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England and Wales High Court (Administrative Court) Decisions

Neutral Citation Number: [2024] EWHC 1224 (Admin)
Case No: AC-2023-MAN-000499

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
IN THE MATTER OF AN APPEAL BY WAY OF CASE STATED FROM DEPUTY DISTRICT JUDGE (MAGISTRATES' COURT) JEPSON SITTING AT BLACKPOOL MAGISTRATES' COURT ON 28 JUNE 2023

Manchester Civil Justice Centre
1 Bridge Street West,
Manchester, M60 9DJ

21/05/2024

B e f o r e :

THE HONOURABLE MR JUSTICE TURNER

Between:

OWEN OYSTON	**Appellant**
- and -	
BLACKPOOL COUNCIL	**Respondent**

Joseph Chiffers (instructed by Direct Access) for the Appellant
John Waiting (instructed by James Holmes Blackpool Council) for the Respondent

Hearing date: 14 May 2024

HTML VERSION OF APPROVED JUDGMENT

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This judgment was handed down remotely at 10.00am on 21 May 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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THE HONOURABLE MR JUSTICE TURNER

The Hon Mr Justice Turner :

INTRODUCTION

1. This appeal is brought by way of case stated against a liability order made against the appellant by Deputy District Judge (Magistrates' Court) Jepson in the sum of £3,038.31 in respect of non-payment of council tax alleged to have become due on The Penthouse, Third Floor, Blackpool FC Stadium, Bloomfield Road, Blackpool.

2. The appellant raised a number of grounds upon which he sought to dispute his liability to pay council tax before the District Judge. They all failed.

3. The appellant now seeks to contend that the District Judge was, as a matter of law, wrong to find against him on any or all of these grounds and no fewer than seven questions have now been formulated for my determination.

JURISDICTION

4. The District Judge in his case stated said:

> *"In very simple terms, the sole issue before me was whether the Claimant was liable to pay council tax on the address."*

5. Unhappily, the District Judge's attention had not been fully drawn to an important aspect of the relevant statutory regime.

6. Section 16 of the Local Government Finance Act 1992 provides that:

> *"A person may appeal to a valuation tribunal if he is aggrieved by— (a) any decision of a billing authority that a dwelling is a chargeable dwelling, or that he is liable to pay council tax in respect of such a dwelling; or (b) any calculation made by such an authority of an amount which he is liable to pay to the authority in respect of council tax."*

7. This case concerns the appellant's grievances as to whether The Penthouse is a chargeable dwelling or whether he is liable to pay council tax in respect of it. His contentions thus fall squarely within section 16. It follows that a route to appeal lay to a Valuation Tribunal.

8. Regulation 57(1) of the Council Tax (Administration and Enforcement) Regulations 1992, as amended by regulation 19(a) of the Council Tax (Administration and Enforcement) (Amendment) Regulations 1992, states:

"Any matter which could be the subject of an appeal under section 16 of the Act or regulations under section 24 of the Act may not be raised in proceedings under this Part."

9. The proceedings to which the regulation relates are enforcement proceedings before a magistrates' court.

10. The consequences of the application of these provisions has been considered in a line of authorities the first of which is ***Salmon v Feltham Magistrates' Court*** [2008] EWHC (Admin) 3507. In that case, the claimant challenged his liability to pay council tax before the magistrates' court on the grounds that the property in question was, contrary to the findings of the justices, not in multiple occupation. Stadlen J held:

