

CO/294/2007

**Neutral Citation Number: [2008] EWHC 2531 (Admin)**  
**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**THE ADMINISTRATIVE COURT**

Royal Courts of Justice  
Strand  
London WC2A 2LL

Friday, 10 October 2008

**B e f o r e:**

**NEIL GARNHAM QC**  
**(Sitting as a Deputy High Court Judge)**

**Between:**

**THE QUEEN ON THE APPLICATION OF MARWAN FAYAD**

**Claimant**

v

**LONDON SOUTH EAST VALUATION TRIBUNAL**

**Defendant**

**THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF LEWISHAM**

**Interested Party**

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**The Claimant appeared in Person**

**Miss J Henderson** (instructed by Legal Services, LB Lewisham) appeared on behalf of the  
**Interested Party**

**J U D G M E N T**  
(As Approved by the Court)

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1. THE DEPUTY JUDGE: Between March 1998 and February 2006, Mr Marwan Fayad was a PhD student at Imperial College London ("ICL"). From April 2001 Mr Fayad lived in the London Borough of Lewisham. Soon after moving there he applied for, and was granted, exemption from Council Tax for the financial years 2001-2003. He made that application on the basis of letters from ICL showing that he was a full-time student.
2. That exemption was continued through 2004 and 2005 until 6 December 2005, when Lewisham Council rescinded the exemption for the academic years 2003-2005. As emerges from the Council's letter of 6 December 2005, the reason for that change of stance was the discovery by the Council of the fact that Mr Fayad's student exemption certificate had expired on 30 September 2003. Mr Fayad's student status is explained in a letter from ICL dated 19 January 2006. That letter reads, so far as material, as follows:

"To whom it may concern

This is to certify that the undernamed:

Surname: Fayad

Forenames: Marwan Abdallah

Was registered at this College as a postgraduate student, as below:

Dates of attendance: 02 March 1998 to 31 May 2003

In the business school

Following a programme of research in: Economics.

Qualifications aimed for: PhD degree of the University of London and the Diploma of Imperial College (DIC)

...

It is not possible to provide a detailed transcript listing the individual elements of the course of study. To qualify for the award of the degree, a candidate is required to carry out a programme of research under the supervision of a member of the academic staff, submit a satisfactory thesis, and be examined orally.

...

For the period 2 March 1998 to 31 May 2002 Mr Fayad was registered as a full-time student and from 1 June 2002 to 31 May 2003 was registered as a part-time student.

Students are permitted to write up their thesis in College for a maximum of three months from the end of their registration period. For the period 1 June 2003 to 31 August 2003 Mr Fayad was engaged in writing-up his thesis in College.

Full-time PhD students are required to submit a thesis within five years; Mr Fayad has been granted special permission to submit his thesis by 28 February 2006."

3. In the light of that letter, the Council maintains its stance that from October 2003 Mr Fayad did not qualify for exemption from Council Tax. In the meantime, Mr Fayad found himself in dispute with the Home Office as to his immigration status. His application for further leave to remain in the United Kingdom was refused on 1 December 2005. He appealed to the Asylum and Immigration Tribunal ("the AIT"), who on 2 February 2006 allowed his appeal. Mr Fayad places some importance on that successful appeal because the AIT concluded that Mr Fayad met the requirements of paragraph 57 of the Immigration Rules and so was recognised as a student for immigration purposes.
4. Mr Fayad also appealed the refusal by the London Borough of Lewisham to grant him exemption from Council Tax. That appeal was to the Valuation Tribunal. They gave their decision on 30 August 2006 dismissing his appeal. I will return below to the Tribunal's reasoning, but it is convenient first if I set out the history of these proceedings and the relevant parts of the statutory scheme. Before I do so, however, I want to say a word about Mr Fayad. He has conducted this hearing in person. He has done so, if I may say so, with moderation and good sense. He has developed the arguments set out in writing in his skeleton argument with considerable skill; skill which is also to be found demonstrated in his preparation of the documents for the court.
5. I turn then to the history. A decision of a Valuation Tribunal may be challenged by way of an appeal pursuant to Regulation 51 of the Valuation and Council Tax Community Charge Tribunals (Amendment) Regulations 1993. Regulation 51 provides as follows:

"(1) An appeal shall lie to the High Court on a question of law arising out of a decision or order which is given or made by a tribunal on an appeal and may be made by any party to the appeal.

