

VALUATION TRIBUNAL FOR ENGLAND

Referencer:

Council tax liability appeal – discount sought on basis of appellant being a full-time student – Council Tax (Discount Disregards) Order 1992 (as amended) – requirement to attend – requirement to undertake periods of study averaging 21 hours a week – recommended period of study of 12-15 hours per week per degree programme module – recommendation not a requirement – appeal dismissed.

*Cases referred to: Feller v Cambridge City Council [2011] EWHC 1252 (Admin)
R(on the application of Fayad) v London South East Valuation Tribunal [2008] EWHC 2531 (Admin)*

Re:

Appeal No:

Hearing / Determination on:

At: Tribunal Offices, 2nd Floor Black Lion House, 45 Whitechapel Road, London E1 1DU

Parties in attendance:

Members: **Ms F Dickie (Chairman)**
 Mr K Sheth
 Mrs ES Keller

The absence in this decision of a reference to any statement or item of evidence placed before it by the parties should not be construed as an indication that that statement or item of evidence has been overlooked by the panel.

Introduction

1 The appeal lay against the Billing Authority's refusal to disregard the appellant for the purposes of a council tax discount on the grounds that he is a full-time student. The legislation provides the amount of council tax payable for a dwelling may be subject to a discount if the property is occupied by a person who is undertaking a full-time course of education at a prescribed education establishment. Such persons will be regarded as students until such time as they finish their course, abandon it or are no longer allowed to undertake it by the educational establishment.

2 Up until 13 May 2011 paragraph 4 (1) of Part II of Schedule 1 of the Council Tax Discount Disregards Order 1992 defined a full-time course of education as 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 attend (whether at premises of the establishment or otherwise) for periods of at least 24 weeks in each academic or calendar year (as the case may be) during which it subsists; and
- (c) the nature of which is such that a person undertaking it would normally require to undertake periods of study, tuition or work experience which together amount in each such academic or calendar year to an average of at least 21 hours a week during the periods of attendance mentioned in paragraph (b) above in the year.'

3 From the 13 May 2011 the definition was amended with paragraphs (b) and (c) being substituted by the following paragraph:

- '(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.'

4 Details of the nature of the appellant's course were provided in his bundle submitted to the Panel at the start of the hearing. The appellant is registered on the University of Wales Master of Business Administration (MBA) degree programme, which he is undertaking on a distance learning basis with Resource Development International Ltd (RDI), an education provider. RDI describe distance learning as off-campus, flexible learning designed to allow students to study campus-based programmes either at home or at work.

5 The study programme comprises two stages, the first consists of eight modules and the second a dissertation, which can only be submitted when the first stage has been completed. The MBA degree is usually studied over 18-24 months, although students can be registered on the degree programme for a maximum of four years. At any one time a student can choose to undertake one, two or three modules. The modules are equivalent to 150 guided learning hours of study.

6 RDI provided a letter in November 2010 stating that the appellant was enrolled on the MBA degree, that the course commenced on 1 November 2009 and that it would run for approximately 18 months. They also sent the appellant an e-mail in March 2011 stating that in order to complete the degree programme, the University recommends 12-15 hours study per module per week.

Appellant's Case

7 The appellant believed that he was undertaking the requisite hours of study per week to qualify as a student for council tax purposes. He had chosen to study two modules per term, which he defined as three twelve week periods. On that basis he argued he was studying 12.5 hours per module per week and was therefore undertaking in excess of 21 hours of study per week. The appellant argued that the rate of progress through the course (taking into account modules not completed or failed and resat) was not relevant to the fact that he was throughout the relevant period attending a full-time course of education.

8 The appellant argued that the Billing Authority, in considering that he failed to meet the requirement to 'attend', as provided in the regulations before they were amended in May 2011, did not understand the nature of the degree programme. He said he was undertaking a number of taught modules, not self-study. In order to be taught he said he was required to 'attend' by logging on the University website to study, to communicate with tutors, etc. He argued there was no requirement for his attendance at some identifiable place.

9 At this point in the proceedings the Panel and clerk referred the parties to the recent High Court case of *Feller v Cambridge City Council* [2011] EWHC 1252 (Admin), which considered whether a PhD student had fulfilled the requirement to 'attend' under the regulations. In relation to his course, Dr Feller was not required to attend at any particular place but was found to be a student for the purposes of a discount. The clerk quoted the following from the learned judge in that case:

'It seems to me that in the ordinary use of language a person can attend a course or attend a university without being physically present at a particular place for any particular length of time. I agree with Mr Drabble that in an academic context it is a natural use of language to speak of a person attending a course if he is subject to a degree of supervision, in some appropriate contact with the academic authorities, but doing the substantial part of his work in a library, or at home.'

