VALUATION TRIBUNAL FOR ENGLAND

*Council tax reduction appeal: Under / over payment; exercise of discretion.*
*Decision: Appeal struck out.*

RE: Liverpool

APPEAL NUMBER: 4310M140277/CTR

BETWEEN: Ms. D. G Appellant

And

Liverpool City Council Respondent

PANEL: Ms. F. Dickie (Vice-President)

SITTING AT: Tribunal Offices, 120 Leman Street London E1 8EU

ON: 11th January 2016

APPEARANCES: Mr T. Royston of Counsel - (Appellant's representative)

Liverpool City Council not represented (Respondent)

**Decision**

1. The whole of the appeal is struck out.

**Reasons - Introduction**

2. This appeal concerns the exercise of the power of Valuation Tribunal for England ("VTE") under Regulation 10(3)(c) of The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 to strike out an appeal. The appeal in

question relates to the calculation of the Appellant's council tax liability for the period 3 June 2013 to 11 April 2014, such calculation taking into account the council tax reduction (CTR) determined by the Respondent in accordance with sections 10-13A of the Local Government and Finance Act 1992 (as amended by the Local Government Finance Act 2012) "the 1992 Act", the relevant provisions of which are set out below.

3. The Appellant disputes a council tax bill issued on 11 April 2014 in the sum of £1630.74. This sum includes the Appellant's council tax liability for the year beginning 1 April 2014, as well as a brought forward balance to pay of £880.87 for the year beginning 1 April 2013. This bill was issued as a consequence of a downward adjustment to the Appellant's CTR from 3 June 2013, recalculated and applied retrospectively as a result of a change in her financial circumstances from that date. The Appellant's case is that she notified this change of circumstances promptly, and that the failure to recalculate her CTR until April 2014 was not her fault, but was the result of an official error on the part of the Respondent. Thus, she argues, she should not have to pay the increased council tax for which she became liable for that period.

4. In essence, there is no dispute that the Appellant has now, on the basis of her financial circumstances, been awarded her full entitlement to CTR for the period 3 June 2013 to 11 April 2014, according to the Respondent's published CTR scheme. The preliminary issue for my determination is whether in these circumstances the appeal should be struck out as having no reasonable prospect of success.

5. The Appellant completed her notice of appeal to the Tribunal (entitled "Council tax reduction scheme appeal form") thus:

   "*Overpayment of Council Tax Reduction is not recoverable because it was caused by an official error and I could not reasonably have known I was being overpaid. I attended the One Stop Shop and I informed Liverpool City Council of the change to my income in a timely manner.*"

6. Since it is not for me to determine the appeal on the merits, I shall not further set out the parties' evidence on the substantive issues here. It serves however to take the opportunity understand in context the Appellant's chosen expressions, namely that there has been an "overpayment" due to an "official error".

7. It should first be noted that there has in fact been no "overpayment" of CTR. The defining feature of CTR is that it operates as part of the calculation of the basic amount of council tax payable (by virtue of s.10 of the amended 1992 Act), which is to be reduced as required by the billing authority's CTR scheme (pursuant to s.13A(1)(a)). A default scheme applies where the billing authority has not devised its own. There is no entitlement under the relevant legislation to a payment of CTR as such, and it follows therefore that there can be no overpayment. The entitlement, subject to eligibility, is to a reduction in the amount of council tax a person is liable to pay. The decision to make a downward adjustment in CTR in the present case therefore resulted in the Appellant's council tax liability for the period from 3 June 2013 being greater than previously notified.

8. It was as a result of the amendments in the 1992 Act to the method of calculation of council tax that the VTE assumed jurisdiction in respect of needs based reductions which lay formerly (in relation to council tax benefit appeals) with the First Tier Tribunal. Under the council tax benefit regime, there was an entitlement to an award of benefit which would be applied to the council tax liability of the claimant, and the circumstances which arise in the present case would have resulted in what was referred to as an overpayment of council tax benefit. The system mirrored that for housing benefit. Regulations existed for the calculation of an overpayment of council tax benefit, the circumstances in which it could be recovered, and the appeal rights afforded to a claimant. Those regulations limited the entitlement of the local authority to recover

council tax benefit overpaid as a result of its own error or that of one of its servants (known as an "official error").

