Neutral Citation Number: [2019] EWCA Civ 2206

Case No: B2/2019/0781

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE COUNTY COURT AT CENTRAL LONDON
His Honour Judge Hellman

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17 December 2019

Before:

LORD JUSTICE UNDERHILL
(Vice-President of the Court of Appeal (Civil Division))
LADY JUSTICE ASPLIN
and
LORD JUSTICE ARNOLD

- -

Between:

NAIM LONE	**Appellant**
- and -	
LONDON BOROUGH OF HOUNSLOW	**Respondent**

- -
- -

Charlotte Thomas (instructed by **Lone & Co Solicitors**) for the **Appellant**
Shomik Datta (instructed by **Brian McKenna & Co**) for the **Respondent**

Hearing date: 4 December 2019

- -

Approved Judgment

Lord Justice Arnold:

Introduction

1. The issue on this appeal is whether the County Court has jurisdiction to entertain a claim for repayment of allegedly overpaid council tax. His Honour Judge Hellman sitting in the County Court at Central London held that it did not, since the Valuation Tribunal had exclusive jurisdiction over such claims. The Appellant ("Mr Lone") contends that the County Court does have jurisdiction.

Background

2. The claim form in these proceedings was issued in the County Court Business Centre on 5 October 2017. The Claimant was named as AL Law & Associates LLP ("AL Law") and its address was given as 55 Church Road, Wimbledon Village, London SW19 5DQ. The amount claimed was £3,000. The Particulars of Claim pleaded the Claimant's case as follows:

> "The Claimant's claim is for the recovery of overpayments made and the defendant's failure to provide single person discount from April 2006-2008 and 1st April 2013 to the date hereof which resulted in the overpayments on a continuous and rolling basis."

3. Although the Particulars of Claim did not expressly say so, the reference to single person discount ("SPD") made it tolerably clear that the claim was one to recover alleged overpayments of council tax. Equally, it was implicitly being alleged that AL Law was entitled to SPD. There was no indication as to how the sum of £3,000 was calculated, however. In particular, no particulars were given of the relevant council tax demands or payments or of any requests for repayment. In addition to the claim for £3,000, there was a claim for interest.

4. On 12 October 2017 the Respondent ("the Council") filed an acknowledgment of service indicating its intention to contest the claim. On 19 October 2017 the Council filed a Defence which it appears was drafted by Claudette Gayle, an officer of the Council. The Defence proceeded on the assumption that the true claimant was not AL Law, but rather Mr Lone. Although the Defence did not explain why the Council made that assumption, it is clear from subsequent correspondence that AL Law is a firm of solicitors of which Mr Lone appears to be the sole practising member. The Council accepted that Mr Lone had not been granted SPD with respect to his council tax in respect of the periods in question, but contended that the reason for this was that Mr Lone had failed to complete and return the relevant review forms which he had been sent by the Council. By contrast, he had completed and returned the relevant forms in respect of the periods 25 November 2004 to 6 March 2006 and 1 April 2008 to 31 March 2013, and as a result he had been granted SPD for those periods. In short, therefore, the Council was contending that Mr Lone had not established his entitlement to SPD in respect of the periods in dispute. Although the Defence did not identify the relevant dwelling, it can be seen from a letter from the Council to Mr Lone dated 19 September 2017 which preceded the issue of the Claim Form that it is a flat at 43 Chiswick High Road, Chiswick, London W4 2LT.

5. On 11 November 2017 the County Court of its own motion ordered that, unless the Council filed a Directions Questionnaire ("DQ") within seven days of service of the order, its Defence would be automatically struck out without further order. The order was received by the Council on 5 December 2017. Since it bore no reference, it was sent to the Council's solicitors, who struggled to identify the subject matter of the proceedings. It was not seen by Ms Gayle until 2 January 2018 when she returned to work following the Christmas break.

6. On 8 January 2018 the Council filed its DQ and issued an application (i) for relief from sanction and (ii) to strike out the claim. The application was supported by a witness statement from Ms Gayle. She explained why the DQ had not been filed in time. She also said that she did not believe that AL Law was entitled to any money from the Council, and that its claim should be struck out, since it was a business which (i) did not pay council tax, (ii) could not claim an SPD, (iii) had not made any payments to the Council and (iv) was located outside the boundaries of the Council. Although she did not say so in terms, it is obvious that the point she was making was that AL Law was the wrong claimant.

