

Report

on an investigation into
complaint no 05/C/03367 against
Redcar & Cleveland Borough Council

27 September 2006

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Report Summary

Local taxation

This report arises because Redcar and Cleveland Borough Council failed to recognise and now will not accept that:

- its power to set the level of Council Tax for empty properties in its area¹ is different to and exercised separately from its power to reduce an individual's liability for Council Tax on a property²;
- it can not fetter its discretion to reduce an individual's liability for Council Tax by having a "blanket policy" that it will never allow a reduction;
- it must consider and reach a decision on any individual requests.

In December 2004, using new powers the Council decided that all empty homes in its area should pay the maximum 90% of Council Tax. Mr and Mrs Weaver bought a bungalow in the area shortly before the Council's decision and renovated it.

They experienced hostility from people in the area and decided not to move into the bungalow. When they received the bill for 90% of the Council Tax Mrs Weaver wrote to explain their circumstances and ask for a reduction in the Council Tax. The Council refused saying that the Council had set the maximum discount for empty properties "... and does not allow for any individual discretion".

In the course of my investigation of Mrs Weaver's complaint the Council has maintained that it does not have to consider individual requests for reductions. Given the case law and legal principles about the duty of public authorities not to fetter their exercise of discretion, the Local Government Ombudsman finds the Council's stance to be inexplicable and, clearly, maladministration.

The Council must consider and reach a decision on Mrs Weaver's request and must establish internal arrangements for how such requests will be considered and decided in the future. The Council is free to reach any decision that it considers fit on any request provided that it reaches such a decision properly.

¹ Local Government and Finance Act 1992 Section 11A (as amended by Local Government Act 2003 Section 75 & 76)

² Local Government and Finance Act 1992 Section 13A (as amended by Local Government Act 2003 Section 13A)

Introduction

1. Mrs Weaver complains that the Council has failed to give proper consideration to her request for a reduction in her Council Tax liability.
2. For legal reasons, the names used in this report are not the real names of the people and places concerned³.
3. An officer of the Commission has spoken with Mrs Weaver and has made inquiries of the Council.
4. An opportunity has been given for Mrs Weaver and the Council to comment on a draft of this report.

Legal and Administrative Background

5. Local authorities may reduce the discount on Council Tax for a number of classes of empty properties in their area, from 50%, which formerly applied across England and Wales, to a minimum of 10%⁴. A council must apply the same level of discount to all empty properties in its area or in a specified part of its area.
6. In addition, local authorities may reduce the amount of Council Tax payable on any dwelling or class of dwellings in its area to any extent which it thinks fit⁵.
7. Where an authority has discretion it can adopt a policy or guidelines to indicate how it proposes to exercise that discretion. Such policy should be determined by those with proper authority, taking account of the law and local circumstances. However, it must not act in a way which ‘fetters’ the proper exercise of discretion. A policy which effectively eliminates the authority’s consideration of an application or of a class of applicants, will be liable to challenge in the courts. Case law has established that without falling into arbitrariness, decision-makers must remember that a policy is a means of securing a consistent approach to individual cases, each of which is likely to differ from others. “Each case must be considered, therefore, in the light of the policy but not so that the policy determines the outcome.”⁶

3 Local Government Act 1974, section 30(3)

4 Local Government and Finance Act 1992 section 11A as amended by the Local Government Act 2003 (sections 75 and 76)

5 Local Government and Finance Act 1992 as amended S13A

6 R v Hampshire County Council ex parte W [1994] ELR 460 at 476, per Sedley J

8. The Commission for Local Administration in England has issued guidance on good administrative practice⁷ which includes the following general advice:

“(Councils should) consider any special circumstances of each case as well as the council’s policy so as to determine whether there are exceptional reasons which justify a decision more favourable to the individual customer than what the policy would normally provide.

... a council’s policy must not be used as a rigidly applied constraint which prevents the proper consideration of any exceptional circumstances of a case. Where the council has a discretion to confer a benefit it is inappropriate to operate a policy which purports to specify in advance circumstances where the discretion will never be exercised. A council which operates in that way would be fettering its discretion.”

