

Neutral Citation Number: [2021] EWHC 1208 (Admin)

Case No: CO/4222/20220

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**

Exeter Hearing Centre  
Southernhay Gardens  
Exeter EX1 1UH

Date: 2<sup>nd</sup> February 2021

**Before :**

**HIS HONOUR JUDGE ALLAN GORE QC SITTING AS A JUDGE OF THE HIGH COURT**

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**Between :**

**Andrzej Kasperowicz**  
**- and -**  
**Plymouth City Council**

**Claimant**

**Defendant**

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**Neither party appeared nor were represented**

Hearing dates: 2<sup>nd</sup> February 2021  
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**JUDGMENT**

HIS HONOUR JUDGE ALLAN GORE QC:

1. By Notice of Appeal filed in time on 16<sup>th</sup> November 2020 but not in fact issued by the Administrative Court Office until the following day, the Appellant sought to appeal against the decision of the Respondent dated 19<sup>th</sup> October 2020 dismissing his appeal against the Respondent's decision to refuse to award him Council Tax Support.
2. The issue in dispute in this case is whether the Respondent billing authority correctly ceased awarding Council Tax reduction to the Appellant with effect from 12<sup>th</sup> May 2018.
3. The Local Government Finance Act 2012 as amended, introduced the possibility of Council Tax reduction by specifying that each billing authority had to make a scheme specifying the reductions that were to apply on account of financial need in respect of dwellings situated in their area. The Respondent had such a scheme in place for the financial year 2018/19. There is no dispute that the Appellant at least theoretically, was a person entitled to apply for Council Tax reduction, and the only issues therefore have been whether he qualified for any and if so, what amount of support.
4. The relevant provisions of the Scheme are the set out in sections 14 and 15 of the Scheme, in the following terms:

**“14.0 Applicable amount: persons who are not pensioners who have an award of universal credit.**

14.1 In determining the applicable amount for a week of an applicant who  
(a) has or  
(b) who (jointly with his partner) has,  
an award of universal credit, the authority must use the calculation or estimate of the maximum amount of the applicant, or the applicant and his partner jointly (as the case may be) subject to the adjustment described in sub-paragraph (2)

14.2 The adjustment referred to in sub-paragraph (1) is to multiply the maximum amount by 12 and divide the product by 52

14.3 In this paragraph “maximum amount” means the maximum amount calculated by the Secretary of State in accordance with section 8(2) of the Welfare Reform Act 2012.

**15A.0 Calculation of income and capital: persons who have an award of universal credit.**

15A.1 In determining the income of an applicant

(a) who has, or

(b) who jointly (with his partner) has,

an award of universal credit the authority may, subject to the following provisions of this paragraph, use the calculation or estimate of the income of the applicant, or the applicant and his partner jointly (as the case may be), made by the Secretary of State for the purpose of determining the award of universal credit.”

5. I observe that whereas under section 14, the billing authority “must” use a stated formula to calculate the applicable amount, in so far as the support is means tested and therefore capital and income of the applicant needs to be considered, under section 15, the Billing Authority “may” use the calculation or estimate of such resources used by the Secretary of State in determining the award of universal credit. Thus, the section 14 calculation is mandatory (the relevant word is “must”) whereas there is a discretion under section 15 as what evidence to use as the basis for the decision (the relevant word is “may”).
6. The Appellant has always asserted that for the purpose of his application for support to the Respondent, he sent it a letter from his mother confirming that she had been supporting him financially, and that he had withdrawn his claim for universal credit. It has always been asserted by the Respondent that the Secretary of State had furnished evidence that he was in receipt of universal credit, and that it was entitled by way of adverse inference, to act on that evidence and find that he no longer qualified for support, because the Appellant had failed to provide details of his income.

7. The Appellant appealed against that decision to the Valuation Tribunal and the appeal decision was dated 19<sup>th</sup> October 2020. Its decision and reasons were as follows:

“ **Decision and reasons**

14. The panel was aware that CTR is a means tested reduction to a person’s council tax liability. In order to calculate an entitlement a BA firstly has to be aware of a claimant’s income.

15. The panel could attach little weight to the appellant’s argument that there had been no change to his income as the DWP had notified the BA that he was in receipt of UC. This would entitle the BA to seek further information in order to correctly calculate any CTR entitlement. It was clear from the BA scheme that a person in receipt of UC should have his CTR calculated based on that award.

