The High Court has recently applied the Denton Principles in a council tax reeduction appeal. Richard Hanstock explains why.

In *Turner v South Cambridgeshire DC* [2016] EWHC 1017 (Admin) , the Administrative Court dismissed an appeal against a decision by the Valuation Tribunal for England to uphold a decision by a council officer to cease to award Council Tax Reduction, following a failure by Mr Turner to comply with what was found to be a reasonable request for information within the terms of its reduction scheme.

The court:

- applied the *Denton* principles to appeals lodged outside the statutory time limit;
- dismissed an argument that the terms of the council's scheme require it to show cause before investigating claimants' ongoing entitlement to Council Tax Reduction, and
- vindicated the council's requirements that evidence be provided in a standard form.

Background

From 1 April 2013, Council Tax Benefit was replaced by locally-devised Council Tax Reduction ('CTR') schemes introduced by the Local Government Finance Act 2012, which made amendments to section 13A Local Government Finance Act 1992.

Decisions regarding eligibility for CTR are made at a local level, with a right of appeal to the Valuation Tribunal for England ('VTE') conferred by section 16 of the 1992 Act. From there, VTE regulations provide for a further route of appeal to the High Court – but only on a point of law, and generally only where notice of such an appeal is lodged within two weeks (reg 43 SI 2009/2269).

Mr Turner was awarded Council Tax Benefit in 2006, on the basis of nil self-employed income. He was transferred to CTR in 2013, when the new scheme came into effect. A few months later, the billing authority decided to review Mr Turner's entitlement to CTR, requiring him to provide evidence of his ongoing entitlement. Part of the rationale for doing so was that his claim for Working Tax Credits had been cancelled by HMRC, suggesting there may have been some change in his income.

Mr Turner's case was, in essence, threefold:

1. He should be allowed to bring his appeal out of time, partly because he had been wrongly advised as to the applicable time limit for appealing.

2. It was unreasonable for the authority to require Mr Turner to substantiate his claim at all, because:

– he was under an ongoing duty to disclose material changes of circumstances to the billing authority, and there was no or no sufficient evidence to show that he had failed to observe this duty; and

– the requirement had been made because his Working Tax Credits had been withdrawn, but as these had subsequently been restored by HMRC, the council should have ceased its investigation into his entitlement to CTR.

3. It was unreasonable for the authority to insist that Mr Turner complete a form to provide the required information, in circumstances in which he had provided the substance of the information requested therein.

The court dismissed the appeal on all grounds, having considered the merits as part of the decision not to entertain the appeal out of time. Of the various arguments put forward, the following are likely to be of wider interest.

1. Application of Denton principles

The regulations that govern appeals from the VTE to the High Court (reg 43 SI 2009/2269) provide as follows:

"(2) Subject to paragraph (3), an appeal under paragraph (1) may be dismissed if it is not 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, in the case of a section 16 appeal, within two weeks of the date on which written reasons for the decision are given in accordance with regulation 37(6), if later."

The court (at [24]) adopted the council's analysis that there are three possible interpretations of this regulation, which provides that such appeals *"may be dismissed"* where they are brought outside the appropriate window. The court agreed that this regulation operates either as (a) a time limit, which may be extended only if the court in its discretion agrees; (b) an automatic sanction, from which relief must be sought; or (c) a ground on which the court may in its discretion dismiss an appeal.

Although the court left open the question of which of these interpretations is correct, it did agree that the *Denton* three-stage test structures its discretion in such cases. The court thereby went further than in *Zafar v Redbridge* (unreported, 3 February 2016) and in *Naz v Redbridge* [2013] EWHC 1268 (Admin), involving a refusal and a grant of an extension respectively, though apparently without specific reference to the *Denton* criteria.

On the facts of this case, the Appellant's notice had been lodged four weeks and one day beyond the two-week window. The argument put forward was that the Appellant had relied upon incorrect legal advice to the effect that the limit was four weeks, not two – advice apparently not taking account of the amendments to that regulation in connection with the 2012 Act.

The court agreed with the council's argument that (a) this was not a good reason for the delay (applying *Mitchell* at [41]), and (b) whilst this explained 14 days of the delay, no explanation had been advanced for the 15th day, for which no reason at all had been advanced. The court went

on to apply the third stage of the *Denton* approach, finding nothing in the broader circumstances of the case that would warrant an extension of time – including, exceptionally, the merits of the appeal.

In reviewing the substantive merits, the court essentially considered the entire appeal, leading to some interesting observations on the remainder of Mr Turner's case.

2. No presumption of regularity

In common with other authorities' schemes, the South Cambridgeshire scheme imposes a duty on claimants to notify the billing authority of any material changes of circumstances during the lifetime of their claims.