> *"40. ... the primary submission of Mr Choudhury on this matter... is that the question of whether in fact the property was a house of multiple occupation such as to satisfy the statutory criteria is irrelevant, not only for the purposes of this court but also for the purposes of the Magistrates' Court. That is because paragraph 57(1) of the Council Tax (Administration and Enforcement) Regulations 1992 provides:*
>
> > *"Any matter which could be the subject of an appeal under section 16 of the Act or regulations under section 24 of the Act may not be raised in proceedings under this Part."*
> >
> > *"This Part" is a reference to Part 6 of the Regulations which deal with enforcement and include section 34, which empower the billing authority to apply to a Magistrates' Court for an order against the person by whom an amount is payable by virtue of a notice having not been complied with.*
>
> *41. Section 16 of the Act provides:*
>
> > *"(1) A person may appeal to a valuation tribunal if he is aggrieved by-*
> >
> > *(a) any decision of a billing authority that a dwelling is a chargeable dwelling, or that he is liable to pay council tax in respect of such a dwelling."*
>
> *42. Thus, the decision by the local authority that Mr Salmon was liable to pay council tax in respect of the first and second floor property, and the decision that that was because it was a house in multiple occupation, was a decision which he had a right under section 16 to appeal against to a valuation tribunal if aggrieved. Indeed, he was notified of the existence of that right in this very case but told me that he did not avail himself of that right in respect of this period, that is to say 2007/2008, prior to the summons or the date of the hearing in front of the Magistrates. If it were indeed the case that it was not for the purposes of 2007/2008 a house in multiple occupation for the purposes of the Act, then he would have had a right to appeal to a valuation tribunal on that ground and on that ground, had it been accepted by the Tribunal, the decision of the defendant that he is liable to pay council tax for 2007/2008 would have been overturned.*
>
> *43. In those circumstances, I do not have the slightest doubt that that is a matter which could be the subject of an appeal under section 16 and therefore that by virtue of paragraph 57 of the Regulations it is a matter that could not be raised in the proceedings in front of the Magistrates' Court for non-payment of the sums contained in the demand and the arrears notice. In those circumstances, it seems to me that this ground of appeal is hopelessly misconceived.*
>
> *44. I raised with Mr Choudhury in argument the question of whether, if Mr Salmon was right that he was entitled to raise this point in front of the Magistrates, then would the relevant point of inquiry in relation to the findings of the Magistrates' Court be on the question of whether they were right to find that it was a house in multiple occupation or rather that it had been so designated by the local authority. The mere statement of those alternative questions demonstrates how misconceived this ground of appeal or application*

is because it is simply not part of the function of the Magistrates' Court in hearing a summons such as that in this case to go behind the making of the demand notice to inquire into the validity of such an underlying decision as whether the defendant to the summons is the person liable to pay council tax for the property in respect of that period for that amount. Those are matters in respect of which, if there is a sense of grievance, the defendant is entitled to exercise his right of appeal to the Tribunal."

11. The same issue arose in the later case of ***Shah v Croydon*** [2013] EWHC 3657 (Admin) in which Andrews J (as she then was) held:

> *"45. It was then submitted by Mr Zwart that by virtue of paragraph 57(1) of the Council Tax (Administration and Enforcement) Regulations 1992, ("the Enforcement Regulations") the magistrates were not entitled to even go into the question of whether this property was a House in Multiple Occupation, because this was a matter exclusively for the Valuation Tribunal. In addressing the question, the magistrates had exceeded their jurisdiction, and thus he had to concede the third ground of the Appeal (which I have not thus far addressed in this judgment. On that basis Mr Zwart submitted that the Court need not make any findings on the other grounds of appeal.*
>
> *46. Paragraph 57, which is under the heading "Miscellaneous Provisions" provides as follows:*
>
> > *i."1. Any matter which could be the subject of an appeal under section 16 of the Act may not be raised in proceedings under this part."*
>
> *47. I therefore have to consider what may be the subject of an appeal under section 16 of the Act. Section 16 provides that:*
>
> > *"(a): An appeal lies to the Valuation Tribunal against a decision of the billing authority that a dwelling is chargeable or that a person is liable to pay council tax in respect of it, or, (b), against any calculation of an amount that is payable by way of council tax."*
>
> *48. If the argument of the Respondent were right in terms of the interpretation of that provision of the Enforcement Regulation, it would mean that the scope of enquiry of the magistrates on any occasion when they were asked to make an enforcement order would be exceedingly narrow. They could not embark on any consideration of whether the dwelling was in fact chargeable to council tax, whether the person from whom the tax was demanded was liable, or whether the sum demanded had been properly calculated. If they made a liability order on an entirely false premise, the defendant would have to go to the Valuation Tribunal for redress.*
>
> *49. The ability of a local authority to apply for a liability order is set out in the Enforcement Regulations at paragraph 34, and that provides:*
>
> > *"If an amount which is fallen due under regulation 23(3) or 23(4) is wholly or partly unpaid, or in a case where a final notice is required under regulation 33 , the amount stated in the final notice is wholly or partly unpaid at the expiry of 7 days beginning with the day on which the notice was issued, the billing authority may, in accordance with paragraph 2, apply to a Magistrates' Court for an order against the person by whom it is payable."*
>
> *50. Pausing there, the word "may" means that it is in the discretion of the billing authority to decide whether to make such an application to the Magistrates' Court. The remainder of the paragraph deals with how the application then proceeds before the magistrates.*
>
> *51. Sub-paragraph 6 provides:*