9. All of these council tax benefit regulations have been swept away with the introduction of CTR. The Appellant has used terminology in her appeal that is no longer relevant in the CTR regime (though it is still applicable in the case of housing benefit). By contrast, there is no such thing as an "official error" in respect of CTR. By virtue of s.13A(1)(a) we must look only to the billing authority's own published CTR scheme for the circumstances in which CTR will reduce the amount of council tax. If there is a restriction on the ability of the billing authority to make retrospective adjustment of CTR in the case of official error, it would be found in that scheme. Where that scheme does not provide for such a restriction, and CTR has been calculated correctly in accordance with it, the issue arises as to what the Appellant can achieve in bringing an appeal. Thus the question for the Tribunal is in what circumstances such an appeal should be struck out as having no reasonable prospect of success.

**Striking out by the VTE**

10. Regulation 10(3) provides that the VTE may strike out the whole or a part of the proceedings if—

    *(a) the appellant has failed to comply with a direction that stated that failure by the appellant to comply with the direction could lead to the striking out of the proceedings or that part of them;*

    *(b) the appellant has failed to co-operate with the VTE to such an extent that the VTE cannot deal with the proceedings fairly and justly; or*

    *(c) the VTE considers there is no reasonable prospect of the appellant's appeal, or part of it, succeeding."*

11. Pursuant to Regulation 10(4) the VTE may not strike out the whole or part of the proceedings under paragraph (2) or (3)(b) or (c) without first giving the appellant an opportunity to make representations in relation to the proposed striking out.

12. On 11 August 2015 the VTE Registrar on behalf of the former President issued a notice of intention to strike out this appeal under Regulation 10(3)(c). The Notice issued did not refer to Regulation 10(2). Reasons for the issue of the notice were contained within it in the following terms:

    1. *It appears to me that the Billing Authority (BA) have recalculated your entitlement to Council Tax Reduction in accordance with the legislation and their Scheme. Your dispute concerns the underpayment of council tax as a result of their recalculation. The Tribunal can only have regard to the legislation and the authority's Scheme, not the fairness of issuing a further bill for the revised amount.*

    2. *An estimated bill is issued prior to or during the financial year on various assumptions including the amount of CTR awarded and its continuation at that level throughout the financial year. If following a recalculation of the entitlement to CTR, the chargeable amount is greater than that estimated, the BA can bill the taxpayer for the difference.*

    3. *Accordingly, in my view, your appeal has no reasonable prospect of succeeding and must therefore be struck out (i.e. rejected or dismissed) in accordance with the above Regulation.*

    4. *If you do not agree with this view, you may, within 14 days, send your views in writing on why you believe your case should not be struck out. Any views you send*

*and any received from the BA (to which this notice has been copied), together with the case papers, will be placed before the President or a Vice- President to decide whether to strike out the case. We shall send you a notice of the decision as soon as possible.*

5. *If your appeal is struck out, you may nevertheless apply to the BA for discretionary relief under s. 13A(1)(c) of the Local Government Finance Act 1992 to reduce the amount of the overpayment. Their decision on your application may then be appealed to this Tribunal."*

13. Identical notices had been issued to the parties in around 40 CTR appeals received by the VTE. This represents a proportion of the 450 or so CTR appeals in respect of "overpayments" which the tribunal has received, the remainder of them having been stayed pending the outcome of the preliminary issue in this appeal. An advice agency acting on behalf of the Appellant made representations in this appeal as to why it should not be struck out. Mr Royston of counsel then having been instructed to act pro bono, the preliminary issue was listed for an oral hearing. I must express considerable gratitude to Mr Royston for his services on her behalf. His written and oral submissions at the hearing assisted considerably in clarifying the relevant issues which have repercussions for Appellants with like appeals.

14. It is unfortunate that the Respondent elected not to make any submissions on the preliminary issue that is before me. Its written submissions were limited only to the merits of its decision as to the calculation of council tax liability. It is regrettable therefore that in considering these important preliminary matters, they have not been fully aired by contested submissions from both parties.

