing and confirmed that she was content to proceed on an audio only basis.
4. In order to assist the appellant, who had expressed a preference for presenting her case second, and with the agreement of all parties, the panel varied the Tribunal's model procedure and invited the BA's representative to present her case first.
5. This Tribunal decision document is not and does not purport to be a verbatim record of proceedings.

Issue

6. The issue before the panel was whether the appellant met the criteria to be eligible for exemption from council tax as a full-time student. The period in dispute was 6 January 2021 to 6 January 2022.

Evidence and submissions

7. The panel was provided with a joint evidence bundle containing the submissions from both parties. This included the appeal form, BA decision, email exchanges between the parties, extracts from relevant legislation and correspondence from 'First Intuition', providing details of the modules that the appellant had studied.
8. This appeal had come before another VTE panel in August 2022, but the panel members were unable to reach a unanimous decision on the appeal. Therefore, it was relisted for hearing on 21 February 2023 and the evidence on file carried over. The clerk understood that a previous decision of the VTE President, *V-S v Royal Borough of Kingston Upon Thames [2019] (appeal number 5630M237894/281C)* had been circulated to the parties prior to the earlier hearing, as it was saved on file along with the evidence bundle. At the hearing, it became clear that neither party recollected having been sent the decision, so the clerk sent it to both parties by email during the hearing. The panel invited the parties to comment on the decision before 4pm that day. Comments were received from Miss Dunbar but none from the appellant.

Decision and reasons

9. The appellant sought exemption under Class N of the Council Tax (Exempt Dwellings) Order 1992. This exemption applies when all residents of the subject property are full-time students. The definition of a student for council tax purposes is found in the Council Tax (Discount Disregards) Order 1992 (SI 1992/548). The definition states in Schedule 1, Part 2 (as far as is relevant to this appeal) –

“4. (1) A full-time course of education is, subject to subparagraphs (2) and (3), one—

(a) which subsists for at least one academic year of the educational establishment concerned or, in the case of an educational establishment which does not have academic years, for at least one calendar year;

(b) which persons undertaking it are normally required by the educational establishment concerned to undertake periods of study, tuition or work experience (whether at premises of the establishment or otherwise)—

(i) of at least 24 weeks in each academic or calendar year (as the case may be) during which it subsists, and

(ii) which taken together amount in each such academic or calendar year to an average of at least 21 hours a week.”

10. In making her application to the BA for exemption, the appellant had supplied a document from ‘First Intuition’, which confirmed her name and address along with a list of the modules she was studying, and the date enrolled on each. She explained that she had registered to study the AAT Accounting Course from 6 January 2021 and provided details of the required total study hours for Level 2, 3, and 4 of the Accounting Diploma. She stated that she would be combining modules to study on a full-time basis and expected to finish her studies on 23 October 2021. On this basis she contended that the total required study hours for the modules totalled 1,050 which, when divided over 41 weeks of study, gave her an average of 25.61 hours study per week.
11. Later, the appellant sought exemption for a longer period. She explained that she had failed some papers and needed to re-sit exams in November 2021. She received her qualification on 6 January 2022 and provided confirmation of the dates each level of the qualification was achieved. She therefore sought an exemption for a calendar year, 6 January 2021 to 6 January 2022. In her appeal to the Tribunal, the appellant explained that she had decided to study by distance learning due to the coronavirus pandemic and that *“the nature of the study is such that it is not imbued with a specific end date.”*
12. The BA had initially questioned whether the course provider was a qualifying establishment, as set out in the legislation, but later conceded that it was an establishment for providing further education and the course accepted as further education, being a professional qualification. However, it decided that there was no evidence that the course subsists for an academic or calendar year and the exemption was refused.
13. The panel was aware that the President’s decision in *V-S v Royal Borough of Kingston Upon Thames* established that part-time courses could be considered full-time if multiple modules were studied simultaneously and the hours studied in combination met the prescribed 21 hours per week. In that case, the appellant was studying with the Open University and the modules ran from October to June, as an academic year. As the student had opted to study two modules in one academic year, which totalled more than 21 hours of study per week, the appeal was allowed.
14. In the case before the panel in this instance, there was no evidence that the AAT Accounting course studied by the appellant subsists for an academic or calendar year. The document from ‘First Intuition’ provided no detail on the expected end dates for each module or details of when an academic year would be considered to start and end. When questioned at the hearing, the appellant confirmed that she re-sat exams in November 2021 but was not able to confirm the number of study hours required or completed between October and the exams in November. When asked what she was doing between November 2021 and qualifying in January 2022, she replied that she was simply awaiting her exam results.
15. The BA relied on the High Court decision *Wirral Borough Council v Farthing* [2008] EWHC 1919. In that case, His Honour Judge Hodge stated at paragraphs 21 and 22:

“21. Paragraph 4 (1) is perfectly clear. Each of the subparagraphs of that paragraph has to be satisfied for the relevant discount to be applicable. The full-time course must not only satisfy the requirements of subparagraphs (b) and (c) of paragraph 4 (1); it must also satisfy the independent requirement of subparagraph (a).

22. I accept the contention that it is not possible to extend the scope of paragraph 4, whether by implication or by any other acceptable process of statutory construction, to persons who undertake intensive courses, but which subsist for less than one academic year. If it had been the intention of Parliament that a course which subsisted for a period of less than one academic year, but which was nonetheless intensive, so that for instance the period specified in subparagraphs (b) and (c) of paragraph 4 (1) were satisfied, then Parliament would have expressly provided for that situation....”

16. After considering the evidence in the subject appeal, the panel found that there was no evidence that the course studied by the appellant subsisted for either an academic or calendar year. It was clear that the appellant had opted to study multiple modules and predicted she would be ready to take the examinations in October 2021. When questioned at the hearing on whether there were fixed exam dates, which would dictate the required study period, she replied that the exams could be booked when required in available slots.
17. In the absence of any evidence that the course ran for a specified academic year, rather than students having the ability to enrol at any time, the panel considered whether the course was for a calendar year. It found there was no evidence that the AAT Accounting course subsisted for a calendar year. The appellant had chosen to combine modules and study at a higher intensity but there was no evidence that the course was expected to take one calendar year to complete. The appellant herself had confirmed in her appeal to the Tribunal that the study had no specific end date. The facts provided to the panel showed that the appellant studied for around ten months and then re-sat some papers in the eleventh month. It appeared that the course was entirely flexible and could be studied over a time period and intensity that suited each individual.
18. The panel was aware that, if the appellant had suffered financial hardship as a result of not being awarded the exemption she sought, it was open to her to ask the BA to consider the situation under its discretionary powers set out in Section 13A(1)(c) of the 1992 Act. Any application must be considered on its merits and there is a right of appeal to this Tribunal, but the panel could not comment on the likely success of any such application.
19. In the absence of any evidence that paragraph 4.1(a) of the Council Tax (Discount Disregards) Order 1992 was met, the panel dismissed the appeal.

Date: 8 March 2023

Appeal number: VT00010075

Appeal Rights

Any party who is aggrieved by the Tribunal's decision has the right of appeal to the High Court on a question of law. Any such appeal should be made within four weeks of the date of this decision notice.