



**DECISION OF**

Sheriff Ian Hay Cruickshank

**ON AN APPLICATION FOR PERMISSION TO APPEAL  
(DECISION OF FIRST-TIER TRIBUNAL FOR SCOTLAND)  
IN THE CASE OF**

Mr Donald Mitchell,

Appellant

- and -

Renfrewshire Council,

Respondent

FTS Case reference: FTS/LTC/CT/23/00019

29 October 2024

**Decision**

Refuses permission to appeal the decision of the First-tier Tribunal for Scotland (Local Tax Chamber) dated 20 May 2024.

**Introduction**

[1] Donald Mitchell (“the appellant”) requests permission to appeal a decision of the First-tier Tribunal for Scotland (Local Tax Chamber) (“the FTS”) dated 20 May 2024. The FTS refused



permission to appeal on 25 July 2024. Accordingly, the appellant now seeks permission to appeal from the Upper Tribunal for Scotland (“the UTS”).

[2] The matter relates to an appeal against a decision of Renfrewshire Council (“the respondent”) in relation to assessment of the appellant’s liability for payment of water and sewerage charges. The appellant sought to argue that his liability for these charges had been wrongly assessed for the period 2018 to 2023. In advancing that argument he sought to rely on the correlation between the statutory framework applicable to the calculation of discounts pertaining to both council tax and water and sewerage charges. The appellant’s reasoning on the correct interpretation, and application, of both primary and secondary legislation pertaining to both discount schemes, as presented to the FTS, and to the UTS, is as outlined below.

[3] For completeness, it should be noted that this is the second appeal to the UTS arising out of these proceedings. In his judgement of 8 March 2024, Sheriff O’Carroll upheld the earlier appeal, quashed the original decision of the FTS and remitted the case back to a differently constituted Tribunal (reference 2024 UT 10). The basis of Sheriff O’Carroll’s decision was that the FTS had erred in law by failing to provide adequate reasons for its decision. In upholding the appeal Sheriff Carroll stated:

“I must emphasise that I do not find that the respondent’s decision as regards level of discounts and reductions to be applied to the Appellant’s water and sewerage charges was wrong or mistaken.... The correct decision may indeed have been made by the respondent and the FTS. But it is not possible from the way in which the FTS has cast its decision to know how and why it came to that decision and thus determine whether that decision was correct.” (paragraph 19)



[4] In the first decision the FTS had summarised the appellant’s position without any reference to the regulations he founded upon. The FTS went on to state in its reasons that it had “read the appropriate regulations” (without any elaboration as to what it considered these to be) and was satisfied that the respondent had applied the correct discounts. In those circumstances, for the reasons given by Sheriff O’Carroll, it is clear why the appellant’s first appeal succeeded and led to this matter being returned to a differently constituted Tribunal.

### *Grounds of appeal*

[5] On receipt of the appellant’s application for permission to appeal, viewing that against the grounds seeking permission to appeal as advanced before the FTS, I was unclear as to the full nature and extent of the ground, or grounds, sought to be advanced before the UTS. By order, I assigned the matter to a Case Management Discussion to clarify the proposed grounds of appeal. This proceeded by Webex on 2 October 2024 and both the appellant and the respondent’s representative attended. Following discussion, the ground of appeal was clarified and formulated as follows:

“The FTS has erred in law in the interpretation it gave to the statutory provisions governing annual discount entitlement in relation to both council tax and to water and sewerage charges. In so doing the FTS erroneously concluded that the appellant was not entitled to the level of discount as claimed by him for the years outlined.”

### *Parties’ submissions*

[6] A permission to appeal hearing proceeded by Webex on 21 October 2024. The appellant appeared with the respondent being represented by Miss Kane. Both parties had lodged written submissions in advance of the hearing, and these were supplemented by further oral



submissions. By order, I had also required each party to lodge a copy of their respective written submissions as presented to the FTS. I noted the latter included copies of the various council tax notices of relevance and information pertaining to the discounts and reductions which the appellant had received.