(2) Subject to paragraph (3) [which does not matter for these purposes], an appeal under paragraph (1) may be dismissed if it is not made within four weeks of the date on which notice is given of the decision or order that is the subject of the appeal."
6. Mr Fayad did not exercise that right of appeal. He explained to me that he was out of the country at the time, and immediately on his return had to complete work on his thesis. Instead, by an application filed on 7 March 2007, he sought permission to apply

for judicial review of the Tribunal's decision, naming the Valuation Tribunal as defendant and Lewisham Council as an interested party.

7. On 28 September 2007, this matter came before Underhill J, who granted permission, indicating that:

"The application raises what appear (without the assistance of submissions from the defendants) to be arguable points about the application of para 4 of Schedule 1 to the 1992 order to PhD students. I do not find the reasons why the claim was brought out of time entirely satisfactory, but the delay was not very long and the issue presumably would have to be determined in any event if the Council brought recovery proceedings ..."

8. I turn next to the statutory scheme. The legislation governing liability to Council Tax is the Local Government Finance Act 1992. Section 11 provides, so far as material:

"11. Discounts

(1) The amount of council tax payable in respect of any chargeable dwelling and any day shall be subject to a discount equal to the appropriate percentage of that amount if on that day—

(a) there is only one resident of the dwelling and he does not fall to be disregarded for the purposes of discount..."

9. Paragraph 4 of Schedule 1 to the 1992 Act provides:

"(1) A person shall be disregarded for the purposes of discount on a particular day if—

(a) on the day he is a student...

(b) such conditions as may be prescribed by order made by the Secretary of State are fulfilled."

10. The relevant regulations are the Council Tax (Discount Disregards) Order 1992. Regulation 4 of that order provides, so far as is material, as follows:

"4. For the purposes of paragraph 4 of Schedule 1 to the Act—

...

'student' means a person, other than a student nurse for the purposes of paragraph 4 of Schedule 1 to the Act who is to be regarded as—

...

(b) a person undertaking a full time course of education, by paragraphs 3 and 4 of that Schedule ..."

11. Paragraph 4 of Schedule 1 is in the following terms, and this is critical to this case:

"(1) A full-time course of education is, subject to subparagraphs (2) and (3) [which do not apply here], one-

(a) which subsists for at least one academic year of the educational establishment concerned or, in the case of an educational establishment which does not have academic years, for at least one calendar year;

(b) which persons undertaking it are normally required by the educational establishment concerned to attend (whether at premises of the establishment or otherwise) for periods of at least 24 weeks in each academic or calendar year (as the case may be) during which it subsists, and

(c) the nature of which is such that a person undertaking it would normally require to undertake periods of study, tuition or work experience which together amount in each such academic or calendar year to an average of at least 21 hours a week during the periods of attendance mentioned in paragraph (b) above in the year."

12. I turn next to the issues. Essentially three issues arise on this judicial review. First, is Mr Fayad to be denied relief in these proceedings because he has commenced judicial review proceedings rather than pursuing a statutory appeal under Regulation 51? Second, on the merits of the challenge, did the Tribunal fall into error of law in failing in effect to follow the AIT in recognising Mr Fayad as a student? Third, did the Tribunal err when it held that "Mr Fayad's course does not meet the criteria for student exemption under the CT legislation". I deal with each of those points in turn.

13. First, the nature of the challenge. It seems to me clear that Miss Henderson, who appears for Lewisham, is entirely correct when she says that this case should have been brought by appeal under Regulation 51. Judicial review is a remedy of last resort, and if there is available a statutory route to challenge a decision, the claimant should exercise it. Furthermore, the time limit for an appeal is four weeks, whereas judicial review has to be commenced as soon as reasonably practicable, and in any event within three months. A judicial review should not ordinarily be entertained when it is used to avoid a statutory time limit.

14. In addition, judicial review provides discretionary remedies, and a failure to exhaust all alternative remedies will often lead to a refusal of relief. However, Mr Fayad is a litigant in person, who has done his very best, in my judgment, to master the procedure and present his case properly. He has the benefit of the grant of permission by Underhill J. The parties who in fact contest this judicial review, namely Mr Fayad and the interested party, Lewisham, would also have been the parties to an appeal. By both routes, the High Court would be asked to decide a point of law. The evidence would be identical in either case.

