

# THE VALUATION TRIBUNAL FOR ENGLAND



*Council tax liability appeal; The Local Government Finance Act 1992; The Council Tax (Reductions for Disabilities) Regulations 1992; Howell Williams v Wirral Borough Council [1981] 79 LGR 697; Sandwell Metropolitan Borough Council v Perks [2003] EWHC 1749 (Admin); South Gloucestershire Council v Titley and Clothier [2006] EWHC 3117 (Admin); Appeal dismissed.*

RE: 2 Rectory Gardens, Doncaster DN1 2JU  
(the subject property)

APPEAL NUMBER: VT00011534

BETWEEN: AMG Appellant  
and Respondent  
Doncaster Metropolitan Borough  
Council  
(Billing Authority)

PANEL: Mr R P Cammidge (Presiding Senior Member)  
Mr M Hunt (Senior Member)

CLERK: Mr A Johnson Tech IRRV

ON: 18 November 2022

APPEARANCES: The appellant  
Mr R de Mello (of No.5 Barristers' Chambers for the appellant)  
Mr P Beresford (for the Billing Authority)

REMOTE HEARING CONDUCTED VIA MICROSOFT TEAMS

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## Summary of decision

1. This appeal was dismissed. The panel found nothing erroneous with the billing authority's decision not to grant a disabled band reduction (hereafter referred to as a DBR) in respect of the subject property from 8 March 2021.

## Introduction

2. This appeal had been brought pursuant to section 16 of the Local Government Finance Act 1992. The appellant had challenged the billing authority's decision not to award a DBR from 8 March 2021. The appellant was also seeking statutory interest of 8% in respect of the council tax he stated he had overpaid in accordance with section 69 of the County Courts Act 1984.
3. This decision notice is not intended to be a verbatim or contemporaneous record of the proceedings. Consequently, the absence of a reference to any statement or evidence should not be construed as it having been overlooked.

## Preliminary issue

4. At the commencement of the hearing Mr Johnson advised the panel that the Tribunal had received additional items of evidence from the appellant which had been submitted outside of the Standard Directions for the exchange of evidence. These, in brief summary, were:

*Received on 15 November 2022:*

A witness statement from the appellant

A report from Sally Smith, SENDCO Inclusion Manager

Photos of the room used by the appellant's son (hereafter referred to as M)

*Received on 16 November 2022:*

A witness statement from the appellant

A report from Sally Smith, SENDCO Inclusion Manager

*Received on 18 November 2022:*

A witness statement from the appellant

A calculation of the amounts of council tax alleged to have been overpaid

5. Mr de Mello explained that he had been instructed at relatively short notice and had advised the appellant to submit the above documents. Mr de Mello argued that their contents did not raise anything new and should not be a surprise to the billing authority. As such, he did not believe that the billing authority had been placed at a disadvantage.
6. Mr Beresford did not raise any objection to the inclusion of these documents in this appeal and he stated that he did not consider them to have placed the billing authority at a disadvantage.
7. In consideration of Mr Beresford's comments, the panel agreed to accept the documents and photographs into evidence.

## Issues

8. The panel had to determine whether the billing authority was correct to refuse a DBR in respect of the subject property.
9. The appellant had also sought, in the event of a successful appeal, for an award of 8% statutory interest in accordance with section 69 of the County Courts Act 1984 in respect of the council tax he had calculated to have overpaid. At the outset of the remote hearing, Mr Johnson advised the panel (and the parties) that the Tribunal had no power to award interest.

## Relevant legislation and case law

10. Section 13 the Local Government Finance Act 1992 states as follows:

*“Reduced amounts*

*(1) The Secretary of State may make regulations as regards any case where -*

*(a) a person is liable to pay an amount to a billing authority in respect of council tax for any financial year which is prescribed; and*

*(b) prescribed conditions are fulfilled.*

*(2) .....*

*(3) .....*

*(4) The conditions mentioned in subsection (1) above may be prescribed by reference to such factors as the Secretary of State thinks fit; and may include the making of an application by the person concerned and all or any of –*

*(a) .....*

*(b) the factors mentioned in subsection (6) below.*

*(5) .....*

*(6) The factors referred to in subsection (4)(b) above are -*

*(a) a disabled person having his sole or main residence in the dwelling concerned;*

*(b) the circumstances of or other matters relating to, that person;*

*(c) the physical characteristics of, or other matters relating to, that dwelling.*