[7] The appellant submitted that the FTS had erred in its interpretation of the relevant legislation. To this end the relevant provisions were to be found in section 79 of the Local Government Finance Act 1992 (“the 1992 Act”), which related to discount entitlement on the amount of council tax payable. When read in conjunction with Regulation 4 of the Water and Sewerage Charges (Exemption and Reduction) (Scotland) Regulations 2006/72 (SSI) (“the 2006 Regulations”) this meant in the appellant’s circumstances that there was a 25% reduction due to the single person discount for council tax purposes and a further 25% reduction on water and sewerage charges over the period between 20 November 2018 and 31 March 2021. In the appellant’s circumstances, these separate discounts and reductions had to be added together leading to a total deduction of 50% on water and sewerage charges over this period.

[8] As from 1 April 2021 the appellant submitted that the percentage discount for water and sewerage charges increased to 35% due to a change in legislation. This was because of the Water Charges Reduction Scheme. The same calculation still applied and, by adding the single person discount for council tax purposes, this led to a total deduction of 60% on water and sewerage charges levied as from 1 April 2021. The respondent had failed to accept his assessment as being correct, and the FTS had erroneously interpreted the relevant provisions in dismissing his appeal.



[9] In addition to section 79 of the 1992 Act and Regulation 4 of the 2006 Regulations, the appellant had also referred the FTS to regulation 79 of the Council Tax Reduction (Scotland) Regulations 2021 SSI 2021/249. The appellant stated this regulation explained maximum council tax reduction in detail.

[10] During the appellant's submissions, I queried whether the appellant could confirm that the 2006 Regulations remained in force and were, in fact, the relevant provisions to be applied to the issue of water and sewerage charge discount for the periods in question. The appellant stated that he understood the 2006 Regulations to be in force and continued to be relevant. He did not accept my proposition that the 2006 Regulations had lapsed. The appellant responded that these were the regulations he had chosen to rely upon, he was correct to do so, and the FTS had misinterpreted them.

[11] The respondent submitted that the appellant was entitled to council tax reductions which included entitlement to the single person discount. A combination of discount and reductions, the latter due to the appellant's entitlement to certain benefits, meant that the appellant paid no council tax but continued to have a degree of liability for water and sewerage charges. Prior to 1 April 2021 the maximum discount for water and sewerage charges was 25%. This increased to 35% following implementation of the Water Charges Reduction Scheme.

[12] The respondent submitted that prior to 1 April 2021, it was the formula in Regulation 5 of the 2006 Regulations which fell to be applied. Thereafter it was the amended formula provided for in the Water Charges Reduction Scheme for unmetered households which was of relevance.

With reference to the latter, in the appellant's circumstances, being in receipt of council tax



reduction, the 35% reduction for water and sewerage charges was affected by the 25% single person discount which had to be included in the overall calculation. The provisions were clear that maximum discount was now 35% and the appellant's understanding of the level of deduction on water and sewerage charges was incorrect. The relevant calculations carried out by the respondent were contained within the submissions provided. The respondent had applied the correct discounts, and the FTS had not erred in law.

[13] I sought the respondent's view on the applicability of the 2006 Regulations. I queried whether the 2006 Regulations had lapsed for the purposes of the periods under calculation. The respondent could not confirm either way.

### *Reasoning of the FTS*

[14] In the second decision of the FTS, being the matter under this appeal, the explanation and reasoning given is more extensive. It identified that the appellant's application related to the level of discount levied on his water and sewerage charges. In this respect the FTS explained that these charges were not levied by local authorities but were separate charges in terms of the Water Industry (Scotland) Act 2002 ("the 2002 Act") and that the manner of demanding and recovering such, which required the participation and involvement of local authorities, was set out in a number of statutory instruments. In this respect the FTS stated:

"The initial regulations were contained in the Water Services Charges (Billing and Collection) (Scotland) Order 2010 ("the 2010 Order") and subsequently in a series of statutory instruments called Water and Sewerage Services to Dwellings (Collection of Unmetered Charges by Local Authority) (Scotland) Orders ("the Collection Orders"). Orders bearing this title have been made in 2014, 2017, 2020 and 2023." (paragraph 5 of the decision)



[15] The FTS went on to observe that each of the orders it referred to set out a process whereby any aggrieved person could appeal the decision of the local authority in relation to liability for water and sewerage charges. As such, the FTS considered that the appellant's application properly proceeded under those regulations "starting with the 2010 Order and continuing through the various Collection Orders" (paragraph 7).

