

C1/2016/1096

COURT OF APPEAL
CIVIL DIVISION

Between

THE QUEEN

on the application of

THE REVEREND PAUL NICOLSON

Applicant

and

GRANT THORNTON UK LLP

Respondent

THE LONDON BOROUGH OF HARINGEY

First Interested Party

TOTTENHAM MAGISTRATES COURT

Second Interested Party

APPELANT'S SKELETON ARGUMENT

INTRODUCTION

1. The appellant is a retired clergyman who was ordained into the Church of England in 1968. He was authorised by the Church of England to be a Minister in Secular Employment working in Industrial Relations for 16 years. He was then a parish priest in Buckinghamshire from 1982 to 1999. In 1995 he founded the Zacchaeus 2000 Trust (Z2K) to work with families and individuals claiming benefits, who are having difficulty in paying their rent, council tax or fines. The trust works without allegiance to any political party.
2. From 1997 to 2007 the Z2K had a contract with the Wycombe Magistrates Court to help people fill in their means statements at the fines enforcement courts on Wednesdays. On many Wednesdays the magistrates allowed the applicant to act as a McKenzie friend for those who wanted him to speak for them and were unaccustomed to speaking in public seeking remission of arrears in cases of hardship; often they also had rent and council tax arrears, so he began helping them through the enforcement procedures of the local authority and the magistrates.
3. Z2K moved to London in 1999 and now supports over 2000 its poorest citizens every year. He remains a trustee having retired from as Chairman of the trust in 2012. He currently runs Taxpayers Against Poverty; he has never been a member of any political party.
4. The respondent is the appointed auditor to the London Borough of Haringey ("the Council").
5. The Council is the first interested party. The second interested party is Tottenham Magistrates' Court

BACKGROUND

6. In April 2013 the Council reduced the Council Tax Benefit from 100% to 80% leaving 20% of the tax to be paid by claimants out of benefits provided by central government for survival and shelter.
7. Concerned about the impact on the health and wellbeing of the substantial change of in the financial circumstances of poorest residents of Haringey in April 2013 the applicant failed to pay his council tax and was summoned to Tottenham Magistrates Court on the 10th July 2013 to appear on the 2nd August 2013.
8. On the 2nd August 2013 he read a statement to the Magistrates setting out the details and cumulative impact of the changes in the incomes of benefit claimants in April 2013. **(10:334-335)** He then asked how they arrived at the costs of £125. They refused to tell him. That was called “indefensible” by Mrs Justice Andrews on the 6th May 2015 when the applicant’s liability order was declared unlawful. **(28:383-398)**
9. Meanwhile the applicant sent his objection to the council’s 2013/14 accounts to the respondent on the 19th September 2014. **(10:338-348)** It was agreed by the applicant that the respondent’s enquiries should not begin until after the High Court had made its decision about the applicant’s case in *Nicolson v Tottenham Magistrates and the council*; that decision was handed down on the 6th May 2015.
10. The respondent issued his decisions on the objection the 12th October 2015. (9a:117-128). From that decision the applicant learned that the council had sent to the respondent its response to applicant’s objection of the 19th September 2014 to the respondent on the 2nd December 2014, without sending a copy to the applicant. The applicant has now received a copy of those figures on the 19th April 2016 which should have been sent to him on the 2nd December 2014 and before Andrews J heard the applicant’s case in May 2015. The detailed explanations of the costs it contained had not been seen by the applicant before April 2016.

At the time of writing the applicant has asked the council for all the correspondence sent by the council to the respondent about the calculations and in response to his objection but has not received it.

CASE SUMMARY

11. In addition to the Grounds of Appeal in the applicants notice of appeal, and following the publication of the transcript of the judgment, the applicant adds the following reasons why the judgment was wrong to dismiss the appeal against the decisions of the respondent on the 12th October 2015 in the order of the 10 March 2016.
12. This case is about the council and the magistrates issuing summonses and liability orders in bulk to enforce council tax against many vulnerable people claiming statutory minimum incomes in work and unemployment, and the failure of all authorities involved to take into consideration relevant matters related to the substantial change in the benefit claimants financial circumstances in April 2013, and robust evidence of a link between their debts and mental health.
13. The appellant argues that the judgment of Lord Justice Hamblen (the judgement) and the decision of the respondent of the 12th October 2015 were wrong because they did not consider relevant evidence.
 - i. the relevant evidence of financial hardship
 - ii. the evidence of a link between debt and mental health problems that should be taken into account when the magistrates are agreeing the costs they award in bulk to local authorities which are added to the arrears of late and non payers of council tax.
 - iii. the evidence of a substantial change in the financial circumstances of all benefit claimants in April 2013.
 - iv. guidance about "vulnerable situations" issued by the Ministry of Justice and the Department of Communities and Local Government.