*(7) .....*

*(8) .....*

*(9) .....*

*(10) .....”*

11. The Council Tax (Reductions for Disabilities) Regulations 1992. The regulations which are relevant in this appeal are:

*1 Citation, commencement and interpretation*

*(1) .....*

*(2) In these regulations –*

*‘qualifying individual’ means a person who is substantially and permanently disabled (whether by illness, injury, congenital deformity or otherwise...’’*

*3 Eligible persons*

*(1) A person is an eligible person for the purposes of these Regulations if -*

*(a) he is a liable person as regards a dwelling which is the sole or main residence of at least one qualifying individual and in which there is provided -*

*(i) a room which is not a bathroom, a kitchen or a lavatory and which is predominantly used (whether for providing therapy or otherwise) by and is required for meeting the needs of any qualifying individual resident in the dwelling;*

*or*

*(ii) a bathroom or kitchen which is not the only bathroom or kitchen within the dwelling and which is required for meeting the needs of any qualifying individual resident in the dwelling;*

*or*

*(iii) sufficient floor space to permit the use of a wheelchair required for meeting the needs of any qualifying individual resident in the dwelling;*

*and*

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

*(2) For the purposes of paragraph (1), and subject to paragraph (3), references to anything being required for meeting the needs of a qualifying individual are references to its being essential or of major importance to his well-being by reason of the nature and extent of his disability.*

12. Prior to the hearing Mr Johnson had circulated copies of case law to the panel and the parties. These were the Court of Appeal decision in *Howell Williams v Wirral Borough Council* [1981] 79 LGR 697 and the High Court decisions in *Sandwell Metropolitan Borough Council v Perks* [2003] EWHC 1749 (Admin) and *South Gloucestershire Council v Titley and Clothier* [2006] EWHC 3117

(Admin). The panel noted that these cases had been referenced within the billing authority's written submission.

### **Summary of evidence and submissions**

13. There was no dispute between the parties that the appellant was an 'eligible person' or that his son was a 'qualifying individual' for the purposes of the regulations.
14. There was no dispute that the appellant's application for a DBR was solely in respect of M's bedroom which had a dual role as his bedroom and a sensory room. In this regard, the panel noted the appellant's witness statement of 18 November 2022 (received on the morning of the hearing), in which he stated that M used the room for sleeping purposes from approximately 20:00 to 05:00 daily and for approximately four/five hours as a sensory room during a typical school day, which increased to approximately six/seven hours during a typical non-school day.
15. Within his written submissions, the appellant explained that M's bedroom contained the following:
  - a bunk bed for M to climb and explore, which doubles as a dark and secluded place for calming him when he is overwhelmed;
  - a variety of sensory lighting comprising of different colours, brightness and movement arrays to suit both M's mood and the environment;
  - a ball pit;
  - a trampoline and a weighted blanket (all for sensory input);
  - a padded fold out mat to aid M's toileting needs, which doubles up as a crash mat so M can jump on it for sensory input;
  - several baby gates at the bay window which provided natural light and allowed a view out, but prevented M from accessing this area for safety reasons because he has no understanding of danger;
  - an enclosed compact safety light which replaces pendant lighting which M would otherwise pull down; and
  - anchored wardrobes which prevent them from being moved so they cannot topple upon M.
16. In brief summary, the appellant argued that the regulations specifically refer to a "room which is not a bathroom, kitchen or lavatory", which is essential for meeting the disabled person's needs, therefore, this did not exclude M's bedroom. As M's bedroom was essential to meet his needs, a DBR should be allowed.
17. In support, Mr de Mello submitted that the regulations do not specifically exclude a bedroom and there is no criterion which speaks of the need for an "additional" room. It requires a room such as, in this case, M's bedroom which is predominantly used by him as a qualifying individual. Mr de Mello observed that Parliament had not deliberately excluded a bedroom from the regulations

and, therefore, its dual use for sleeping and for meeting the needs of M meant that a DBR should be allowed.

