



Case No: C3/2015/3974

Neutral Citation Number: [2018] EWCA Civ 3125
IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE UPPER TRIBUNAL
(SOCIAL ENTITLEMENT CHAMBER)
(HIS HONOUR JUDGE POYNTER)

The Royal Courts of Justice
Strand, London, WC2A 2LL

Wednesday, 7 March 2018

Before:

LADY JUSTICE GLOSTER

Between:

LEBBIE

Applicant

- and -

LONDON BOROUGH OF BROMLEY

Respondent

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THE APPLICANT APPEARED IN PERSON.

THE RESPONDENT DID NOT APPEAR AND WAS NOT REPRESENTED.

Judgment

(As Approved)

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LADY JUSTICE GLOSTER:

1. This is an application by Mr Lebbie, seeking permission to appeal the decision of Judge Poynter in the Upper Tribunal, dated 20 February 2015, corrected on 1 July 2015 in respect of alleged recoverable overpayments to him of housing benefit and council tax benefit and for an extension of time. Beatson LJ, in an order dated 13 January 2017, directed that the application be listed before a single Lord Justice for a one-hour hearing on notice to the respondent, the London Borough of Bromley. The second respondent, Amicus Horizon housing association (“Amicus”) does not appear to have played an active part in the proceedings.
2. The case relates to the assessment of the appellant’s entitlements to housing benefit (which I shall refer to as “HB”) for the period 24 September 2007 to 14 June 2009 and council tax benefit (which I shall refer to as “CTB”) for the period 24 September 2007 to 31 March 2009.
3. In his reasons on the papers, adjourning the application into court, Beatson LJ said as follows:

“It is not entirely clear what the amounts accepted by the Upper Tribunal at [53] and [62] are or whether the applicant’s tax credit was included in the calculation. Although the issue concerns the details of a calculation and thus does not appear to raise any important points of principle or practice, since there have been differences in the decisions reached by the FTT’s decision and those of the UT, the flexibility in the test that exists applies (see *JD (Congo)* [2012] EWCA Civ 327).”

4. As at present, 10.15, although this case was listed to start at 10.00, the appellant, Mr Lebbie, has not arrived. He has been contacted by the associate and apparently is in the bus some 20 minutes or so away. Since I am proposing to give permission to appeal anyway for the reasons which I will be giving in a moment, I consider it appropriate that I should deliver this short oral judgment now and then tell Mr Lebbie when he arrives in court that permission to appeal has been granted. Although the respondent local authority (Bromley) was invited to attend and to make written submissions, and although the Bromley will have been informed of that order, the standard letter that was sent out to them, dated 23 January 2017, incorrectly indicated that their attendance at the hearing was not required and that they needed to take no action until permission to appeal was given. In a letter dated 27 January 2017, however, Bromley correctly noted the tension between the order and the letter and indicated that it did not intend at this stage to take part in the proceedings but would review the position if permission to appeal were granted. However, with its letter Bromley enclosed a copy of the letter which it had sent to the appellant dated

16 December 2014 following notice that he had applied to the Court of Appeal for permission to appeal. That contained a yet further correction to the figures. It does not explain the reason that it was said that Judge Poynter's decision was incorrect in the Upper Tribunal, but a calculation was enclosed, highlighting the difference from the judge's calculations. Clearly there seems to be some confusion at all levels of decision making and by the respondent itself as to what the precise figure is. This is difficult, and although at the end of the day if Bromley is correct that the figure simply goes apparently to reduce the amounts payable by the appellant, in my judgment it is unsatisfactory to have no settled agreement as to the figures or as to the method of calculation.

5. I will therefore grant an extension of time. The application for permission to appeal was made on 27 November 2015, significantly out of time. The reason given in the appellant's notice was that he had been completely demoralised and unable to put his case together in time due to the delay in receiving evidence papers from the Upper Tribunal in time. Given the letter from Bromley dated 16 December 2015 which I have already mentioned, I think an extension of time should be granted to the appellant in this case.
6. As to whether permission to appeal should be given, the appellant is of course a litigant in person and his Grounds of Appeal are not clearly formulated. It is clear he does not accept the figures which were used by the judge and it seems that in one regard at least he was correct not to do so. But he has not put forward alternative figures. It seems the appellant accepts there was some overpayment but there appears to be, or remains, a dispute as to the amount. It is not known whether the appellant accepts the figures set out in Bromley's letter of 16 December.
7. In those circumstances there is considerable uncertainty about the amount of the calculations before one even gets to the decision on recoverability. Again, although it is not very clear from the appellant's Grounds of Appeal, it would appear that he seeks to challenge the decision on recoverability under the relevant regulations. Although Judge Harty, the First-Tier Tribunal judge, found that the appellant acted in good faith, she nevertheless found that under the HB and CTB regulations that sums were recoverable. The Upper Tribunal agreed with this aspect of her decision, meaning that the appellant has failed twice on this issue in the tribunals. However, I note that both regulations require that, for an error to be an official error, the claimant must not have materially contributed to it. The finding by Judge Harty was only that the claimant contributed to the errors, not that he had materially done so. Although this is not expressly a point raised by the appellant, it may well be one he will seek to raise on appeal.
8. As the case referred to by Beatson LJ makes clear (JD (Congo)), in deciding whether to grant permission to appeal this court has greater flexibility since the Upper Tribunal set aside the decision of the First-Tier Tribunal and remade the decision. It seems to me that this is very much a case where there is another compelling reason for permission to appeal to be given under the relevant rule. Whilst the court does not have information on the appellant's current financial circumstances, it would appear that the effects of

the decision both as to quantum and as to recoverability are serious for him. It is difficult at this stage to judge what prospects of success the appeal would have since the appellant has not put forward any figures to support a calculation which would mean that he was liable for nothing, but there does seem to be at least some argument in relation to the issue of recoverability for the reasons that I have already stated.

9. Again, in the absence of any submissions from the council, I propose to give permission to appeal. The case should be heard before two Lord Justices, one of whom can be a High Court judge, listed for a period of half a day. When the appellant turns up later in the morning, I will adjourn the other case that is listed to start at 10.30 for five minutes to inform Mr Lebbie that I have granted an extension of time and permission to appeal and I would ask the associate to draw up the order accordingly.

Order: Extension of time granted; permission to appeal granted

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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