

NORTHERN IRELAND VALUATION TRIBUNAL
THE RATES (NORTHERN IRELAND) ORDER 1997
Case Reference Number: NIVT 15/20

Between:

GM and DM - APPELLANTS

-and-

DEPARTMENT OF FINANCE - RESPONDENT

NI Valuation Chairman: Mr Keith Gibson B.L.

Members: Mr Brian Reid FRCS and Ms Noreen Wright

DECISION

Introduction

1. This is an appeal by GM for Disabled Person's Allowance. The statutory regime pertaining to the Disabled Person's Allowance is dealt with in greater detail below but the relevant statute, namely the Rates (Northern Ireland) Order 1977 provides for a 25% reduction for rates for any household where a person with a disability lives and the property has been adapted or had additional facilities added to help with that disability.
2. It is not dependent upon any assessment in respect of income or savings.
3. On the 20th July 2020, the Appellants both applied for the aforementioned Disabled Person's Allowance in respect of their home. The First Named Appellant GM had a history of heart difficulties and diabetes. In order to support the Appellant, a bathroom was added to the ground floor. His application was supported by medical evidence from his General Practitioner and by an assessment from the Department of Communities in respect of a Personal Independence Payment.
4. The application for a Disabled Person's Allowance was, in the view of the Tribunal, properly granted by Land & Property Service (LPS) in the first instance but only from the date of the current rating year, at that time from the 1st April 2020 onwards (it has been subsequently reapplied for 1 April 2021, and there is no issue on this point).
5. Once the decision to allow the Rebate was communicated to the Appellants, they took the opportunity to reply on or about the 15th October 2020, indicating that GM was in receipt of DLA since 1994 and that the rebate should be backdated. LPS, on the 22nd October 2020, wrote in reply to the Appellants to indicate that, pursuant to the relevant legislation, namely the Rates (Northern Ireland) Order 1977, a Disabled Person's Allowance could not be backdated.
6. The Appellants appeal as against that decision.

The Legislation

7. The relevant provisions are contained in Art. 31A of the 1977 Order, the salient parts of which is replicated below;

31A. - (1) Subject to paragraphs (5), (7) and (8), the [Department of Finance] shall, in accordance with the provisions of this Article, grant to the person mentioned in paragraph (4) a rebate from the rates chargeable in respect of a hereditament to which this Article applies.

(2) This Article applies to—

(a) a hereditament in which there is a facility which is required for meeting the needs of a person who resides in the hereditament and has a disability, including a facility of either of the following descriptions—

(i) a room, other than a kitchen, bathroom or lavatory, which is wholly or mainly used (whether for providing therapy or for other purposes) by such a person; or

(ii) an additional kitchen, bathroom or lavatory; and

(b) a hereditament in which there is sufficient floor space to permit the use of a wheelchair used by and required for meeting the needs of a person who resides in the hereditament and has a disability.

(3) In paragraph (2)—

(a) references to a person who resides in a hereditament include references to a person who is usually resident there; and

(b) subject to paragraph (3A), references to a facility or a wheelchair being required for meeting the needs of a person who has a disability are references to its being essential or of major importance to that person's well-being by reason of the nature and extent of the disability.

8. Article 31A was inserted into the 1977 Order by the Rates (Amendment) (Northern Ireland) Order 1979. Article 31A was then amended thereafter by Article 17 of the Rates (Amendment) (Northern Ireland) Order 2006 but the amendments have no impact on the issues the Tribunal has to determine. There is no challenge here to the entitlement of the Appellants to the appropriate reduction. The issue is quite plainly one of the backdating of that reduction and, in answer to such a claim, the Department refers to the provisions of 31A and more especially 31A(8) which provide as follows;

(8) No rebate shall be granted-

(a) for any period before 1st April 1979; or

(b) except in such circumstances and to such extent as the [Department of Finance] may determine, for any period before the beginning of the year in which the application is made.

9. No amendments to Article 31A were made by Article 31A(8) by the Rates (Amendment) (Northern Ireland) Order 2006 and, in essence, this appeal boils down to an interpretation of 31A(8)(b). The power to grant a rebate is only available to the Department in such circumstances and to such an extent as they themselves determine for any period before the beginning of the year in which the application is made. The reason why the Appellants state the Department should exercise any discretion is as follows:

(i) The Appellant indicates that he has been registered disabled since 1994.

(ii) He had been in receipt of Housing Benefit on the basis that he had a disability although the date when he received said Housing Benefit was not specified.

(iii) He had been in receipt of a Disability Living Allowance (Higher Rate Mobility) since the 23rd August 2007.