> *i. "The court shall make the order if it is satisfied that the sum has become payable by the defendant and has not been paid."*
>
> *52. It follows therefore, as a matter of plain English, that in order to be able to make such an order, the magistrates must be satisfied: (a) that the specific sum which is being claimed has become payable, (b) that it has not been paid, and (c) that the person who is liable to pay it is the defendant. It cannot possibly reach that conclusion without considering the calculation of the amount, or any other matter or factor which goes to the question of whether or not the right person is being asked to pay.*
>
> *53. The construction that is being placed on paragraph 57 by the Respondent would preclude the magistrates from doing that, so it cannot be the correct construction. One has to construe regulations in a way that make sense. The obvious intention of Parliament in paragraph 57 is to stop the dissatisfied owner, tenant, or other person who is being charged with council tax from initiating a complaint that he should not pay in front of the magistrates, instead of going to the Valuation Tribunal. That is why it says that any matter which could be the subject of an appeal under section 16 may not be raised in proceedings under this part. The person who would raise the matter by way of any such appeal is the person who is dissatisfied, and he would be raising it by way of complaint that he should not pay it: but it is one thing to stop somebody from initiating a complaint before the magistrates, and quite another to stop him from defending himself in circumstances where he says that the local authority has not been able to provide satisfactory evidence that he is the person who is liable.*
>
> *54. For that reason I do not accept Mr Zwart's submission on instructions that the magistrates had no jurisdiction to entertain these matters. On the contrary, they were matters which they were obliged to take into account in determining whether or not Mr Shah was in fact liable to pay the money that was being sought by way of a liability order. It was quite proper for them to do that. It was not a case of Mr Shah going to the magistrates and saying: "I am not liable."*
>
> *55. Therefore, for that reason, I conclude that the magistrates were acting within their jurisdiction when they looked at these matters, and that they were entitled to take these matters into account but, for the reasons I have already given in this judgment, the conclusion that they reached was wrong in law. Consequently the decision to make the liability order has to be quashed, and this appeal is successful."*

12. It is to be noted that the judge in ***Shah*** was not referred to the decision in ***Salmon***. Had she been so then she would no doubt have paid due regard to the observations of Lord Goddard CJ in ***Police Authority for Huddersfield v Watson*** [1947] KB 842 at 848:

> *"I can only say for myself that I think the modern practice, and the modern view of the subject, is that a judge of first instance, though he would always follow the decision of another judge of first instance, unless he is convinced the judgment is wrong, would follow it as a matter of judicial comity."*

13. More recently, in ***Willers v Joyce*** [2016] UKSC 44, Lord Neuberger said at [9]:

> *"So far as the High Court is concerned, puisne judges are not technically bound by decisions of their peers, but they should generally follow a decision of a court of co-ordinate jurisdiction unless there is a powerful reason for not doing so."*

14. In ***Wiltshire Council v Piggin*** [2014] EWHC 4386 (Admin) William Davis J (as he then was) had to choose between the two conflicting first instance authorities. He held:

> *"16. The Council's argument is that the matter is really determined by a combination of section 16 of the 1992 Act and regulation 57(1) of the 1992 regulations. Section 16 provides as follows:*

> i. "A person may appeal to a valuation tribunal if he is aggrieved by –
>
> > (b) any decision of a billing authority that a dwelling is a chargeable dwelling, or that he is liable to pay council tax in respect of such a dwelling; or
> >
> > (c) any calculation made by such an authority of an amount which he is liable to pay to the authority in respect of council tax."

17. There is no doubt that this case concerns Mr Piggin's grievance as to whether he is "liable to pay council tax." Therefore, his contention appears to fall squarely within section 16. It follows that he may appeal to a Valuation Tribunal. As a matter of fact, he did just that. As already noted, the appeal was still awaiting hearing at the time of the hearing before the Magistrates' Court. I now know that it has reached a conclusion. I have not seen the decision of the Tribunal. It is not relevant to my consideration of this case to see the decision at all and I have not done so.

