

Neutral Citation Number: [2025] EWHC 2380 (Admin)

Claim No: AC-2025-MAN-000188

**IN THE HIGH COURT OF JUSTICE
KING’S BENCH DIVISION
ADMINISTRATIVE COURT
SITTING IN MANCHESTER**

Manchester Civil Justice Centre,
1 Bridge Street West,
Manchester
M60 9DJ

BETWEEN:

THE KING

on the application of

(1) LL

(2) AU

Claimants

-and-

**TRAFFORD METROPOLITAN
BOROUGH COUNCIL**

Defendant

MR TOM ROYSTON and MR JACK CASTLE instructed by **LEIGH DAY** for the Claimants

MR BEN DYLAN WILLIAMS instructed by **IN HOUSE SOLICITORS** for the Defendant

Hearing dates: 24, 25 July 2025

JUDGMENT

This judgment was handed down remotely at 10am on 19 September 2025 by circulation to the parties or their representatives by email and by release to the National Archive,

HIS HONOUR JUDGE PEARCE

INTRODUCTION

1. The Defendant is the billing authority responsible for the setting and collecting of council tax in the Trafford district of Greater Manchester pursuant to the Local Government Finance Act 1990 (“the 1990 Act”). The Claimants¹ are both Trafford residents who are liable to pay council tax to the Defendant.
2. As part of its duties as billing authority, the Defendant is obliged to operate a Council Tax Reduction Scheme. In 2025, the Defendant sought to adopt a new Scheme for working aged people (the ‘Working age Local Council Tax Reduction Scheme for 2025-2026’, otherwise called “the Scheme” in this judgment). It is the adoption (or purported adoption) of the Scheme, together with its operation for certain people in receipt of state benefits or private pension income, which is under challenge.
3. Until 2025, the Claimants had both received 100% reduction to their council tax bills. In March 2025, they each received full council tax bills with no reduction as a result of the changes brought about by the Scheme. They seek judicial review of the Defendant’s determination (or alleged determination) to adopt the Scheme.
4. The Claimants sought expedition in dealing with the claim. I made an order on 30 May 2025 listing the Application for Permission at a “rolled up” hearing in which the substantive merits of the Claim would be considered if permission was granted. In the event, as is usually the case in such hearings, the focus was on the merits of the challenge, not on whether permission should be granted, it being taken as read that if the Claimants were able to make out their grounds of challenge on the merits, permission would be granted without further consideration.

THE GROUNDS OF CHALLENGE

5. The Claimants argue two grounds of challenge to the Scheme:
 - 5.1. Ground 1 – since the Defendant has not adopted the Scheme in full Council, it is invalid;
 - 5.2. Ground 2 – the Scheme contains a design error in that certain income is in effect double counted. In consequence, the Claimants argue that the Scheme:

¹ The terms applicant or claimant are used both in the legal context for the person bringing this claim and in the benefits context for the person seeking relief from liability to pay Council Tax. To try to avoid confusion, I refer to the persons bringing the claim as “Claimants” and persons seeking benefits as “claimants” (underlying added for clarity here).

- (a) Fails to comply with the Defendant's obligation to enact only rational policy - "the Rationality Challenge;"
 - (b) Fails to ensure that the Defendant complies with Section 149 of the Equality Act 2010 - "the Public Sector Equality Duty Challenge;"
 - (c) Causes the Defendant to be acting in a discriminatory fashion, contrary to its obligations under Section 29 of the Equality Act 2010 - "the Equality Act Discrimination Challenge;"
 - (d) Causes the Defendant to be acting in a discriminatory fashion, contrary to its obligations under the Human Rights Act 1998 - "the Human Rights Act Discrimination Challenge."
6. The Defendant asserts that the Scheme was lawfully adopted and that there is no error in the Scheme but that the error lies in the software used to calculate figures under the Scheme. It has also raised three other grounds for refusing permission:
- 6.1. An argument as to the availability of an alternative remedy, namely the Defendant's discretionary Council Tax Reduction policy. This argument was pursued at the hearing in July 2025.
 - 6.2. An argument that the Claim was academic in light of the exercise of the grant of discretionary relief to the Claimants under the policy. Again this argument was pursued by the Defendant.
 - 6.3. Delay in bringing the claim. This was not pursued.