7. The Council's application was heard by Deputy District Judge Jacobs on 1 February 2018. She refused to grant the Council relief from sanction. Applying the well-known three-stage test in *Denton v TH White Ltd* [2014] EWCA Civ 906, [2014] 1 WLR 3926, she concluded that the breach was a serious and significant one, that there was no good reason for it and that in all the circumstances of the case it was not appropriate to grant relief. She went on to say that, if she had granted relief from sanction, she would not have struck out the claim, but would have given AL Law the chance to amend the claim form to substitute Mr Lone as the claimant. She nevertheless made an order giving judgment for the Claimant (i.e. AL Law) for £3,000 plus interest and costs.

8. On 28 February 2018 Mr Lone applied to be substituted as claimant in place of AL Law. On 15 May 2018 District Judge Smart duly made an order substituting Mr Lone as claimant. I would point out that Mr Lone thereby implicitly acknowledged that the claim was wrongly constituted when it was issued.

9. The Council appealed against DDJ Jacobs' order. The appeal was heard by Judge Hellman on 14 September 2018. He allowed the appeal on two grounds. First, he held that DDJ Jacobs had not correctly applied the third stage of the *Denton v White* test because she had not considered the effect of the Council's failure to file its DQ on time. Secondly, he held that the County Court had no jurisdiction to entertain Mr Lone's claim, since the Valuation Tribunal had exclusive jurisdiction over disputes concerning council tax. The latter point had not been raised before DDJ Jacobs.

10. Accordingly, Judge Hellman made an order paragraph 1 of which set aside the order of 1 February 2018 and paragraph 3 of which dismissed the claim.

11. On 30 July 2019 Lewison LJ granted Mr Lone permission to appeal on the sole ground that the Judge was wrong to hold that the County Court had no jurisdiction to entertain Mr Lone's claim, but refused permission to appeal on a number of other grounds. It follows that Mr Lone only has permission to challenge paragraph 3 of Judge Hellman's order, and not paragraph 1.

12. The appeal was very well argued on both sides. It is clear that, as a result, we received much more detailed submissions than Judge Hellman did, and were referred to a

considerable body of legislation and case law that he was not referred to. Accordingly, without intending any disrespect to the learned judge, I shall not refer to the reasons he gave for reaching the conclusion he did.

The jurisdiction of the County Court

13. Unlike the High Court, the County Court has no inherent jurisdiction. It only has the jurisdiction conferred on it by statute, namely the County Courts Act 1984 (as amended). This provides, so far as relevant to this appeal:

> "**15. General jurisdiction in actions of contract and tort**
>
> (1) Subject to subsection (2), the county court shall have jurisdiction to hear and determine any action founded on contract or tort.
>
> …
>
> **16. Money recoverable by statute**
>
> The county court shall have jurisdiction to hear and determine an action for the recovery of a sum recoverable by virtue of any enactment for the time being in force, if—
>
> (a) it is not provided by that or any other enactment that such sums shall only be recoverable in the High Court or shall only be recoverable summarily."

14. "Enactment" includes subordinate legislation: section 23(2) of the Interpretation Act 1978. "Recoverable summarily" means recoverable summarily as a civil debt in a Magistrates' Court under section 58 of the Magistrates' Court Act 1980.

Outline of the rival contentions

15. Although it is exiguously pleaded, the essence of Mr Lone's case is that he has overpaid council tax because at the relevant dates he was entitled to SPD which was not allowed in the demand notices which he was sent by the Council, and therefore he is entitled to repayment of the excess amounts he paid. Mr Lone's primary case is that he can make this claim under regulations 31 and 55 of the Council Tax (Administration and Enforcement) Regulations 1992 (SI 1992/613) (as amended, "the 1992 Regulations"), which the County Court has jurisdiction to entertain by virtue of section 16 of the 1984 Act. In the alternative, Mr Lone contends that he has a restitutionary claim for unjust enrichment either on the *Woolwich* principle (see *Woolwich Equitable Building Society v Inland Revenue Commissioners* [1993] AC 70) or on the ground of mistake, which the County Court has jurisdiction to entertain by virtue of section 15 of the 1984 Act. Mr Lone accepts that he could have appealed to the Valuation Tribunal, but contends that the jurisdiction of the Valuation Tribunal is concurrent with that of the County Court.

16. The Council contends that it is implicit in the statutory scheme that the Valuation Tribunal has exclusive jurisdiction over disputes as to the correct amount of council tax which is payable, and thus the County Court does not have jurisdiction to entertain Mr Lone's claim under section 16 of the 1984 Act. For the same reason, the Council contends that Mr Lone has no common law claim falling within section 15 of the 1984 Act.

