Upper Tribunal for Scotland

2024UT10
Ref: UTS/AP/23/0976

DECISION OF

Sheriff O'Carroll

ON AN APPLICATION TO APPEAL
IN THE CASE OF

Mr Donald Mitchell

Appellant

- and -

Renfrewshire Council

Respondent

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

8 March 2024

Decision

The appeal is allowed. The decision of the First-tier Tribunal for Scotland Local Taxation Chamber dated 2 August 2023 is quashed. The case is remitted to a differently constituted First-Tier Tribunal for Scotland Local Taxation Chamber for re-determination

Reasons

1. This is an appeal against the decision of the FTS Local Taxation Chamber dated 2 August 2023 to refuse the Appellant's appeal against the decision of the respondent that the assessment of his liability to water and sewerage charges ("the charges") for the period 20 November 2018 to 31 March 2021 was incorrect. The Appellant's position is that he was

entitled to a greater reduction in the charges than he has been awarded. The respondent assessed the appropriate reduction as being 25% (and then 35% from 1 April 2021 as a result of changes in the legislation). The Appellant's position was that the legislation relating to reductions and discounts from sewerage and water charges entitled him to a reduction of 50% for the first period, rising to 60% thereafter (that is he was initially entitled to two 25% discounts). Alternatively, he was entitled to a reduction of 100% in the charges since that was the reduction which the respondent had applied to his council tax. This is a dispute which has lasted for some time.

2. The FTS held a hearing on 2 August 2023 at which the respondent was represented by a Council official and the Appellant was unrepresented. The FTS comprised a single Legal Member. The appellant, though not legally qualified, advanced his contention by reference to legislation founding on the Water and Sewerage Charges (Exemption and Reduction)(Scotland) Regulations 2006. He also relied on the Council Tax Reduction (Scotland) Regulations 2021 and in particular regulation 79. He produced excerpts from the legislation. He explained what he understood by that legislation. He produced a large number of documents which he believed supported his claim. The respondent lodged a 41 page submission with the FTS (which included a large number of copy documents) in support of its decision. Its representative spoke to it those submissions at the hearing.

3. The FTS written reasons given on 2 August 2023 narrates the contentions of the Appellant as follows:

"4.2 The Appellant was of the view that he should receive a greater discount of the water and sewerage charges levied against the Property than had been applied by the local authority since 20 November 2018. His position at the hearing was that he should receive either:

1) A discount of 50% (from 20 November 2018 until 31 March 2021) and 60% (from 1 April 2021 to date) on the basis that the 25% that he was entitled to for single person occupancy and the 25% reduction given for water and sewerage charges (35% from 1 April 2021) were cumulative; **or**

2) A 100% reduction in water and sewerage charges as these charges should be treated in the same way as the council tax liability on the Property for which he receives a 100% reduction"

4. I pause there to note that while the FTS appears to have summarised the contentions of the applicant, absent from that summary is any reference to the two sets of regulations which the Appellant founded on, which he produced to the FTS, upon which in part his argument rested. Nor is there any reference to the various other documentary material he produced. Neither is there an equivalent summary of the respondent's submissions.

5. The FTS goes on then in the next paragraph to give its decision and reasons. They are as follows:

"4.3. Having read the appropriate regulations, the Tribunal is satisfied that the Local Authority has applied the correct discounts to the water and sewerage charges for the Property. It is clear from the regulations that even when an individual is in receipt of 100% Council Tax Reduction the maximum discount that can be applied to water and sewerage charges is 35% (from 1 April 2021) and 25% prior to that.

4.3 [sic] **The Tribunal dismisses the Appeal**"

6. That is the full extent of the reasons and explanation. There is no explanation of what are the "appropriate regulations" apparently read by the legal member. There is no explanation of what the Legal Member apparently found there to justify her conclusion. There is no reference to the regulations specifically founded on by the appellant. There is no attempt to grapple with the applicant's essential contentions and explain why the FTS decided he was mistaken. No reference is made to the contentions of the respondent.

7. The Appellant sought a review of the FTS decision under Rule 19 of the Rules of Procedure. His grounds were brief but to the point. They read in part: "First Point of failure. The Tribunal Court judge hasn't given a clear explanation in her Statement of Reasons on how she came to her decision". He continued his review application by asserting that although he had referred several times to the legislation in the hearing and had given his interpretation of it, the Legal Member did not express her understanding of it, so far as he

was concerned, at the hearing. He then set out again in summary form his argument on the legislation.