- v. the judgement of the Supreme Court in *Mosley v Haringey*.
 - vi. the assurances given by the Minister for Welfare Reform to the House of Lords on the 25th January 2012 during the passage of the Welfare Reform Act 2012 about the application of the *Wednesbury* principles to include benefit claimants' health and financial circumstances
14. Neither magistrates nor the council can know the financial circumstances or the health of all the late or non payers when summons late and non-paying residents in bulk and the magistrates award liability order costs in bulk to the council, but that is no reason for ignoring robust evidence that the financial circumstances and health of residents are put at risk by debts enforced against low incomes. The magistrates decided;
- 2,168 liability orders **in bulk (10:361)** on the 13th June 2013, when only 43 attended court,
 - and a further 2017 in bulk on the same day, of whom only 48 attended court,
 - or the 1160 awarded in bulk, when only 45 attended or on the 2nd August 2013 when the applicant was summoned.
15. 32,237 **(10:361)** summonses were issued by computer in 2013/14. Computers are not yet programmed to be aware of the dire circumstances of many late and non payers. All the summonses have written on them in red;**(10:358)**

IMPORTANT

In most circumstances, you do not need to attend court. See details overleaf and yellow sheet. Please do not send correspondence to the Magistrates' Court.

There are 1000s of cases dealt with in bulk by the magistrates whose opportunity to explain their financial circumstances to a council official during a visit to the court is actively discouraged by the council.

16. The impact of the awarding of costs for liability orders in bulk on top of the arrears, in the absence of the debtor against statutory minimum incomes, in work and unemployment, can create unmanageable debts and mental and physical ill health unknown to the magistrates or the council as reported in "Not having enough money impacts on health" by Dr Angela Donkin. **(30:715)**

THE RESPONDENT REFUSAL TO CONSIDER RELEVANT EVIDENCE OF LINK BETWEEN DEBT AND MENTAL HEALTH

17. In his objection to the 2013/14 accounts of the 19th September the applicant specifically raised his concerns about the impact of council tax enforcement on the health of Haringey residents. "This section is included to show how important it is to the health and well-being of low income residents of Haringey that liability order costs should not be a penalty and should be no more than a genuine and rational contribution to costs." **(10:262-264)**
18. The respondent refused to consider the robust evidence of the link between debt and mental health of the Royal College of Psychiatrists and the Government Office for Science; to which the applicant can add BMA, The Mental Health Foundation, The Faculty for Public Health, Mencap and Mind should this appeal go to trial. The Applicant wrote to the Respondent on the 3rd May 2015 sending a copy to the council.

The Local Government Association has reported that councils will lose £1 billion over the three years since April 2013 because people cannot pay. That £1 billion could have been used for local services.

I am therefore asking you to investigate whether LBH is losing money because the poorest residents are being taxed by a tax they cannot pay and if so by how much. I expect the council is predictably wasting and losing money trying to enforce the tax against people who cannot pay; and causing severe distress in many cases.

Please will you ask the local GPs and NHS by how much their costs have increased due to the increasing impact of debt and austerity on the health of residents since their benefits were taxed in April 2013.

See Royal College of Psychiatrists and The Faculty of Public Health*. The council now has responsibility for public health and that means prevention of the costs to the taxpayer of ill health that accrues from the tax and its draconian enforcement.*

**Links to these two websites were provided in the letter to provide easy access to the relevant evidence.*

19. The respondent replied to the appellant on the 5th May 2015.

"I think it's worth being very clear that in this case our remit as auditors only extends to whether the Council acted ultra vires . We have no remit over related public sector bodies nor to opine on the impact of this policy on the well-being of those required to pay council tax".