The legislative framework with respect to council tax

17. In order to determine the correctness of the rival contentions, it is necessary to consider some rather complex statutory provisions concerning, first, the assessment and collection of council tax and, secondly, the jurisdiction of the Valuation Tribunal to entertain appeals concerning council tax.

Council tax and SPD

18. Council tax was introduced with effect from 1 April 1993 by the Local Government Finance Act 1992. It is payable on all domestic dwellings, with certain exceptions. By virtue of section 1 of the 1992 Act, the relevant billing authority (here the Council) has a statutory duty to levy and collect the tax. The 1992 Act sets out who is liable to pay the tax and some of the machinery for its calculation, but a lot of the detail is fleshed out in regulations made pursuant to powers conferred by the 1992 Act. Section 2 provides that liability to council tax accrues on a daily basis. By virtue of section 11, a chargeable dwelling which is only occupied by a single person on any day attracts SPD of 25%. As counsel for Mr Lone emphasised, the taxpayer is entitled to SPD if the criteria specified in section 11 are satisfied: the billing authority has no discretion in the matter.

19. Regulations 14 to 16 in Part IV of the 1992 Regulations provide, so far as relevant:

> "**14. Ascertainment of entitlement to discount or liability to premium**
>
> Before making any calculation for the purposes of Part V of these Regulations of the chargeable amount in respect of any dwelling in its area, a billing authority shall take reasonable steps to ascertain whether that amount is subject to a discount or premium, and if so, the amount of that discount or premium.
>
> **15. Assumptions as to discount or premium**
>
> (1) Where, having taken such steps as are referred to in regulation 14, a billing authority has no reason to believe that the chargeable amount for the financial year concerned is subject to a discount or premium, it shall assume, in making any calculation of the chargeable amount for the purposes of Part V of these Regulations, that the chargeable amount is not subject to any discount or premium.
>
> (2) Subject to paragraph (3), where, having taken such steps as are referred to in regulation 14, a billing authority has reason to believe that the chargeable amount for the financial year concerned is subject to a discount or premium of a particular amount, it shall assume, in making any such calculation as is mentioned in paragraph (1) above, that the chargeable amount is subject to a discount or premium of that amount.
>
> …
>
> **16. Correction of discount or premium assumptions**

(1) Subject to paragraphs (1A) and (2), where a person-

(a) has been informed in accordance with any provision of demand notice regulations of an assumption as to discount or premium made in his case; and

(b) at any time before the end of the financial year following the financial year in respect of which the assumption is made has reason to believe that the chargeable amount is not in fact subject to any discount or premium, or is subject to a discount or premium of a smaller or larger amount,

he shall, within the period of 21 days beginning on the day on which he first has reason so to believe, notify the authority in writing of his belief.

…

(3) For the purposes of paragraphs (1) and (2), the fact that any person concerned has wholly or partly discharged his liability to pay the amount shall be ignored."

20. It can be seen that regulation 14 places a duty on the billing authority to take reasonable steps to ascertain whether, among other things, the chargeable amount is subject to SPD. Depending on whether or not it has reason to believe that the amount is subject to SPD, regulation 15 requires the billing authority to make the appropriate assumption when calculating the chargeable amount. Regulation 16 places a duty on the taxpayer to notify the billing authority that it has made an erroneous assumption in certain circumstances.

21. I note in passing that the interpretation of regulation 16(1)(b) is not free from difficulty. In particular, what is the effect of the temporal limitation at the beginning of the sub-paragraph, and does "a discount … of a larger amount" include the case where the billing authority has not applied any discount at all? Fortunately, it is not necessary for present purposes to attempt to resolve these difficulties.

Demand notices and adjustments

22. Regulations 18 to 31 in Part V of the 1992 Regulations make very detailed provision for the service by the billing authority on taxpayers of "demand notices" requiring the payment of council tax and for consequential matters. The key provisions for present purposes are as follows:

"**20. Demand notices: payments required**

(1) If the demand notice is issued before or during the relevant year, the notice shall require the making of payments on account of the amount referred to in paragraph (2).

(2) The amount is-

(a) the billing authority's estimate of the chargeable amount, made as respects the relevant year or part, as the case may be, on the assumptions referred to in paragraph (3); …

(3) The assumptions are-

(a) that the person will be liable to pay the council tax to which the notice relates on every day after the issue of the notice;

…

(e) if, by virtue of regulation 15(1), the chargeable amount is assumed not to be subject to a discount on the day the notice is issued, that it will not be subject to a discount as regards any day after the issue of the notice;

…

24. Payments: adjustments

(1) If the chargeable amount proves to be greater than the estimated amount an additional sum equal to the difference between the two shall, on the service by the billing authority on the liable person of a notice stating the chargeable amount, be due from him to the authority on the expiry of such period (being not less than 14 days) after the day of issue of the notice as is specified in it.