**Statutory Provisions**

15. The LGFA 1992 makes the following provision in respect of CTR:

*13A Reductions by billing authority*

*(1) The amount of council tax which a person is liable to pay in respect of any chargeable dwelling and any day (as determined in accordance with sections 10 to 13)—*

*(a) in the case of a dwelling situated in the area of a billing authority in England, is to be reduced to the extent, if any, required by the authority's council tax reduction scheme (see subsection (2));*

…

*(c) in any case, may be reduced to such extent (or, if the amount has been reduced under paragraph (a) or (b), such further extent) as the billing authority for the area in which the dwelling is situated thinks fit.*

*...*

*(6) The power under subsection (1)(c) includes power to reduce an amount to nil.*

*(7) The power under subsection (1)(c) may be exercised in relation to particular cases or by determining a class of case in which liability is to be reduced to an extent provided by the determination."*

16. Subsection (2) of s.13A(2) requires authorities to make a scheme referred to in subsection (1)(a); and para. 2(7) of Schedule 1A to the 1992 Act (inserted by Schedule 4 to the 2012 Act) requires that a CTR scheme "*must state the procedure by which a person can apply to the authority for a reduction under section 13A(1)(c)*". Paragraph 2(1) also provides as "Matters to be included in Schemes" (1) that a scheme "*must state the classes of person who are to be entitled to a reduction.*"

17. Section 16 provides in relation to appeals:

*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;*

**The Appellant's Case**

18. Mr Royston began his submissions by disclaiming any reliance on the part of the Appellant on s.13A(1)(a) in her appeal. He squarely acknowledged that the Respondent's local CTR scheme does not provide entitlement under s.13A(1)(a) to a reduction where there has been unnoticeable official error. The Respondent billing authority's CTR scheme was comprised of the default scheme plus 6 pages of additional provision which were produced in evidence and there is no reference in either to any such a provision. Mr Royston referred by way of illustration to the Manchester City Council CTR scheme, which reserved the right of that billing authority to waive the application of all or part of a reduction in cases of official error such as is alleged by this Appellant. In the absence of a relevant provision in the Respondent's scheme, Mr Royston conceded that the Appellant cannot appeal on the basis that a reduction is "required by the authority's council tax reduction scheme". He acknowledged therefore that (by virtue of s.66(2)(ba)

of the 1992 Act as amended) the only route for challenge to the scheme for failing to make such provision would be by way of judicial review.

19. Mr Royston did not consider that it was likely that there would be a bar on a billing authority amending a previous year's bill, for example, if a liable person who had claimed CTR had fraudulently concealed their income. In any event, prescribed requirements for CTR Schemes, and the default scheme, specify the date from which a change of circumstances takes effect and that it can be retrospective.

20. The Appellant's position has reduced therefore to an implied acknowledgement that it would be correct to strike out the appeal under Regulation 10(3)(c) but for the fact, Mr Royston argued, that the Tribunal has jurisdiction to consider determining that there should be further reduction in council tax under s.13A(1)(c) in the circumstances of the case.

21. It can be noted that the amended 1992 Act provides separately for the billing authority to make a decision as to the entitlement to CTR in s.13A(1)(a) and as to entitlement to a further reduction in council tax in s.13A(1)(c) ("discretionary relief"), but that s.16 provides for only a single type of appeal to be brought in respect of any decision or calculation which falls within s.16(a) or (b).

**Character of CTR Appeals**

22. The character of an appeal to the VTE against a calculation of council tax liability was the subject of the decision by the then President of the Tribunal in *SC and VW v East Riding of Yorkshire Council - Appeal Nos 2001M113393 and 2001M117503* [2014] EW Misc B46 (VT) (27 May 2014). The legislative history of the present provisions is ably set out in this decision and hence not repeated here. The former President noted (in para 12 of his decision) that "In precisely the same way as council tax reduction scheme appeals come to the Tribunal under section 16(1)(b), so too do calculations of the amount payable as a result of an application for discretionary relief under section 13A(1)(c)". The jurisdiction of the Tribunal to hear appeals against a billing authority's decision to refuse discretionary relief or regarding the amount of any relief granted was not challenged in that appeal, and he could see no basis for questioning it. Neither party to this appeal has questioned that jurisdiction either. As acknowledged in *SC and VW* (at Paragraph 25(1)), such an appeal is on the merits, and is not restricted to narrow public law grounds.

23. It is appropriate at this stage to pause to consider the point. Parliament has determined that an appeal exists as a result of calculation under Regulation 16(1)(b). If by the word "calculation" the statute could be understood to limit the Tribunal's jurisdiction to doing no more than checking the arithmetical integrity of the billing authority's decision, the consequences would be particularly significant, in that there would be no right of appeal against a decision not to award discretionary relief other than by way of judicial review. That, Mr Royston observed, would not adequately compensate for the unavailability of an independent tribunal and, in accordance with the decision of the European Court of Human Rights in *Tsfayo -v- UK, ECHR 14 Nov 2006*, there would be a violation of Article 6.