15. Miss Henderson concedes that I would have jurisdiction to consider the matter notwithstanding the procedural error in the way the matter comes before the court. If the procedure matters she also concedes, rightly in my view, I would have power to treat this as a statutory appeal and proceed today to consider it, if that were necessary. In those circumstances, I have decided to consider the challenge on its merits. If I were to decide that Mr Fayad's challenge is sound, I will turn to address the exercise of discretion which this first issue would then require.
16. The second matter concerns the relevance of the AIT ruling. In my view, this issue can be disposed of quite shortly. Whilst I readily understand Mr Fayad's frustration that he should succeed in persuading the AIT that he is a bona fide student entitled to leave to remain, but then fail before the Valuation Tribunal, in my judgment the former has little relevance as a matter of law to the latter. Mr Fayad's difficulty is that the two Tribunals were addressing different questions against different statutory backgrounds. The AIT was concerned with the application of rules 57 and 60 of the Immigration Rules, and those rules are framed in very different terms to the Discount Disregards Order.
17. In my judgment, success in bringing himself within the Immigration Rules does not assist in answering the question whether he falls within the Discount Disregard provisions. In those circumstances, I see no error of law in the Tribunal's ruling to the effect that it was-

"... satisfied that any decision made by the Home Office under Immigration rules ... does not include or fall under the jurisdiction of this Tribunal or the Council Tax legislation. Immigration rules and regulations are completely different to Council Tax rules and regulations."
18. I turn finally to what in truth is the substance of this case, namely the meaning of "full-time course of education" in paragraph 4 of Schedule 1 to the 1992 Order. I have already set out the terms of that paragraph. Mr Fayad contends that his PhD course was full-time. In the period after September 2003, he devoted himself to the writing-up of his doctoral thesis, a task which must have taken him very many hours of hard work. He refers to letters from Lewisham, which he says misstate the requirements of paragraph 4. In particular, he refers to a letter dated 10 May 2006 which says this:

"To qualify for a discount or exemption you must attend a full-time course of education for a minimum of one academic or calendar year. Your course must be for at least 24 weeks with 21 hours of tuition or organised study each week."
19. He says the reference to 21 hours of tuition or organised study each week is a wholly inaccurate paraphrase of paragraph 4, which has no requirement for organised study. In my view, he is right about that. He says he was enrolled at ICL, and any suggestion that he has to be registered is erroneous. I think he is right about that as well. He says his was a research task, that writing up his thesis did not necessitate his physical attendance at the College for any particular number of hours. He concedes that attendance at the College was not a strict requirement of his course, but points to

paragraphs 2.6 to 2.8 of Imperial College's rules, which he says applied to him throughout. In particular, he relies on rule 2.6, which says:

"Attendance at taught courses is strongly encouraged at Imperial College and all students are urged to take the opportunity to follow appropriate courses, on the advice of their supervisor, so as to consolidate and/or broaden background knowledge."

20. In the light of these observations, he says that the Valuation Tribunal's decision is unsustainable. The Valuation Tribunal concluded on this point that it was satisfied that:

"... the Council Tax legislation is very clear that the student should be regarded as undertaking a full-time course of education and to attend for periods of at least 24 weeks in each academic or calendar year and would normally require to undertake periods of study, tuition or work experience which together amount in each such academic or calendar year to an average of at least 21 hours a week.

The Tribunal is also aware that Mr Fayad had stated that his course was not structured tuition of 21 hours a week.

When considering all of the evidence the Tribunal is satisfied that from the period in question, 1 October 2003 to 31 March 2007, Mr Fayad's course does not meet the criteria for student exemption under the Council Tax legislation."