8. In response to that review application, a different Legal Member on 21 September 2023 refused the review as being "without merit", deciding without explanation that the decision of the first Legal Member was clearly expressed and that the law was applied correctly,

9. The appellant then sought leave to appeal repeating once more his essential contentions on the legislation; now expanded to some extent. That application for leave to appeal was refused by the original Legal Member on the basis that the FTS "remains satisfied it applied the law correctly …" (without further explanation) and therefore there was no arguable point of law for an appeal.

10. So, the Appellant sought leave directly from the Upper Tribunal. I granted leave to appeal on the basis that it was arguable that the FTS had failed in its duty to provide adequate reasons for its decision and that his substantive basis for appeal was also arguable.

The appeal hearing

11. At the appeal hearing, the respondent did not appear. The official concerned was unavoidably unable to attend; apparently no substitute was available. The respondent instead gave its consent for the hearing to proceed in its absence and relied on the written response it made to the appellants application to appeal as well as the submission it made to the FTS. The appellant appeared in person. His essential contention was to repeat what he has already stated repeatedly: that the FTS has not explained itself. He does not know, and still does not know, why he was unsuccessful and why his arguments were rejected.

Conclusion and reasons

12. In my view the FTS has erred in law in that it has failed to provide adequate reasons for its decision. Rule 17(4) of the FTS Local Taxation Chamber Rules of Procedure 2022 obliges the FTS to issue its decision in writing to the parties after making its decision. The rule provides the written decision must include a statement of facts, its findings and reasons for

the decision. The Rule goes no further than that. One has to examine the case law to understand the standard of reasons. That is what I now briefly explore.

Case law on giving of reasons

13. The value of reasons, the extent of that duty and what qualifies as adequate reasons has been explored in many decisions of the senior UK courts. Some of that law is helpfully set out by Judge Jacobs in *Tribunal Practice and Procedure* (5th ed, 2019) at paragraph 4.222 to 4.553 and Chapter 14. From that account, I extract the following principles and dicta.

14. In *Flannery v Halifax Estate Agencies Ltd* [2000] 1 WLR 377, the Court of Appeal said: "The duty [to give reasons] is a function of due process and therefore justice… Fairness surely requires that the parties- especially the losing party- … should be left in no doubt why they have won or lost. This is especially so since without reasons the losing party will not know… whether the court has misdirected itself and thus whether he may have an available appeal on the substance of the case. [Further] a requirement to give reasons concentrates the mind: if it is fulfilled, the resulting decision is much more likely to be soundly based…" The Court went on further to state: "The rule is the same in all cases: the judge must explain *why* he has reached his decision. The question is always, what is required of the judge to do so: and that will differ from case to case. Transparency should be the watchword". In *English v Emery Reimbold & Strick Ltd* [2002] 1 WLR 2409, the Court of Appeal further explained: "… justice must not only be done but be seen to be done… We would put the matter at its simplest by saying that justice will not be done if it is not apparent to the parties why one has won and the other has lost". In *Clark v Clark Construction Initiatives Ltd* [2009] ICR 718, Sedley LJ, (dealing with an appeal against a decision of an employment tribunal), referred to the "…universal obligation of judicial tribunals to give reasons which are candid, intelligible, transparent and coherent…". In the House of Lords decision in the case of *South Bucks District Council v Porter* [2004] 1 WLR 1953, (a decision involving adequacy of reasons in a planning case), Lord Brown summarised the law by saying that: "The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was

decided as it was and what conclusions were reached on the 'principal important controversial issues' disclosing how any issue of law and fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision". Lest it be thought that the standard of reasons expected in a first instance tribunal decision is unreasonably high, in a House of Lords decision (concerning an employment tribunal's reasons), Lord Hope held: "It has also been recognized that a generous interpretation ought to be given to a tribunal's reasoning… But the quality which is to be expected of its reasoning is not that to be expected of a High Court judge. Its reasoning should be explained, but the circumstances in which a tribunal works should be respected. The reasoning should not be subjected to an unduly critical analysis": *Shamoon v Chief Constable for the Ulster Constabulary* [2003] ICR 337. And, in the context of a First Tier Tribunal appeal, *R(Jones) v First-tier Tribunal (Social Entitlement Chamber)* [2013] 2 AC 48, Lord Hope held: "The appellate court should not assume too readily that the tribunal misdirected itself just because not every step in its reasoning is fully set out in it".