24. It would be troubling indeed if the result of the localising of benefit were that a person who had previously enjoyed a right of appeal on merits to a tribunal (in respect of council tax benefit) could now only challenge the council tax calculation on the basis of error in law to the High Court, and the Act makes no such express provision. Rather, I consider that for council tax to be correctly calculated, it has to take into account the correct amount of any reduction, including any discretionary relief. I therefore accept Mr Royston's submissions on the point and concur with the former President as to the existence of the Tribunal's jurisdiction to entertain an appeal concerning the award of

discretionary relief.

25. In the present case, Mr Royston observed that this billing authority, in common with others, does not appear to have a nuanced understanding of how the discretionary power under s.13A(1)(c) might operate. It does not appear to publish any policy separate from its CTR scheme on the circumstances in which it may make such an award. Whereas by virtue of s.13A(2) the billing authority must publish its CTR scheme, it has no statutory obligation to publish any policy on consideration of discretionary relief (unless there has been a "determination" pursuant to s.13A(7) that a class of case is to be reduced in accordance with that determination). Otherwise, the statute by virtue of paragraph 2(7) of Schedule 1A only requires it to publish information on *how to apply for* discretionary relief. The Respondent has not amended that particular part of the default scheme, in that such an application may be made in writing, by email or by telephone if a number is published for such a purpose.

**Could an "Unknown official error" form the basis of a discretionary relief?**

26. Mr Royston argued that it was hardly controversial to suggest that a billing authority might think fit to make a discretionary relief reduction of liability in the case of unnoticeable official error – that it could lawfully decide that where it had made a mistake that an individual could not reasonably have known that it had, that it would make a grant relief under s.13A(1)(c). Critically, he said, the scope of the statutory power in s.13A(1)(c) is open ended, in that it is to make a discretionary reduction to such further extent as the billing authority thinks fit. Such a concept was common said Mr Royston in benefits legislation, and if there was no power to alter such liability then Manchester and other billing authorities had adopted unlawful schemes. I have no difficulty in accepting Mr his argument on this point, which appears entirely sound.

27. Mr Royston made two further points in support of his position which I also found persuasive. Firstly, if an unnoticeable official error could *not* lawfully justify a reduction under s.13A(1)(c), that would create a striking disparity with housing benefit cases, where unnoticeable official error overpayments are *always* unrecoverable [Housing Benefit Regulations 2006, Reg 100(2)], and decisions concerning such overpayments can be challenged on appeal. Secondly, because such a position would inflexibly put the taxation consequences of an unnoticeable official error upon the innocent individual council tax payer, it would interfere disproportionately with that individual's property rights as protected by Article 1 of Protocol 1 to the ECHR: see *Moskal v Poland - 10373/05* [2009] ECHR 1286, (2010) 50 EHRR 22, §§73-76.

**The Validity of the Appeal**

28. Assuming that Mr Royston's arguments are correct thus far (as, in the absence of argument or evidence to the contrary, I accept they are), he identified two significant concerns remaining in the present case:

    1. The Appellant did not expressly request that the Respondent exercise a power under s.13A(1)(c) LGFA 1992 to grant discretionary relief; and

    2. The Appellant did not expressly appeal on the ground that the Respondent should have exercised such a power.

29. Mr Royston argued that neither of those matters are jurisdictional, since the VTE's jurisdiction arises simply because the Appellant is aggrieved by the Respondent's assessment of her council tax liability: s 16(1)(b) LGFA 1992. He submitted quite simply that the Appellant was so aggrieved, and thus the Tribunal should entertain her appeal. He considered that the former President in *SC and VW* had assumed that such cases would come to Tribunal after an express application to the billing authority to

exercise that power. Such an assumption underpinned the wording of Paragraph 5 of the Notice issued by the Registrar under Regulation 10(5), which advised that "*you may nevertheless apply to the BA for discretionary relief under s. 13A(1)(c) of the Local Government Finance Act 1992 to reduce the amount of the overpayment. Their decision on your application may then be appealed to this Tribunal.*" Mr Royston respectfully disagreed with any view that there must be a separate application to the billing authority under s.13A(1)(c), observing that there is no provision that the power of a billing authority to give discretionary relief may only be exercised on an application.