The applicant was not asking the respondent for his opinion but to take into account distinguished, powerful and relevant evidence about the impact of debts on mental health while considering the costs of the council which add to the debts of poorest residents of the borough and are applied in bulk by the magistrates.

20. Lord Freud, the Minister for Welfare Reform, gave the following assurance to Parliament on the 25th January 2012 during the passage of the Welfare Reform Act 2012; (Hansard 25 Jan 2012:Column 1061; 4.15)

*"We spoke about the Wednesbury principles at our seminar, and I can reassure noble Lords that the decision-making process is and will continue to be consistent with these fundamental principles of public law. The department strives to ensure that no decision is influenced by irrelevant factors and that decision-makers act in a rational and fair manner, taking into account all relevant matters before exercising a discretion. For example, the primary legislation expressly sets out that a conditionality sanction applies only if there is no good reason for the failure. **In determining whether there is such good reason, decision-makers will have to consider all relevant matters raised by the claimant within a particular time period, including information about a claimant's health condition and financial circumstances**".*

Pepper (Inspector of Taxes) v Hart [\[1992\] UKHL 3](#)

21. In this case the decision makers have been the council, the Tottenham Magistrates, Grant Thornton and the High Court; they all failed to take relevant matters about the claimants' health and the substantial change in their financial circumstances in April 2013 into account.
22. The applicant wrote to The Leader of the Council on 10/12/12

"The council's proposals will create unmanageable debts and ill health among the poorest residents. *Unmanageable council tax arrears are inevitable, when poverty incomes are capped, cut then taxed. The councils then add around £70 for a liability order from the Magistrates Courts and the bailiffs up to a further £400 so creating unmanageable debts. The Royal College of Psychiatrists and the Government Office for Science have*

persistently drawn attention to the relationship between debt and mental health problems. 50% of people in debt have mental health problems and 25% of people with a diagnosed mental health illness are in debt."

23. The judgement in *Nicolson v Grant Thornton* ignored the judgement of the Supreme Court in *R (on the application of Moseley (in substitution of Stirling Deceased)) (AP) (Appellant) v London Borough of Haringey (Respondent)* (**27:671-682**) which specifically acknowledged the change in the financial circumstances of the benefit claimants having their income taxed from April 2013;

"Their income was already at a basic level and the effect of Haringey's proposed scheme would be to reduce it even below that level and thus in all likelihood to cause real hardship, while sparing its more prosperous residents from making any contribution to the shortfall in government funding". Para 29.

The Supreme Court also commented in para 29 that;
"The protest of The Rev. Nicolson in his letter dated 10 December 2012 was well-directed." See also paras 22 & 31.

24. The applicant had read his concerns to the Magistrates (**10:334-335**) on the 2nd August 2013 about the cumulative impact of benefit changes on top of the council tax arrears and liability order costs, and therefore the health of the poorest residents of the borough. He had in mind a detailed analysis of the cumulative impact on statutory minimum incomes of several polices since April 2013 which was a very substantial change in the circumstances of benefit claimants. The applicant has now summarised the evidence of the numbers affected and the benefits cut.

25. The evidence in the table below was available to the High Court and the respondent but ignored in the judgment. It was presented by Officials to a Haringey Council Meeting on the 12th July 2012 describing "The financial impact of Council Tax Benefit localisation" on thousands of residents under the following variety of changes circumstances from April 2013. The numbers of residents impacted by the changes of their financial circumstances for the worse in April 2013 have been extracted.

UNEMPLOYED	CTB	CTB/LHA	CTB/OBH	CTB/LHA/OBC
Single person	6837	131	73	14
single 2 children	1183	111	96	27
couple 2 children	476	35	49	9
couple 4 children	50	6	36	11
TOTAL	8456	283	254	61

IN WORK	CTB	CTB/LHA	CTB/OBH	CTB/LHA/OBC
Single person	1788	775	0	0
single 2 children	699	55	2	0
couple 2 children	1092	77	4	1
couple 4 children	205	34	11	4
TOTAL	3784	941	17	5

TOTAL NUMBER OF RESIDENTS IN THESE SAMPLES WHOSE BENEFITS WERE TAXED FROM APRIL 2013 IS 13,801.

