Challenging Unlawful Local Council Tax Reduction Schemes

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A brief history of local taxation

Until 1990 ... Domestic rates:

– based on rentable value of the property.
– single adult living alone (e.g. pensioner) pays the same as a household with several earners.

1990-1993... The Community Charge (or “Poll Tax”):

– fixed tax per adult resident.
– reductions for people who could not afford to pay.
– widely seen as unfair.
– riots and mass non-payment.

1993... Council Tax.
What is Council Tax? (1)

“is best understood as a cross between a land tax and a personal tax” (CPAG Council Tax Handbook)

• Local Government and Finance Act 1992
• Pays for local services, together with business rates, although 75% of local government finance is paid for by central government.

Features:
1. Chargeable per dwelling (like rates).
2. But “protection for individuals” provided through discounts and council tax benefit.
What is Council Tax? (2)

- Payable on “chargeable dwellings” (i.e. most residential homes)
- Certain chargeable dwellings exempt (e.g. some unoccupied dwellings, student halls of residence)
- Eight valuation bands (A-H)
- Amount of tax set by local authorities each year (though capped).
- Liability:
  - person aged 18 or over
  - is solely or mainly resident or
  - if more than one person, the person with the greatest legal interest in the dwelling;
  - normally the owner or the tenant.
Protection for individuals

• Single adult discount (25% if no other adults in the property).

• Special discounts for certain groups (e.g. students, student nurses, disabled).

• Council tax benefit... “will protect people on low incomes” (Hansard HL Deb 09 January 1992 vol 533 cc1574-648).
Criticisms of the council tax system

• Payable regardless of means (though council tax benefit was intended to protect individuals on low income).
• Regressive.
• Valuations haven’t changed since 1993 and aren’t proportionate to relative value.
• Unfair on renters.
• Consistently been capped by central government.
How is Council Tax administered?

1. Billing authorities (i.e. local authority):
   • Set the rate of council tax for each band every year.
   • Responsible for billing, collection and enforcement.
   • Rate is capped centrally, with incentives not to increase.

2. Local Valuation Office:
   • Decides whether or not a property is a dwelling.
   • Sets the valuation bands.

3. Valuation Tribunal. Hears appeals against:
   • Decision that property is a dwelling;
   • Decision that someone is liable to pay council tax;
   • Valuation of property;
   • Calculation of the amount of tax;
   • Penalties;
   • And (since 2013) a refusal of a council tax reduction.
   • Onward appeals on a point of law to the High Court.
Enforcement

1. Council Tax Bill
2. Reminder Notice
3. Magistrates Summons
4. Liability Order. Allows a local authority to:
   • deduct from earnings;
   • seize and sell goods via bailiffs;
   • obtain a charge on the home;
   • request deductions from benefits;
   • bring bankruptcy proceedings.
5. Warrant committing the debtor to prison:
   • Must establish debtor has means to pay but has failed to do so.
Council tax benefit (now abolished)

s131 Social Security Contributions and Benefits Act 1992:
• Means tested benefit, i.e. payable if income is lower than applicable amount.
• Eligibility set out in statute and regulations.
• If income is nil / on means tested benefit, then covers full liability (c.f. council tax reduction schemes).
• Paid for by central government.
• Administered by local authorities alongside housing benefit.
• Right of appeal to the First-tier Tribunal (Social Entitlement Chamber)
Localism

• Local Government Act 1993:
  – broad power for LA to provide a discretionary reduction in any case “to such extent as it thinks fit”, including to reduce to nil.

• Localism Act 2011:
  – “Sets out a series of proposals with the potential to achieve a substantial and lasting shift in power away from central government and towards local people” (White Paper).
  – Any billing authority that decides to raise council tax above a certain amount must hold a referendum.

• Local Government and Finance Act 2012:
  – Replace council tax benefit with local authority schemes.
Local Government and Finance Act 2012

• Abolishes council tax benefit.
• Each local authority must set its own council tax reduction scheme.
• To be paid for out of a central government pot.
• 10% cut in overall funding compared to CTB.
• But pensioners protected.
  ➔ c.30% cut for working-age taxpayers.
• NB councils cannot borrow to make up the difference.
Local Council Tax Reduction Schemes

s13A LGFA 1992 (s10 LGFA 2012)

(1) The amount of council tax which a person is liable to pay in respect of any chargeable dwelling and any day (as determined in accordance with sections 10 to 13)—

(a) in the case of a dwelling situated in the area of a billing authority in England, is to be reduced to the extent, if any, required by the authority’s council tax reduction scheme (see subsection (2));

(b) in the case of a dwelling situated in the area of a billing authority in Wales, is to be reduced to the extent, if any, required by any council tax reduction scheme made under regulations under subsection (4) that applies to that dwelling;

(c) in any case, may be reduced to such extent (or, if the amount has been reduced under paragraph (a) or (b), such further extent) as the billing authority for the area in which the dwelling is situated thinks fit.

(2) Each billing authority in England must make a scheme specifying the reductions which are to apply to amounts of council tax payable, in respect of dwellings situated in its area, by—

(a) persons whom the authority considers to be in financial need, or

(b) persons in classes consisting of persons whom the authority considers to be, in general, in financial need.
Local Council Tax Reduction Schemes (cont.)