(2) If the chargeable amount proves to be less than the estimated amount the billing authority shall notify the liable person in writing of the chargeable amount; and any overpayment of the chargeable amount-

(a) subject to paragraph (6), shall be repaid if the liable person so requires, or

(b) in any other case shall (as the billing authority determines) either be repaid or be credited against any subsequent liability of the liable person to make a payment in respect of any council tax of the authority

(3) If any assumption by reference to which the estimated amount was calculated is shown to be false before the chargeable amount is capable of final determination for the purposes of paragraphs (1) and (2), the billing authority may, and if so required by the liable person shall, make a calculation of the appropriate amount with a view to adjusting the liable person's liability in respect of the estimated amount and (as appropriate) to-

(a) requiring an interim payment from the liable person if the appropriate amount is greater than the estimated amount, or

(b) subject to paragraph (6), making an interim repayment to the liable person if the appropriate amount is less than the amount of the estimated amount paid.

(7) In this regulation-

…

'*the estimated amount*' means the amount last estimated under regulation 20(2) for the purposes of a demand notice …

31. Demand notices: final adjustment

(1) This regulation applies where-

(a) a notice has been issued by a billing authority under this Part requiring a payment or payments to be made by a person in respect of his liability to pay council tax for a financial year or part of a financial year,

(b) the payment or payments required to be made are found to be in excess of or less than his liability for the year or the part, and

(c) provision for adjusting the amounts required under the notice and (as appropriate) for the making of additional payments or the repaying or crediting of any amount overpaid is not made by any other provision of this Part, of the Act or of any agreement entered into under regulation 21(5).

(2) The billing authority shall as soon as practicable after the expiry of the year or the part of a year serve a further notice on the person stating the amount of his liability for the year or the part, and adjusting (by reference to that amount) the amounts required to be paid under the notice referred to in paragraph (1)(a).

(3) If the amount stated in the further notice is greater than the amount required to be paid under the notice referred to in paragraph (1)(a), the amount of the difference for which such other provision as is mentioned in paragraph (1)(c) is not made shall be due from the person to the billing authority on the expiry of such period (being not less than 14 days) after the day of issue of the notice as is specified in it.

(4) If there has been an overpayment, the amount overpaid for which such other provision as is mentioned in paragraph (1)(c) is not made-

> (a) shall be repaid if the person so requires, or
>
> (b) in any other case shall (as the billing authority determines) either be repaid or be credited against any subsequent liability of the person to make a payment in respect of any council tax of the authority."

23. It can be seen that this machinery enables the billing authority to issue notices demanding payment of council tax for (in particular) the next financial year and to assume for that purpose that the taxpayer's liability will remain the same throughout that year. Because council tax accrues daily and because circumstances may change during the year (e.g. the occupier(s) of the dwelling may change or the valuation band may change), however, there is provision for adjustments to be made under regulations 24 and 31.

24. It is not necessary for present purposes to explore the relationship between regulations 24 and 31. One thing they have in common is that, in the event of an overpayment, the taxpayer can require it be repaid: regulation 24(2)(a) and regulation 31(4)(a) (but in the latter case, only if there is no other provision which enables this).

25. Again, the interpretation of regulations 24 and 31 is not free from difficulty. Two particular issues were debated in the course of argument. First, what is meant by "proves" in regulation 24(1) and (2) and by "are found to be" in regulation 31(1)(b)? Counsel for Mr Lone submitted that it was sufficient for these purposes that the taxpayer believed that there had been an overpayment. Counsel for the Council submitted that in both cases what was required was a decision by the billing authority: in other words, the provisions should be read as meaning "proves in the billing authority's judgment" and "are found by the billing authority to be". In my judgment the latter interpretation is the correct one. The language is inconsistent with a mere belief on the part of the taxpayer being sufficient, and in context it makes sense for it to refer to a judgment of the billing authority.

