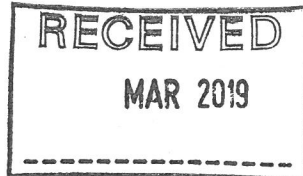




Mick Quinn  
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**MARCH 2019**

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## Notice of Decision

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The appeal shown below was heard by the Tribunal on:

<b>Hearing Date:</b>	February 2019	<b>Time:</b>	
<b>Venue:</b>		Newcastle Upon Tyne	
<b>Appeal Number:</b>			
<b>Appeal Type:</b>	Council Tax Liability Appeal		
<b>Appellant:</b>	Mrs		
<b>Appeal Date:</b>	November 2017		
<b>Appeal Property:</b>			

The Tribunal's decision is attached.

Please read the enclosed leaflet as this gives you important information.

**Registrar**

Appellant : Mrs

Appellant's address :

Matter appealed against : Council Tax Liability

Date of hearing : February 2019

Appearances : Mrs

Officer of the Billing Authority

Date of decision : March 2019

Decision of Tribunal : Appeal Allowed

Tribunal taking officer : Mr D Mulgrew IRRV (Hons)

Reasons for decision

see attached document

# VALUATION TRIBUNAL FOR ENGLAND



*Council tax liability appeal; backdating of discount; Limitation Act 1980; HS v Leicester City Council [2015]; appeal allowed.*

RE:

APPEAL NUMBER

BETWEEN:

Mrs  
and  
Northumberland County Council  
(Billing Authority)

Appellant  
  
Respondent

PANEL: Mr D L Nicholson (Chairman)  
Mr D G Halliday

SITTING AT: Newcastle upon Tyne

ON: February 2019

APPEARANCES: Mrs (Appellant) represented by Mr M Quinn (Welfare Rights Officer, Northumbria Healthcare NHS Foundation Trust)  
Mrs (Respondent's representative)

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## Summary of decision

1. Appeal allowed.

## Introduction

2. This appeal has been brought in respect the above dwelling (the 'appeal property') and challenged the billing authority's decision in relation to council tax liability. The appellant had sought the backdating of a discount to 27 September 2003.
3. The appeal has been accepted by the Valuation Tribunal for England as an appeal made under section 16 of the Local Government Finance Act 1992 (the '1992 Act'). This allowed appeals to be made concerning the calculation of an amount the person was liable to pay.

4. Although this decision document is not a verbatim record of proceedings, the parties can be assured that all of the evidence has been taken into account. The tribunal panel's full reasons for coming to its decision are given below.

## Issue

5. The issue in dispute concerned whether a 50% discount should be backdated to 27 September 2003.

## Evidence and submissions

6. The billing authority provided an evidence bundle which included contributions from both parties to the appeal. The documents submitted included:
  - (a) case law; namely *Arca v Carlisle City Council* [VTE, 0915M85513/254C, 29 January 2013], *Holdsworth, Cassidy and Phillips v Bradford Metropolitan District Council* [VTE, 4705M141113/254C, 22 June 2015], *HS v Leicester City Council* [VTE, 2465M142876/037C, 11 August 2015], *appeal heard in Ashford* [VTE, 2210M71913/148C, 11 November 2011] and *appeal heard in Maidstone* [VTE, 2235M79431/148C, 2 March 2012];
  - (b) extracts from relevant legislation;
  - (c) discount application form;
  - (d) the appellant's letter requesting backdating of discount to the date her son became 18 years of age;
  - (e) the billing authority's decision of 11 September 2017 stating that discount could only be backdated six years;
  - (f) notes from the billing authority's database;
  - (g) Sample letters and guidance material which would have previously been issued by the billing authority (and its predecessor, Blyth Valley Borough Council, before local government re-organisation) in connection with council tax discounts.
7. The appellant sought discount from 27 September 2003, the date her eldest son became 18 years of age. Mr Quinn stated that the appellant made an application for discount on 9 August 2017, as soon as she became aware of it. He believed that this was the cause of action under section 9 of the Limitation Act 1980. He also argued it was the billing authority who had a duty to take reasonable steps, under regulation 14 of the Council Tax (Administration and Enforcement) Regulations 1992 to ascertain whether discount could be allowed.
8. The billing authority had backdated the discount for six years (to 13 May 2010) but relying on *Arca v Carlisle*, it would not backdate any earlier than that. However, the billing authority accepted that the appellant's eldest son met the criteria for discount disregard status on the grounds of severe mental impairment and that other adults in the household were also disregarded as they qualified as carers.