21. Miss Henderson subjected paragraph 4 to close analysis. She emphasised the wording in sub-paragraph (b) that a full-time course of education is one which persons undertaking it are normally required by the education establishment concerned to attend, whether at premises of the establishment or otherwise, for periods of at least 24 weeks a year. She was prepared to contemplate the possibility that the word "attend" in sub-paragraph (b) meant "give their attention to", but she said that that did not fit with the scheme of the paragraph when read as a whole.
22. Having given this point some anxious scrutiny, I have come to the conclusion that Miss Henderson is right about that. Whilst she was acting entirely properly in conceding, against her client's interest, that "attend" might mean something other than physically attend, I have no doubt that it does indeed mean physically attend. The words "to attend" are followed in parenthesis by the words "whether at premises of the establishment or otherwise". The use of the words "or otherwise" just about make possible Miss Henderson's alternative construction, but the only natural reading of these words indicates a provision that students are normally required to attend at some identified place.
23. The purpose of this paragraph is to define full-time education. As Miss Henderson points out, for our purposes there are two essential elements to that definition: first, the paragraph (b) requirement to attend for a prescribed number of weeks; and second, the paragraph (c) requirement to undertake periods of study, tuition or work experience for

an average of 21 hours a week during the periods of attendance mentioned in (b). If attendance in sub-paragraph (b) meant "give their attention to", it would be surprising in the extreme if there were then a separate discrete condition as to the activities to be carried out during that period of "attendance".

24. I am wholly satisfied that sub-paragraph (b) means that the College must normally require attendance of students on the material course at some identified place. Since, as Mr Fayad rightly concedes, he was not required to attend at a particular place when writing up his thesis, he is not, for the very special purposes of these provisions, to be regarded as engaged in a full-time course of education, and therefore cannot benefit from the discount arrangements.
25. Accordingly, the London Borough of Lewisham and the Valuation Tribunal were right to regard Mr Fayad as liable to pay Council Tax. In these circumstances, this application must fail, and it is not therefore necessary for me to consider whether I ought to exercise my discretion either to allow judicial review when an alternative remedy has not been pursued, or to treat this hearing as a hearing of a statutory appeal.
26. The challenge fails on its merits.
27. MISS HENDERSON: My Lord, may I make an observation about the issue of registration and enrolment, which did not form part of the ratio of your decision? I am conscious I did not draw your Lordship's attention to paragraph 3, and I do not know whether your Lordship had that in mind in that it does require a person -- it states:  

"A person is to be regarded as undertaking a full time course of education on a particular day if—

(a) on the day he is enrolled for the purpose of attending such a course ..."
28. I do not know if that affects --
29. THE DEPUTY JUDGE: It certainly does not affect my decision.
30. MISS HENDERSON: You said that Mr Fayad rightly says any suggestion that he has to be registered is erroneous, and you said he is right about that.
31. THE DEPUTY JUDGE: What you have pointed out to me would confirm it, would it not?
32. MISS HENDERSON: It states that he has to be enrolled.
33. THE DEPUTY JUDGE: Not registered.
34. MISS HENDERSON: Indeed, but we did not have argument in that area -- the meaning of enrolment or registration.



35. THE DEPUTY JUDGE: You are quite right, I did not. What you have just pointed out to me does not change my view as to what I expressed. In fact, it rather confirms what I said. But, as you rightly say, it was not part of the essential reasoning of this judgment anyway, but thank you for pointing it out.
36. MISS HENDERSON: I do have an application for costs. A costs schedule has been served on Mr Fayad, albeit I think it was only yesterday that he would have received that.
37. THE DEPUTY JUDGE: I think I have seen that. Is it somewhere in your bundle?
38. MISS HENDERSON: It is not. It was prepared recently and I have a copy that I can hand up.
39. THE DEPUTY JUDGE: Perhaps you could hand it up, please. Who is Angelee Agarwal? Is that the lady behind you?
40. MISS HENDERSON: She is the solicitor sitting behind.
41. THE DEPUTY JUDGE: Yes. How do you put your submission, Miss Henderson?
42. MISS HENDERSON: Simply I ask that costs follow the event.
43. THE DEPUTY JUDGE: And you ask for costs in the total sum of £4,643.90?
44. MISS HENDERSON: My Lord, yes.
45. THE DEPUTY JUDGE: What do you say about this, Mr Fayad? You have lost, I am afraid, and now they are asking for their costs again you, and they are asking for costs which they invite me to assess summarily. I understand that is what you are doing?
46. MISS HENDERSON: My Lord, yes.
47. THE DEPUTY JUDGE: They ask me to assess that summarily, and the sum that they ask for is £4,600-odd. What do you say?
48. CLAIMANT: Let me be clear about this. You accepted this as a judicial review and your judgment is that this judicial review has failed. Am I allowed to appeal against this?
49. THE DEPUTY JUDGE: You certainly are. Your appeal would be to the Court of Appeal, and you would need, first of all, to ask for my permission to appeal. If I were to refuse you permission to appeal, you could ask the Court of Appeal for permission to appeal. Miss Henderson, that is right, is it not?
50. MISS HENDERSON: My Lord, yes.
51. THE DEPUTY JUDGE: So if you want to appeal this you need permission either from me or from the Court of Appeal. If you want it from me, you have to ask for it. Do I take it you are asking for it?