26. The second issue is whether the taxpayer is entitled to repayment without having requested it. Counsel for Mr Lone submitted that the taxpayer could issue a claim form without having made a prior request, which would imply that the taxpayer was so entitled. Counsel for the Council submitted that the taxpayer was not entitled to repayment unless and until they requested it. In my judgment the latter interpretation is again the correct one. Regulation 24(2)(b) and regulation 31(4)(b) enable the billing authority, if it chooses, to give the taxpayer a credit if the taxpayer does not request repayment. That is inconsistent with any entitlement on the part of the taxpayer to a repayment without having requested it.

27. For completeness, I note that further provisions concerning the content of demand notices are contained in the Council Tax (Demand Notices) (England) Regulations 2010 (SI 2010/2990). These require (among things) demand notices to specify the days (if any) when the amount payable was calculated by reference to section 11 of the 1992 Act (Schedule 1 paragraph 16(a)) and to include explanatory notes giving a general indication of the circumstances in which an amount may be subject to a discount under section 11 (Schedule 1 paragraph 24(b)(ii)).

28. Returning to the 1992 Regulations, regulation 55, which is headed "Repayments", provides as follows:

> "A sum which has become payable (by way of repayment) under Part V to a person other than a billing authority but which has not been paid shall be recoverable in a court of competent jurisdiction"

29. I shall consider the effect of this provision below. At this stage, I note three points. First, it concerns a sum "which *has become payable* … under Part V [emphasis added]". Secondly, at least for present purposes, the relevant provisions in Part V are regulations 24(2)(a) and 31(4)(a). Thirdly, although regulation 55 refers somewhat elliptically to "a person other than a billing authority", it is clear that this includes a person who has paid council tax (it is unnecessary to consider whether it also includes anyone else).

The jurisdiction of the Valuation Tribunal

30. Sections 15 and 16 of the 1992 Act provide, so far as relevant:

> "**15. Valuation tribunals**
>
> (1) Valuation and community charge tribunals established under Schedule 11 to the 1988 Act shall be known as valuation tribunals.
>
> (2) Such tribunals shall exercise, in addition to the jurisdiction conferred on them by or under the 1988 Act, the jurisdiction conferred on them by—
>
> (a) section 16 below;
>
> ...
>
> **16. Appeals: general**
>
> (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; 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.
>
> (2) In subsection (1) above the reference to any calculation of an amount includes a reference to any estimate of the amount.
>
> (3) Subsection (1) above shall not apply where the grounds on which the person concerned is aggrieved fall within such category or categories as may be prescribed.
>
> (4) No appeal may be made under subsection (1) above unless—

(a) the aggrieved person serves a written notice under this subsection; and

(b) one of the conditions mentioned in subsection (7) below is fulfilled.

(5) A notice under subsection (4) above must be served on the billing authority concerned.

(6) A notice under subsection (4) above must state the matter by which and the grounds on which the person is aggrieved.

(7) The conditions are that—

(a) the aggrieved person is notified in writing, by the authority on which he served the notice, that the authority believes the grievance is not well founded, but the person is still aggrieved;

(b) the aggrieved person is notified in writing, by the authority on which he served the notice, that steps have been taken to deal with the grievance, but the person is still aggrieved;

(c) the period of two months, beginning with the date of service of the aggrieved person's notice, has ended without his being notified under paragraph (a) or (b) above.

(8) Where a notice under subsection (4) above is served on an authority, the authority shall—

(a) consider the matter to which the notice relates;

(b) include in any notification under subsection (7)(a) above the reasons for the belief concerned;

(c) include in any notification under subsection (7)(b) above a statement of the steps taken."

31. It is clear that section 16(1)(b) confers jurisdiction on the Valuation Tribunal to entertain an appeal by a council taxpayer against the amount of council tax which is assessed by a billing authority such as the Council. It is common ground that that includes an appeal on the ground that SPD has wrongly not been allowed: see *R (on the application of Morris) v Cheshire West & Chester Council* [2012] EWHC 3016 (Admin) at [8] (HHJ Raynor QC).

32. Appeals to the Valuation Tribunal under section 16 are subject to the time limits set out in regulation 21 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 (SI 2009/2269) (as amended, "the 2009 Regulations"):

"(1) Paragraphs (2) to (5) are subject to paragraph (6).

(2) The VTE shall dismiss an appeal by a person in relation to whom the condition mentioned in section 16(7)(a) or (b) of the 1992 Act is fulfilled unless the appeal is initiated within two months of the date of service of the billing authority's notice under that section.

(3) Where the condition mentioned in section 16(7)(c) of the 1992 Act is fulfilled, the VTE shall dismiss an appeal by an aggrieved person unless the appeal is initiated within four months of the date of service of the person's notice under section 16(4).

