



## VALUATION TRIBUNAL FOR ENGLAND

*Council Tax Liability appeal; Local Government Finance Act 1992; Council Tax (Exempt Dwellings) Order 1992: Council Tax (Discount Disregards) Order 1992, Schedule 1 (as amended); full time course of education; appeal dismissed*

APPEAL NUMBER: VT00023951

RE: 9 Azalea Court, Woking, GU22 0HG  
(the "subject property")

BETWEEN:	NF	Appellant
	and	
	Woking Borough Council (Billing Authority)	Respondent

SITTING: *remotely using Microsoft Teams*

ON: Tuesday 26 November 2024

BEFORE: Mr S Levy, Presiding Senior Member  
Mrs FER Duggan, Member

CLERK: Mr R Patel IRRV (Hons)

APPEARANCES: Mr N Fernando (father and representative of the appellant)  
Miss R Evans (representative for the respondent)

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### DECISION AND STATEMENT OF REASONS

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#### Decision

1. The appeal is dismissed.
2. The Tribunal Panel held that the appellant was not entitled to an exemption under the provisions of Class N of the Council Tax (Exempt Dwellings) Order 1992 (SI 1992 No 558) (as amended), for the period in dispute.

## **Introduction**

3. The appeal had been accepted by the Tribunal as an appeal made under section 16 of the Local Government Finance Act 1992. The appeal was against a decision of the respondent billing authority dated 20 May 2024, in which it refused to award an exemption for the period that the appellant lived in the appeal property. The appeal was received by this Tribunal on 14 June 2024.
4. This hearing was conducted via Microsoft Teams. The appellant's representative was given the opportunity by the panel to vary the Model Hearing Procedure but elected to present the appellant's evidence first.
5. This statement of reasons is not and does not purport to be a full verbatim record of proceedings.

## **Background**

6. The billing authority stated that the appellant had lived in the appeal property from 26 September 2023 to 25 March 2024. As the sole adult occupant of the property, she had been held liable for the council tax charge for this period in her capacity as the resident.
7. The billing authority had determined that the appeal property was not an exempt dwelling, as it had decided it was not occupied by one person, who fell to be classed as a full-time student.
8. The billing authority accepted that the appellant was a full time student at the Open University for the academic years 2020 and 2022. The appellant, however, was not regarded to be a full-time student for the 2021 academic year. These decisions in respect of the previous academic years did not relate to the appeal property and the period disputed in this appeal.
9. The appellant disagreed, contending that during the period in question, as she was the sole adult occupant of the appeal property and as she was a full-time student, the appeal property should fall to be exempt under class N of the Council Tax (Exempt Dwellings) Order 1992.

## **Preliminary issue**

10. A merged evidence bundle had been sent to both parties in advance of the hearing. This did not include a one page document submitted by the appellant, which at the time it was sent to the parties, could not be opened by the Tribunal. This was subsequently rectified and both parties were sent a copy of this one page document, in advance of the hearing.
11. In addition, both parties had referred to a previous decision of the Valuation Tribunal (VT) (5630M237894/281C) heard on 21 March 2019, in support of their cases. This judgement was relevant to this appeal, however had also been excluded from the merged bundle. The clerk sent a copy of this decision, to the parties and the panel, in advance of the hearing.

## **Relevant Law**

12. Council tax is payable on a dwelling which is not an exempt dwelling in accordance with section 4 of the Act. Classes of exempt dwellings are prescribed by the Council Tax (Exempt Dwellings) Order 1992 (SI 1992/558).

3. A dwelling is an exempt dwelling for the purposes of section 4 of the 1992 Act on a particular day if on that day it falls within one of the following classes—

Class N:(1) A dwelling which is either—

- (a) occupied by one or more residents all of whom are relevant persons;
- (b) occupied only by one or more relevant persons as term time accommodation;

(2) for the purposes of paragraph (1)—

[(a) “relevant person” means—

- (i) a student;

....

13. The definitions of a student and a student nurse for the purposes of applying an exemption are set out in Schedule 1 of the Council Tax (Discount Disregards) Order 1992 (SI 1992/548) (the “1992 Order”)

#### Part II Students

3. A person is to be regarded as undertaking a full time course of education on a particular day if—

- (a) on the day he is enrolled for the purpose of [undertaking] such a course with a prescribed educational establishment within Part I of Schedule 2 to this Order, and
- (b) the day falls within the [period beginning with the day on which he begins the course and ending with the day on which he ceases to undertake it,

and a person is to be regarded as ceasing to undertake a course of education for the purpose of this paragraph if he has completed it, abandoned it or is no longer permitted by the educational establishment to [undertake] it].

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.

## Discussion

14. In arriving at its decision, the panel had regard to the relevant and aforementioned legislation, which was binding. Part II of the 1992 Order, under 4 specified the criteria for a course of education to be determined as full-time. In this appeal, the issue which the panel was required

to determine, was whether the appellant met the legislative criteria to be defined as a full-time student for the period in dispute.