18. Regulation 57(1) of the 1992 regulations states as follows:

> i. "Any matter which could be the subject of an appeal under section 16 of the Act may not be raised in proceedings under this part."

19. The proceedings to which the regulation relates are enforcement proceedings before a Magistrates' Court.

20. In the hearing in the Magistrates' Court, Mr Piggin argued that he was not liable for the outstanding council tax because the property was owned by a trust. Thus, the argument is his argument before the lower court fell clearly within the scope of section 16(1). Therefore, by virtue of regulation 57 this was a matter that could have been determined by way of an appeal to the Valuation Tribunal and was not in those circumstances a matter that could be raised by way of defence in proceedings in the Magistrates' Court.

21. This court has considered that issue on at least two previous occasions. The decision in R (on the application of John Stuart Salmon) v Feltham Magistrates' Court [2008] EWHC 3507 (Admin) supports the argument raised by the Appellant in this case. The decision in Mahendra Shah v London Borough of Croydon [2013] EWHC 3657 (Admin) supports the argument put by Mr Piggin. In particular, it supports the argument that it would in essence not be fair to bar Mr Piggin for raising these matters before the magistrates.

22. Miss Harrison on behalf of the Appellant in this case accepted before me that neither decision is binding on me. When Andrews J made her decision she apparently was not referred to the case of Salmon , but it is not suggested that the decision in Shah was per incuriam for that reason. It follows that I am in a position to reach the view that I think is appropriate bearing in mind the words of the statute and the regulation.

23. I conclude that regulation 57(1) of the 1992 regulations establishes clearly and unequivocally that the substantive merits of the billing authority's decision in terms of the chargeability of the dwelling, which is not this case, or the liability of the individual, which is this case, those matters are matters for the Valuation Tribunal. They "may not be raised" in the enforcement proceedings.

24. Mr Piggin is in general terms entirely correct. A Magistrates' Court is there to dispense justice, but a Magistrates' Court has jurisdiction in particular cases depending upon the extent of that jurisdiction as provided by statute. In this case, the statute is entirely plain. The substantive issues are to be raised before the Tribunal. They may not be raised in the enforcement proceedings.

25. It follows that the magistrates in this case made an error in law in permitting Mr Piggin to raise the issue to argue it and then to find in his favour. They simply did not have the jurisdiction to do so. That disposes of the substantive part of the appeal."

15. The next decision to be considered is that of ***Okon v London Borough of Lewisham*** [2016] EWHC 864 (Ch) in which the appellant faced a bankruptcy petition presented by the respondent in respect of liability orders made by the magistrates relating to unpaid council tax. She sought to persuade the magistrates' court to set aside the orders on the grounds, inter alia, that the properties in respect of which they had been made were tenanted. She, however, faced the ***Piggins*** jurisdictional hurdle. The matter found its way to the High Court where the Deputy Judge held:

"On 29 May 2015, that is to say the week before the adjourned hearing of the bankruptcy petition, the Applicant and Respondent were back in court against each other, this time at the Bromley Magistrates Court at the hearing of the Respondent's proceedings seeking the making of fresh Liability Orders against the Applicant. Miss Bailey appeared again for the Applicant and submitted that her client was not liable on the facts for the council tax in question. I accept for present purposes that it came as a rude shock to Miss Bailey, therefore, for the Court to accept the Respondent's submissions on that occasion, with Mr. Sayer in attendance, that the court had no power to go into the substantive merits: it only had power to consider whether the Respondent had followed the correct procedure in making the application for Liability Orders and that a challenge to the merits of the liability order had to be raised by way of an appeal to the Valuation Tribunal. I accept for present purposes that this was not appreciated by anybody who participated at the first hearing of the bankruptcy petition on 3 February 2015.