Investigation

9. In December 2004, the Council resolved to reduce the discount on Council Tax for empty properties in its area to 10%. Mr and Mrs Weaver, who live in a different council’s area, had bought a bungalow in Redcar shortly before the Council’s decision. The bungalow needed extensive renovation which Mr and Mrs Weaver carried out in advance of their intended move. However, they were dissuaded from making the move by hostility directed against them from people in the neighbourhood including incidents to which the police were called. They have now put the bungalow on the market.
10. On receiving a Council Tax bill for 90% of the full amount, Mrs Weaver wrote to the Council, outlining her circumstances and the reason why the property was empty. She asked the Council to reduce the amount of tax which it was demanding. The Council replied, saying that, whilst sympathetic, it was unable to reduce the bill as the decision to set the empty property discount at 10% had been taken at policy level “and does not allow for any individual discretion”.
11. In reply to queries from the Commission’s officer, the Council said:
- that it had decided to impose a blanket increase in Council Tax liability on empty properties to encourage their owners to bring them into use;
 - that the policy did not allow for the exercise of discretion in individual cases and that, were it to do so, the Council could anticipate applications for relief from the owners of all the 350-plus empty properties in its area
 - any similar requests in future would be refused.

⁷ Guidance on Good Practice 2: Good Administrative Practice

12. The Commission's officer then raised with the Council the issue that it might be fettering its discretion, contrary to law. In reply, the Chief Executive said that:
- he did not consider that the Council had fettered its discretion and was "not acting unreasonably as all customers will be treated the same";
 - future requests for amendments to Council Tax charges would not be dismissed out of hand and would be considered by the administrative machinery within the relevant department, although it was most likely that such requests would be refused;
 - the Council would recognise instances where requests were based on extraordinary circumstances and would act accordingly. However there appeared to be no such circumstances to justify a different decision in Mrs Weaver's case; and
 - the Council would welcome my advice on the matter.
13. In response to a draft of this report, the Council said that its position was that:
- in respect of its power to reduce the discount on empty properties, it was not necessary to "apply discretion" in individual cases;
 - the discretion to reduce Council Tax payments generally is a power, not a duty and the Council "may decide not to use this power" especially where to do so would mean making payments out of local funds;
 - the Council believes it should be able to take account of financial constraints "in deciding whether and to what extent discretion to reduce Council Tax payments would be applied".
14. The Council has drawn attention to court cases where there appears to have been an acceptance that authorities' general policies left 'only a small degree of room for discretion'.
15. Statistics produced by the Office of the Deputy Prime Minister in answer to a Parliamentary Question by the Shadow Local Government Minister revealed that 20 local authorities had confirmed that they either used or planned to use the discretionary power to reduce Council Tax between 1 April 2004 and 31 March 2005.

Conclusion

16. The Council argued that it had no discretion to consider or comply with Mrs Weaver's request and failed to take into account the legislation which enables it to reduce Council Tax on any dwelling as it thinks fit.

17. Parliament has given the Council powers to reduce Council Tax payments at discretion. It must therefore give proper consideration to any application made to it for such a reduction.
18. The Council's response to Mrs Weaver clearly was a fettering of its discretion and was certainly maladministration. The injustice to Mrs Weaver was that her own particular circumstances were not properly taken into account.
19. To remedy that injustice, the Council should now give proper consideration to Mrs Weaver's request. It should invite her to state her reasons as to why her Council Tax payments should be reduced as an exception to the generally applicable level. Having considered her reasons, the Council should then state its reasons for either accepting or rejecting the application. It should notify me that it has done so, within one month of its formal consideration of this report. It should also confirm that it will establish internal arrangements for how any other requests will be considered and decided in the future, taking into account the relevant law and the proper exercise of its discretion. It should inform me of those arrangements within one month of its formal consideration of this report.

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27 September 2006