THE APPLICATION

7. The hearing took place on 24 and 25 July 2025. The Claimants relied on witness statements from themselves (LL's being dated 19 April 2025 and 10 July 2025, AU's being dated 19 April 2025) and from Ms Carolin Ott, a solicitor, dated 16 June 2025. The Defendant relies on a statement from Mr Malcolm Gardner, the Managing Director of Visionary Network Ltd, a company which advised the Defendant on the Scheme (dated 7 May 2025); four from Louise Shaw, the Defendant's Head of Exchequer Services (dated 7 May 2025, 4 June 2025, and two dated 24 July 2025); and one from Ms Dominique Sykes, a Solicitor employed by the Defendant, dated 12 May 2025.

THE LAW – COUNCIL TAX REDUCTION SCHEMES

8. Until 2012, the position of those whose income was such that they could not afford to pay Council Tax was dealt with through two routes:
- 8.1. A national system of Council Tax Benefit;

- 8.2. The discretion under Section 13A of the Local Government Finance Act 1992 (“the 1992 Act”) introduced by the Local Government Act 2003.
9. However in 2013, the system of dealing with this issue changed. Council Tax Benefit was abolished, and Section 13A was superseded by a new legislative obligation requiring Billing authorities in England to make a scheme (a “Council Tax Reduction² Scheme”) specifying a reduction which applies to the amount of council tax payable in respect of residents situated in its area by either (a) persons whom the authority considers to be in financial need or (b) persons in classes whom the authority considers in general to be in financial need – see the new Section 13A of the Local Government Finance Act 1992. A person’s liability for Council Tax must be reduced to the extent prescribed by the billing authority’s Council Tax Reduction Scheme - see section 13A(1)(a) of the 1992 Act. A billing authority also has a discretion to reduce individuals’ liability to such extent it thinks fit, under section 13A(1)(c) of the 1992 Act.
10. Schedule 1A of the 1992 Act and the Council Tax Reduction Schemes (Prescribed Requirements) (England) Regulations 2012 prescribe certain requirements of such schemes. At Schedule 1A [2], it is provided that such schemes must state the classes of person entitled to a reduction, which may be determined in particular by reference to income and number of dependents. A scheme must set out the reduction to which persons in each class are to be entitled; different reductions may be established for different classes.
11. Section 67 of the 1992 Act provides that the functions mentioned in that section “*shall be discharged only by the authority.*” The functions mentioned include “*making or revising a council tax reduction scheme under Section 13A(2).*” Accordingly, it is common ground that the Defendant’s Executive Committee (which comprises the leader of the Council and nine other councillors who hold executive portfolios) did not have the power to adopt the Scheme.
12. Schedule 1A to the 1992 Act also contains, at paragraph 4, a Default Scheme which would apply in the event that a Billing Authority had never adopted a Scheme under that Schedule and at paragraph 5 provisions requiring a billing authority to consider for each financial year whether to revise or replace its scheme. It is common ground that once a scheme has been adopted (as has historically happened in the Defendant’s area), it continues in effect until it is revised or replaced. It follows that, if the decision to approve the Scheme is quashed in this court, entitlement to Council Tax Reduction will revert to that which was in place in the previous financial year.

² Often abbreviated to “CTR”

THE DETAILS OF THE SCHEME INTRODUCED BY THE DEFENDANT IN 2015

13. The Scheme involves the means-testing of the income of a claimant's income with a reduction in Council Tax of 100%, 75%, 50%, 25% or 0% depending on which income 'band' their household falls into. The bands are:

Band	Discount (%)	Single (weekly income)	Couple weekly income)	1 Child (Weekly income)	2 Child (Weekly income)
1	100%	£93 or less	£145 or less	£224 or less	£291 or less
2	75%	£93.01 to £111	£145.01 to £171	£224.01 to £253	£291.01 to £320
3	50%	£111.01 to £129	£171.01 to £196	£253.01 to £281	£320.01 to £349
4	25%	£129.01 to £147	£196.01 to £221	£281.01 to £310	£349.01 to £378
5	0%	£147.01+	£221.01+	£310.01+	£378.01+