(4) The VTE shall dismiss an appeal under paragraph 3 of Schedule 3 to the 1992 Act unless the appeal is initiated within two months of the date of service of written notice of the imposition of the penalty.

(5) The VTE shall dismiss an appeal against a completion notice unless the appeal is initiated within 28 days of the date of service of the notice.

(6) The VTE President may authorise an appeal to be entertained where the VTE President is satisfied that the failure of the person aggrieved to initiate the appeal as provided by this regulation has arisen by reason of circumstances beyond that person's control."

33. The powers of the Valuation Tribunal upon such an appeal are set out in regulation 38 of the 2009 Regulations. This provides, so far as relevant:

"(1) After dealing with a section 16 appeal the VTE may by order require—

(a) an estimate to be quashed or altered;

(b) a penalty to be quashed;

(c) the decision of a billing authority to be reversed; or

(d) a calculation (other than an estimate) of an amount to be quashed and the amount to be re-calculated.

…

(10) An order under this regulation may require any matter ancillary to its subject matter to be attended to."

34. Where an order of one of the kinds specified in regulation 38 is made by the Valuation Tribunal, paragraph 10A of Schedule 11 Part 3 to the Local Government Finance Act 1988 provides, so far as relevant:

"(1) This paragraph applies where a tribunal orders a billing authority—

> (a) to reverse a decision that a particular dwelling is a chargeable dwelling for the purposes of Chapter I of Part I of the 1992 Act, or that a particular person is liable to pay council tax in respect of such a dwelling,
>
> (b) to quash or alter an estimate of an amount which a person is liable to pay to the authority in respect of council tax,
>
> (c) to quash a calculation (other than an estimate) of such an amount, or to recalculate the amount, or
>
> (d) to quash a penalty imposed by the authority under regulations under section 14C of or Schedule 3 to the 1992 Act.
>
> (2) If the order is recorded in accordance with any provision included in regulations under paragraph A19 or paragraph 1 above, the authority ordered shall—
>
> (a) reverse the decision, quash or alter the estimate, quash the calculation, recalculate the amount or quash the penalty accordingly; and
>
> (b) attend to any ancillary matter provided for in the order (such as the repayment of an amount, or the allowance of an amount by way of deduction against a sum due)."

35. Although it is slightly curious that regulation 38 of the 2009 Regulations does not explicitly provide that the Valuation Tribunal may make an order for repayment of an amount that has been overpaid, it is clear from paragraph 10A of Schedule 11(3) to the 1988 Act that it can do so as an "ancillary" matter. The important point for present purposes is that the legislation proceeds upon the basis that the primary remedy which the Valuation Tribunal will make in favour of a taxpayer who successfully contends that they have been overcharged is an order requiring the billing authority to recalculate the amount due. Repayment is only an ancillary remedy. Consistently with this, it appears from a number of decisions which we were shown that the Tribunal's usual practice is simply to order recalculation and not to order repayment.

36. An appeal lies to the High Court on a question of law arising out of a decision or order of the Valuation Tribunal on an appeal under section 16 of the 1992 Act: see regulation 43 of the 2009 Regulations.

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 London Borough of Lewisham* [2016] EWHC 864 (Ch), [2016] BPIR 958 at [15] (Robin Hollington QC sitting as a Deputy High Court Judge).

Mr Lone's primary case

39. As noted above, Mr Lone's primary case is that the County Court has jurisdiction to entertain his claim by virtue of section 16 of the 1984 Act. He contends that his claim is one for the recovery of a sum recoverable by virtue of an enactment, namely regulations 31 and 55 of the 1992 Regulations. Regulation 31(4)(a) enables him to claim repayment of amounts which he has overpaid because the payments he was required to make by the Council are in excess of his actual liability having regard to his entitlement to SPD. Regulation 55 is explicit that such sums are recoverable in any court of competent jurisdiction, which must include the County Court. Accordingly, Mr Lone contends, the jurisdiction conferred on the Valuation Tribunal by section 16(1)(b) of the 1992 Act is concurrent with that of the County Court.

40. Counsel for Mr Lone drew our attention in this context to the case of *Phillips v Francis* [2010] L&TR 28, in which His Honour Judge Griggs reasoned at [7] that the use of the word "may" in section 27A of the Landlord and Tenant Act 1985, which provided that an application "may be made to a leasehold valuation tribunal", indicated that the jurisdiction was concurrent with that of the ordinary courts. As she accepted, however, the use of the word "may", whether in that context or in the context of section 16 of the 1992 Act, does not support the conclusion that the jurisdiction thereby conferred is a concurrent one. It simply gives the applicant or appellant the option of applying or appealing. (This is not to say that Judge Griggs' actual decision was wrong: he was clearly right, because section 27A(7) of the 1985 Act expressly provided that the jurisdiction of the leasehold valuation tribunal was additional to any jurisdiction of the court.)