LHA = Local Housing Allowance OBC = overall benefit cap both of which cut housing benefit leaving rent to be paid out of JSA and children's benefits from April 2013. CTB = Council Tax Benefit which was cut from April 2013.

26. However the above examples did not include the impact of the bedroom tax, which also cuts housing benefit, the courts costs and bailiffs fees or the devastating impact of a sanction that stops JSA completely on the health of residents.

27. In November 2008, Professor Sir Michael Marmot was asked by the Secretary of State for Health to chair an independent review to propose the most effective evidence-based strategies for reducing health inequalities in England from 2010.

It is harder for many people to accept that serious health inequalities exist here in England. We have a highly valued NHS and the overall health of the population in this country has improved greatly over the past 50 years. Yet in the wealthiest part of London, one ward in Kensington and Chelsea, a man can expect to live to 88 years, while a few kilometres away in Tottenham Green, one of the capital's poorer wards, male life expectancy is 71. Dramatic health inequalities are still a dominant feature of health in England across all regions.

But health inequalities are not inevitable and can be significantly reduced. They stem from avoidable inequalities in society: of income, education, employment and neighbourhood circumstances. Inequalities present before birth set the scene for poorer health and other outcomes accumulating throughout the life course.

Fair Society Healthy Lives – Page 25

Tottenham Green is a Ward in the London Borough of Haringey.

28. The most deprived ward in Haringey had among the highest rates of low birth weight between in the UK between 2007 and 2009 ;

- | | |
|--------------------|-----------------------|
| a. Tottenham Green | 12.5%, of live births |
| b. St Ann's | 9.4% |
| c. Haringey | 11.62% - |

The average for Haringey is 7.63%, England 7.53% and the OECD in 2008 6.4% with Iceland lowest at 3.8% and Turkey highest at 11%.

THE RESPONDENTS EXAMINATION OF INDIVIDUAL CASES

29. The respondent reports in his witness statement that (Paragraph 30) that "As part of the audit process the respondent reviewed a number of case files provided by the first interested party and concluded that the apportionment was not unreasonable". On what detailed evidence of the financial circumstances and health of these cases did he therefore decide that that liability order costs charged in bulk against 13,000 benefit claimants a year since April 2013 were "not unreasonable" or "broadly reasonable"? The applicant has never seen it or been able to comment. Did the council draw

the attention of the respondent to the guidance on vulnerable situations issued by the DCLG and the MOJ?

30. A single adult living alone in Tottenham was sanctioned in January 2014 by the Tottenham jobcentre stopping his JSA. The enforcement of his council tax and rent arrears and a TV licence fine was continued unabated by the council's and the BBC's computers adding court costs; the bailiffs made a visit demanding £435, even though he had no income with which to pay off the arrears, court costs and bailiffs fees; his liability order was issued in his absence with 1000s of others. He was referred by his GP for 12 sessions of therapy by the NHS. The applicant, acting as a McKenzie Friend, appealed his fine to the Highbury Corner Magistrates court who remitted £135 and dismissed the bailiffs after taking into account a letter from his doctors, a chronology of his deteriorating circumstances and a means statement.
31. In another example could be a recently widowed unemployed adult aged 55, in difficulty finding a job, receives JSA of £73.10 a week, which was rent and council tax free before April 2013. Since then it can be paying £15 a week rent due to the bedroom tax and £5 council tax. Threats of evictions and prison are generated by computer.
32. Local Government Ombudsman reports the case of Mr "Watson", a single, semi-literate adult living alone in Southwark. Jobcentre Plus mistakenly cancelled his JSA so Southwark cancelled his housing and council tax benefits creating arrears in both accounts. On the 12th January 2001 CSL, Southwark's out sourced agent collecting council tax, sends Mr. Watson a summons for unpaid council tax of £235.10, plus costs, for a hearing on 9th February 2001. The summons contains the following threats, in bold type and highlighted.

"If a liability order is granted the council will be able to take one or more of the following actions: Instruct bailiffs to take your goods to settle your debt - this can include your car. You will be liable to pay the bailiffs costs which could substantially increase the debt. Instruct your employer to deduct payments from your salary or wages. Deduct money straight from your jobseekers allowance or income support. Make you bankrupt. Make a charging order against your home. Have you committed to prison".