(iv) His Disability Living Allowance was changed to the current statutory regime of Personal Independence Payment at an enhanced rate in respect of both his daily living needs and mobility needs. This payment started on the 26th December 2018 in respect of both payments and is not due to be reviewed until the 29th October 2023.

10. The Appellants rely upon the fact that since Housing Benefit was administered by the same Government Department, the Department were on notice of his disability and ought to have been applying the reduction in his favour. Whilst that is undoubtedly correct, it would be a stretch to say that there was some obligation on the Department to review all Housing Benefit applications to see if there was some crossover into rates relief or other forms of relief. The Department have pointed out, in their response to this appeal from the Appellants that an information leaflet is provided with all domestic rates bills which provides information for help available with domestic rates. Including the disability relief.
11. As an opening observation it should be noted that there is no obligation contained in 1977 Order obliging the Department of Finance to conduct a trawl of housing benefit or DLA applications to determine who might be eligible. The onus must always be on any applicant to avail of the appropriate relief.
12. In the papers and the submissions of the Applicants there appears to be a tacit acknowledgement by the Appellants that they were simply unaware of the availability of this relief.

The interpretation of Art 31A(8)(b)

13. The way the relevant statutory provision is worded, it, on the face of it, gives rise to a very large discretion in favour of the Department. There is no specific restriction in the legislation and in such circumstances the Department's discretion is therefore subject to relatively few limits. It would be wrong to say that it is totally unfettered however, and one of those limits which the common law has made clear is that, in exercising the discretion, the Department must use the aforementioned discretion to promote the policy and objects of the Act and must not act so as to frustrate that policy and those objects.
14. This is known as the Padfield approach pursuant to Lord Reid's Judgment in **Padfield –v- Minister of Agriculture, Fisheries & Food** [1968] A.C. 997 at 1030. With that approach in mind in **R –v- Tower Hamlets London Borough Council Ex P Chetnik Developments Ltd** [1988] A.C. 858 at 873, Lord Bridge observed:

“Thus, before deciding whether a discretion has been exercised for good or bad reasons, the Court must first construe the enactment by which the discretion is conferred. Some statutory discretions may be so wide that they can, for practical purposes, only be challenged if shown to have been exercised irrationally or in bad faith. But if the purpose for which the discretion is intended to serve is clear, the discretion can only be validly exercised for reasons relevant to achievement of that purpose.”
15. Here, the purpose of the relevant provision of the Order is to ensure that persons who are disabled and who have, within his or her home, a facility which is required for their needs, should receive a rebate.
16. The Department have applied a reduction in the rates bill which the Appellants are faced with but they have refused to exercise a discretion to backdate that reduction beyond the 1st April 2020. That discretion can only be challenged if it can be said to be irrational or made in bad faith. The simple reason why the discretion has not been exercised is that the Appellants did not apply prior to the 20th July 2020.
17. Pursuant to Article 31A(1), the Department is under an obligation to grant the person named in paragraph 4 (being the occupier of the relevant property) a rebate from the rates. Explicit within that provision is the notion that a rebate is to be granted provided that any Applicant satisfies the statutory requirements. Until the Applicant brings himself within those provisions and makes the application to the Department, he cannot avail of the relief envisaged.

18. Here there has been no mistake of fact or of law which might allow the Appellants to challenge the decision by the Department to provide a rebate beyond the 1st April 2020. As aforementioned, their reasons for doing so are clear and concise, namely that the Appellants did not apply for the necessary rebate and the Department cannot be said to be on some sort of implied or constructive notice by virtue of the fact that it operates a Housing Benefit scheme, which might alert them to an individual's disability.
19. Whilst the Appellants might regard this decision as unreasonable, it is not unreasonable in the context which the law understands (in these particular circumstances), the word 'unreasonable' to mean. The unreasonableness here must be what is known as Wednesbury unreasonableness, i.e. so unreasonable that no other proper Department properly instructed or informed would make the same decision. The oft-cited example, as given by Warrington LJ in **Short -v- Poole Corporation** [1926] CH 66 at 90, is that of a red-head teacher dismissed from her job because she had red hair. Such a decision would be unreasonable for a whole host of reasons including the fact that it takes into account extraneous matters, namely her red hair, which is, on the face of it, so manifestly unreasonable that the decision to dismiss may be considered to be done in bad faith.
20. That is not this case.

Decision

21. Nothing in the Department's decision making process indicates that the refusal to rebate beyond the 1st April 2020 was either irrational or done in bad faith. In all the circumstances, therefore, this appeal is refused.

**Signed: Mr Keith Gibson, Chairman
Northern Ireland Valuation Tribunal**

Date decision recorded in register and issued to parties: 11 October 2021