14. If a family is in receipt of Universal Credit³, for the purpose of the Scheme, household income is calculated by taking the Universal Credit received by the household, *'limited to the standard allowance for the applicant's household, plus any extra amounts for children'*. The scheme expressly excludes from the amount of Universal Credit taken into account *"the following elements: housing costs, limited capacity for work, carer, disabled child, childcare and any amount for transitional protection."* together with the other unearned income, for example Carer's Allowance, occupational pension, or contributions-based Employment Support Allowance, unless specifically disregarded.
15. The 2025-26 'standard allowance' in Universal Credit is, for those aged 25 or over, £92.34 per week for a single person and £144.94 per week for a couple. The Scheme's income bands provide that a household in receipt only of that standard allowance will be in Band 1, entitled to 100% support. That makes sense since the standard allowance is calculated by what is said to be the minimum amount a person is ever expected to live on – if a person had to pay Council Tax from that figure, they would be expected to live on a figure below that minimum.
16. A person in receipt of Universal Credit may be entitled to additional elements depending on their circumstances, for example in addition to the standard allowance, they may receive a health element (£97.68 per week), a carer element (£46.54 per week), a housing costs element or a childcare costs element (both of which are variable) – see Regulation 36 of the Universal Credit

³ Abbreviated in some cited text to "UC."

Regulations 2013. This reflects the fact that these elements are paid to reflect the additional costs because of the person's needs or responsibilities to which they relate and disregards them in the calculation of income for the purpose of the Scheme.

17. It is possible that a person in receipt of Universal Credit may also be in receipt of other income, for example social security benefits such as carer's allowance (as in the case of AU), or, as in the case of LL, a private occupational pension. Such income is treated as part of deemed income for the purposes of the Scheme and therefore counts as part of the claimant's income for determining the banding for Council Tax Reduction. However, that income may also affect a person's entitlement to Universal Credit, reducing the amount that they actually receive.
18. The Claimants suppose the case of two people, A and B, living within the Defendant's area and paying Council Tax to the Defendant. A and B have the same health needs but a different occupational benefits history:
 - 18.1. A's only source of income is Universal Credit. This is £190.02 per week, comprising the standard allowance of £92.34 per week and the health element of £97.68 per week. Since the health element is not included in the calculation, A's Deemed Income for the Scheme will be the standard allowance only, that is £92.34. Under the Scheme, A will be in Band 1, entitled to 100% Council Tax reduction and accordingly none of the figure of £190.02 that A receives by way of Universal Credit will need to be spent on Council Tax, reflecting the fact that this figure is calculated by reference to the minimum amount need to meet A's needs.
 - 18.2. B is also entitled to Universal Credit, including the health element. However, B is in receipt of an occupational disability pension of £100 per week. But for the pension, B would be entitled to the same figure of Universal Credit as A, £190.02 per week. However, under the Universal Credit provisions, B's pension is deducted in the calculation of Universal Credit so that B receives only £90.02 per week. B's Deemed Income for the purpose of the Defendant's Council Tax Reduction Scheme will be the Universal Credit of £90.02 per week plus the occupational pension of £100 per week, a total of £190.02 per week. Accordingly, under the Scheme B will be in band 5 receiving no Council Tax reduction. Although B's needs are the same as A's, B will have to meet the liability for Council tax from the same income that is considered to be the minimum amount necessary to meet the needs of someone whose only entitlement to benefit is by way of Universal Credit.
19. In B's case, there is an element of what the Claimants call double counting, in that the disability pension acts both to reduce actual income but to increase deemed income. It is right that it should

be counted once, since it is money that is available for B's needs, but to count it twice penalises B in a manner which the Claimants contend is unlawful and irrational.

20. The Defendant accepts that there is a flaw in the Scheme by way of double counting, which it attributes to the software programme which is used to calculate the appropriate reduction. As it is put at [27] in the Summary Grounds of Resistance, "*the current software parameters are unable to disregard all of the elements of UC that are intended to be disregarded, in particular where the net UC allowance is less than the total sum of the disregarded elements. This has been identified as being specific to customers who receive contributory based benefits and/or other income than their UC. The DWP combine this other income in their calculation of UC entitlement.*"
21. An amendment to the software has been requested but for the moment, the Defendant deals with this issue by the exercise of discretionary relief in the case of LL. In the case of AU, she has been granted full Council Tax Reduction. On the Defendant's case, this is because she is entitled to it under the Scheme. The Claimants argue that in fact she is not entitled to full relief on the terms of the scheme and that in reality her reduction is therefore partly an exercise of the power to give discretionary relief. I shall return to this when considering Ground 2.
22. It should be noted that the Claimants do not accept the Defendant's argument that the only flaw lies in the operation of the software – they contend that the problems is illustrated by the hypothetical cases of A and B and the actual circumstances of LL and AU are inherent in the Scheme itself.