His sister-in-law calls on him. His body is hanging in his flat. The police found the summons with him, paper littered with rough calculations and a note:

"Dear I at to do this I am in so much in Detr good By for ever Love....."

Threats of eviction for rent arrears were not far off. JSA was £53.05 a week after rent and council tax. (Now £73.10). The Joseph Rowntree Foundation minimum income standard for healthy living, after rent and council tax, is £144 a week for a single adult.

33. Under these circumstances the comments in the judgement about £125 being a deterrent are unrealistic. £125 is not a deterrent to people who cannot pay or to people who can spend £125, or more, on a bottle of champagne. The deterrence is in the enforcement procedures; it is in the actions available to the council after the magistrates have issued the liability orders. Costs are neither a tax nor a penalty. The conclusions that the £125 costs were not "not unreasonable" or "broadly the reasonable" on the 2nd August 2013 are not valid conclusions by respondent because he has refused to consider the *"impact of this policy on the well-being of those required to pay council tax"*.

GOVERNMENT GUIDANCE IGNORED

34. Both the first and second interested parties failed to draw the attention of the court or the respondent to government guidance about vulnerable situations published by the;
- a. Ministry of Justice in "Taking control of Goods National Standards", posted the MOJ website in 2012, and the
 - b. Department of Communities and Local Government in "Council Tax Guidance to local councils on good practice in the collection of Council Tax arrears". It was originally published on 2002 as the National Standards for Enforcement Agents by the then Lord Chancellor's Department with "Vulnerable Situations" on Page 9.

The relevant paragraphs are attached as PN1

SUMMARY.

35. Lord Justice Hamblen's Judgement made it clear in paragraph 60;

There is a right of appeal under section 17(4) of the 1998 Act in respect of a decision not to seek a declaration, but that requires establishing that the respondent's exercise of their discretion was "wrong in principle" or "outside the range of decisions reasonably open to the decision maker" or "made without consideration of the relevant factors"; see Ouseley J's observations in the Moss case.

36. In this case the decision the decision of the respondent of the 12th October 2015 was wrong in that it was made "without consideration of the relevant factors".

In considering the level of the summons and liability order costs none of the parties have considered the evidence of a link

between debt and mental health problems or the substantial change in the financial circumstances since 2013 of benefit claimants who are summoned to the magistrate's court in bulk and against whom the magistrates awarded £125 costs in bulk. Had they done so a most rigorous application of the 1992 Council tax (Administration and Enforcement Regulations) would have been insisted on by the respondent when the council calculates the level of summons and liability order costs against residents claiming benefits? The Supreme Court recognised that *"Their income was already at a basic level and the effect of Haringey's proposed scheme would be to reduce it even below that level and thus in all likelihood to cause real hardship."* That substantial change in the financial circumstances of benefit claiming residents took place in April 2013.

37. The £125 cost of a summons dispatched to 1823 residents on the 10th July 2014 and identical liability order costs of £125 charged to the applicant 1160 of them on the 2nd August 2014 should have been declared unlawful on the 24th February by the High Court.

38. It was never the intention of government that Local Authorities and Magistrates Courts should bypass proper consideration of the financial circumstances and health of vulnerable people by the use of computers to issue summons to the magistrates' court in bulk and then for magistrates to agree thousands of liability orders in bulk adding costs to already unmanageable arrears against many vulnerable people. The Wednesbury principles were robustly endorsed by Lord Freud in the House of Lords on the 25th January 2012.

"decision-makers will have to consider all relevant matters including information about ... health condition and financial circumstances".

39. The approach of the council since 2004 has been to “charge as much as possible” and to “maximise” the costs. The council ignored the change in the financial circumstances of benefit claimants in April 2013. The approach of the council should have been to charge no more than allowed under the regulations against the residents it represents in the interest of both obeying the law and considering the financial circumstances and health of the residents they serve.

