

Help for council tax payers – Part 1: appeals about reductions



This article by **Jan Luba QC** and **Catherine O'Donnell** is the first of two articles focusing on the help advisers can give to residents who are struggling to pay their council tax bill because of their low income. The second article, which will be published in September 2013 *Legal Action*, will deal with the help that can be given to defaulters who face enforcement action as a result of non-payment or late payment.

Introduction

People of limited means will often have difficulty paying their local council tax bill. For that reason, since the inception of the council tax system, a national means-tested benefit had been available from central government to help those who could not pay. Up to 100 per cent assistance was available. Over six million low-income households received council tax benefit (CTB) to help them to meet their annual bills. However, on 1 April 2013, the whole national system of CTB was abolished by Welfare Reform Act 2012 s33(1)(e). The government's twin aims in abolishing the benefit were:

- to place responsibility for administration and delivery of new assistance schemes on local billing authorities themselves; and
- to reduce the cost to central government by over £400m a year.

These aims were achieved by imposing on every billing authority a requirement to have its own local council tax reduction scheme (CTRS) and by paying a central government subsidy to fund those schemes at a level significantly less than had been spent on the national benefit.

The impact of the changes is that many of the poorest residents – who previously did not have to contribute anything towards their council tax – will now have to make at least some payment. Pensioner households will get at least as much help as they would have obtained from the former CTB, but the extent of assistance for non-pensioner households is left to each local billing authority to decide in framing its local scheme.

Some billing authorities have been able to find enough from other funds (including a transitional grant from central government) to make their local scheme at least as generous as the old national benefit, even for working-age households. But 71 per cent of the schemes that have been adopted will leave working-age households liable to pay at least

some of their council tax bill, however poor they are.¹

The net effect will be to produce hundreds of thousands of modest council tax debts owed by low income working-age households. It is in the interests of those defaulters, and the billing authorities, to ensure that:

- the proper entitlement is claimed and paid under the local CTRS; and
- successful applications are made for any outstanding balance to be removed by way of an additional discretionary reduction.

This article describes both the CTRS and discretionary reduction arrangements but is primarily about the system for appealing decisions which leave the poorest taxpayers with residual liabilities to pay.

Council tax reduction under the local scheme

The starting point is to ensure that the taxpayer has applied for, and has been awarded, the maximum appropriate help under the local CTRS. Advisers will need to have ready access to copies of the relevant local scheme.

The requirement for every council in England to have a CTRS is contained in Local Government Finance Act (LGFA) 1992 s13A and Sch 1A, as inserted by LGFA 2012 ss9–18 and Sch 4. Every local billing authority (there are 326 in England alone) should have adopted its own individual scheme. For those authorities that did not, or chose not to do so, the Council Tax Reduction Schemes (Default Scheme) (England) Regulations 2012 SI No 2886 (as amended) provide for operation of a default or fall-back local scheme.²

The minimum legal requirements of each locally adopted scheme are set out in the Council Tax Reduction Schemes (Prescribed Requirements) (England) Regulations ('the Prescribed Requirements Regs') 2012 SI No 2885 (as amended).³ These regulations prescribe classes of people who must be

included in a scheme (pensioners) and classes who must be excluded. They also prescribe other provisions that must be included in a scheme: for example, matters relevant to determining eligibility for a reduction and the amount of reduction under a scheme, how income and capital are treated, and procedural matters. The individual local reduction schemes (sometimes misleadingly called council tax support schemes) are designed to assess, on a means-tested basis, whether each taxpayer should pay the full or a lesser amount of his/her council tax.

The local scheme will normally have been lawfully made and adopted. Any scheme could be challenged on the basis that there was some irregularity about its adoption or that its content is unlawful, but any such challenge needs to be made by the process of judicial review in the Administrative Court.⁴ Such challenges – there have already been two unsuccessful cases (*R (Buckley) v Sheffield City Council* [2013] EWHC 512 (Admin) and *R (Stirling) v Haringey LBC* [2013] EWCA Civ 116) – are beyond the scope of this article.

Households will receive a statement of their liability for council tax from their billing authority in the usual way. It is then the responsibility of the taxpayer to make an application (or claim) for council tax reduction to the same billing authority. This claim is separate from any claim for benefits to the Department for Work and Pensions. Indeed, what is sought under the CTRS is not a welfare benefit in the ordinary sense at all. It is simply a reduction in a bill.