ADOPTION OF THE SCHEME

23. The Defendant's evidence on the adoption of the Scheme is set out in the witness statement of Ms Sykes and documents referred to therein. She states that responsibility for drafting Council Tax Reduction schemes for consideration and imposition by the Council rests with Trafford Council's Exchequer Services Department. The process would involve the Defendant engaging in public consultation, carrying out an equality impact assessment and benchmarking exercise, obtaining expert advice then drafting a scheme. The draft scheme would be presented to the Defendant's Executive Committee for consideration. Once the draft was finalised it would be put to the Executive Committee for approval at its budget meeting and, if approved, put to the full Council at its budget meeting.
24. On this occasion, what Ms Sykes calls the "*usual budget setting process*" (which I take to be the process referred to in the previous paragraph) was followed.
 - 24.1. On 7 October 2024, an informal briefing meeting was held with Executive Committee members and relevant officers at which detail was provided as to forthcoming draft budget proposals.

- 24.2. The Executive Committee met on 21 October 2024, reports having been circulated in advance to all elected members of the Council (not just members of the Executive Committee). Members were informed of proposed amendments to the Council Tax reduction scheme and the period for consultation. That Executive committee meeting on 21 October 2024 was broadcast live and the detailed report was circulated to all members.
- 24.3. Public consultation then ran from 30 October 2024 to 19 November 2024. The Defendant's website, in inviting views on the proposed changes, stated, "*The outcome of the consultation and proposed final scheme will be presented at the Executive Committee Meeting in December 2024 for a final decision.*"
- 24.4. The Council's Scrutiny Committee met on 6 November 2024 at which members had the opportunity to ask questions. Further, there was an informal briefing meeting with Executive Committee members on 2 December 2024 at which the members of that Committee received a briefing as to the detail of forthcoming final draft budget proposals.
- 24.5. On 25 November 2024, Ms Helen Machin, the Defendant's Assessments, Client Services and ASC Finance Manager and Ms Shaw signed off an Equality Impact Assessment relating to the proposed changes on the Council Tax Reduction Scheme. It stated that the effect of the proposed scheme for a person with a protected characteristic of disability was "neutral" and that "there are protected disability groups in the existing scheme and it is planned to keep those."
- 24.6. On 18 December 2024, the Council's Executive Committee met and considered amongst other matters, the final draft Scheme. Agenda papers were published on the Council's website on 10 December 2024 and circulated to all elected members. Those documents included a report on the proposed changes from the Executive Members for Housing and Advice and for Finance, Change and Governance, which was stated to have the purpose of providing "*final recommendations for the Council's Council Tax Support Scheme from 1 April 2025 of the Executive to consider*" and recommended that the Executive Committee "*approves the proposal contained in the report to change the Council's Council Tax Support working age scheme from 1 April 2025.*" The meeting of the Executive Committee was again broadcast live on YouTube and recorded. The minutes of the meeting on 18 December 2024 record that the Executive Committee resolved to approve the proposals. The decision to approve the Scheme was also recorded in a 'Statement of Executive Decision' dated 18 December 2024.

- 24.7. An informal budget briefing meeting for members of the Executive Committee was held on the 10th February 2025. Ms Sykes indicates that the briefing meeting provided an opportunity for elected members to consider draft reports, raise queries and seek any clarification needed.
- 24.8. The Executive Committee was due to meet on the 19th February 2025 before a Council Budget meeting due to be held on the same day. However those meetings were postponed until 3 March 2025 to allow more time for the publication of reports and to enable members to liaise with the Council's "S151 Officer"⁴ and to table amendments in accordance with the procedures established under the Council's constitution as set out in Dominique Sykes' statement at [22].
- 24.9. The agenda pack was published on the Council's website and was issued to all members of the Council on 13 February 2025. The details of the Scheme are set out at section 10.4.1 of the document titled 'Executive's Revenue Budget Proposals 2025/26 & 2026/27 - 2027/28 Medium Term Financial Strategy', ("the Medium Term Financial Strategy") where it says:

"Trafford has, following public consultation, changed its scheme from 1 April 2025 to make it a simpler scheme that is easier to understand and administer. It also will align to the Universal Credit system, which is now the main working age benefit as well as to other Greater Manchester schemes. The new scheme is a banded scheme and each financial year as part of the Council's annual budget setting process, the Council will be required to set the levels for the next financial year to ensure the costs align to the budget set aside for the CTS scheme."