18. In support, Mr De Mello referred the panel to the *Perks* case and specifically paragraphs 3, 5, 6, 14, and 17. The panel noted that paragraph 3 of the judgement sets out regulation 3 which is shown above. Therefore, the panel did not consider it necessary to repeat it. Paragraphs 5, 6 14 and 17 stated:

*“5. Mr Timothy Jones, who appears for the council, makes three submissions. First, he says that in order to obtain exemption the use by the disabled person must be of a room which is predominantly used, and is essential and/or of major importance, to the well-being of the disabled person by reason of the nature and extent of his disability.”*

*“6. Second: he submits that there has to be a causal link between the disability and the use of the room.”*

*“14. To my mind, Mr Jones has made good his two submissions which I regard as being correct. It is important that any tribunal, which has to consider whether or not a person is entitled to exemption under Regulation 3, should consider if there has been the appropriate causative link between the disability and the requirement of the use of the room, because the use has to be essential or of major importance, because of the nature and extent of the disability.”*

*“17. It is important to stress that the Howell-Williams case is authority for the need for the causal link to which I have referred. The Tribunal, in my view, failed to take note of that point, and thus erred. In those circumstances their decision cannot stand. Mr Perks, who is neither present nor represented today, has signed a consent order agreeing that the decision under challenge should be set aside and that is what I propose to order”.*

19. This case, Mr de Mello submitted, established that if there was a causal link between M's disability and the use of his bedroom to meet his specific needs, then a DBR should be granted.
20. In summary of the billing authority's position, Mr Beresford stated there was no dispute as regards the relevance of the *Perks* case. However, it was the billing authority's position that an "additional" room was required under the Regulations and, despite the dual use of M's bedroom, it was still his bedroom. As such, a DBR could not be granted.
21. The panel considered the case of *Howell-Williams* to be relevant. Whilst this case considered the interpretation of The Rating (Disabled Persons) Act 1978 the panel noted that the relevant provisions of the 1992 regulations were similar. This conclusion was supported by the comments of Silber J in *Perks*

where, at paragraph 12, he quoted from the judgement of Turner J in *Luton Borough Council v Ball* [2001] EWHC Admin 328 where he observed that the 1978 Act was similar, in all relevant aspects, to the 1992 regulations. The relevant part of the 1978 Act was as follows:

*“(2) This section applies to -*

- (a) a hereditament in which a room other than a bathroom or lavatory is predominantly used (whether for providing therapy or for other purposes) by and is required for meeting the needs of a disabled person who resides in the hereditament;*
- (b) a hereditament in which there is an additional bathroom or lavatory which is required for meeting the needs of a disabled person who resides in the hereditament;*
- (c) a hereditament which is equipped with a heating installation for providing heating in two or more rooms, being heating required for meeting the needs of a disabled person who resides in the hereditament;*
- (d) a hereditament in which there is any other facility which is required for meeting the needs of a disabled person who resides in the hereditament;*
- (e) a hereditament in which there is sufficient floor space to permit the use of a wheelchair used by and required for meeting the needs of a disabled person who resides in the hereditament;*
- (f) a hereditament which includes or consists of a garage, carport or land used otherwise than temporarily for accommodating a vehicle used by and required for meeting the needs of a disabled person.*

*(3) In subsection (2) above -*

- (a) references to anything being required for meeting the needs of a disabled person are references to its being essential or of major importance to his well-being by reason of the nature and extent of his disability; and*
- (b) references to a disabled person who resides in a hereditament include references to a disabled person who is usually resident there.”*

22. In *Howell-Williams* a disabled person was using a night storage heater in her living room to help with her disability. The Court of Appeal held that the room itself was not required for meeting the needs of the disabled person (as it remained a living room). Fox LJ (with whom Oliver LJ agreed) stated that:

*"It cannot have been the intention of Parliament to grant a rebate merely because a room is predominantly used by a disabled person; that is quite inconsistent with the language of the section. It seems to me that the user of the room must be related to the disability. Section 1(2)(a) refers to both user and to the fact that the room must be required to meet the needs of the disabled person because of the disablement. The form of the paragraph is such that the two requirements are very closely related; that, I think, is emphasised by the word "required" - the room must be required to meet the needs of the disabled person by reason of the disability."*

23. The panel also had regard to *South Gloucestershire Council v Titley and Clothier* [2006] EWHC 3117 (Admin). In paragraphs 21, 22 and 23 of his judgement Bean J examined the construction of regulation 3 (of the 1992 regulations):

*"21. It is clear, even without recourse to the judgement of Fox LJ in the Howell-Williams case, that on a grammatical construction of regulation 3(1)(a)(i) there must be a room which is:*