It was argued on behalf of Mr Turner that the existence of this duty gives rise to a rebuttable presumption of continuing entitlement, which would have prevented the council from randomly checking ongoing entitlement unless there was some evidence that the duty to disclose material changes of circumstances had not been observed. In other words, it was argued that the council cannot randomly 'virtue test' its CTR claimants; it needs to have a reason to investigate them. The mere fact that it had been several years since Mr Turner's income had been assessed, it was argued, was not sufficient to rebut such a presumption.

The council argued that this argument went beyond the scope of appeals of this nature, straying into the realms of judicial review. In any event, there was no such presumption under the scheme; furthermore, several of its features pointed to the opposite conclusion. Such a presumption would severely hamper the council's ability effectively to administer its scheme, and would be contrary to common sense; alternatively, if there were such a presumption, it was rebutted on the facts of this case.

The High Court rejected Mr Turner's argument, and agreed with the council's submission that this was essentially a point for judicial review. At [32], the court ruled that the argument *"fails in law, and in fact. No such presumption is expressed in the Scheme, nor can one be implied. It would be an unreasonable implication."*

As to the relationship between CTR and Working Tax Credits, the council argued that although both schemes were means-tested, they were administered by different bodies, served different purposes, and cannot be equated. Importantly, the council argued that there is no basis in its scheme to argue that entitlement to WTC is a 'passport' to entitlement to CTR. The court went on to find that the removal of Working Tax Credits did amount to a good reason to investigate – but, fundamentally, the council did not need such a reason. It did not follow that the HMRC decision to reinstate WTC meant that the authority should cease its investigation into CTR.

3. Substance vs. form

As well as attacking the power under the scheme by which the council required Mr Turner to provide evidence of his ongoing entitlement, Mr Turner complained that the VTE (and the council) had "elevated form over substance" (at [3]) by requiring him to fill out a form for the purpose of providing the necessary information.

The form sent to Mr Turner required him either to provide copies of company accounts, which he said did not exist, or to provide information about income and expenditure, which he said were close to nil, and to verify the same with a statement that the information provided was correct and complete.

Mr Turner argued that the requirement to fill out the form was not reasonable, for three main reasons. Firstly, he had in fact provided all the information required by the authority to confirm his claim. Secondly, he was unable to complete the form because he had been assisting the police with an investigation into an alleged fraud (at [11]), which came to light around 2007 and was presently awaiting trial. As a result, he argued, the information requested was *"sub judice"* (at [46]). Thirdly, the form was directed at self-employed persons, whereas in fact he was employed by a company (of which he was a director) that paid him no or next to no salary.

The court was persuaded that many of the Appellant's arguments in this regard essentially amounted to "a misconceived attempt to secure a rehearing on an issue of fact" (at [34]) – serving as a reminder to would-be appellants that appeals to the High Court from the VTE are to be confined to questions of law. In response to this criticism, counsel for the Appellant formulated the following question of law on the morning of the hearing:

"Is a reasonable Valuation Tribunal lawfully permitted to dismiss an appeal on the ground that the appellant has failed to fill in a form provided by the billing authority, but has otherwise provided all available information required by the billing authority for the consideration of his claim?"

After a detailed review of the long history of correspondence between the parties, the court noted that there had been a number of discrepancies in the Appellant's various letters to the council in which he described his income. At [49], *"[d]iscrepancies such as these are at odds with the central argument for Mr Turner, that the council had been given accurate and complete information and evidence to the full extent that it could reasonably have required."*

Whilst considering that *"a different way of dealing with the issue [on the part of the council] might have yielded better results"* , Warby J concluded (at [52]-[53]) by vindicating the council's decision and approach:

"In the end, the position is this. The council made some relatively straightforward requests for information, evidence, and verification. They were clear enough, and could without any real difficulty have been complied with in full and on time. The VTE was fully entitled to conclude that they were reasonable requests, and it had an ample basis for finding that they were not met."

"The outcome is that the extension of time is refused and the appeal is dismissed. If I had granted relief against sanctions and an extension of time I would have affirmed the Tribunal's decision."

Comment

Billing authorities are in a difficult position when facing appeals of this nature, as they are named as respondents in appeals that are supposedly confined to issues of law between the Appellant and the VTE. The VTE, as a judicial body, generally will not participate – though councils must ensure that the VTE has been made aware of the appeal (reg 44(5) SI 2009/2269).

Cases such as this demonstrate the value of active participation by billing authorities in appeals of this nature – and the value of instructing counsel to appear in the VTE below. Although the VTE is generally a no-costs forum, the council did recover its costs in the High Court.

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