



2024UT13

Ref: UTS/AP/23/0979

**DECISION OF**

Sheriff O'Carroll

**IN THE APPEAL**

Mr Vasileios Argyropulos

Appellant

- and -

Scottish Borders Council

Respondent

FTS Case Reference - FTS/LTC/CR/23/40991

7 March 2024

**Decision**

The appeal is refused. The decision of the First-tier Tribunal for Scotland Local Taxation Chamber dated 7 September 2023 is upheld.



## Reasons

### *Background*

1. This is an appeal against the decision of the respondent concerning the assessment of the Appellant's liability for Council tax for his Hawick property for the period 25 August 2022 to 31 October 2022 ("the disputed period"). He claims that the assessment during that period was wrong. There are two bases for that. The first is that that having been successful in obtaining 100% Council Tax Reduction for the period from 1 November 2022, that ought to have been backdated to 25 August 2022 when he became owner of the property. Instead of which, he only received a 50% "discount" for the disputed period in terms of the Council Tax (Discount for Unoccupied Dwellings)(Scotland) Regulations 2005. That argument was rejected by the FTS in its decision dated 7 September 2023. Leave to appeal against that decision on the basis that the FTS erred in law in holding that the respondent acted incorrectly in refusing to backdate 100% Council Tax Reduction was refused by this Upper Tribunal on in its written decision dated 29 November 2023 for the reasons given then. In short, the respondent's decision on the question of council tax reduction and that of the FTS was correct in law for the reasons given by the FTS. I need not repeat the explanation for that decision here. That disposed of that ground of appeal.
2. However, the second basis on which the Appellant argues the calculation of his council tax for the disputed period was wrongly calculated is that the property should have been treated as exempt from council tax for that period. "Exemption" is a different basis for diminution of council tax than "reduction" (and in turn is different from "discounts"). In this Tribunal's decision of 29 November 2024, leave to appeal was granted against the decision of the FTS on the basis that while the FTS correctly determined the question of council tax reduction, it did not deal at all with the question of exemption.
3. On granting leave to appeal on this ground, the respondent was ordered to produce a response to the appeal setting out its position on the exemption question. It did so timeously. There are two strands to that response. First, it argues that it correctly



determined the question of exemption for the reasons given in that response. Second, it argues that the FTS did not have the power in any event to deal with the exemption question. That is because, put short, the process for appealing against a decision on council tax reduction is different from the procedure for appealing a decision relating to council tax exemption. So, while the appellant correctly downloaded and completed the appeal form concerning the council tax reduction decision, he did not download and complete the form C1 which must be used for exemption appeals. Therefore the appeal was not before the FTS and the FTS did not err.

4. The Appellant was given the opportunity of responding to that response further if he wished. No advantage was taken of that opportunity.
5. This Tribunal fixed a Webex hearing on 14 February 2024 and the parties were invited to attend. The Appellant then requested that the oral hearing be discharged and that this Tribunal determine the appeal on the documents before it. This Tribunal has the power to do that in terms of rule 24 of the rules of procedure. The respondent assented to that motion. I discharged that hearing and decided the appeal on the papers.

### *Reasons for decision*

6. To determine whether the Appellant is entitled to exemption for the disputed period, it is necessary of course to apply the relevant regulations to the facts. The conditions for exemption from council tax liability are found in the Council Tax (Exempt Dwellings)(Scotland) Order 1997. Unless the property in question falls within a category of exemption specified in the Order, the usual rules for determining liability for Council Tax apply. It is not in dispute that leaving aside questions of reduction, discount and exemption, council tax is exigible in respect of the property for the disputed period and that the Appellant is the person liable.
7. The appellant claims exemption as the property was unoccupied and unfurnished during the disputed period. He had purchased the property and had the right to occupy it from 25 August 2022 but did not take occupation and furnish it till 1 November 2022. Those facts are not disputed. The reason for that void is irrelevant to the question of exemption. The



respondent submits, and I accept, that the only provision of the 1997 Order which is applicable to the Appellant's circumstances is schedule 1(4). That provides that a dwelling which is both unoccupied and unfurnished qualifies for exemption, subject to the important proviso that "less than six months have elapsed since the end of the last period of 6 weeks or more throughout which it was continually occupied or furnished". So if the property was at one time continually occupied or furnished but then ceased to be so, and if more than six months pass before the property is once again occupied and furnished, no exemption may be claimed. All that may be claimed is the 50% discount under the 2005 Regulations.