As a result of this hearing, Miss Bailey realised that her client, the Applicant, may well be barking up the wrong tree in trying to set aside the Liability Orders, and that she should perhaps instead be making an application to the Valuation Tribunal by way of an appeal against them. The Applicant's appropriate remedy turns upon the true construction of certain important provisions in the 1992 Regulations, namely section 16 of the 1992 Act and reg. 57(1) of the 1992 Regulations. Section 16 provides that a person aggrieved by "any decision of a billing authority that a dwelling is a chargeable dwelling, or that he is liable to pay council tax in respect of such a dwelling" may appeal to the valuation tribunal. And reg. 57(1) provides that any "matter which could be the subject of an appeal under section 16 of the Act may not be raised in proceedings under this part [i.e. Part VI: Enforcement which includes reg. 34 (Application for liability order)]". The courts have reached divergent views as to whether reg. 57(1) is effective to bar the council tax payer from raising the substantive merits before the Magistrates Court in proceedings for the making of liability orders, but it seems to me to be clear (and it is indeed now common ground between the parties, as appears from paragraph 16 of the Respondent's supplemental Skeleton Argument) that it does have this effect, and I propose to follow the recent but relatively unknown decision on this point of Mr Justice William Davis, in Wiltshire Council v. Piggin [2014] EWHC 4386 (Admin). I say this decision is relatively unknown because neither counsel appearing before me had any knowledge of it until Miss Bailey found it and cited it to me on the second day of submissions before me."

16. The decision of the Deputy Judge on costs went to the Court of Appeal in ***Okon v London Borough of Lewisham*** [2017] EWCA Civ 1973. The Court proceeded on the basis that the "Piggin point" was validly taken but without any independent analysis or appraisal.

17. Of greater assistance to this court is the case of ***Lone v Hounslow London Borough Council*** [2020] 1 WLR 952. The claimant in that case sought to recover council tax which he alleged he had overpaid by bringing a claim in the County Court. The Court of Appeal held that the operation of section 16 of the 1992 Act precluded the jurisdiction of the County Court. Arnold LJ observed:

"37. Finally, regulation 57(1) of the 1992 Regulations provides, so far as relevant: "Any matter which could be the subject of appeal under section 16 of the Act … may not be raised in proceedings under this Part [i e Part VI of the Regulations]."

38. This prevents an issue that could be the subject of an appeal to the Valuation Tribunal under section 16 from being relied upon by way of defence to an application by the billing authority in a magistrates' court for a liability order enforcing the payment of council tax: see Okon v Lewisham London Borough Council [2016] BPIR 958 , para 15."

And later:

"42. Counsel for the Council submitted that, upon analysis of the statutory scheme, the determination as to whether the taxpayer is entitled to SPD is to be made in the first instance by the billing authority. Initially, the billing authority is required to make reasonable enquiries and then to make an assumption: regulations 14 and 15 of the 1992 Regulations. The taxpayer is under a duty to correct an erroneous assumption: regulation 16 of the 1992 Regulations. Even if the taxpayer is not under a duty by virtue of regulation 16, the taxpayer is plainly at liberty to draw an error to the billing authority's attention. As discussed above, it is then for the billing authority to determine whether any adjustment is required: regulations 24 and 31 of the 1992 Regulations. If the billing authority refuses or neglects to make an adjustment which the taxpayer believes they are entitled to, the taxpayer can appeal to the Valuation Tribunal under section 16(1)(b) of the 1992 Act, subject to compliance with section 16(4), which in essence requires the taxpayer to notify the billing authority of their complaint and give it two months to reconsider the matter, and the time limits in regulation 21 of the 2009 Regulations. If the taxpayer is successful on appeal, the Valuation Tribunal will make an order requiring the billing authority to recalculate the amount of council tax which is due. The Valuation Tribunal may also make an ancillary order for repayment of any sum which has been overpaid. It is only once there has been a determination, either by the billing authority itself under regulations 14 or 31 of the 1992 Regulations or by the Valuation Tribunal on appeal, that a sum should be repaid to the taxpayer, and the billing authority has not paid that sum, that regulation 55 confers jurisdiction on the courts to entertain a claim to recover it.

