

VALUATION TRIBUNAL FOR ENGLAND



Council Tax Liability Appeal; Late service of council tax demand; Liable person; Resident freeholder; Section 9 of the Limitation Act 1980; Backdated liability starting from the date the cause of action had occurred; Appeal allowed in part.

APPEAL NUMBER: VT00013858

BETWEEN: NS Appellant
and

City of Bradford Metropolitan District Council Respondent
(Billing Authority)

RE: 63 Hutton Road, Bradford, BD5 9DU

PANEL: Mr A N Backway (Chair)
Mrs A Taylor

CLERK: Mrs K Edhouse-Thomas IRRV (Tech)

SITTING ON: Friday 30 June 2023

APPEARANCES: NS (appellant)
Ms K Ward (representative for the respondent)

Summary of decision

1. Appeal allowed in part. The panel made a finding of fact that the Billing Authority (BA) was aware that the appellant was the freehold owner of the property when he moved in with his mother to provide care for her on 9 December 2008. Therefore, on 24 April 2017, the BA was incorrect to backdate council tax liability more than six years.

Introduction

2. This was a council tax liability appeal which had been made in accordance with section 16 of the Local Government Finance Act 1992. The appellant was aggrieved with the BA decision to hold him liable for the council tax at the appeal dwelling for the period from 9 December 2008 to 30 November 2018 on the basis that the demand notices for council tax were not issued until 24 April 2017.

3. The BA argue that whilst the benefits department within City of Bradford Metropolitan District Council was aware that the appellant was the freehold owner of the appeal property in 2007, when a housing and council tax benefit claim was made by the appellant's mother, the separate team responsible for council tax billing was not made aware of this until 22 March 2017. This was the date that the benefits team identified that it had incorrectly held the appellant as a non-dependant on his mother's council tax reduction claim.
4. Under section 6 (2)(a) of the Local Government Finance Act 1992, the appellant should have been the liable person for council tax from the date that he moved in on 9 December 2008 as he was the resident freeholder. The BA argued that the initial demand for council tax was issued promptly on 24 April 2017, and that 22 March 2017 is the date that the cause of action accrued for the purposes of section 9(1) of the Limitation Act 1980.
5. There is no dispute that the appellant was the freehold owner of the property for the whole of the period in dispute, or that he was resident.
6. The appeal was received on 17 November 2022.
7. To assist the appellant, the model procedure was varied to allow the lay appellant to present his case second.
8. During the hearing, the appellant informed the panel that his mother had sadly passed away a couple of months prior. The hearing was not an easy process for him. The panel gave the appellant the opportunity to adjourn the hearing to an alternative date. The appellant stated that he would prefer to continue.
9. The hearing was held remotely on Microsoft Teams.
10. This document is not and does not purport to be a full verbatim record of proceedings.

Issue

11. Is the appellant liable for the council tax dating back to 9 December 2008 when no demand notice was issued until 24 April 2017?

Evidence and submissions

12. The appeal bundle was submitted which contained the respondent's case, legislation, supporting documentary evidence and caselaw including the High Court's decision in *Encon Insulation (Nottingham) Ltd v Nottingham City Council* [1999]. The appellant's appeal documents were included, but no submissions were received from the appellant. In advance of the hearing the clerk sent a copy of a previous Tribunal decision, *L.M v Bradford Metropolitan Borough Council* [VTE, 4705M214233/254C, 18 October 2018] to both parties.

Decision and reasons

13. The appellant argued that the BA was aware that he was the owner of the property much earlier than 2017. His Mother had made a claim for housing and council tax benefit in 2007 (when she lived alone). The housing benefit had been refused on the basis that he was the owner of the property. He had purchased the property on 29 October 2004. The BA's housing benefit decision had been appealed and had been heard by the First-tier Tribunal in April 2008 and the BA had attended this hearing. The panel was therefore aware that the matter concerning ownership of the appeal property had received considerable attention in 2008.
14. The appellant explained that his mother had become seriously ill in 2007, and that he had moved into the property on 9 December 2008 to provide full time care for her. Whilst providing care, he was unable to work and was claiming both Carers Allowance and Income Support. He explained that he has Dyslexia, and had never filled in any application forms himself, he received assistance from the benefits team, which also included at least one home visit.
15. The appellant was under the impression that Bradford Council was aware that he owned the property and that he was living there. He thought that any rebate received was based upon the benefits that he was in receipt of. He stated that on no occasion did he try to mislead the BA. He tried to give the right information to the right people and had not appreciated the separate departments.
16. The BA argument was that the appellant did not notify the council tax department that he had moved into the appeal property. Whilst the benefits department was aware that he was living there, the council tax department was unaware that he was the resident freeholder from 9 December 2008. It was argued that this was only identified on 22 March 2017. As the BA had acted promptly in issuing demand notices, it was argued that there was no impediment to the council retrospectively charging back to the first date when the appellant became liable for council tax on 9 December 2008.
17. The BA believed the following caselaw which supported the case that the date of notification should be used when considering retrospective billing, rather than the date of the change: *Holdsworth and others v City of Bradford Metropolitan District Council* [VTE, 4705M141113/254C, 22 June 2015] and *Singh v Leicester* [VTE, 2465M142876/037C, 11 August 2015].
18. The panel preferred the previous Tribunal decision in respect of *L.M v Bradford* because this related to backdated liability whereas the other decisions concerned a refund and discount. Further, the appellant in that case had had professional legal representation. Referring to *L.M v Bradford*, the BA pointed to paragraph 23 which they considered confirmed that the Tribunal upheld the decision that it was appropriate to bill retrospectively.