16. Significant weight was attached to the DWP screen shot within the BA’s bundle that clearly showed the appellant had received UC from 12 May 2018. Little weight could be attached to the appellant’s income and capital form provided to the BA on 12 June 2018 as this provided only statements that the appellant had no income and received no benefits. Whilst the appellant’s mother had written a statement to say she was fully supporting her son financially this was not signed and therefore no weight could be attached to it.

17. The panel noted that the appellant’s letter to the DWP withdrawing his claim for UC was dated 21 January 2019. This was some time after an award had been made and therefore the panel considered that on 12 May 2018 the appellant had been in receipt of UC. This led to a change in the appellant’s circumstances and in order to calculate the appellant’s entitlement the BA had correctly requested details of the UC paid.

18. It was clear from the correspondence that at no time had the appellant provided the income from UC which the BA had sought. This information had been requested on more than one occasion, but the appellant had failed to submit any details.

19. The panel referred to the High Court decision in *Francois v London Borough of Waltham Forest* [2017] EWHC 2252 (Admin) as provided to it by the clerk of the tribunal. Paragraphs 27 and 28 of this judgment state:-

“27 I was also referred to *Jeleniewicz v Secretary of State for Work and Pensions* [2008] EWCA Civ 1163. This was an appeal from the Social Security Commissioner and a Polish national’s entitlement to income support. *Mummery LJ* at paragraph 30 states:

*"First, as to the process adopted by the Commissioner on the hearing of the appeal, there was no error of law as Baroness Hale observed in Kerr [v Department for Social Development (Northern Ireland)] [2004] UKHL 23 [at paragraph 62, quoted supra] the claimant is the person, who generally speaking, can and must supply the information needed to determine whether the conditions of entitlement had been met...In my judgment,*

*this is true in determining whether the conditions of entitlement have ceased to be satisfied as it is when determining whether the conditions have been satisfied.”*

*Both those cases relate to benefits and are applicable to this case in my view.*

*28. These cases establish that when considering an entitlement to a benefit, which would include a reduction in council tax, the principle is that the person who has knowledge or access to information that supports their claim should provide it.”*

20. In conclusion the panel considered that the appellant had been in receipt of UC from 12 May 2018. The letter of withdrawal dated 21 January 2019 was too late to have withdrawn the original award and in any event no evidence was submitted to show that the letter had been sent and no acknowledgement from the DWP had been provided.

21. As the BA had no details of the appellant’s income to enable it to calculate CTR correctly it was entitled to make an adverse inference that the appellant was in receipt of income in excess of the threshold for CTR to be awarded.

22. The appeal was therefore dismissed.”

Glossary:

CTR	Council tax reduction
DWP	Department of Work and Pensions whose senior representative is the Secretary of State for the purpose of the Scheme
BA	Billing authority
UC	Universal credit

8. The Appellant asked for that decision to be reviewed, as was his right. On or before the 16<sup>th</sup> November 2020, the review was declined, the reasons being that none of the grounds for a review as set out in the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 SI 2009/2269 (“the 2009 Regulations”) had been satisfied and the application was perceived to be without merit. That led to the issue of the Appellant’s Notice of Appeal now before me.

9. I remind myself that this is a statutory appeal, governed by the 2009 Regulations and by clause 43(1) such an appeal lies only “on a question of law arising out of a decision ...by the VTE ...”. VTE is the Valuation Tribunal for England.

10. For the purpose of this appeal, the Appellant has lodged a mass of disordered papers all of which I have read, comprising or entitled Attachments (108 digital pages attached to the Appellant's Notice), Grounds of Appeal, and Supplementation of the Grounds of Appeal. He was served with Notice of Hearing for today including an indication that the hearing would be remote by audio using the BT Meet Me platform. He responded by e-mail dated 22<sup>nd</sup> January 2021 stating that "I will not be able to participate in the hearing due to medical reasons", referring to a previously lodged medical certificate at page 81 of his attachments which is a letter dated 16<sup>th</sup> November 2010 and in no way explains whether or why he is unfit to participate in a telephone hearing in 2021 but supporting avoidance of stress by engagement with the court in writing) and requesting that "the hearing ... go ahead in my absence" (which I take to be a request to deal with the appeal by way of written decision).
11. Meanwhile, the Respondent, which had filed no Respondent's Notice (it is not obliged to have done so), wrote to the Court and the Appellant a letter dated 28<sup>th</sup> January 2021, declining to engage legal representation so as to save costs and also avoid potential costs risk to the Appellant, but making written submissions in lieu of skeleton argument or representation by Counsel. I take that to be consent to the Appellant's request for the appeal to be determined without a hearing. The Appellant responded by inviting the court to reject and not consider the Respondent's letter because it was lodged too late.
12. The Respondent's letter sets out the relevant paragraphs of the Scheme. They are a matter of record and cannot be controversial. The letter then sets out in paragraphs 5 to 15 what is described as the "Background to this case". As a