A claim can only be made if the property is the claimant's only or main home and s/he is responsible for paying the council tax. Claims can be made at any time but any backdating of non-pensioner claims will need to rely on any relevant provision of the local scheme. Claims can be made in writing but some local schemes may also allow telephone or online claims. A claim will result in a written notice of the decision on the claim.

The council's decision must be made within 14 days of receiving the claim form or receipt of any further evidence relied on and be notified forthwith or as soon as reasonably practicable. The decision notice will either confirm the amount of council tax originally notified or provide for an amount of reduction of council tax liability. It will give information on what to do if the taxpayer disagrees with the decision. Indeed, in every case the notice must set out what the appeal procedure is and refer the claimant to the relevant provisions about appeal procedures in the local scheme. The claimant has a month to request written reasons for the decision notified: Prescribed Requirements Regs Sch 8 paras 11 and 12.

Once the billing authority receives a written

challenge to the decision made on the claim, it has two months to respond with a decision on that challenge (referred to below as 'the review decision'). The billing authority may affirm the original decision or revise it.

Council tax reduction outside the local scheme

Whatever the terms of the billing authority's statutory reduction scheme, it has a further power to grant reductions in liability to pay any amount of council tax that might otherwise be payable. This includes the power to reduce the amount to nil: LGFA 1992 s13A(1)(c) and s13A(6) (as amended). For obvious reasons, these discretionary powers to reduce the council tax in individual cases are not well advertised and are often described (if at all) on council websites as discretionary relief schemes or council tax hardship schemes.

Historically, the powers have only sparingly been used to help small groups of council tax payers such as war pensioners and the very seriously disabled. But any council tax payer can apply for such discretionary reduction (or further reduction) at any time. Every CTRS must include a provision explaining the procedures for making applications under section 13A(1)(c) and if the billing authority has adopted, in advance, a class of persons in respect of whom it will award extra help under section 13A(1)(c), an application for help under the CTRS from such a person is also treated as an application for extra help: Prescribed Requirements Regs Sch 7 para 9.

Appeals

In England, appeals from decisions about reductions, under both the CTRS and the discretionary powers, lie to the Valuation Tribunal for England (VTE): LGFA 1992 s16(1)(b). They are known as 'section 16 appeals'. The right to appeal is available in respect of any calculation made of an amount which a person is liable to pay in council tax. This includes any estimated amount: section 16(2). The VTE has traditionally dealt with a relatively modest number of appeals about council tax matters – liability, exemptions, penalties, etc. However, the government estimates that there will be around 14,000 further section 16 appeals to the VTE each year in relation to council tax reduction. The VTE has never previously been concerned with appeals about entitlement to means-tested reductions or arising from the discretionary power to reduce bills.

The rules of procedure in the VTE are set out in the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations ('the Procedure Regs') 2009 SI No 2269 (as amended).⁵ The Procedure Regs are supplemented by a series of

Practice Statements issued by the President of the VTE.⁶

The Procedure Regs provide that the appeal must be made within two months of the date of the review decision: Procedure Regs reg 21(2). If the billing authority has not provided a review decision within two months of a request to do so, then the original decision can be appealed. In such a case the appeal must be brought within four months of the request for a review: Procedure Regs reg 21(3).

The appeal form can be completed online or printed and submitted by post.⁷ Late appeals may be accepted where the VTE President is satisfied that the failure to make an appeal within the time limits has arisen due to circumstances beyond the taxpayer's control: Procedure Regs reg 21(6). The application to extend time must be made on the prescribed application form to the Registrar of the Valuation Tribunal.⁸ There is no right of appeal against the decision to reject the application to extend time and a further application may be made only on the basis of new information which was not known or available at the date of the earlier application.

On receipt of the appeal, a date is usually fixed for an appeal hearing and the billing authority is sent a council tax reduction appeal respondent's enquiry form.⁹ However, the VTE will normally use its strike-out powers if:

- the appeal is, in reality, a challenge to the lawfulness of the local CTRS itself (see above); or
- the appellant has already received the maximum reduction achievable under the local CTRS (and has not applied for a further discretionary reduction).

Minded-to notices will precede any exercise of the strike-out powers.