30. Put simply, the Appellant's position is that:

    1. The Tribunal's jurisdiction crystallised on a person being aggrieved. A person is entitled to appeal to the VTE on the ground that she is aggrieved at the billing authority's calculation of her council tax liability [s.16(1)(b)]; and

    2. The Appellant *is* aggrieved at the Respondent's calculation of her council tax liability, because the presence of unnoticeable official error should have caused the Respondent to reduce the Appellant's liability under s.13A(1)(c).

31. Mr Royston observed that the default scheme permits for an application for discretionary relief to be made by telephone. Were appeals restricted to cases in which an application had been made, he argued that this would involve the Tribunal in undesirable enquiry, and possibly satellite litigation involving preliminary issues in determining whether such an application had been made. He argued that if Parliament had intended to restrain the exercise of jurisdiction under s.13A(1)(c) to application, it could have said so.

32. Mr Royston is undoubtedly correct in observing that there is no statutory authority for treating the billing authority's discretion under s.13A(1)c as restricted to cases of application. In my view, however, his argument conflates the circumstances in which an award of discretionary relief might be sought from or granted by a billing authority with the circumstances prescribed by s.16 in which an appeal may be brought.

33. The statute proscribes an appeal unless a grievance has been made which includes the matters and grounds upon which the person is aggrieved. Section 16 provides that an aggrieved person may appeal any decision or calculation of the billing authority which falls within subsections (1)(a) or (b). However, by virtue of subsection (4) no such appeal may be brought unless "*the aggrieved person serves a written notice*" on the billing authority which, by virtue of subsection (6) "*must state the matter by which and the grounds on which the person is aggrieved.*". This procedure must be sufficiently simple to be followed by a claimant, and the requirements of the content of a grievance merit practical consideration to identify those cases in which a right of appeal to the VTE exists.

34. Where a billing authority issues a decision refusing to grant discretionary relief under s.13A(1)(c), whether or not an application has been made by the claimant for it, a grievance may be against that decision. It seems to me as a matter of common sense that it may not be necessary for there to be explicit reference to the existence of that discretionary power in the matters and grounds for the grievance, as such reference would be implied.

35. However, where (as is apparently the case here) there has been no decision communicated on the exercise of the power in s.13A(1)(c) and no application for it, I consider that for a right of appeal to arise under s16 the grievance must sufficiently clearly refer to the discretionary power in the matters and grounds relied upon. The legislation requires that the matter aggrieved of is put in writing to the billing authority before the right to appeal crystallises. Logically, where there has been no application for discretionary relief, or no decision refusing it, the grievance cannot be understood as a grievance concerning the failure to grant discretionary relief under s.13A(1)(c) (as

opposed to or in addition to being a grievance on some other ground or grounds) unless it sufficiently clearly says that it is by making reference to the discretionary power in the statute expressly or in terms.

36. I now turn to consider the grievance made by the Appellant in the present case. Her notice under s.16(4) was a letter dated 29 April 2014 to the billing authority in which she asserted that she had provided proof of her change of income in June 2013. She also said it was unfair to ask her to pay back (the CTR) because someone at the billing authority had made a grave mistake. She explained that she is disabled, that she is worse off working, cannot afford her council tax payments increasing from £27 to £152 per month and was looking to reduce her hours of work as she cannot possibly pay. She asked for reassessment of her payments to an affordable amount, said she would have had her receipts if she had not had a flood, and asked for more time if she had to pay for someone else's mistake. She then disputed that the calculation of her council tax liability could be correct based on the reduced amount of CTR she had been awarded.

37. The Appellant's letter did not expressly or in terms seek discretionary relief from council tax, and Mr Royston did not seek to argue that it did. No reply to this grievance from the billing authority was produced to me by either party (pursuant to s.16(7)(c) the Tribunal's jurisdiction arises in such cases after two months have passed from service of the grievance). However, it does not make logical sense to me to suggest that the Appellant on making appeal to the VTE was aggrieved over the billing authority's failure to award discretionary relief when it had not been asked to do so, had not reached a decision whether it would do so, and such a grievance as had been made had not expressly complained as to that failure. I conclude on the available evidence that the Appellant has not made a grievance in relation to the failure to exercise the discretionary power under s.13A(1)(c).