[16] The FTS explained that they did not agree with the appellant's interpretation of "these legislative provisions" and that his belief that he was entitled to a double discount was misconceived. It concluded that the appellant was entitled to a maximum discount of 25% on water and sewerage charges to 31 March 2021, and to a maximum discount of 35% discount from 1 April 2021. In neither case was it a second discount to be added to the single person discount in respect of council tax.

[17] The FTS referred to the 2006 Regulations and stated these indicated that where a person was entitled to single person discount for council tax purposes, that person was also entitled to the same level of discount in respect of water and sewerage charges. The FTS concluded that the appellant's interpretation of the 2006 Regulations, namely that this gave a second and additional 25% reduction was not supported by a proper reading of the regulations (paragraphs 46 – 47).

[18] I note that the decision of the FTS was largely reached based on the parties' written submissions. This is because the appellant left the video conference call after a brief period (according to the written decision at a point less than ten minutes into the hearing). The appellant did not rejoin the hearing. On this matter the FTS stated:



“It is regrettable that (the appellant) withdrew abruptly...as it meant that the tribunal member was not able to have a proper discussion with him with regard to the interpretation of the legislation and to discuss with him the whole background to the legislation which is not set out in his written representations.” (paragraph 52)

## *Discussion*

[19] The appellant’s application to the FTS was because he disagreed with the respondent’s assessment of his liability to pay water and sewerage charges. The appellant’s argument was based on the impact that his entitlement to council tax discounts, reductions or benefits, had on discount he was entitled to for water and sewerage.

[20] It was correctly recognised by the FTS that these are two separate and distinct charging schemes. They appear on the same bill (being the annual council tax notice) but whereas council tax is levied by the local authority, water and sewerage is levied by Scottish Water with the role of collection and recovery falling to the local authority on behalf of Scottish Water. The correlation between regulations affecting discounts to be applied to council tax do, in some cases, affect the discount, or rather the calculation of discount, relating to water and sewerage charges.

[21] Liability for council tax, including entitlement to discount, is governed by the 1992 Act. Liability for water and sewerage, including discount, is governed by the 2002 Act. The relevant secondary legislation made under these Acts, particularly under the 2002 Act, is complicated and the legislative history is not straight forward.

[22] It is unnecessary for the purposes of this appeal to reflect upon the terms of the 1992 Act in any detail. The appellant refers to section 79 of the 1992 Act which relates to council tax discounts. It is, so far as relevant, in the following terms:





**“79.— Discounts.**

(1) The amount of council tax payable in respect of a chargeable dwelling and any day shall be subject to a discount equal to the appropriate percentage of that amount if on that day—

(a) there is only one resident of the dwelling and he does not fall to be disregarded for the purposes of discount; or

(b) there are two or more residents of the dwelling and each of them except one falls to be disregarded for those purposes.

(2) The amount of council tax payable in respect of a chargeable dwelling and any day shall be subject to a discount equal to twice the appropriate percentage of that amount if on that day—

—

(b) there are one or more residents of the dwelling and each of them falls to be disregarded for the purposes of discount.

(3) In this section “the appropriate percentage” means 25 per cent. or, if the Secretary of State by order so provides in respect of the financial year in which the day falls, such other percentage as is specified in the order.....”