41. The Council's answer to Mr Lone's primary case is that it conflates two different and discrete issues. The first issue concerns the determination of Mr Lone's entitlement to SPD, and hence to repayment of amounts which he has overpaid if he was so entitled at the relevant dates. The second issue concerns the enforcement of that entitlement once established. The Council contends that the first issue is subject to the exclusive jurisdiction of the Valuation Tribunal, although it accepts that the second issue may in certain circumstances fall within the jurisdiction of a court of competent jurisdiction, which may include the County Court.

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* (1997) 29 HLR 682 at 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.

Mr Lone's alternative case

46. Mr Lone's alternative case is that he has a claim for unjust enrichment which the County Court has jurisdiction to entertain because it is an "action founded on contract" within the meaning of section 15 of the 1984 Act.

47. Uncertainty has been expressed as to whether a claim for unjust enrichment is an "action founded on contract" for this purpose. The difficulty is that many types of claim for unjust enrichment were at one time thought to be part of the law of "quasi-contract". It is only in recent decades that unjust enrichment has been recognised as a distinct source of legal rights and wrongs. The theory that "quasi-contractual" claims rested upon an implied contract between the parties was decisively rejected in *Westdeutsche Landesbank Girozentrale v Islington London Borough Council* [1996] AC 699 at 710 (Lord Browne-Wilkinson).

48. In *Agodzo v Bristol City Council* [1999] 1 WLR 1971 the claimant contended that the sum charged by a local authority for repairing a sewer was unreasonable. He brought a claim in the County Court. Holman J, with whom Henry LJ agreed, observed in passing at 1974:

> "Dr. Agodzo's action seems to me to be founded, underlyingly, on unjust enrichment. In view of the decision of the House of Lords in *Kleinwort Benson Ltd v. Glasgow City Council* [1999] 1 A.C. 153, it might, in the absence of statute, be very difficult to characterise the action as being founded on either 'contract' or 'tort.'"

49. At present, *Kleinwort Benson v Glasgow* remains authoritative that claims for unjust enrichment are not "matters relating to a contract" within rule 3(a) of Schedule 4 to the Civil Jurisdiction and Judgments Act 1982 or its counterpart in what is now Article 7(1)(a) of European Parliament and of the Council Regulation 1215/2012/EU of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast): see *Aspen Underwriting Ltd v Credit Europe Bank* [2018] EWCA Civ 2590, [2019] 1 Lloyd's Rep 221, an appeal against which was recently argued before the Supreme Court.

50. On the other hand, the position is otherwise when it comes to limitation. In *Aspect Contracts (Asbestos) Ltd v Higgins Construction Plc* [2015] UKSC 38, [2015] 1 WLR 2961 Lord Mance said at [25]:

> "… an independent restitutionary claim falls to be regarded as 'founded on simple contract' within section 5 of the Limitation Act: *Kleinwort Benson Ltd v Sandwell Borough Council* [1994] 4 All ER 890, 942-943, per Hobhouse J, not questioned by the House of Lords in *Kleinwort Benson Ltd v Lincoln City Council* [1999] 2 AC 349, when it had to consider whether, in the

> circumstances of that case, section 32(1)(c) of the Act operated so as to extend the normal six-year limitation period".

51. Fortunately, it is not necessary to try to resolve this conundrum for the purposes of the present case. Counsel for the Council did not argue that, if Mr Lone had a common law claim for unjust enrichment, such a claim would not fall within section 15 of the 1984 Act. Rather, he took a more fundamental point, which is that the existence of the statutory remedy under section 16(1)(b) of the 1992 Act impliedly excludes any common law claim for unjust enrichment.

52. As is explained by Professor Andrew Burrows in *A Restatement of the English Law of Unjust Enrichment* (OUP, 2013) in the commentary to rule 21(5) at page 114:

> "It cannot be overstated that the common law of restitution in this area – and hence the law laid down in the Restatement – is residual. Normally the right to restitution from a public authority, especially of tax from HMRC, is embodied in a statute. As Lord Goff said in *Woolwich* [1993] AC 70 at 176: 'most cases will continue for the time being to be regulated by the various statutory regimes now in force'. In conformity with that, the picture in respect of restitution from public authorities appears to be as follows …: some provisions expressly replace the common law …. Others … may do so by necessary implication. So in *Monro v Revenue and Customs Commissioners* [2008] EWCA Civ 306, [2009] Ch 69 it was held that the common law right to restitution of overpaid capital gains tax (which is a tax paid after assessment) on the ground of mistake or the *Woolwich* principle was impliedly replaced by s 33 of the Taxes Management Act 1970: the statutory remedy was inconsistent with common law restitution."

