



VALUATION TRIBUNAL FOR ENGLAND

Council tax liability appeal: backdate of single person discount in dispute; Smith v Nottingham City Council; section 11 of the Local Government Finance Act 1992; Council Tax (Administration and Enforcement) Regulations 1992 (SI 1992 No. 613); appeal allowed.

APPEAL NUMBER: VT00014406

RE: 81 Wickham Chase, West Wickham, BR4 0BG
(the "appeal property")

BETWEEN:	A M	Appellant
	and	
	London Borough of Bromley (Billing Authority)	Respondent

SITTING: *Remotely using Microsoft Teams*

ON: Monday 5 August 2024

BEFORE: Mr PJ Ward, Presiding Senior Member
Miss L Moses, Vice President

CLERK: Mrs L Horne IRRV(Hons) BA (Hons)

APPEARANCES: The appellant
Miss J Morbin representing London Borough of Bromley

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is allowed. The panel determined that the appellant's single person discount should be backdated to 1 January 2013.

Introduction

2. The appeal had been brought in response to a decision of the Billing Authority, dated 28 November 2022, which refused to backdate a single person discount in respect of the appellant's council tax liability, for the period from 1 January 2013 to 31 March 2021.

3. The appellant submitted an application for a single person discount on 26 September 2022, in which he stated that he had only recently been made aware that, as a single adult, he should have been receiving a 25% discount from when his ex-partner moved out of the appeal property in December 2012.
4. Following receipt of the application, the Billing Authority awarded a single person discount with effect from 1 April 2021. The Billing Authority refused to backdate the discount further on the basis that it could only be backdated to the previous financial year; information regarding the discount had been included with the yearly council tax bills; and the appellant had failed to notify a change in circumstances.
5. The appeal had been accepted by the Valuation Tribunal for England on 26 December 2022, as an appeal made under section 16 of the Local Government Finance Act 1992; that section allowed challenges concerning the calculation of council tax liability.
6. This statement of reasons is not, and does not purport to be, a full verbatim record of proceedings.

Preliminary issue

7. Prior to the hearing, the clerk sent a copy of the past President's decision in the appeal of *Smith v Nottingham City Council* (Appeal number: 3060M96343/037C) to the parties. Although the past President had later acknowledged that he had made an error with the period from when backdating can be awarded, this decision helpfully set out the test for considering cases in respect of discounts. Of particular relevance to the subject appeal, was the issue of a Billing Authority relying on taxpayers to apply for discounts on the basis of the small print on the back of a bill, or contained in a booklet.
8. Shortly before the hearing, Miss Morbin sent an email to the clerk and the appellant, in which she confirmed that she had obtained authority to backdate the single person discount to 26 September 2016; this was six years from when the application was made on 26 September 2022, in line with the decision in *Smith v Nottingham City Council*.
9. The clerk advised that the past President acknowledged that he had made a mistake in *Smith v Nottingham City Council* as the Limitation Act 1980 sets the time limit for actions for sums recoverable by statute. The effect of this provision is that the claim must be commenced within six years of the accrual of the cause of action. The limitation period of six years does not apply to the backdating of the discount. In the subject appeal, the taxpayer was not aware of any entitlement until September 2022, so had six years from that date to make an application.
10. Following a brief adjournment, the panel announced its decision that the appellant's single person discount should be backdated to 1 January 2013. In reaching the decision, the panel was guided by the past President's decision in *Smith v Nottingham City Council*:

The critical provisions are regs. 14 and 15(1) of the Council Tax (Administration and Enforcement) Regulations 1992 (SI 1992 No. 613), which reproduce verbatim the relevant provisions in the empowering statute (Local Government Finance Act 1992, Sched. 2, para. 4(2),(3)(a)).

Reg.14 reads:

“Before making any calculation...of the chargeable amount in respect of any dwelling in its area, a billing authority shall take reasonable steps to ascertain whether that amount is subject to a discount, and if so, the amount of that discount.”

Reg. 15(1) states:

“Where, having taken such steps as are referred to in regulation 14, a billing authority has no reason to believe that the chargeable amount for the financial year concerned is subject to a discount, it shall assume, in making any calculation of the chargeable amount ..., that the chargeable amount is not subject to any discount.”

It is to be noted that, in contrast to the corresponding provisions in Arca with respect to a disability reduction, there is no reference to making an application to the billing authority for the discount. It is unclear why this should be so, and I cannot conceive of the reason for this difference in approach, but it is of critical importance.

The specific wording of reg.14 is critical to the outcome of this appeal, and it is wording that has attracted no attention in the submissions made to me, in the decision in the earlier Tribunal appeal or in the argument and reasoning in this appeal before the original panel. I refer to the opening words of reg.14: “Before making any calculation...”

I do not know what precisely the draftsman had in mind when using these words, but they are entirely clear and admit of no ambiguity. The regulation does not, for example, say: “In sending a council tax bill, a billing authority shall take reasonable steps to bring to the attention of the person to whom the bill is addressed that that person may be entitled to a discount on the amount specified in the bill...”

The duty imposed on billing authorities is to ascertain the situation before making any calculation, which can only mean before issuing the annual council tax bill. It is not for me to say whether that is a sensible arrangement or the optimal way to deal with this matter. My duty is to apply the law, and the statutory provisions are clear.

The respondent took no steps, reasonable or otherwise, to ascertain the situation before making its calculation. It has therefore failed to comply with the statutory requirements.

Even if the regulation were worded differently, I would still find against the authority. It claims to have acted reasonably, or in the language of the regulations and the statute, to have taken “reasonable steps”. I disagree.

I do not find that small print on the reverse of the bill, referring generally to discounts with no specific headings, can constitute a reasonable step; and this is not, in my view, cured by information contained in an accompanying leaflet or booklet.

11. The panel considered that the decision was relevant to the subject appeal, as the Billing Authority had cited the fact that information regarding discounts had been sent with the yearly council tax bills, in support of the refusal to award a backdated discount. The panel was satisfied that no reasonable steps had been taken by the Billing Authority to ascertain whether the chargeable amount was subject to a discount.

12. There was no dispute that the appellant had been the sole adult resident in the appeal property from 1 January 2013, and his application had been made within six years of becoming aware of his possible entitlement. Consequently, the panel decided that the appellant was entitled to a single person discount with effect from 1 January 2013, and therefore, the appeal was allowed.

Order

13. 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 Billing Authority to award a single person discount in respect of the appellant's council tax liability arising at 81 Wickham Chase, West Wickham, BR4 0BG for the period from 1 January 2013.
14. Under regulation 38(9), the Billing Authority must comply with this order within two weeks of the date of its making.

Date issued to parties: 23 August 2024

Right of further 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.