[23] In simple terms, for the purposes of this appeal, this section refers to what is commonly known as the “single person discount”. That continues to be a 25% discount on council tax liability where there is only one occupier living in a property. The appellant relies upon this section read in conjunction with Regulation 4 of the 2006 Regulations. That Regulation reads:

“4. - Where any council tax payable for the dwelling is for any period during a relevant year subject to a percentage discount under section 79 of the 1992 Act (discounts), then the amount payable in respect of water charges or sewerage charges, or both, shall during such a period be subject to the same percentage discount as applies under that section.”

[24] In the respondent’s submissions, reference was made to the applicability of Regulation 5 of the 2006 Regulations. That Regulation reads:

“5. - (1) Where a person receives council tax benefit in respect of the dwelling for any period during a relevant year, then the amount payable in respect of water charges or sewerage charges, or both, shall during such a period be subject to the percentage discount calculated in accordance with the formula specified in paragraph (2), unless a discount already applies by virtue of regulation 4.



(2) The formula is: –

$$R\% = 25 \times A/B$$

Where–

“R” is the percentage discount of water charges or sewerage charges, or both;

“A” is the amount of council tax benefit which a person receives in respect of that dwelling for the period mentioned in paragraph (1); and

“B” is the council tax for which that person is liable in respect of that dwelling for the period mentioned in paragraph (1).”

[25] In its written decision the FTS comments on the parties’ respective reliance on Regulations 4 and 5. From my reading of the decision, the FTS does not, in simple terms, affirm which Regulation it considered was relevant or whether it concluded that the Regulations were relevant at all. The decision of the FTS hints at the fact that the 2006 Regulations are not to be read in isolation without consideration being given to later SSI’s.

[26] During submissions I queried with both parties whether the 2006 Regulations remained in force or were relevant for the periods forming the subject of this appeal. In its written decision the FTS refers to the appellant’s erroneous interpretation of these Regulations. Despite the appellant’s submission that the 2006 Regulations remained in force until 2021, and on one reading the FTS’s acceptance that this was so, I have concluded these Regulations did not remain in force to that point in time.

[27] The 2006 Regulations were made under section 40 of the 2002 Act which related to reduced charges. Section 40 of the 2002 Act was repealed by the Water Services etc. (Scotland) Act 2005, section 32 and Schedule 5 paragraph 7(5). The appointed day for repeal of section 40 of the 2002 Act was 22 July 2012 by virtue of the Water Services etc. (Scotland) Act 2005 (Commencement No 6) Order 2012/ 192 (SSI). Accordingly, the 2006 Regulations lapsed on date



of revocation of section 40. As such, the secondary legislation founded upon by the appellant, and indeed founded upon by the respondent, is incorrect. It did not govern the calculation of relevant discount for water and sewerage charges for the periods between 2018 and 2021.

[28] Put simply, until July 2012 Scottish Ministers had the power by regulation to provide that an individual was either exempt from liability or liable to a reduced water and sewerage charge. From that point on, reduced charges are made by Scottish Ministers issuing a statement of policy in terms of section 29D of the 2002 Act (added by section 21 of the Water Services etc. (Scotland) Act 2005).

[29] Both parties, and the FTS, referred to the Water Charges Reduction Scheme (“WCRS”). This is a statement of policy made under section 29D of the 2002 Act and relates to the policy regarding water services charges for the period from 1 April 2021 to 31 March 2027. Ministers confirm within the statement that the WCRS should remain the primary means by which the water industry supports customers least able to pay water and sewerage charges and further confirms that detailed provisions in that respect are set out in Annex A. This is as follows:

## **“Annex A**

### **Reductions to apply to water and sewerage charges at unmetered Households**

Ministers confirm that during the 2021-27 period the following provisions will apply to ensure that a maximum of 35% discount may be applied to water and sewerage charges under the Water Charges Reduction Scheme either directly or in combination with other discounts.