At 10.4.2 of the Medium Term Financial Strategy, it is stated:

"The 2025/26 discount and provisional income bands are shown below. The final income bands will be confirmed once the scheme parameters have been set in order to remain within the CTSS budget allocation. Executive have been requested to note the provisional income bands, with final approval being delegated to the Director of Finance and Systems in consultation with the Executive Member for Finance, Change and Governance."

A pack of documents was provided to members of the Executive Committee for the purpose of the meeting. It does not include the Equality Impact Assessment.

⁴ The Defendant's officer responsible for making the necessary arrangements for local financial and management controls, under Section 151 of the Local Government Act 1972

- 24.10. The Executive Committee met again on 3 March 2025, in advance of the meeting of the full Council scheduled that evening. At the meeting, the Executive Member for Finance, Change and Governance and the Director of Finance and Systems and the Director of Finance and Systems recommended that the Executive Committee should in turn ‘recommend’ to the Council inter alia that it:

“Item (b) – approve the 2026/27 to 2027/28 Medium Term Financial Strategy Document

Item (i) – notes the provisional income bands set for Council Tax Support Scheme discounts (Section 10) and delegates approval of the final income bands to the Director of Finance and Systems, in consultation with the Executive Member for Finance, Change and Governance .”

The Executive Committee resolved to follow these recommendations.

- 24.11. The full Council met later on 3 March 2025 to consider budget matters. The meeting was broadcast live on YouTube. During the course of the meeting, the full Council debated a proposed amendment to the budget brought forward by Liberal Democrat members, requiring the exploration of community funds for each council ward. The minutes of the meeting record the following reference to Council Tax in respect of the 2025/2026 budget:

“Resolved

(1) That the Council

- (a) Approves the 2025/26 net Revenue Budget of £231.89 million.*
- (b) Approves the 2026/27 to 2027/28 Medium Term Financial Strategy (MTFS) including the income and savings proposals.*
- (c) Notes the continued arrangements in relation to an enhanced Finance and Change Programme and the role of the Finance and Change Board who will continue to work with the Executive on the development of sustainable budget plans to support the Council in meeting the financial challenges from 2026/27 onwards.*
- (d) Notes the arrangements to continue to lobby government for a localised and sector wide financial settlement which addresses the financial sustainability of the Council and Local Government.*
- (e) In order to balance the 2025/26 revenue budget, approves new borrowing up to the maximum value of the Capitalisation Direction*

from the Ministry of Housing, Communities and Local Government (MHCLG) of £9.6 million.

- (f) Approves the calculation of the Council Tax Requirement as summarised in Section 10.1 of the Revenue Budget Proposals report and the formal Council Tax Resolution set out at (4) below.*
- (g) Approves the proposal to increase Council Tax by 7.49% in 2025/26 consisting of:*
 - an increase in the 'relevant basic amount' in 2025/26 by 2.99%.*
 - an additional 2.5% agreed by MHCLG on 3 February 2025*
 - 2.00% for the 'Adult Social Care' precept in 2025/26.*
- (h) Notes the assumptions in the Medium-Term Financial Strategy to increase Council Tax by*
 - An increase in the 'relevant basic amount' of 1.99% in 2026/27 and 2027/28, and*
 - for the 'Adult Social Care' precept in 1% in 2026/27 and 2027/28.*
- (i) Notes the provisional income bands set for Council Tax Support Scheme discounts (Section 10 of the Revenue Budget Proposals report) and delegates approval of the final income bands to the Director of Finance and Systems, in consultation with the Executive Member for Finance, Change and Governance.*
- (j) Approves the planned application of earmarked reserves as detailed in Section 8 of the Revenue Budget Proposals report...."*