8. In my view, the correct position is as follows. The last period before 25 August 2022 that the property was continually occupied and furnished for a period of 6 weeks or more ended on 12 January 2022. That is not disputed by the appellant and that date is found as a fact by the FTS. The gap between those two dates is over 7 months. It follows therefore that schedule 1(4) of the 1997 Order does not bite and the Appellant is therefore not entitled to have the property treated as "exempt" during the disputed period. There is no other statutory basis for exemption. He is however entitled to a 50% "discount". That discount was applied to the calculation of his council tax liability. That reasoning is entirely consistent with that provided by the respondent in this appeal which is in my view correct. It follows that the respondent was correct to have refused to treat the dwelling as exempt. It also follows that even if the FTS had separately considered the question of exemption as well as reduction, it would have been bound to have reached the same conclusion. I need not remit the matter to the FTS as I can decide the appeal on material before me. Therefore this appeal must be refused.
9. That finding is enough to dispose of this appeal. Therefore it is not necessary for me to decide whether the remaining contention of the respondent, that the question of exemption was not properly before the FTS and therefore there could not have been any error of law on its part. So I do not decide that question and I do not find that the FTS erred in law in



that respect. However, given this is a new jurisdiction, the following observations may be of assistance should a similar issue arise in the future.

10. The Local Taxation Chamber of the First-Tier Tribunal for Scotland was brought into being in 2021, commencing operation in April 2023. The rules of procedure governing appeals to that tribunal were made by the Scottish Ministers in 2022 and came into force on 1 April 2023: The First-tier Tribunal for Scotland Local Taxation Chamber (Rules of Procedure) Regulations 2022. That tribunal has transferred to it the functions of Valuation Appeals Committees and Council Tax Reduction Review Panels from that date. As even a cursory examination of the council tax legislation (including myriad regulations and forms) demonstrates, the law is detailed and complex and may be difficult to understand, especially by an unrepresented lay person. To such a person, trying to navigate their way through the legislation, the differences between the provisions on council tax discount, council tax reductions and council tax exemption and the different ways in which decisions may be challenged may not be readily misunderstood. The creation of a single chamber in the FTS may be seen as an improvement in access to justice: in that a single specialist tribunal, with a single set of rules of procedure may be expected to work for the benefit of both Appellant and respondents in this sometimes complex area.
11. Rule 2 of those Rules provides that the over-riding objective of the FTS is to deal with proceedings fairly and justly. That principle is particularised by providing that the FTS is to deal with proceedings in a proportionate manner, avoiding unnecessary formality, by seeking flexibility, ensuring so far as practicable that parties are able to fully participate. Rule 2 obliges the FTS to give effect to the overriding objective when exercising any power under the rules (including, for example, rule 4: case management powers) and obliges the FTS to actively manage proceedings in accordance with the overriding objective. That Rule has its equivalent in other FTS rules of procedure.
12. Thus, in cases where appellants may not have understood that they should have used a different form to appeal or that their appeal is in law based on more than one ground or concerns more than one route whereby diminution (to use a neutral term) of the council



tax that might otherwise be payable might be achieved, the FTS may be expected to see that mere formalities, not affecting the substance of the appeal or causing unfairness to the other party, will not stand in the way of a just resolution of the true substance of the matters complained of by the appellant. Thus for example, in a case where it is clear from the papers that an unrepresented appellant has sought a reduction in council tax from the respondent on two legally distinct bases, has appealed the refusal but has not used the correct form or made explicit the true bases of appeal in an appeal form, the FTS will no doubt be astute to comply with its Rule 2 obligations so that any oversight or error on the part of the Appellant, where the true substance of the appeal is otherwise manifest, will be dealt with in such a way as to ensure essential basis of the appeal is determined in a manner in accordance with law while avoiding the imposition of unnecessary inflexible formalities or injustice to either party.

13. The appeal is refused.

### **Member of the Upper Tribunal for Scotland**

*A party to this case who is aggrieved by this decision may seek permission to appeal to the Court of Session on a point of law only. A party who wishes to appeal must seek permission to do so from the Upper Tribunal within **30 days** of the date on which this decision was sent to him or her. Any such request for permission must be in writing and must (a) identify the decision of the Upper Tribunal to which it relates, (b) identify the alleged error or errors of law in the decision and (c) state in terms of section 50(4) of the Tribunals (Scotland) Act 2014 what important point of principle or practice would be raised or what other compelling reason there is for allowing a further appeal to proceed.*