9. Prior to 1 April 2009, the billing authority for the appeal property was Blyth Valley Borough Council and there was a lack of records available. The billing authority was aware that the appellant was a student and had qualified for 25% discount between 17 September 2001 and 7 July 2004. The student review form asked for details of other adults living in the dwelling. Mrs [redacted] believed that the billing authority would have taken the appropriate action to discuss discount had the appellant's eldest son been disclosed on that form.
10. Mrs [redacted] referred to booklets sent with council tax bills since its introduction in 1993 and a Mencap leaflet. There had been other Tribunal panel decisions where it was held that if the billing authority had taken reasonable steps to ascertain discount then it was the appellant's responsibility to make the application for discount.
11. The panel's clerk, Mr D Mulgrew, advised on four matters:
  - (a) This Tribunal's decision in *Arca v Carlisle City Council* only concerned the backdating of reductions under the Council Tax (Reduction for Disabilities) Regulations 1992. Those regulations required an application to be made for each financial year.
  - (b) This Tribunal's decision in *HS v Leicester City Council* was the most relevant judgment to consider because it specifically concerned the backdating of discount.
  - (c) Valuation Tribunal panel decisions were not binding on other panels, but the panel in the instant appeal would need to take into account that the former Tribunal President, Professor G Zellick QC, had considered those appeals as test cases on the questions of law concerning backdating.
  - (d) The other Tribunal panel decisions submitted in relation to dwellings in Kent pre-dated Professor Zellick's decisions.

### Decision and reasons

12. The panel accepted the clerk's advice that *HS v Leicester City Council* was the most important Tribunal decision. That case also concerned backdating of discount in the case where a resident was disregarded as a carer. At paragraphs 3 and 4, Professor Zellick made some important observations over the responsibility of the billing authority with regard to discounts:
  - (3) It is unnecessary to set out the qualifying criteria as there is no dispute about it. What is important to establish, however, is the duty on the BA [billing authority]: is it for the council tax payer to make an application to the BA (as is the case with some council tax reductions and exemptions such as disability band reduction) or is there a burden on the BA to satisfy itself that the disregard does not apply (as with the single person discount, for example)?
  - (4) The carer's disregard falls into the latter category where it is for the BA to take reasonable steps to ascertain whether the calculation of the chargeable amount of council tax is subject to a discount: Council Tax (Administration and Enforcement) Regulations 1992, SI 1992 No. 613, reg. 14.

13. The panel then considered whether Northumberland County Council and its predecessor, Blyth Valley Borough Council, had taken reasonable steps. The panel found that the current information on the billing authority's website provided clear information concerning discounts for severely mentally impaired persons, carers and care workers. Similarly, the information provided with the bills in 1993/1994 also contained useful guidance on the discount groups. However, the information in 1993/1994 was well before the appellant was entitled to discount.
14. The most relevant evidence was the two Blyth Valley Borough Council leaflets from 2000/01 and 2001/02 because this was closer to the disputed period of time. The panel found that the information provided to alert taxpayers to discount disregards was inadequate; although it had referred to discounts for severely mentally impaired persons and care workers, it did not mention the disregard for carers, which was applicable in the case of the appellant's household.
15. The panel noted the Mencap leaflet provided relevant information, but this was not published by the billing authority.
16. Through questions, the panel also made a finding that the billing authority did not have a leaflet concerning discounts which could be distributed through the Council's social services department in appropriate cases.
17. In view of those findings, the panel was not satisfied that the billing authority had taken reasonable steps as it was required to do under regulation 14 of the Council Tax (Administration and Enforcement) Regulations 1992 to ascertain whether discount could be allowed.
18. The panel also considered the student review form which asked for details of other adults living in the dwelling. However, the form had not been retained by the billing authority and it was impossible to know what had been stated on it. The appellant believed that she would have declared her eldest son and the panel found no reason to reach any alternative conclusion.
19. The panel also noted that the billing authority agreed that the appellant would have been entitled to discount had she applied for it in 2003.
20. In *HS v Leicester*, Professor Zellick had, at paragraphs 6 to 10, distinguished the backdating of discount from the backdating of the reduction under the Council Tax (Reduction for Disabilities) Regulations 1992; in the latter there was a requirement on the taxpayer to make an application for each financial year. However, with discounts the obligation was on the billing authority to take reasonable steps to ascertain entitlement.
21. At paragraph 8 of *HS v Leicester*, it was stated that the claim must be commenced within six years of the accrual of the cause of action. This was clarified at paragraph 9 and meant that the claimant had six years to make a claim for backdating from the date he or she became aware they were entitled to discount. If the claim was made in this six year period there was nothing to prevent the taxpayer being eligible to claim the amount of overpaid council tax from the date he or she first became eligible for the discount.

22. In the present case in Northumberland, the panel was satisfied that the appellant had claimed discount when she became aware of it and thus held that she was eligible with effect from 27 September 2003.

23. The appeal was therefore allowed.

**Order**

24. Under the provisions of regulation 38(1) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the billing authority to recalculate the appellant's council tax liability for the period 27 September 2003 to 12 May 2010 to allow the 50% discount.

25. Under regulation 38(9), the billing authority must comply with this order within two weeks of the date of its making.

**Date:** March 2019

**Appeal number:**