40. The applicant therefore asks the Appeal Court to;

- A. Declare unlawful the costs of £125 for summonses issued in bulk on the 10th July 2013 and of £125 for the liability orders granted in bulk against late and non payers of council tax by Tottenham Magistrates on the 2nd August 2013/14 on the grounds that there had been no review of the costs of £125 since 2010 which could take account of relevant evidence of the link between debt and mental health or the change in the financial circumstances of benefit claimants on the 1st April 2013.
- B. To recalculate the 2013/14, 2014/15 and 2016/17 and to review 2017/18 costs after taking all relevant information about financial circumstances and health into account.
- C. To repay all residents who have been overcharged.
- D. To order the respondent to pay the costs of *Nicolson v Grant Thornton* decided by Lord Justice Hamblen
- E. To order the respondent and interested parties to pay their own and the applicants costs in this case.

1. The relevant clauses of the MOJ guidance read as follows.

Vulnerable situations

70. Enforcement agents/agencies and creditors must recognise that they each have a role in ensuring that the vulnerable and socially excluded are protected and that the recovery process includes procedures agreed between the agent/agency and creditor about how such situations should be dealt with. The appropriate use of discretion is essential in every case and no amount of guidance could cover every situation. Therefore the agent has a duty to contact the creditor and report the circumstances in situations where there is evidence of a potential cause for concern.

71. If necessary, the enforcement agent will advise the creditor if further action is appropriate. The exercise of appropriate discretion is needed, not only to protect the debtor, but also the enforcement agent who should avoid taking action which could lead to accusations of inappropriate behaviour.

72. Enforcement agents must withdraw from domestic premises if the only person present is, or appears to be, under the age of 16 or is deemed to be vulnerable by the enforcement agent; they can ask when the debtor will be home - if appropriate.

73. Enforcement agents must withdraw without making enquiries if the only persons present are children who appear to be under the age of 12.

74. A debtor may be considered vulnerable if, for reasons of age, health or disability they are unable to safeguard their personal welfare or the personal welfare of other members of the household. 75. The enforcement agent must be sure that the debtor or the person to whom they are entering into a controlled goods agreement understands the agreement and the consequences if the agreement is not complied with.

76. Enforcement agents should be aware that vulnerability may not be immediately obvious.

77. Some groups who might be vulnerable are listed below. However, this list is not exhaustive. Care should be taken to assess each situation on a case by case basis.

- the elderly;*
- people with a disability;*
- the seriously ill;*
- the recently bereaved;*
- single parent families;*
- pregnant women;*
- unemployed people; and,*
- those who have obvious difficulty in understanding, speaking or reading English.*

78. Wherever possible, enforcement agents should have arrangements in place for rapidly accessing interpretation services (including British Sign Language), when these are needed, and provide on request information in large print or in Braille for debtors with impaired sight.

2. The relevant clauses of the DCLG guidance reads as follows;

1.1. This document sets out guidance to local authorities on the enforcement of council tax arrears and aims to clearly set out the Government's position

1.1. In particular this guidance deals with the kinds of help and support that Local Authorities should be giving to vulnerable people, both in the run up to enforcement activity taking place and afterwards

1.5 This short guide supplements that work, looking more widely at the enforcement of council tax and helping Local Authorities think about their activity in the run up to enforcement activity being taken, as well as reminding Local Authorities about their duties as responsible creditors.

2.5. Local Authorities should work with non fee charging debt advisors and the Local Authority bailiffs to design protocols for enforcement action, including agreeing what might constitute a

vulnerable situation and how people in these circumstances will be dealt with. There is more detail on this later in the guidance.

People in vulnerable situations.

4.8 The National Standards for Enforcement Agents gives examples of potentially vulnerable situations. The reality is that judgements need to be made on a case by case basis.

4.9 There should be clear, agreed protocols in place between Local Authorities and their bailiffs governing the approach that should be taken in vulnerable situations and the kinds of cases which should be raised with, or referred back to, local authorities for further consideration when encountered.

4.10 This might mean agreed indicators of vulnerable circumstances and ensuring there is a clear and efficient mechanism to refer cases back to the Local Authority where bailiff action is not the most appropriate route.

3.4 Local Authorities are reminded that they are only permitted to charge reasonable costs for the court summons and liability order. In the interests of transparency, Local Authorities should be able to provide a breakdown, on request, showing how these costs are calculated. While it is likely that authorities will have discussed costs with the Clerk to Justices it should be recognised that the Court may wish to be satisfied that the amount claimed by way of costs in any individual case is no more than that reasonably incurred by the authority.