In most cases, the progress of the appeal will be governed by the standard directions for CTRS appeals set out in Annex 4 to the VTE *Practice Statement: council tax reduction appeals* VTE/PS/A11, 22 May 2013. They set a timetable for exchange of information between the parties and the VTE and put the onus of assembling the bundle of appeal documents on the billing authority.

The VTE has produced free user-friendly information booklets for actual and prospective appellants.¹⁰ The administration for the VTE is not undertaken by HM Courts and Tribunals Service but rather by the independent Valuation Tribunal Service.

The appeal hearing

All hearings are held in public, unless otherwise ordered: Procedure Regs reg 31. The VTE does not have specific national or regional hearing centres (except in London). Historically, it has tended to list appeals in hotels, community centres and other premises which provide a

local hearing opportunity to the parties. That is in part because no travelling or other expenses are payable to the parties or their representatives.

The VTE will usually comprise two or three persons drawn from the panel of lay members who sit part-time. The senior member will preside. Most members are not legally qualified. Given the likely volume and nature of section 16 appeals, the Senior President of Tribunals has exercised statutory powers to second legally qualified judges of the First-tier Tribunal (Social Entitlement Chamber) to be deployed as members of the VTE. Where such a judge is on the sitting panel s/he will usually preside. The Practice Statement on council tax reduction appeals sets out a listing procedure for determining which classes of case will be listed for a hearing with a judicial member.

If a party does not attend, the VTE may proceed to hear the appeal and make a decision in their absence: Procedure Regs reg 32. An appellant may be represented by anyone of his/her choice, authorised by him/her in writing. The billing authority will usually be represented by a council officer and only rarely by a lawyer. Procedure is relatively informal. The VTE President has produced a standard model procedure for hearings.¹¹

A section 16 appeal to the VTE will usually be based on the proposition that the billing authority is wrong about either eligibility for assistance under the local CTRS or about the amount of assistance that the taxpayer should have if eligible. The issue in CTRS appeals is therefore whether the decision-taker has correctly understood and applied the local scheme. The VTE may, if it allows the appeal, order the calculation of any amount to be quashed and direct that the amount be recalculated: Procedure Regs reg 38(1)(d).

The scope of an appeal in respect of a decision about discretionary reductions under LGFA 1992 s13A(1)(c) is more controversial. On the one hand it might be suggested that the VTE has the same function as in relation to CTRS appeals, namely to consider the calculation of the correct amount (if any) under the terms of the billing authority's own policy on when it will (or will not) allow a discretionary reduction. In such cases, scrutiny might even be limited to the question of whether the decision by the council was lawfully taken. On the other hand it might be said that the VTE has precisely the same powers as in CTRS appeals to quash decisions and direct recalculations so that it can, in effect, simply apply its own view of the amount of reduction the appellant should have. The Practice Statement on council tax reduction appeals suggests that the VTE should simply apply judicial review principles, ie, consider whether the billing authority's decision has been properly and lawfully taken.

Most decisions of the VTE are reserved and promulgated later in writing. However, the decision on section 16 appeals may well be announced at the hearing which would trigger a right to obtain full written reasons on request: Procedure Regs regs 37(4) and 37(6).

The VTE may review its decisions in specified circumstances, including where a party shows reasonable cause for non-attendance: Procedure Regs reg 40.

Further appeals

Appeals from the VTE lie to the High Court on a point of law only: Procedure Regs reg 43(1). In the case of a section 16 appeal, an appeal must be made within four weeks of the date on which notice is given of the decision or order that is the subject of the appeal or within two weeks of the date on which written reasons for the decision are given (if later): Procedure Regs reg 43(2) (as amended). The High Court may confirm, vary or set aside, revoke or remit the decision or order and may make any order the VTE could have made: Procedure Regs reg 43(4). Further appeal lies (with permission) to the Court of Appeal and the Supreme Court.

Legal aid

Legal aid is not available for help with appeals to the VTE or with representation at that tribunal. Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 Sch 1 Part 1 para 8A (as amended) makes legal aid available in relation to an appeal on a point of law to the High Court, the Court of Appeal or the Supreme Court relating to a CTRS.¹²

However, LASPO Act Sch 1 Part 1 para 8A(3) creates a specific exclusion of advocacy services in the High Court. Therefore legal representation (as opposed to help with drafting grounds and preparation) for these cases can only be provided on legal aid before the Court of Appeal and Supreme Court.