*(1) not a bathroom, kitchen or lavatory;*

*(2) predominantly used by a qualifying individual, whether for providing therapy or otherwise; and*

*(3) essential or of major importance to his well-being by reason of the nature and extent of his disabilities.*

*22. In both of the cases before me requirements (1) and (2) are obviously fulfilled. The issue concerns requirement (3). This must add something to (1) and (2), otherwise regulation 3(1)(a)(i) would not contain the words "and is required for meeting the needs of". Indeed, if the intention of Parliament or the Secretary of State had been to allow a reduction in council tax of one band to any household including someone who is substantially and permanently disabled, it would have been simple enough to say so.*

*23. I consider that some assistance in the interpretation of regulation 3(1)(a)(i) is provided by 3(1)(a)(ii). A sole kitchen or bathroom is essential or of major importance to a disabled person, but it is essential or of major importance to almost any household. However, even if a sole bathroom or kitchen has been adapted for a disabled person, it*



*does not qualify the property for a disabled band reduction because of the exclusionary words in regulation 3(1)(a)(ii). By contrast, a second bathroom or second kitchen can do so, whether or not predominantly used by the disabled person. This is, I suspect, because while in the majority of houses (as opposed to flats or bungalows) there is no bathroom on the ground floor, such a facility may have to be added if the household contains a qualifying individual who cannot manage the stairs. Conversely, if the disabled person lives on an upper floor a kitchen may have to be added there. There are no doubt some instances of large properties that had bathrooms on every floor even before the household contained a disabled person and whose owners obtain a windfall reduction under the Regulations. But the intention of the legislator appears to be that a room which will qualify is in most cases one which would not otherwise be required for the relevant purpose (say a ground floor room converted to a bathroom, or a bathroom added as an extension to the ground floor). Similarly under regulation 3(1)(a)(iii) the additional space necessary for the use of a wheelchair within the property (for example where doorways have to be widened) allows the property to qualify for a reduction. Reducing council tax by one band compensates the taxpayer, not precisely but by the application of a broad brush, for the fact that some additional space is required for the use of the disabled person.”*

24. The panel was satisfied that a causal link had been established between M's use of the bedroom and his disability. However the panel, when following the case law, did not accept that a DBR necessarily followed.
25. In *Howell-Williams*, Fox LJ made it clear that a reduction could only apply if a disabled person requires an “additional” room in the sense that it would not be required for its relevant purpose if the qualifying individual was not disabled. This principle was followed by Bean J in *Clothier*. At paragraph 9, he set out the circumstances:

*“9. In Mr Clothier's case the household consists of five members: Mr and Mrs Clothier, Michelle, Michael and Abigail. Mr and Mrs Clothier are parents of Michelle and Abigail and custodians of Michael. Michelle, who is 33, and Michael, who is 20, both have Downs Syndrome and it is common ground that they are 'qualifying individuals' within the meaning of regulation 1(2) [of the 1992 regulations]. Each of them has a bedroom where he or she spends a great majority of time each day alone. There is no physical adaptation to the bedrooms. Mr Clothier described each room as a sanctuary. There is medical evidence supporting his argument that Michelle and Michael need to experience a safe environment where they can respectively enter their own private world, which the respective bedrooms provide.”*

26. At paragraph 25 Bean J concluded:

*“25. Mr Clothier’s case is more difficult, and in my judgment closer to the borderline. But in the end I conclude that the result is the same. Michelle is 33 and Michael is 20. If they had no disability but were still living in the same house as Mr and Mrs Clothier, they would each have their own bedroom anyway. The difference would be that they would spend less time in it, but neither bedroom is in any sense ‘additional’. Accordingly in Mr Clothier’s case also the council’s appeal is allowed and the decision of the valuation tribunal quashed.”*

27. The panel accepted that the bedroom in question was used to meet the needs of M and had been furnished accordingly. However, when following the case law the panel concluded that whilst the bedroom had a dual use as a bedroom and sensory room, it would nevertheless be required for its relevant purpose as M’s bedroom if he were not disabled. Therefore, the bedroom was not, in any sense, found to be ‘additional’.

28. After full consideration of the evidence presented before it, the panel found that the requirements of the legislation and case law had not been met and the billing authority had correctly decided not to award a DBR.

29. This appeal was therefore dismissed.

**Date:** 9 December 2022

**Appeal number:** VT00011534

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### **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.