43. Counsel for the Council acknowledged that there is no provision which expressly states that the jurisdiction of the Valuation Tribunal to determine issues as to the correct amount of council tax payable is exclusive. He submitted, however, that this is implicit in the nature of the Valuation Tribunal's jurisdiction. The Valuation Tribunal is a specialist tribunal. Appeals to it are subject to certain conditions, such as that imposed by section 16(4) and the time limits contained in regulation 21 of the 2009 Regulations. It has its own procedures, and it has no power to make an order for costs (see regulation 12 of the 2009 Regulations). Furthermore, he submitted, this was reinforced by regulation 57 of the 1992 Regulations, which as noted above prevents issues as to the correct amount of council tax payable being raised by way of defence to applications for liability orders. He submitted that it was implicit in this scheme that the County Court had no jurisdiction to determine such issues, as opposed to enforcing an obligation to make repayment which had already arisen either by virtue of the billing authority's own determination or as a result of a decision of the Valuation Tribunal on appeal. If it were otherwise, the conditions and restrictions attendant upon an appeal to the Valuation Tribunal could be circumvented by filing a claim with the County Court. Moreover, if there were concurrent jurisdiction, it would give rise to the risk of inconsistent decisions.

44. In support of this analysis, counsel for the Council relied on the reasoning of Mummery LJ giving the judgment of the Court of Appeal in the admittedly somewhat different context of claims for the payment of housing benefit in Haringey London Borough Council v Cotter (1996) 29 HLR 682, 688–689.

> *"The important point about the procedure for determination and for internal and external review is that, pursuant to the authority of primary legislation, the Regulations provide a detailed, self-contained and exhaustive procedure for enforcing the duties of the appropriate local authority in relation to the determination and payment of housing benefits. Until a determination is made under that procedure, there is no duty on the appropriate authority to make a*

> *payment of housing benefit either to the claimant entitled to it or to any other person. If there is any dissatisfaction with a determination which has been made, the appropriate procedure for challenging that determination is that laid down in the 1987 Regulations. It is not possible to discern either in the primary legislation or in the detailed Regulations a legislative intention to confer on a claimant or, a fortiori, any other person, a right to enforce by an ordinary private law action a claim for breach of statutory duty in the determination of entitlement to payment of housing benefit."*
>
> *45. In my judgment the Council's analysis of the statutory scheme is correct, and it is implicit that the jurisdiction of the Valuation Tribunal to determine the correct amount of council tax payable under section 16(1)(b) of the 1992 Act is exclusive. It follows that the County Court has no jurisdiction over such issues under section 16 of the 1984 Act."*

18. Counsel for the appellant in this case tried valiantly to persuade me that the passages to which I have referred in ***Lone*** were the expressions of an obiter view because they related to the exclusion of the jurisdiction of the County Court and not that of the magistrates' court.

19. I cannot agree. There is no plausible basis upon which the jurisdiction of the magistrates' court could be distinguished from that of the County Court in this context. It follows that I am satisfied that I am bound by the decision in ***Lone*** to follow the principle laid down in ***Piggin***. Even counsel for the appellant in this case volunteered the observation that this was "the most obvious interpretation" of the statute and regulations. Moreover, even if I were to find that the observations of the court in ***Lone*** were not strictly binding upon me, I am satisfied that the analysis therein set provides a detailed and compelling refutation of the fears expressed by Andrews J in ***Shah***.

20. It follows that in this case I find that the District Judge had no jurisdiction to entertain any of the substantive arguments raised by the appellant. Furthermore, there was no merit in any of the grounds upon which an adjournment was contended for because however long an adjournment was granted it would never have operated so as to afford the court with the jurisdiction it lacked.

21. It follows that the only decision which the District Judge would have been entitled to make was whether to not to adjourn the enforcement proceedings for the purpose of affording the appellant the opportunity to raise his objections in an appeal to the Valuation Tribunal. However, no such application to adjourn was made on those grounds.

CONCLUSION

22. The points taken on behalf of the appellant before the District Judge were misconceived. The questions now identified by way of case stated are inapposite through want of jurisdiction. In short, the District Judge had no business in addressing any of the points taken on behalf of the appellant and so this appeal must be dismissed.

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What has not been argued is that r57 is ultra vires as s16 is a granted liberty and not a duty and r57 removes that right in breach of Parliaments Authority in the LGFA1992.

The intent is clear - first sort out liability and do it at a special tribunal for that purpose to avoid delaying enforcement in Magistrates having to resolve it... which they can do under their powers in section 148 MCA1980... as until that is resolved they cannot be certain of the sum payable... and in the alternative magistrates must stay proceedings pending a VO decision on liability :)