52. CLAIMANT: If I decide to, am I allowed to appeal?
53. THE DEPUTY JUDGE: It is not for me to advise you what to do, Mr Fayad, but I do not think anybody will tell me off if I said if you are even contemplating the possibility of an appeal, it would be prudent for you to ask me now for permission, because if you do not ask me now for it, you are going to have to come back to me to ask at some other time, and frankly the amount of time it would take me to deal with an application for permission to appeal this afternoon is a matter of minutes, and if we are all here you might as well do it now and it will cost nothing. If you have to come back on another time to do it, it will cost a lot of money. So do you make that application now?
54. CLAIMANT: Yes, my Lord.
55. THE DEPUTY JUDGE: Thank you for making that application. I am not going to give you permission to appeal. I am of the view that whilst you are perfectly entitled to seek to pursue an appeal, I do not see any realistic prospects of success. So I am declining your application for permission. If you want to pursue it further, you need to make an application initially in writing to the Court of Appeal.
56. CLAIMANT: Thank you, my Lord.
57. THE DEPUTY JUDGE: You need now to address the application that is made by the Council against you for costs in -- whatever the figure was, £4,600-odd. What do you say about that? What they say is that they have won and costs normally go to the winner. So you tell me what you want to say about it. How much was at stake? Can somebody tell me how much was at stake in this case?
58. CLAIMANT: £2,017.50.
59. THE DEPUTY JUDGE: Well, the costs are rather more than double the amount at stake. What do you say about it? You say it is an awful lot of money, no doubt.
60. CLAIMANT: I think it is unfair. I was pursuing a full-time PhD course, but you have decided that the Valuation Tribunal was right in its judgment.
61. THE DEPUTY JUDGE: Yes, and the question is why, in those circumstances, should Lewisham pay their costs rather than you, and if it is you, how much of their costs should you pay? So why do you say that you should not pay their costs first of all?
62. CLAIMANT: Because in the first place I provided evidence that shows I was doing a full-time PhD course. The whole purpose of my presence in this country was to pursue research, and that was what I was doing.
63. THE DEPUTY JUDGE: All right, and if I were to be against you on that and say that you have to pay some costs, what do you say about the amount they are asking for?
64. CLAIMANT: I would say that, in that case, I have been paying the Council Tax arrears. I can continue with this and Lewisham Council can absorb the costs of these proceedings.

65. THE DEPUTY JUDGE: Thank you. Miss Henderson, anything in response?
66. MISS HENDERSON: No, my Lord.
67. THE DEPUTY JUDGE: I am going make an order of costs against the applicant, Mr Fayad, and I am going to assess those costs in the sum of £2,500. I will give reasons for that if I am asked to, but I am not much minded to unless you invite me to, Miss Henderson.
68. MISS HENDERSON: No, my Lord.
69. THE DEPUTY JUDGE: So I am not ordering you to pay the full amount of costs, but I am ordering you to pay £2,500 in costs. It will be a matter for you to speak to Lewisham as to how that is to be paid, but that is the order I make.
70. Is there anything else this afternoon, either Mr Fayad or Miss Henderson?
71. MISS HENDERSON: No, my Lord.
72. CLAIMANT: Thank you, my Lord. Is it possible to ask for a copy of the proceedings and of the judgment?
73. THE DEPUTY JUDGE: After I have risen, you have a word with the shorthand writer, and he will tell you how to get hold of a transcript of the judgment. You will not get a transcript of the proceedings as a whole because they are not transcribed.
74. CLAIMANT: Thank you.