



## THE VALUATION TRIBUNAL FOR ENGLAND

Appeal Numbers: I. 4705M141113/254C

II. 4705M143473/254C

III. 4705M148253/254C

6 July 2015

Council tax – rebanding – revised council tax bill – extent of refund – whether limited to six years – Council Tax (Administration and Enforcement Regulations) 1992, SI 1992 No 613 – Limitation Act 1980, s. 9.

### Appellants

#### I. Mr Mark Holdsworth

Re: 8 Denbrook Walk, Tong, Bradford BD4 0QS

#### II. Mr William Cassidy

Re: 12 Denbrook Walk, Tong, Bradford BD4 0QS

#### III. Mr Colin Phillips

Re: 41 Cavalier Drive, Apperley Bridge, Bradford BD10 0UF

v.

### Respondent

**City of Bradford Metropolitan District Council  
(Billing Authority)**

**Before:** The President (Professor Graham Zellick QC)

**At:** Leeds

**On:** 22 June 2015

#### Appearances:

Mr Mark Holdsworth, Mr William Cassidy and Mr Colin Phillips, Appellants.

Mr Tony Sykes, Senior Appeals and Disputes Officer, Revenues and Benefits Service, assisted by Mr Michael Gallagher and Mr David Carre, City of Bradford MDC, for the Respondent.

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## **Introduction**

1. All three appeals raise the same issue: to what refund of council tax are the appellants entitled after the Listing Officer (LO) has rebanded their properties to a lower council tax band?
2. Under council tax law, the rebanding is entered in the list as from 1993 (or when the dwelling was first entered in the list if later), when council tax was introduced, but the billing authority (BA) claim that they are required to refund only the past six years of the council tax paid over the years since 1993. They base their view (which appears not to be taken by most other local authorities) on s. 9 of the Limitation Act 1980 as construed and applied by this Tribunal in *Arca v. Carlisle City Council* [2013] RA 248.
3. I have heard the appeals together since the facts are identical and all concern the same respondent: The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 (SI 2009 No 2269), reg. 6(3)(b).
4. The facts may be simply stated:
  - Mr Holdsworth has been liable for council tax in respect of 8 Denbrook Walk since 18 November 1993; the billing authority was informed of the rebanding of the dwelling by the LO on 30 June 2014 and issued a revised council tax bill on 29 July 2014 stating that the refund was limited to 1 April 2008. After challenging the authority's position, Mr Holdsworth appealed to the Tribunal on 29 September 2014.
  - Mr Cassidy has been liable for council tax in respect of 12 Denbrook Walk since 21 February 1994. The property was rebanded as above and the BA issued a revised bill on 15 July 2014 on the same basis as above and Mr Cassidy appealed to the Tribunal on 18 November 2014.
  - Mr Phillips became liable for council tax at 41 Cavalier Drive on 19 April 1996. He requested a refund of council tax on 9 December 2014 following a rebanding of his property. He appealed to the Tribunal on 6 February 2015.
5. The following facts are also common to all three appeals:
  - The rebanding was not precipitated by any action on the part of the appellants;
  - The BA did not exercise its statutory right to challenge the rebanding: Council Tax (Alteration of Lists and Appeals) (England) Regulations 2009, SI 2009 No 2270. reg. 4.
  - None of the appellants had challenged the original banding by bringing an appeal to the Tribunal.
6. In all three cases, the appellants seek a refund back to the date when they first became liable for council tax – 1993, 1994 and 1996 – and in all cases the BA is willing to refund only six years of the overpaid council tax.

7. I am not going to burden this decision by setting out all the relevant legislation concerning the LO's power to reband and the effect of a rebanding. None of this is in dispute. Nor is it disputed that the legislation permits and requires adjustments to be made to council tax bills and for revised bills to be issued. Moreover, any calculation that is shown on the bill may be the subject of an appeal to this Tribunal.
8. A council tax bill is necessarily fluid. The regulations speak of an "estimated amount" because circumstances may change at any time, leading to a recalculation. The banding may change, as in these appeals, or the taxpayer may become entitled to a discount or a reduction. Any number of changes may take place which will require the estimated amount to be increased or reduced. This revised amount is then called the "chargeable amount". Meanwhile, the taxpayer will be paying his council tax on the basis of the estimated amount. For most taxpayers, that estimated amount will not change and no revised bill will be issued.
9. The BA will issue a demand notice before or shortly after the start of the relevant year setting out the authority's estimate of the chargeable amount based on a number of assumptions set out in the regulations: Council Tax (Administration and Enforcement) Regulations 1992 (SI 1992 No 613), reg. 20.
10. Reg. 24 then deals with adjustments that may be occasioned by changes. Reg. 24(2) provides for the situation where the bill has gone down:

"If the chargeable amount proves to be less than the estimated amount the billing authority shall notify the liable person in writing of the chargeable amount; and any overpayment of the chargeable amount –

(a) . . . shall be repaid if the liable person so requires . . ."
11. Nothing in these Regulations, or elsewhere in the council tax legislation, imposes any limitation on the refund or the period covered by the refund. By contrast, however, there is a restriction on how many years of unpaid tax can be recovered by the BA. Reg. 34(3) limits the period to six years.
12. Notwithstanding the absence of any limitation in the Regulations, the BA argue that they are bound to refund only six years of the overpaid tax, leaving in these appeals some 15 years of overpaid tax unrefunded. It is unsurprising that the appellants are aggrieved by this, especially after discovering that other billing authorities in these circumstances refund the full amount – as did this respondent until my decision in *Arca*.
13. I fear they have misread and misunderstood the decision in *Arca*, as well as failed to appreciate the purpose and effect of the Limitation Act.
14. Section 9(1) of the Limitation Act 1980 provides:

"An action to recover any sum recoverable by virtue of any enactment shall not be brought after the expiration of six years from the date on which the cause of action accrued."
15. In *Arca*, I held that this applied to proceedings in this Tribunal concerning overpayment of council tax where the taxpayer was entitled to a reduction in respect of disability but had not applied for that discount until many years after the entitlement arose, but sought to have it backdated. I concluded that she had to bring

those proceedings within six years. The effect of that was that only the previous six years of entitlement could be claimed because claims in respect of all earlier years were statute-barred.

16. The Limitation Act sets a limit on when proceedings must be initiated. If they are not brought within the maximum period following “the date on which the cause of action accrued”, then the action cannot proceed and must fail. The Act does not set a limit on the number of years in the past in respect of which sums may be recovered. That is the fundamental error made by the BA in these appeals.
17. They have simply assumed that s. 9, as interpreted and applied in *Arca*, sets a six-year maximum period for refunding overpayments. It does no such thing.
18. The only question in these appeals, therefore, is whether the appellants have brought these proceedings within six years of the date on which the cause of action accrued.
19. The BA have argued that the cause of action in these appeals accrued in 1993, 1994 or 1996, as the case may be, when the band was originally fixed and sought to attach significance to the fact that none of the appellants had brought proceedings then to challenge their band.
20. This argument has no merit. These appeals are not about the bands. They are about overpaid council tax following a reduction of the banding by the LO in the exercise of his statutory duty. The cause of action accrued when the BA issued a new council tax bill to reflect the revised band and declined to give the full refund requested in accordance with reg. 24(2)(a). If the BA had refused to issue any revised bill, then the relevant date would be either when the LO gave notice of the banding or (more likely) when the taxpayer applied to the BA for a refund.
21. It is utterly fanciful for the respondent to argue that the appellants should or could have brought these proceedings before the LO revised his banding decision and a revised council tax bill was issued.
22. The BA also base an argument on the expression “final determination” in reg. 24(3):

“If any assumption by reference to which the estimated amount was calculated is shown to be false before the chargeable amount is capable of final determination for the purposes of paragraph (1) and (2), the billing authority may, and if so required by the liable person shall, make a calculation of the appropriate amount with a view to adjusting the liable person’s liability in respect of the estimated amount and (as appropriate) to –

- (a) requiring an interim payment . . . or
- (b) . . . making an interim payment . . .”

23. The use of the term “final determination” in this rather cumbersome provision does not support the respondent’s weighty argument that it is designed to introduce a degree of finality in council tax refunds. It plainly does no such thing and has been taken out of context.

24. The requirement to make a refund of council tax going back some 20 years may seem odd, but it is not the only odd feature of council tax law. It is the result of the failure to have periodic revaluations. It is the same reason why houses built in 2015 have to be given a 1991 valuation for banding purposes.
25. For the reasons given above, I allow the three appeals. The BA must refund the overpaid council tax back to the date when each appellant became liable to pay the council tax on the appeal dwelling.

## **ORDER**

The respondent billing authority is ordered, pursuant to reg. 38(1)(d) of the Procedure Regulations, to recalculate the appellants' council tax over the full period of their liability, following the alteration of the band by the Listing Officer, and to adjust the amount accordingly; and to do so within two weeks (reg. 38(9)).



**President**



**Registrar**  
**6 July 2015**