#### *The Water Charges Reduction Scheme (WCRS)*

Reductions to water and sewerage charges at unmetered dwellings should apply in relation to dwellings (where “dwelling” has the same meaning as in part II of the Local Government Finance Act 1992) where all the following circumstances apply:

1. A person is liable to pay water and/or sewerage charges under a charges scheme;
2. Council Tax Reduction (CTR) applies; and



3. The dwelling in respect of which the charges are payable is not one to which the Council Tax (Discount for unoccupied Dwellings) (Scotland) Regulations 2005 apply.

The following formula should be used to calculate the level of reduction for which that dwelling is eligible:

$$R = (35 \times (A/B)) - D$$

Where

Unless  $R < 0$ ,  $R$  is the percentage WCRS reduction to be applied to  $W$  (defined below) in addition to council tax discounts that are also applied to water and sewerage charges.

$A$  is the amount of CTR (£s) which a person receives in respect to that dwelling in that period.

$B$  is the net council tax prior to the application of CTR (£s) for which that person is liable in respect to that dwelling in that period (i.e. after discounts and disabled relief but before the application of CTR).

$D$  is the level of discount (expressed as a number) awarded against the Council Tax liability for the dwelling for which that person is liable in respect to that dwelling in that period.

$W$  is the water and sewerage charge, prior to the application of discounts and reductions, in respect of that dwelling in that period for which the person would be liable if there were no discounts or reductions.”

[30] The decision of the FTS gives no real detail as to how the WCRS operates or how calculations are to be made. That does not necessarily invalidate the conclusion that the FTS reached. From the above a maximum discount of 35% can be applied to water and sewerage charges. That is either in isolation or in combination with other discounts. The rules under the WCRS therefore do not support the appellant’s submission that he is entitled, by a combination of discounts or benefits, to 60% discount on these charges. To that extent, based on the information before the FTS, its reasoning is correct as to the level of discount applicable in the appellant’s circumstances as from 1 April 2021.

[31] Of course, in the appellant’s case, the WCRS is only of relevance as from 1 April 2021. The earlier part of the appellant’s dispute regarding calculation of discount on water and sewerage charges, being from 18 November 2018 to 31 March 2021, should properly rely on a



previous statement pursuant to section 29D of the 2002 Act. In that respect Minister's principles of charging for water services from 2015 – 2021 was published on 1 October 2014. This similarly had an Annex A being of relevance. During the period between 2018 and 2021 the appropriate calculation was as follows:

## **"Annex A**

### **Reductions to apply to water and sewerage charges at unmetered households**

Reductions to water and sewerage charges at unmetered households should apply in relation to dwellings (where "dwelling" has the same meaning as in part II of the Local Government Finance Act 1992) where all the following circumstances apply:

- a person is liable to pay water and/or sewerage charges under a charges scheme
- the dwelling in respect of which the charges are payable is not one to which the Council Tax (Discount for Unoccupied Dwellings) (Scotland) Regulations 2005 apply

Where the dwelling is subject to a Council Tax discount under section 79 of the Local Government Finance Act 1992, the discounts to be applied to unmetered water and sewerage charges shall be the same as those applied to Council Tax charges. If there is no such discount under section 79, but a person receives Council Tax Reduction in respect of the dwelling, the following formula should be used to calculate the level of reduction for which that dwelling is eligible:  $R = 25 \times A \div B$

Where:

- R is the percentage discount to be applied to water and/or sewerage charges
- A is the amount of Council Tax Reduction which a person receives in respect to that dwelling in that year
- B is the council tax for which that person is liable in respect to that dwelling in that year

No reduction in water charges should be applied for 2nd homes or to dwellings supplied through a water meter."

[32] Accordingly, applying this Annex to the appellant's circumstances, the correct interpretation can be summarised in the following manner. In the years between 2018 and 2021 the appellant received discount of 25% on council tax under section 79 of the 1992 Act. As such he was entitled to the same discount on water and sewerage charges as he was in relation to council tax. He was entitled to a 25% discount on each individually. As he received discount



under section 79 that is the end of the calculation without having to go onto the next part where council tax reduction then enters the equation. The respondent submitted that the appellant had received a 25% discount on his water and sewerage charges. Having seen the council tax notices in question that is evidently the case. The appellant's submission that he was entitled to a 50% discount on water and sewerage charges is not supported by the terms of the policy statement for 2015 to 2021.