38. An aggrieved person may appeal to the VTE under s.16(1), and subsections (4) and (6) of s.16 use the present tense to indicate that the grievance must be held and communicated at the time of service of the notice before that right to appeal can exist. Indeed, the requirement in s.16(7) that on receipt of a response (if any) the person be “still aggrieved” suggests a continuity in the source of grievance between the grounds expressed and those that still exist (though the point cannot be applied too strictly since of course the precise grounds can change based on the nature of the billing authority's response to the grievance which it has been asked to consider, and it is important to note that the Tribunal is not restricted to considering only the evidence and argument put to the billing authority). However it appears clear that “aggrieved” as an adjective describing and defining the person who has the right of appeal to the VTE must be understood as aggrieved about the same matter and grounds they have raised in a notice under s.16(4). In the circumstances the right of appeal of the present Appellant does not encompass the failure to award discretionary relief under s.13A(1)(a).

39. Mr Royston invited me to treat the absence of any objection from the Respondent billing authority to the exercise of jurisdiction by the Tribunal as an acceptance that it can and should determined in this appeal whether an award of discretionary relief should be made. In any event, he relied on the tribunal's overriding objectives as justification for the proceedings to continue on that basis. He emphasised that the Respondent had shown that it had already addressed the substantive issues in its submission (which did indeed deal with its position with regard to the alleged “official error”).

40. However, the billing authority's submissions going to the merit of an application for discretionary relief were prepared after the Appellant had appealed and been notified the Tribunal's intention to strike out her appeal. I am not persuaded that the Tribunal should or could consider discretionary relief where the Appellant has failed to follow the statutory process in s.16 simply because the parties are willing for it to do so. It seems likely to me, judging from its failure to engage, that the significance of this issue has not

really impressed itself upon the Respondent.

41. I have considered this preliminary issue on the evidence and argument before me, but the matter has wider implications for the handling of such appeals by the Tribunal. Its task in identifying those cases in which it should determine whether to grant discretionary relief would be rendered almost impossible by adopting the approach Mr Royston recommends in the present appeal. Instead of considering whether the matter or grounds of grievance in the notice under s.16(4) included the failure to award discretionary relief, it would be the task of the Tribunal to consider (in the absence of any express objection by the billing authority), whether such relief was justified in each and every case in which appeal is made against any council tax decision or calculation made after the service of a grievance on the billing authority on any number of other matters or grounds. I cannot construe the legislation as requiring this exercise by the Tribunal.

42. If the Tribunal was to accept jurisdiction to determine discretionary relief in appeals such as the present, there would seem to be a real risk of undesirable consequences. An unrepresented Appellant might receive an adverse decision on the matter without the billing authority having considered its discretionary power (whether it was asked to do so or not), without the Appellant ever having expressed a grievance that it has not, and without having put forward to the Tribunal full grounds on which discretionary relief might be appropriate. Not only would this be a wholly impractical approach for the Tribunal to take, but in my view it would be unfair and unlawful.

43. I acknowledge Mr Royston's argument that the grounds of appeal, which do not make reference to any particular provision of the 1992 Act, were probably not professionally drafted, and the title of the preprinted appeal form makes it less than clear whether distinct appeal forms exist for challenges to the exercise of discretion outwith a scheme. However, the issue that is most material in this appeal is not the wording used in a notice of appeal, but the terms in which the grievance has been made under s.16(4) which gives rise to the right to appeal.

44. The billing authority can exercise discretion in response to an application or of its own motion. However in my view, since the billing authority had not been given notice that the Appellant was aggrieved by a failure so to exercise its discretion under s.13A(1)(c), she cannot properly be said to be aggrieved (or still aggrieved) on that ground. Given that the statute requires the billing authority to publish the means by which an application for discretionary relief may be made, and to publish the classes of case in which a discretionary reduction will be awarded (if any), it is not unreasonable or unnecessarily onerous to suggest that the claimant would have sufficient information to make herself aware of the existence of discretionary relief and to express clearly a grievance at the failure to grant it. The grievance she addressed to the billing authority did not do this, and provides the scope for the matter in relation to which she may properly be said to be an aggrieved person with the right of appeal.

45. Accordingly, I cannot construe the present appeal as one in respect of discretionary relief. The appeal as made arises from a grievance addressed to the billing authority which I cannot interpret as having been in respect of discretionary relief. An appeal on any other basis, as acknowledged by Mr Royston, has no reasonable prospect of success. For the reasons above therefore I order that the appeal is struck out. This may not mark the end of the matter for these parties. The Appellant is still entitled to apply for discretionary relief to the billing authority, to make a grievance on that ground, and to appeal thereafter to the Tribunal.