- Each billing authority must make a scheme.
- The scheme must specify the reductions for persons / classes of person in financial need.
- If you’re within the scheme, your liability “is” reduced accordingly (i.e. no individual discretion).
- But discretionary reductions still available in any case where the authority “thinks fit”.


Matters that must be included in each scheme

Schedule 1A LGFA 1992

Each scheme must state...

... the classes of person entitled. These may be determined by reference to:
  – income / capital of person liable or other residents;
  – number of dependents;
  – whether the person has made an application.

... the reductions to which persons in each class are entitled:
  – different reductions may be set out for different classes;
  – the reduction may be expressed as:
    • a percentage;
    • a set amount;
    • the whole amount.

... the procedure by which people can:
  – apply for a CTR; and
  – appeal against a refusal.
Prescribed requirements

Schedule 1A(8) and (9) LGFA 2012:

• The Secretary of State may prescribe “other requirements”, including classes that must or must not be included in the scheme.

The Council Tax Reduction Schemes (Prescribed Requirements) (England) Regulations 2012 prescribes requirements for:

• pensioners
• persons subject to immigration control and habitual residence
• meaning of “couple”, “household”, “non-dependants”
• applicable amounts
• earnings and capital disregards
• procedural matters
• Schedule 7, Part 1, para 2: an application may be in writing, by email, or by phone.
Procedure for introducing a scheme

• Duty to publish draft scheme and consult “such other persons as it considers are likely to have an interest in the operation of the scheme.” (Sch1A, 3(1)).

• Duty to approve scheme before 31 January each year.

• Scheme must come into force by 1 April.

• Otherwise, default scheme applies.
How have councils responded?

- Minimum payments for all residents (71% of local authorities in 2013/14)
- Excluding low paid who are in work
- Protecting only the most vulnerable, e.g. families with dependents, the disabled.
- Changing capital rules
- Minimum residency rules (e.g. Sandwell and Tendring)
The future?

“Westminster city council, for example, is looking into the idea of social contracts, such as linking council tax benefit with obeying the law, actively seeking employment and undertaking voluntary work.”

(Eric Pickles, House of Commons 2nd reading debate)
Challenging a refusal

Appeal to the Valuation Tribunal:

• Two stages:
  1. Write to the billing authority.
  2. Appeal to VT. Must appeal within 2 months of LA’s response, or 2-4 months after initial representation if no response.

• Cannot challenge the lawfulness of the scheme itself (s66(ba) LGFA 1992).

• So appeal e.g. if you think you should be eligible under the scheme or the calculation is incorrect

• Has jurisdiction to hear appeal against refusal of discretionary reduction on public law grounds.
Challenging a scheme

Judicial Review:

– S66(ba) LGFA 1992 (inserted LGFA 2012):
  “a council tax reduction scheme, or any revision of such a scheme” may “only be questioned by way of judicial review”.

Other remedies

• Magistrates Court:
  – If appeal or JR is pending request a stay on enforcement.

• Complaint to the Ombudsman:
  – Can award compensation.
  – But no power to rule on lawfulness of the scheme.

• Local democratic routes:
  – e.g. consultation, writing to councillors, campaign.
  – NB: after 31 January council has no power to change its scheme.
Judicial Review Grounds

• Consider:
  1. Was the scheme implemented lawfully?
  2. Is the content of the scheme lawful?
  3. Does the scheme discriminate unlawfully?
Was the scheme implemented lawfully?

• Failure to consult properly.

• Failure to have due regard to the public sector equality duty:
  – s149 Equality Act 2010;
  – Was the an Equality Impact Assessment?
  – Duty applies before decision is made.

• *R (Stirling) v Haringey LBC* [2013] EWCA Civ 116
Is the content of the scheme lawful?

• **Ultra vires:**
  – s13A(1)(b) of the LGFA 1992 – “financial need”
  – *R v Minister of Agriculture ex p Padfield* [1968] AC 997
  – *R(Attfield) v London Borough of Barnet* [2013] EWHC 2089
  – Does it comply with the prescribed requirements?

• **Irrationality:**
  – *Associated Provincial Picture Houses Ltd. v Wednesbury Corporation* [1948] 1 KB 22
  – *R(Alconbury Developments) v Secretary of State for the Environment* [2001] UKHL 23
Does the scheme discriminate unlawfully?

• Equality Act 2010:
  – disability; gender reassignment; marriage and civil partnership; race; religion or belief; sex; sexual orientation
  – duty to make reasonable adjustments

• Article 14 European Convention on Human Rights
  – “other status”

• Indirect discrimination:
  – Is the discrimination justified?

• EU freedom of movement.
Judicial review: don’t forget!

- Strict time limit: promptly or in any event within 3 months. When does this run?
  - Date when draft scheme published?
  - Date of Council’s decision to approve the scheme?
  - Date of decision to refuse a CTR?
  - Continuing breach?
- Comply with the pre-action protocol.
- Must exhaust available alternative remedies.
- Standing: Do you have to show that you would be affected by the scheme when it comes into force?
- Consider bringing a public interest claim as an organisation.
Test case JR’s currently pending

• *R (Stirling) v Haringey LBC* [2013] EWCA Civ 116

• *R(AA and Ors) v Sandwell MBC* (CO/633/2014)