

## Student exemptions from council tax (Jagoo v Bristol City Council)

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**Local Government analysis: How did the court determine that a student's individual circumstances while pursuing a course of study did not qualify her for an exemption from council tax? Chris Milsom, barrister at Cloisters, explains the background to the Jagoo v Bristol City Council and the implications of the appeal judgment.**

### Original news

*Jagoo v Bristol City Council* [[2017\] EWHC 926 \(Admin\)](#), [[2017\] All ER \(D\) 06 \(May\)](#)

*The Administrative Court, in dismissing the appellant's appeal, held that in determining whether the fiscal advantage of an exemption from council tax should be afforded to a student, attention should be directed to the normal requirements of the course which the student was undertaking and not the study undertaken by an individual student. Accordingly, the appellant had been unable to bring herself within the definition of a person undertaking a full-time course of education because her studies required additional hours due to her dyslexia.*

### What is the background to this case?

J is a student undertaking an MPhil in education with core expected study of 20 hours per week. Her University classified this as a part-time course. She has dyslexia such that she is to be treated, as a matter of common ground, as disabled for the purpose of [section 6](#) of the Equality Act 2010 ([EqA 2010](#)). As a result of her dyslexia her studies take longer and made full use of additional hours of proof-reading and one-to-one support provided by the University by way of reasonable adjustments to alleviate the effects of her condition. While she was not compelled to make use of the additional hours of support in practice she had to in order to complete her studies and bridge the gap between herself and her non-dyslexic peers.

When Bristol City Council (BCC) sought payment of council tax as the Billing Authority, J asserted that she was eligible for an exemption from payment of council tax as a person undertaking a 'full-time course of education' by reference to paragraph 4(1), Schedule 1 to the Council Tax (Discount Disregards) Order 1992, [SI 1992/548](#) (Council Tax Order 1992). A full-time course is defined as one subsisting for at least one academic year and one:

'[...] which persons undertaking it are normally required by the educational establishment concerned to undertake periods of study, tuition or work experience (whether at premises of the establishment or otherwise) (i) of at least 24 weeks in each academic or calendar year (as the case may be) during which it subsists, and (ii) which together amount in each academic year to an average of at least 21 hours a week.'

While aspects of the facts were unclear, J's case was taken at face value, namely that her course lasted at least one year, spanned at least 24 weeks and that were hours afforded by way of reasonable adjustments included she would exceed the 21-hours threshold. The fundamental question was one of statutory construction—should those hours be included as those 'which persons undertaking it are normally required by the educational establishment...to undertake?' Both BCC and the Valuation Tribunal for England (VTE) concluded that those hours should not be included and that therefore J was ineligible for the student exemption. She appealed to the Administrative Court.

### What were the arguments before the court?

J contended that the additional hours she was in fact required to undertake put her in a legally distinct position to other students on the course. Excluding those hours would contravene the protection against discrimination found in both [EqA 2010](#) and Article 14 ECHR, it being accepted that issues of tax engaged the right to freedom as regards possessions found in Article 1 ECHR Optional Protocol. An interpretation of Council Tax Order 1992, para 4(1) Schedule 1 which gave effect to the needs of disabled persons in education was required by the ECHR, EU Directive, EU Charter on Fundamental Rights and the UN Convention on the Rights of Persons with Disabilities. Moreover, such a reading did not 'go against the grain' of the legislation in that Parliament should be taken to intend that disabled students who were in

practice required to undertake additional hours of study are students sufficiently devoted to study that they exceed the 21-hour threshold.

By contrast, BCC contended that the Council Tax Order 1992 was clear, unequivocal and required bright lines as a matter of practice. While J was entitled to receive additional support from the University, she was not required to make use of it. It relied upon a number of decisions from the Upper Tribunal including *R (Feller) v Cambridge City Council* [2011] EWHC 1252, [\[2011\] All ER \(D\) 349 \(Mar\)](#) and *R (Hakeem) v London Borough of Enfield* [2013] EWHC 1026, [\[2013\] All ER \(D\) 177 \(Jan\)](#), which supported a distinction both between requirements (which pertained to the course itself) and recommendations or the practices of the individual student. Finally it was argued that the interpretative obligation simply did not arise in the absence of proven discrimination under the [EqA 2010](#) by either BCC or the VTE.

### **What did the court decide?**

The court largely adopted the approach of the Billing Authority at para [33]:

‘The focus must be on the study normally required of persons enrolled on the relevant course and not on the study in fact undertaken by an individual student enrolled on that course.’

While there may be instances in which sub-groups of students could be subject to additional requirement such as those who had failed to attain a particular diploma, the particular case engaged no such sub-group. Such a reading had the advantage of ease in practical application both for a Billing Authority and for the VTE:

‘To shift the focus from the normal requirements of the course to the circumstances of an individual student would require a time-consuming and potentially contentious enquiry in relation to every claim for a student exemption. It would moreover risk favouring the student who was slow in his work (for example because of a want of aptitude for the subject or because he did not speak English as his first language) and penalising the able student who was able to complete the required work in less time than the education establishment expected... (T)here is no relevant difference between the Appellant, who is entitled to support which increases the number of hours per week which she devotes to her course, and—for example—a foreign student who is granted an entitlement to attend weekly English language lessons in order to bring his command of the language up to a level commensurate with the requirements of the course.’

The interpretative obligation was not engaged—the reason J was ineligible was because she was registered on a part-time course and not because she was disabled. To the extent that it was engaged, it would go against the grain of the legislation to require a detailed enquiry into every claim for a student exemption in which the educational establishment’s certificate would form only a small part of what would have to be considered. Consequently, J could not avail herself of the student exemption.

### **What are the implications of this decision? To what extent is the judgment helpful in clarifying the law in this area?**

There is some prospect of the judgment being appealed and so any wider commentary must be considered with that caveat. Should the judgment serve as the last word it will be welcomed by both the VTE and Billing Authorities. The University certificate will, in most cases, prove definitive subject to any inherent features of the course which lead to a sub-group of students. By contrast, students who may fall within protected classes of persons under discrimination provisions (including not only the disabled but also foreign students unable to speak fluent English) will be unable to point to features which lead to additional hours of study or tuition to increase the core required hours.

### **Are there still any unresolved issues practitioners will need to watch out for? If so, how can they avoid any potential pitfalls?**

In addition to the determination of the law the case illustrated the difficulties in establishing ‘required hours’ in the context of postgraduate education which is not typically driven by a strict timetable of lectures and seminars. Practitioners seeking to assist those who argue for an exemption are advised to consider in advance what disclosure may be available from educational establishments. As to unresolved issues of principle, time will tell what—if anything—the Court of Appeal has to say on the nuanced issues at stake for disabled and non-British students.

*Interviewed by Alex Heshmaty.*

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