statement of facts, it is contested by the Appellant in his letter dated 28<sup>th</sup> January 2021. With respect to both parties, what they both ignore is that this appeal court is not a fact-finding tribunal but an appeal court essentially of last resort in that an appeal lies to this court only on questions of law arising out of the decision of the VTE. The disagreement as to history between the parties therefore is not justiciable before me. The letter then sets out a correct statement of the jurisdiction of this court (paragraph 16), and assertions that the writer is unclear what are the points of law on which the Appellant relies (paragraph 17) and is unclear what remedy is being sought (paragraph 18) or what prejudice has been suffered (paragraph 19).

13. This last point arises from the assertions at paragraphs 13 and 14 that since the historical events on which the VTE's decision was based, the Appellant has now provided the evidence in issue as a result of which the decision to withdraw support was replaced by a decision that he was entitled to some support, which decision dated 26<sup>th</sup> January 2021, resulted in an award that put his Council Tax account in credit in the sum of £629.23. In the Appellant's objection to the Respondent's letter at item 5 on page 15, the Appellant admits these facts but questions whether the amount was calculated correctly because the Respondent did not show any calculation.
14. From this disordered mass of material, I draw the following conclusions and make the following findings:
  - a) There is no let alone a valid basis on which to reject and ignore the Respondent's letter dated 28<sup>th</sup> January 2021 which I admit into the appeal documentation. If and in so far as it stood as a

pleaded case, it did no more than seek to uphold the VTE decision on the grounds relied upon, which a Respondent to an appeal is entitled to do without serving a Respondent's Notice;

b) In so far as that letter asserts and the Appellant admits, a decision to make an award on 26<sup>th</sup> January 2021, the decision under appeal to decline Council Tax support has been replaced by a decision to make an award. This is undisputed fact. It means this appeal has become academic, and there remains no merit to it, so that it ought to be dismissed on that ground alone;

c) If and in so far as there remains an issue as to the calculation of the award of 26<sup>th</sup> January 2021 and its correctness, that is a matter in respect of which appeal lies to the VTE, not this court, if indeed there are any rights of appeal in that regard, or alternatively, the Appellant can ask for a review of that decision. Either way, some sort of burden of proof would lie upon him to explain what was wrong with the calculation, which he has not done to date;

d) Lest another court decides that those conclusions are wrong, as regards the substantive merits of this appeal, there being no dispute that the Appellant was entitled to apply for support, the only issues for the VTE to decide were whether he was at the material time in receipt of universal credit (the section 14 question: which was a question of fact and a matter of evidence), and if so, whether to use the assessment of income by the



Secretary of State (that is, the DWP) as the basis for calculating the amount of Council Tax support to award (the section 15 question: again a question of fact and discretion). These matters were in dispute in that the Appellant asserted (but did not demonstrate by evidence) that he had no income whereas the Respondent asserted and provided evidence in support of the assertion that he did and therefore had failed to demonstrate that he had no income.

15. So identified, the issues before the VTE were pure questions of fact. There was evidence that entitled the VTE to conclude as it did. There was no issue of law in respect of which the VTE could or did fall into error. Therefore, there is no apparent error of law in its approach or decision-making. I cannot identify or crystallise from the representations made by the Appellant any point of law “arising out of” the decision of the VTE. The various complaints that documentation was incomplete and that the chronology of events and history of the claim were otherwise than as stated by the Respondent do not amount to identification of any point of law being incorrectly determined by the VTE or therefore available to this court to correct.
16. For all of these reasons, this appeal is dismissed. In that the Respondent has not appeared or been represented or filed a statement of costs or indeed appeared to have incurred any costs, the appropriate order to make is no order as to costs.