15. In addition, to the legislative criteria, the panel also had regard to an aforementioned VT judgement, (5630M237894/281C), which also related to an appeal for an exemption under class N by an Open University student.
16. During the verbal submissions in the appeal before this panel, mention was made to the Court of Appeal Judgement in *Jagoo v Bristol City Council* [2019] EWCA CIV 19, reference to which had been made in the VT decision 5630M237894/281C, which was also relevant to this appeal.
17. The appellant's representative had stated during the hearing, that documents had been submitted to the respondent about additional support that had been provided by the Open University to the appellant due to issues that affected her health and mental well-being. The appellant's representative was asked to send these documents to the clerk. The hearing was adjourned, to allow the clerk to send these documents and a copy of the *Jagoo* judgement to the parties and the panel.
18. When the hearing resumed, the billing authority representative stated that she had no objections to the inclusion of the documents provided during the adjournment by the appellant. With the agreement of the parties, the appeal continued to be heard, taking into account, the evidence provided on the day of the hearing.
19. The appellant's course was a BSc (Honours) Psychology with Counselling which requires 360 credits in total to complete. During the disputed period, she started a 60 credit module on 7 October 2023 which was due to finish on 30 June 2024.
20. A letter from the Open University to the appellant stated that its modules are valued according to a nationally agreed system of credit points in which one credit point equals ten hours of study over the duration of the module. A 60 credit module, over nine months, requires around eighteen hours of study a week. The respondent also noted that the Open University stated that students are free to increase or decrease their student intensity as they wish during the course of the year. It was on this basis, that the billing authority had determined the appellant not to be a full-time student.
21. The appellant's representative stated that the information provided by the Open University about modules and hours of study was guidance, and did not relate to the actual hours of study required. He stated that the amount of study was largely dependent upon the student and the course of study, and in this particular instance the appellant studied for more than eighteen hours per week.
22. It was also stated that the course was offered as full-time and part-time. The appellant at the outset of the course had applied for and completed two modules, totalling 120 credits. This was an automatic full-time student status and there should be an acceptance that it was established she was a full-time student. It was stated that once a student was classed as full-time, they could not change to be part-time. In addition, the appellant's representative stated that a full time course would be completed in three or four years, with a part-time course completed over six years. In this instance, the appellant was to complete the course in four years, making her a full-time student.

23. The appellant, in support of the appeal, had provided a copy of the judgement in the 2019 VT decision. In the 2019 appeal, that panel rejected the focus on recommended hours preferring to rely on the actual University required hours, allowing the appeal and finding that the appellant in that case, studied in each academic year for periods in excess of twenty one hours a week. That panel stated that the focus should be on paragraphs 4(1) (a) to (c) of the 1992 Order as a whole and the requirements of a full-time course.
24. Turning to paragraphs 4(1) (a) to (c) of the 1992 Order, the panel noted that 4(1) (a) stated a full-time course was one “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.” The panel agreed, with the 2019 panel, that any consideration of whether a course of education is full-time should be done on a year by year basis. The module undertaken during the period in dispute began on 7 October with an end date of 30 June 2024, well in excess of twenty four weeks. This left the panel to decide, if, in respect of the 2023 academic year, the legislative criteria set out in 4(1) (b) (ii) was satisfied.
25. Based on the information provided about the module studied in the 2023 academic year, as mentioned in paragraph 20 above, the panel understood the billing authority’s decision to refuse the exemption. However, in this appeal, it was stated that the appellant was provided with additional support by the Open University, which resulted in her studying an average of at least 21 hours a week. The panel was advised that during the disputed period, in addition to the 60 credit module, the appellant, having failed an earlier module, was re-sitting that particular subject, which she had to complete under supervision and was in regular contact with her tutor as part of this.
26. The appellant’s representative stated that the billing authority had been previously informed about this, however there were no documents in the merged evidence bundle to verify this. It was based on this information and the Jagoo judgement, that the panel adjourned the hearing, such that the parties had the opportunity to provide further evidence in respect of this issue.
27. In the Jagoo case, the appellant had a disability, which affected her study and whether additional hours were required as part of her course, with the panel having regard to paragraph 32

32. “In the present case the University has decided that in order to meet the requirements of the MSc course Mr Jagoo must be provided with one additional hour of study support each week. Adapting Pill LJ’s phrase in Flemming, Ms Jagoo is “enrolled upon and pursuing a course offered by the university”. Although for the able-bodied student that course involves 20 hours study per week, in the case of Ms Jagoo, it involves an additional hour of study skills support. As Ward LJ put it in Deane: “A student will “receive” that which is provided.” If, as a practical matter, she must take advantage of that additional hour in order to meet the requirements of the MSc course, then I see no real difficulty in holding that in order to meet the requirements of the course, she is equally required to undertake that additional hour. As Sir Rupert Jackson put it in argument, the purpose of paragraph 4 (1) (b) (ii) is to convert into hours per week the requirements of the course. To put it another way, the course on which she is enrolled is not merely the MSc in Educational Research, but the MSc plus study support. The additional study skills support is an adjustment of the MSc course itself in order to mitigate the disadvantage arising from her disability.

Undertaking both elements is a requirement in her case. The extent of the support is formally documented. That is sufficient to satisfy an objective test which, I accept, is a necessary part of the legislative scheme,

28. The information provided by the appellant to illustrate the additional support consisted of a doctors letter to the billing authority explaining her physical and mental well-being issues. In addition, there were a number of screenshots that showed assistance provided by tutors to the appellant, such as having a catch up after marking an essay, extending an essay deadline, and the offer of support and advice for students experiencing issues impacting on their studies. There was, however, no timetable, schedule or other documentary evidence provided to show that the appellant was required to study any additional hours, beyond the hours required to complete her 60 credit module. The panels hands were tied. Without formal documentation to demonstrate to the contrary, during the period in dispute, the appellant's course required her to undertake periods of study, tuition or work experience, of around eighteen hours of study a week a week.

### **Disposal**

29. In view of the above findings and conclusions, the Tribunal Panel is satisfied that the respondent had not erred in refusing a council tax exemption for the appeal property in respect of the disputed period. The appeal was therefore dismissed.

**Date issued to parties:** 3 January 2025

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### **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.

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