Help beyond that prescribed by LASPO Act Sch 1, including excluded advocacy services, can be obtained by a successful exceptional case funding application. Further information on exceptional case funding can be found in the *LAG legal aid handbook 2013/14*, edited by Vicky Ling and Simon Pugh, with Anthony Edwards, April 2013 (see also May and June 2013 *Legal Action* 17 and 27).

Liability

Applications for reductions, and appeals about reduction decisions, do not act as an automatic bar to the enforcement of council tax liability. It is therefore in the interests of applicants to secure an early decision. Appellants will be helped by obtaining early hearing dates.

If enforcement action is being pursued

unreasonably, even though an application or appeal is ongoing, complaint should be made under the billing authority's complaints procedure and then to the Local Government Ombudsman.

Wales

Section 13A of LGFA 1992 enables Welsh ministers to make regulations in connection with CTRS. Schedule 1B para 6 enables Welsh ministers to prescribe a default scheme by regulations.¹³ Minimum legal requirements have accordingly been provided for in the Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2012 SI No 3144. The relevant default scheme is set out in the Council Tax Reduction Schemes (Default Scheme) (Wales) Regulations 2012 SI No 3145.

Appeals, as in England, are governed by LGFA 1992 s16. They are heard by the Valuation Tribunal for Wales (VTW), referred to in this context as the appeals panel. The rules of procedure are similar to those in England and are set out in the Valuation Tribunal for Wales Regulations (VTW Regs) 2010 SI No 713, which established the single valuation tribunal in Wales, and in the Valuation Tribunal for Wales (Wales) (Amendment) Regulations 2013 SI No 547, which amend the 2010 regulations so that the VTW may deal with appeals in relation to CTRS. Readers are directed to those regulations for specific provisions.

The VTW also provides information online for appellants and supplements its regulations with a series of Best Practice Protocols in relation, for example, to time limits, conduct of the hearing, representation and decisions.¹⁴ Appeals from the VTW to the High Court are on a point of law only under VTW Regs reg 44.

Further reading

The House of Commons Library has produced two helpful free briefing notes both published in June 2013:

- *Localising support for council tax – background* (SN/SP/6101); and
- *Council tax reduction schemes* (SN/SP/6672).¹⁵

- 1 Sabrina Bushe, Peter Kenway and Hannah Aldridge, *The impact of localising council tax benefit*, Joseph Rowntree Foundation, March 2013, summary available at: www.jrf.org.uk/sites/files/jrf/council-tax-benefit-localisation-summary.pdf.
- 2 Council Tax Reduction Schemes (Prescribed Requirements and Default Scheme) (England) (Amendment) Regulations 2012 SI No 3085.
- 3 See note 2.
- 4 LGFA 1992 s66(2)(ba) inserted by LGFA 2012 Sch 4 Part 2 para 5.
- 5 Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) (Amendment)

Regulations 2013 SI No 465.

- 6 See: www.valuationtribunal.gov.uk/Attending_A_Hearing/PracticeStatements.aspx.
- 7 See: www.valuationtribunal.gov.uk/CTReduction/Forms.aspx.
- 8 *Practice Statement: extensions of time limits for making appeals* VTE/PS/A1, 15 July 2010, see note 6.
- 9 See: www.valuationtribunal.gov.uk/Libraries/CTR_Forms/BA_Pre-Hearing_Enquiry_Form.sflb.ashx.
- 10 See: www.valuationtribunal.gov.uk/vt_guidance_notes.aspx.
- 11 See: www.valuationtribunal.gov.uk/Libraries/Publications/Practice_Statement_-_B1_Model_Procedure.sflb.ashx.
- 12 Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Amendment of Schedule 1) Order 2013 SI No 748.
- 13 Inserted by LGFA 2012 Sch 4 Part 1.
- 14 See: www.valuation-tribunals-wales.org.uk/en/guidance/index.php and www.valuation-tribunals-wales.org.uk/en/best-practice-protocols/index.php respectively.
- 15 Available at: www.parliament.uk/briefing-papers/SN06101.pdf and www.parliament.uk/briefing-papers/SN06672.pdf respectively.



Jan Luba QC and Catherine O'Donnell are barristers in the housing team at Garden Court Chambers, London. The authors are founder members of Legal Action on Council Tax (LACT), and would be interested to receive responses to this article and details of council tax appeals raising points of general interest. To find out more about LACT, e-mail: LACT@gclaw.co.uk.