

THE VALUATION TRIBUNAL FOR ENGLAND



Council Tax liability appeal; Application for discretionary relief under section 13A(1)(c) of the Local Government Finance Act 1992; Appeal allowed in part.

RE: 86 Cammell Road, Sheffield S5 6UW

APPEAL NUMBER: VT00012067

BETWEEN:	A R H	Appellant
	and	
	Sheffield City Council (Billing Authority)	Respondent

PANEL: Mr K Everett (Presiding Senior Member)
Mrs A E Fielder (Senior Member)

CLERK: Mrs A Keohane

REMOTE HEARING: Thursday 2 February 2023

APPEARANCES: A R H, the Appellant

Summary of decision

1. The appeal was allowed in part.

Introduction

2. This appeal arose as a consequence of a decision issued by the billing authority (BA) dated 17 May 2022 in which it refused to award the Appellant discretionary relief under the provisions of section 13A(1)(c) of the Local Government Finance Act 1992 (the 1992 Act). Section 13A(1)(c) provided the BA with discretionary powers to reduce the amount of a person's council tax liability. The appeal was accepted by the Valuation Tribunal as an appeal made under section 16 of the 1992 Act.
3. Prior to the hearing, the Appellant had contacted the Tribunal as some of the emails he considered relevant to his appeal had been omitted from the BA bundle, although he had requested their inclusion. The emails were provided by the

Appellant and sent to the BA, who provided comments. The panel decided to admit the content of the emails, together with the BA's comments in respect of them.

4. Within the BA response, further comments were included regarding outstanding council tax for 2022 and reference to summonses. The Appellant considered the BA was attempting to present an untruthful account and stated that this was presently the subject of a 14-page complaint. The panel had no regard to any aspect of the BA's comments that did not refer to the omitted emails.
5. At this point, it is important to stress that the only issue the panel had jurisdiction to consider was whether the BA had correctly refused to exercise its discretionary power to reduce the Appellant's liability for the period he sought. The evidence placed before it in relation to other outstanding issues, such as complaints about the BA's actions, possible maladministration, discrimination, harassment, and the escalation of disputes to the Local Government and Social Care Ombudsman, were not matters it had authority to deal with. Although a significant amount of evidence was before the panel, it had regard to that which it considered addressed the issue under consideration.
6. This document is not intended to be an exhaustive record of the proceedings, but the parties can be assured that all of the evidence relevant to the appeal was fully considered by the panel before coming to its decision. Consequently, the absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

Issue

7. Whether the BA's decision to refuse to reduce the Appellant's council tax liability using its discretionary powers under section 13A(1)(c) of the 1992 Act was reasonable.

Evidence and submissions

8. The Appellant outlined the history of his dealings with the BA, together with the reasons for his accumulated council tax arrears, which he believed had been exacerbated by the BA's tardy responses to his correspondence. He referred the panel to relevant emails and correspondence with the BA.
9. In brief, the Appellant had written to the BA in March 2020 seeking relief from paying council tax. At that time, he was in Thailand and his property in Sheffield was empty and not benefitting from any of the services provided by the BA. The Appellant indicated that he was to cancel his direct debit for council tax, together with the direct debits for other services. At the time of contacting the BA, the Covid-19 pandemic was underway and it became apparent that he would not receive any financial help from the government because he was self-employed. He believed that, due to the pandemic, his income would be affected and possibly reduced to nil.
10. The Appellant was due to return to the UK from Thailand on 13 May 2020. The pandemic had prolonged his stay which resulted in substantial additional living costs he had not accounted for. This unexpected expenditure was further increased by the problems he had finding a flight back to the UK.

11. The Appellant indicated that he had initially sought relief from payment of council tax from April 2020 to August 2020, a period of five months covering his enforced extended stay in Thailand. Over time, the arrears had accrued to such a level that he had no way of clearing them. Within his application he had sought discretionary relief for the outstanding liability from the end of 2019/2020, and the years 2020/2021, 2021/2022.
12. Within the Appellant's application for discretionary relief, as well as setting out income and expenditure as at 31 December 2021, the following was stated:
- i. He owned an investment rental property, and this provided his only source of income. He received £630 per month in rent but was required to pay an £80 service charge, giving him a total net income of £550 per month.
 - ii. The BA had viewed the rental property as a capital asset that could be sold to clear any outstanding debt. However, it was this asset that provided his source of income and was the reason he did not claim benefits. The investment property was also to provide his pension as he had no other pension funds.
 - iii. The pandemic had detrimentally affected his mental health making it difficult to go out and improve his financial situation, for example looking for part-time work or taking in a lodger.
 - iv. Council tax was not the only debt the Appellant had accrued, outstanding amounts for gas and electricity were also owed.
13. The BA submitted a bundle of evidence, which included correspondence between the parties and a copy of the Appellant's application for discretionary relief. In refusing the application, the BA outlined the following:
- i. The Appellant's total arrears for the period 2020/2021 (£552.02) and 2021/2022 (£995.71) amounted to £1547.73.
 - ii. In deciding whether to exercise its discretion, consideration was given to a person's ability to pay and whether payment of the liability would cause the taxpayer significant financial hardship. A further concern was whether the decision to reduce liability would be a 'fair decision' to other taxpayers within the city, who would effectively have to absorb the costs of writing off the council tax charge.
 - iii. The BA considered it would not be a fair decision to other taxpayers to agree to write off the Appellant's arrears, given he had a capital asset from which he derived an income and which could be used, if necessary, to release funds to pay the outstanding debt.
 - iv. As the Appellant had a second property, he was treated as having capital over £16,000, which impacted his ability to claim council tax support or universal credit. The BA considered these were the appropriate routes for the Appellant to reduce his council tax liability.
 - v. Whilst the BA accepted that the Appellant had been unable to return to the UK due to the Covid-19 pandemic and associated lockdowns until August 2020, it considered it was reasonable for the Appellant to have made payments in respect of his liability upon his return. At the point of the Appellant's application for discretionary relief, his arrears amounted to £1547.73. The liability for the period of his absence from the UK was in the region of £395.