15. The approach of the English Courts chimes with that of the Scottish Courts. The venerable Scottish case on reasons (concerning a planning decision but nonetheless of general application) is *Wordie Property Co Ltd v Secretary of State for Scotland* 1948 SLT 345 in which the Lord President held: "The decision must, in short, leave the informed reader and the Court in no real and substantial doubt as to what the reasons for it were and what were the material considerations which were taken into account in reaching it". Where there is a statutory requirement for reasons to be given, the statement of them must be plain and intelligible: *MacLeod v Banff and Buchan Housing Benefit Review Board* 1988 SLT 379. The reasons must not be confused and ambiguous: *Brechin Golf and Squash Club v Angus District Licensing Board* 1995 SLT 547. In the context of the duty of a Rent Assessment Committee (the statutory predecessor of the FTS Housing and Property Chamber) to give reasons, the Lord President observed that "The statutory obligation to give reasons is designed not merely to inform the parties of the result of the Committee's deliberations but to make clear

to them and this Court the basis on which their decision was reached and that they have reached their decision in conformity with the requirements of the statutory provisions and the principles of natural justice": *Albyn Properties Ltd v Knox* 1977 SC 108.

16. Finally, two recent decisions of the Upper Tribunal in Scotland bear on the adequacy of reasons provided by the FTS both of which are instructive. The earlier case concerns a decision of Lady Poole in *DS v SSWP (ESA)* [2019] UKUT 347 (AAC) a decision concerning the adequacy of reasons given by the FTT in a decision about entitlement to Employment Support Allowance: see paragraphs [5]-[15] and the legal standard explained at paragraph [7], which account is consistent with the law explained above. Sheriff Collins KC, in a case considering adequacy of reasons given by a FTS in the Housing and Property Chamber considered the law in *Manson and Downie v Turner and Others* [2023] UT 38: see paragraphs [16] to [25] in which *inter alia* the dicta in *Wordie Property Co Ltd* is endorsed in the context of tribunal decisions.

17. The foregoing does not attempt to be a comprehensive account of the law in this area: for that, reference needs to be made to the cases themselves and the usual texts. But it helps identify the principles applicable to scrutiny of decisions of tribunals when considering adequacy and sufficiency of reasons.

Application of the law to the FTS decision

18. Applying those principles to the reasons provided in this appeal, I regret to say that the decision of this FTS falls somewhat short of the appropriate standard. The reasons given, such as they are, do not explain transparently to the losing side, the Appellant, why he has lost. All he is told by the tribunal in effect is that the tribunal has satisfied itself that the decision of the respondent is correct, so that is an end of it. That finding does not explain why. There is a fundamental and elementary distinction between a statement of the decision (we say the local authority is right: you lose) and an account which presents an explanation to the parties on what grounds and for what reasons the tribunal concludes that a party has lost. Here the tribunal has failed to explain why the statutory provisions relied on by the Appellant do or do not apply on the facts of his case. He is left guessing as

to the reasons for the FTS decision. And that despite his having stated in the review application that he has not received adequate reasons, that the tribunal had not properly explained itself, as the Appellant put it at the UT appeal hearing. In my view, the reasons given for the FTS decision are not transparent (the reader cannot tell the reasoning of the FTS), it is not plain and clear (there is no analysis of the facts and the legislative material logically taking the reader to its ultimate conclusion) and is therefore unintelligible to the informed reader and this Upper Tribunal, both of whom are left in doubt as to the reasons. Justice has not been seen to be done. The appeal must succeed.

19. In so finding, I must emphasise that I *do not* find that the respondent's decision as regards the level of discounts and reductions to be applied to the Appellant's water and sewerage charges was wrong or mistaken. I have taken note of the response by the respondents to this appeal and their submission that the level of reduction and discount has been properly arrived at in accordance with law. The correct decision may indeed have been made by both 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 to determine whether that decision was correct. The reasons are inadequate and do not comply with the statutory duty on the tribunal to provide a reasoned decision. If the Appellant is wrong, that must be explained in an intelligible transparent fashion which explains why he has lost. Equally so if the FTS decision is otherwise. As the case law makes clear, the reasoning need not be elaborate or lengthy. The standard of the higher courts is not expected and the appeal courts can be expected to understand the circumstances in which the FTS operates.
20. I quash the decision of the FTS and remit the whole matter to a newly constituted FTS (not comprising either the Legal Member at first instance or the Legal Member who made the decision on Review) to determine the matter afresh.

Member of the Upper Tribunal

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.*