53. In the *Monro* case cited by Prof Burrows, Arden LJ (as she then was) stated at [22]:

> "In my judgment, the authorities give clear guidance that if Parliament creates a right which is inconsistent with a right given by the common law, the latter is displaced. By 'inconsistent' I mean that the statutory remedy has some restriction in it which reflects some policy rule of the statute which is a cardinal feature of the statute. In those circumstances the likely implication of the statute, in the absence of contrary provision, is that the statutory remedy is an exclusive one."

Applying this principle, the Court of Appeal concluded that the remedy conferred by section 33 of the Taxes Management Act 1970 was inconsistent with there being a common law remedy.

54. In another case cited later by Prof Burrows, *Test Claimants in the FII Group Litigation v Revenue Customs Commissioners* [2012] UKSC 19, [2012] 2 AC 337, Lord Sumption stated at [204]:

> "There is certainly nothing in [section 33 of the Taxes Management Act 1970] which expressly excludes the availability of other causes of action at common law. If that is its effect, it must be by implication. In the ordinary way, such an exclusion might be implied, on the ground that where Parliament confers a restricted right of recovery, that must impliedly displace a corresponding right at common law which would be unrestricted. However, it is axiomatic that the courts cannot imply an exclusion of unrestricted rights of action at common law where that would be inconsistent with an overriding rule of EU law that an unrestricted right must be available. Section 33 cannot therefore be an exclusive right to recover tax overcharged contrary to EU law. Whether it is an exclusive right in other circumstances, is not a point which needs to be considered on this appeal."

Thus the overriding effect of EU law distinguished that case from the *Monro* case.

55. Turning to the present case, counsel for the Council submitted that the restricted right of recovery conferred by section 16(1)(b) of the 1992 Act was indeed inconsistent with there being an unrestricted common law right for the same reasons that he relied upon in relation to section 16 of the 1984 Act. Counsel for Mr Lone disputed this, and sought to distinguish the remedy conferred by section 16(1)(b) of the 1992 Act from that conferred by section 33 of the Taxes Management Act 1970.

56. In my judgment the Council is correct on this question. Accordingly, Mr Lone has no common law claim for unjust enrichment. The only remedy available to a taxpayer who wishes to complain about allegedly overpaid council tax is to appeal to the Valuation Tribunal.

57. I would point out that this should not be a hardship for aggrieved taxpayers. As discussed above, the Valuation Tribunal is a specialist tribunal. Unlike the County Court, it does not charge fees in this kind of case. Its procedures are informal, and well adapted to litigants in person. And the fact that it has no power to make an order for costs protects taxpayers from the risk of an adverse order if they are unsuccessful. The price which taxpayers must pay for these advantages is the much shorter time limits than those which normally apply to claims at common law.

Conclusion

58. I would dismiss this appeal.

Lady Justice Asplin:

59. I too would dismiss the appeal for the reasons given by Arnold LJ. I would add that it is perhaps unfortunate that the mechanism by which overpayment of council tax can be recovered is quite so complex and, at times, opaque.

Lord Justice Underhill:

60. I agree that this appeal should be dismissed, for the reasons given by Arnold LJ. In short:

(1) The County Court did not have jurisdiction under section 16 of the 1984 Act to entertain Mr Lone's claim because an overpaid sum would only become "recoverable" by virtue of the council tax legislation *either* if the Council had decided, of its own motion or following a recalculation ordered by the Valuation Tribunal, that an adjustment should be made and he had requested repayment (i.e. as opposed to simply accepting a credit), *or* if repayment had, as an "ancillary" matter, been ordered by the Tribunal (though it appears that this is not normally done). That is the only route to recovery under the legislation itself.

(2) Nor does the County Court have jurisdiction under section 15, even if (which is in fact my strong provisional view) a claim in unjust enrichment can be treated in this context as being "founded on contract", because any such claim is displaced by the existence of the statutory scheme for repayment on the basis explained by Professor Burrows.

61. I wish to associate myself with Arnold LJ's tribute to the quality of counsel's submissions.