Decision and reasons

14. Under Section 13A of the 1992 Act, the BA has 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.

15. The former President of this Tribunal, Professor Zelic, in the case of *SC v East Riding of Yorkshire Council* and *CW v East Riding of Yorkshire Council* [VTE, appeals: 2001M113393/CTR & 2001M117053/CTR, 27 May 2014], (a copy of which had been sent to the parties prior to the hearing), confirmed that the Tribunal’s approach to this type of appeal was the same as for any other liability appeal; at paragraphs 23 and 24 Professor Zelic stated the following:

“23. The Tribunal’s approach is thus the same as in every other appeal. This is captured in para. 5 of our Model Procedure (VTE/PS/B1: 22 May 2013):

(1) It is for the appellant to satisfy the Tribunal that the appeal should be allowed.

(2) All parties must satisfy the Tribunal in respect of any argument or evidence they advance or introduce.

24. Thus, it is for the appellant to raise doubt as to the correctness of the authority’s decision and to argue what the correct decision should have been. The authority may then defend its decision and the panel will decide the appeal on the balance of probabilities. There is no inhibition on the Tribunal substituting its view for that of the authority, but any such substitution must be soundly and solidly based”.

16. Whilst paragraph 23 above quoted a Practice Statement that had since been updated, the principles established in the decision were still authoritative. Professor Zelic had also given consideration to the financial circumstances of the Appellants

involved in those appeals and had resolved that if there was a surplus of income to pay council tax then an application for discretionary relief should be dismissed.

17. The Appellant had indicated in his submissions that his property had remained empty during his visit to Thailand and therefore he was not receiving the services he paid council tax to cover. The panel did not accept this argument as it was aware that there was no direct link in legislation between the amount of services enjoyed by a taxpayer and the amount of council tax paid.
18. The burden of proof in this case lay with the Appellant to show that he could not afford the council tax payments. Within the documentation, the panel found a schedule setting out the income earned by the Appellant from the property he let out, namely £630 per month which reduced to £550 when the service charge was deducted. In carrying out a brief calculation of the Appellant's income and expenditure from the information he had provided, which reflected his circumstances as at 31 December 2021, the panel found that after deducting the amounts he had specified for food and housekeeping, home insurance, water rates, mobile telephone or landline costs, home internet costs, car running costs and other household expenses, his total expenditure was £358.30.
19. Having regard to the expenditure, the panel noted that the Appellant had a surplus of income of around £190 from which some contribution to council tax, which is classed as a priority debt, could have been made. In carrying out the calculation, no expenditure was included for gas, electricity, or council tax, because whilst they were included in the outgoing income column, the comments indicated these were not being paid, thus they were not part of the Appellant's outgoings.
20. The Appellant had commented that his credit card payments varied from month to month but were paid automatically on a monthly basis; it was therefore difficult to clarify the monthly outgoings for his credit card. However, the panel noted that it was used for shopping and day to day expenses which may also have been covered by the expenditure specified for food and housekeeping. In the panel's view the evidence demonstrated that for at least some of the periods the Appellant had accrued arrears, it was likely that he could have contributed some amount to his council tax liability or to clear some of his outstanding debt, without the need to sell his rental property. The panel therefore determined that, other than for the period from 13 May 2020 to 31 August 2020, the BA had correctly refused to award discretionary relief.
21. The Appellant indicated in correspondence that his original departure date from Thailand was 13 May 2020. The panel therefore considered that the extra period that the Appellant had been compelled to remain in Thailand due to the restrictions of the Covid-19 pandemic was 13 May 2020 to 31 August 2020. It was ascertained from the Appellant that his trip to Thailand was not a holiday but necessary for emotive reasons and it was where his girlfriend had resided. He explained that his girlfriend had since passed away. Whilst accepting that the Appellant had a capital asset, the panel considered that the Appellant's enforced stay in Thailand due to the pandemic, was by reason of exceptional circumstances outside of his control and that having to remain in Thailand for the extended period would have caused him immediate and significant financial hardship. It considered that allowing relief for this period would not be an unfair decision to other taxpayers, and therefore

determined that the Appellant's liability for council tax should be reduced to nil for the period from 13 May 2020 to 31 August 2020 only.

Order

22. Under the provisions of regulation 38(1) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the BA to reduce the Appellant's council tax liability to nil for the period from 13 May 2020 to 31 August 2020.

Date: 21 February 2023

Appeal number: VT00012067

Right of Appeal

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.