[33] It is not surprising that the FTS concentrated on the 2006 Regulations given the submissions before it. It would, however, have been much clearer if the FTS had specifically recorded in its decision that the 2006 Regulations did not apply. The whole period with which the appellant's application was concerned relied upon the two policy statements outlined above. That said, for the avoidance of doubt, the FTS was correct in its conclusion that the appellant's interpretation did not amount to a proper reading of the 2006 Regulations albeit the Regulations were no longer relevant.

[34] The FTS did go on to outline the fact that, in relation to the 2006 Regulations, there were a number of subsequent orders which required to be considered. In particular, the FTS referred to the Water Services Charges (Billing and Collection) (Scotland) Order 2010/10 (SSI) and described this as the starting point of the appellant's right to appeal.

[35] The various "Billing and Collection" SSI's referred to by the FTS in this respect have been made under section 37 of the 2002 Act. This section relates to collection of charges by a local authority and gives Scottish Ministers the power to determine, by order, a number of matters including circumstances in which a customer of Scottish Water who is aggrieved by a decision or



calculation by a local authority may appeal. Such “Billing and Collection” SSI’s were made under section 37 at regular intervals between 2005 and 2012.

[36] Thereafter, the FTS referred to various Water and Sewerage Services to Dwellings (Collection of Unmetered Charges by Local Authority) (Scotland) Orders (see these as outlined in paragraph 14 above). It is the case that there have been 4 such named SSI’s (being SSI 2014/3; 2017/348; 2020/4 and 2023/52). Each of these SSI’s allowed aggrieved persons to appeal against decisions of a local authority regarding water and/or sewerage charges either to the valuation appeal committee, or following transfer of that function, to the FTS. These SSI’s have also been made under section 37 of the 2002 Act.

[37] None of the SSI’s stated in the previous two paragraphs contain provisions as to the calculation methods to be employed to arrive at appropriate discount for water and sewerage charges so far as individuals are concerned. One reading of the FTS decision perhaps suggests that these later orders were akin to the 2006 Regulations in that respect. That is not the case. The above SSI’s, amongst other things, provide for the right of appeal. By the time the SSI’s relevant to this appeal were made under section 37 of the 2002 Act, section 40 of the 2002 Act had been repealed. None of these SSI’s contain formulae for calculating discount as contained in the 2006 Regulations. The formulae to be applied, as I have outlined, are contained in policy statements.

## *Conclusion*

[38] It is therefore clear that the statutory framework governing calculation of discount to water and sewerage charges is complicated. Its evolution is not straight forward or easy to



follow. This permission to appeal fails because the appellant relied upon the wrong Regulations which he stated governed the calculation of discount between 2018 and 2021. He relied upon the correct provisions, being the policy statement known as WCRS as from 2021, but as decided by the FTS, his interpretation of that policy statement was incorrect.

[39] Whereas the decision of the FTS could have been clearer, the FTS concluded that the combination of discounts afforded to the appellant between council tax and water and sewerage charges was correctly calculated. It concluded that the appellant's submission that the legislation allowed him a 50% total reduction in water and sewerage charges to 31 March 2021, and to 60% reduction as from 1 April 2021, was not supported by the legislation and was erroneous. I appreciate that the FTS did not have an opportunity to properly explore the relevant legislation during the hearing given the appellant's withdrawal from that. It is unfortunate, however, that the FTS did not make crystal clear in its written decision that the appellant's reliance on the 2006 Regulations was incorrect in law. Notwithstanding this apparent confusion the decision it did reach remains justified by correct application of the regulations and policy statements that I have referred to above. For that reason, permission to appeal is refused.

Sheriff Cruickshank  
Member of the Upper Tribunal for Scotland