'I think the words ("whether at premises of the establishment or otherwise") are significant, in that the words "or otherwise" are used, as opposed to "or elsewhere". The words "or otherwise" in my view reflect the wide range of situations in which the test falls to be applied.'

'Further, I do not think this is a surprising result, having regard to the fact that there is a separate discrete condition (in paragraph 4 (1) (c)) as to the activities to be carried out during that period of "attendance". It is not surprising that Parliament wished to provide that people attending a course should be required to carry out a minimum of weekly study or work. Otherwise, it might be possible for a person to attend a course for many years, and thus claim exemption from council tax, while exhibiting very little commitment to the course.'

Billing Authority's Case

10 In general the Billing Authority's representative argued that the appellant did not qualify for a discount because he was a part-time student and as such did not undertake the average 21 hours of study required under the regulations. Furthermore, up until the regulations were amended, she also contended that he was not a full-time student because he did not fulfil the requirement 'to attend'.

11 In relation to the issue of attendance, she referred to an earlier case before the High Court, *R (on the application of Fayad) v London South East Valuation Tribunal* [2008] EWHC 2531 (Admin). She noted that it was held in that case that in order for a person to be regarded as a full-time student their attendance at some identifiable place was necessary. In relation to issue of attendance the learned judge in that case stated, *inter alia*:

'The words "to attend" are followed in parenthesis by the words "whether at premises of the establishment or otherwise". The use of the words "or otherwise" just about make possible Miss Henderson's alternative construction, but the only natural reading of these

words indicates a provision that students are normally required to attend at some identified place.'

12 With regard to the issue of study time, she stated that she had contacted RDI on a number of occasions to determine whether it could treat the appellant as a full-time student. She referred to an e-mail from RDI dated 27 May 2011 in which they confirmed that the appellant was enrolled on four modules but had only submitted one module for assessment.

13 she said that for the appellant to be studying full time, and assuming that the degree programme had commenced on 29 October 2010, he should have completed six modules. However, as she had been unable to determine if that were the case, and the e-mail from RDI in May 2011 had advised that he had only submitted one module for assessment, she suggested that he had been studying part time and that as a consequence, the appellant was not entitled to a student discount.

Decision and Reasons

14 The Panel, noting the respective views of the judges in Fayad and Feller cases, does believe that the words 'or otherwise' should be read in the wider context and that prior to the amendment to the regulations, attendance at a particular place would not appear to have been necessary, providing that a person who was studying at home, for example, was pursuing a course that was subject to some form of supervision and had appropriate contact with the educational establishment. In the Panel's opinion, it having considered the course documentation provided, by logging on to the university's website at home and undertaking taught modules the appellant had an appropriate degree of supervision by, and contact with, the institution in order for him to be considered to be attending the degree programme. The Panel is therefore not persuaded that the appellant would have fallen outside the requirement 'to attend' prior to the changes in the regulations.

15 However, in relation to undertaking periods of study averaging 21 hours per week, the Panel finds that the appellant does not fulfil the statutory requirement and therefore does not fall to be disregarded as a student for the purposes of a discount. The Panel notes that before and after the regulations were amended it remains the case that a person is 'normally required' to undertake periods of study, etc, that amount to an average of 21 hours a week. In the Panel's mind, this conveys some sort of mandatory requirement usually applied by the educational establishment in respect of study time.

16 As far as the appellant is concerned, it appears that the university recommends 12-15 hours study per week per module in order to complete the degree programme within 18 months to 2 years. The appellant agreed that when compacting the entire course into a 24 month period the recommended study requirement would not average more than 21 hours per week. Whatever the actual period of recommended study time, the Panel does not find the university's recommendation to be a normal requirement.

17 In the Panel's view, there is an element of choice for the appellant in relation to study time. Flexibility is one of the principal features of this course, which can be studied part time to fit around a student's other commitments. The Panel notes that a person can take up to four years to complete the programme and can opt to take between one and three modules at a time, choosing to do more or less than the recommended period of study per week. Indeed it would appear to the Panel that the appellant in having only submitted one module for assessment was not following the recommended period of study.

18 The Panel is satisfied that a student of this course is not normally required to study for an average of 21 hours per week. The Panel accordingly dismisses the appeal.

Order(s): No order made.

PC/BH