THE CIRCUMSTANCES OF THE CLAIMANTS

25. The First Claimant, LL is entitled to Contributory Employment Support Allowance because of her National Insurance payment history. Her work history qualifies her for a private occupational pension, which she gets early because of her ill health requirement. However her income is still so low that she qualifies for Universal Credit, the sole national means tested benefit for working age people. Nevertheless, her Universal Credit is reduced pound for pound by reason of her receipt of a private occupational pension and, consequently, she receives less Council Tax Reduction under the Scheme than would another person whose income was entirely Universal Credit and its associated additions. She is said to be disadvantaged under the Scheme by being granted a lesser reduction in Council Tax than another person whose actual income is the same as LL and as in identical circumstances in all respects other than that they were not receiving other income that reduces Universal Credit entitlement.

26. The Defendant's case is that LL was in contact with a welfare adviser from December 2024. She complained that the changes in her entitlement of Universal Credit, especially the move from her being entitled to Housing Benefit to receive the Housing Element of Universal Credit and her entitlement to an occupational pension mean that her Council Tax support fell to zero. In March 2025 she was awarded 50% reduction from her Council Tax liability and was then awarded full discretionary relief on the basis of her financial hardship for the year 2025-2026.
27. The Second Claimant, AU is her daughter's full time carer. Her main income is Universal Credit. She also gets a non means tested benefit, namely Carer's Allowance. Again the result of her receipt of Carer's Allowance is to reduce her entitlement to Universal Credit but nevertheless the full amount of the credit is taken into account in calculating her Deemed Income under the Scheme. If she were not claiming Carer's Allowance, her Universal Credit would increase by exactly the same amount but her Deemed Income would be capped by the amount of Universal Credit received. She too is said to be disadvantaged under the Scheme because she receives less Council Tax reduction than another person who receives the same actual income but whose Deemed Income would be less because of the cap on the amount of Universal Credit taken into account.
28. AU initially received a Council Tax bill for the year 2024/2025, stating that she had a Council Tax liability in the sum of £706.94. She contacted the Defendant in March 2025 asserting that a mistake had been made and subsequently her Council Tax Reduction was assessed at 100%. In her second statement of 24 July 2025 (served during the course of the hearing before me), Ms Shaw for the Defendant explains how this calculation is reached. In essence, the calculation is:

Monthly Universal Credit	£1,412.67	
Less		
Unearned income (carers allowance)	£354.90	
Net monthly universal credit	£1,057.77 =	£326 per week
Disregard		
Disabled Child element		£112.52 per week
Carers element		£45.76 per week
Net income for the Scheme		£167.72 per week

Since this figure is £224 or less, she falls in the band for a lone parent with one child and she gets full Council Tax Reduction under the Scheme.

29. However the Claimants have asserted that this is not a correct calculation of her entitlement under the Scheme. AU does not complain that she is in fact receiving what she says she should be entitled to as of right under the scheme, even if the Defendant has made an error. It is arguable

that were she the sole Claimant in this case, the proper determination of her entitlement under the Scheme would be a relevant issue since it might affect whether the relief sought (at least on Ground 2) ought to be granted if any adverse effects of the Scheme had been put right by the Defendant. However, it does not undermine her argument on Ground 1, nor affect LL's argument on Ground 2 to determine whether the Defendant has in fact erred in granting her full relief as of right. Accordingly I do not need to deal with this issue further.

30. In fact however, the calculation of AU's entitlement under the Scheme is clearly wrong. The Scheme provides for the income to be deemed to be the sum of the Standard Allowance and unearned income. Taking the figures above and accepting the Standard Allowance to be £90.80 per week (see page 71 of the Supplemental Bundle – I am not clear why this is a different figure than the figure of £92.34 referred to at paragraph 15 above), AU's income is the sum of that figure and the pro rata equivalent of the £354.90 per month received by way of unearned household income, that is £81.90 per week, a total of £172.70 per week. If the Standard Allowance should be higher, the income would be correspondingly increased. Even if all other elements of income are disregarded, the Defendant's calculation is wrong. The reason for this difference is not apparent and there may be something in the argument advanced on behalf of the Claimants that the error comes through making the calculation in a three stage rather than two stage process, but it concerns me that the Defendant is not able adequately to explain AU's entitlement and it is at least arguable that her Council Tax reduction is being assessed on the wrong factual basis.
31. Ultimately, both Claimants have been granted full relief from Council Tax (although in LL's case this relief is in part discretionary, and at least as the Claimants argue it, the relief in AU's case is partly discretionary). It would appear that there may have been a delay in their case being referred to the Defendant's Exchequer Services for reasons unrelated to the challenge to the Scheme. It is not necessary to explore this issue any further here.