19. In *L.M v Bradford* [2018], the issue to be determined was when the cause of action had occurred as both parties accepted the BA could go back 6 years from that date. The cause of action in that case, was found to have occurred on 30 January 2017, when the BA became aware of the true position, and therefore it was entitled to bill the taxpayer retrospectively to April 2005.
20. The panel noted the differences between this case and *L.M v Bradford* [2018]. In the 2018 case, “the appellant’s mother had provided the billing authority with inaccurate information in connection with her council tax benefit/reduction claims.” In this case, the appellant had not deliberately provided the BA with inaccurate information regarding the ownership of the property. Further, the BA became aware in 2007 of ownership; albeit the BA’s team administering council tax benefit was aware and it had not made the council tax billing team aware of this fact.
21. *L.M v Bradford* [2018] provides some further clarification regarding the limitation for the issuing of demand notices and the recovery of the charge due.

Paragraph 17.

“Under section 9 (1) of the Limitation Act 1980 an action to recover any sum recoverable by virtue of any enactment shall not be brought after the expiration of six years from the date on which the cause of action accrued.”

Paragraph 18.

“There was a question mark over whether the Limitation Act 1980 applied to council tax because Regulation 34(3) of the Council Tax (Administration and Enforcement) Regulations 1992 had the same effect, the regulatory wording was as follows;

Section 127(1) of the Magistrates’ Courts Act 1980 does not apply to such an application; but no application may be instituted in respect of a sum after the period of six years beginning with the day on which it became due under Part V.”

Paragraph 19.

“Part V related to the service of demand notices and the payment and collection of the council tax.”

22. Nobody at the BA had made the connection that the appellant, as owner of the property, had become resident on 9 December 2008. This connection had only been made on 22 March 2017. The panel considered that this oversight was due to a shortcoming in the way the BA retained important information needed for it to identify the liable person. That error could have been noticed

on any working day after 9 December 2008, as the BA had access to this information.

23. Section 1(2)(a) of the Local Government Finance Act 1992 defines a billing authority as 'a district council or London Borough council, the Common Council or the Council of the Isles of Scilly'. The legislation refers to the BA as a whole. The individual departments the BA choose to administer council tax is not an entity that is recognised under the legislation.
24. The panel determined that since 2007, the BA was aware that the appellant was the owner of the property as this is when his mother's housing and council tax benefit claim was submitted. It is inconceivable to this Tribunal that the BA was not aware of the full circumstances, particularly as the matter had received a higher degree of attention as it had involved a hearing at the First-tier Tribunal. The date on which the cause of action accrued was therefore 11 December 2008 when the appellant's sister advised the BA that the appellant had moved into the appeal property to provide care for their mother.
25. The demand notices were issued in excess of the six years of the date on which the cause of action accrued, and on that basis, the appeal is allowed.
26. The panel noted that the BA representative was prepared to consider an application for discretionary relief under section 13A(1)(c) of the Local Government Finance Act 1992, as the appellant may have been entitled to council tax benefit/reduction if he had been issued with demand notices in the respective financial years. The council tax reduction scheme at Bradford Metropolitan District Council only allows council tax reduction claims to be backdated for one month from the date of the application.
27. The panel further established that the BA had not investigated whether the appellant was entitled to any other discounts or reductions whilst looking after his mother during the period in dispute. The BA should therefore invite and consider any new applications. The appellant would have a further right of appeal if he considered the new calculation of liability to be incorrect.
28. The panel was grateful to the appellant for attending the Tribunal and presenting his case. The panel would also like to express its condolences on the recent passing of his mother.

Order

29. Under the provisions of Regulation 38 (1) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Billing Authority must reverse its decision, and amend its records to show that the appellant is not liable for council tax in respect of the appeal property from 9 December 2008 up to and including 23 April 2011 (as the appellant was the liable person from 24 April 2011, this being the date six years prior to the issue of the demand notices)

30. Under Regulation 38 (9) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Billing Authority must comply within two weeks of the date of this order.

Date: 17 July 2023

Appeal number: VT00013858

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.