GROUND 1

The Claimants' Case

32. The Claimants' starting position is the provision in Section 67 of the 1992 Act that the functions mentioned in that section "*shall be discharged only by the authority.*" These include the making or revising of a Council Tax Reduction scheme (see Section 67(2)(aa)). In *R (Buck) v Doncaster Metropolitan Borough Council* [2012] EWHC 2293, Hickinbottom J as he then was confirmed this interpretation of the 1992 Act. It follows from this that only the full council and not the Executive Committee alone was capable of authorising the Scheme.
33. The Claimants contend that it is apparent from the records of the various meetings that the decision to adopt the Scheme was purportedly taken not by the full Council but by its Executive Committee. This is apparent from the following:

- 33.1. The minutes of the Executive Committee meeting on 18 December 2024 and the Statement of Executive Decision following that meeting, both of which record the Executive Committee approving the proposed scheme – the document does not for example refer to the Executive Committee “*recommending*” the scheme but rather unambiguously refers to it being approved.
- 33.2. The Medium Term Financial Strategy presented to the meeting of the Executive Committee on 3 March 2025 in which it is stated, “*Trafford has, following public consultation, changed its scheme from 1 April 2025*” – the reference to the change having already taken place is unambiguous and inconsistent with the Defendant’s case that the decision was taken later by the full Council.
- 33.3. Conversely, the Executive Committee Meeting on 3 March 2025, resolved to make recommendations to the full Council that did not include that it approve the draft scheme – had the Executive Committee Council not considered that the scheme was already approved but that rather the decision to approve needed to be taken in full Council, there would have been a record to this effect.
- 33.4. The minutes of the full Council meeting on 3 March 2025, do not refer to the decision to adopt the Scheme, whether expressly mentioning that document or impliedly referring to in the context of some other decision. In particular, the approval of the Medium Term Financial Strategy could not be taken to be approval of the Scheme when that document itself refers to the Scheme as already having been approved.
34. Even if the court accepted that the full Council rather than the Executive Committee had taken the decision to adopt the Scheme, the Claimants contend that it is unarguable that the decision was taken by it without regard to the relevant material.
35. In so far as the quality of consideration by decision makers is concerned, the Claimants rely on the judgment of the Court of Appeal in *R (Stratford Taxis Ltd) v Stratford on Avon DC* [2011] EWCA Civ 160 at [11] where Sir Anthony May P giving the judgment of the court stated:

“Decision making bodies in the position of the cabinet here are not required to give personal detailed attention to every strand of fact and argument capable of bearing on the decision they are making. But they are required to have drawn to their attention the main lines of relevant debate... “

As this decision makes clear, the failure to place the main material relevant to the decision-making before the decision-maker (there the Council cabinet) and/or the failure of the decision-maker to consider it will be a significant procedural flaw which may vitiate the decision.

36. In this case, the matters to which the court would need to have regard are the statutory relevant considerations which are prescribed in the making of Council Tax Reduction Schemes. However, the full council was not presented with any of the information necessary to make a decision as to whether the proposed scheme complied with the obligation to enquire into the test of how the scheme dealt with those in financial need. The papers for the meeting on 3 March 2025 did not include details as to either the proposed method of calculating deemed income for the purposes of the Scheme, nor the final income bands that were to be applied. Without taking into account and evaluating those proposals, the full Council could not come to a determination about whether to adopt the Scheme which complied with the obligation referred to by Sir Anthony May in *Stratford Taxis*. There is no indication they did take such matters into account - on the contrary, they obviously did not.
37. The only way in which it might be argued that the Council had taken into account the relevant material would be by treating it as having ratified the decision of the Executive Committee to approve the Scheme. If it were open to a body in the position of the full Council to ratify the decisions of others in this way, it would be open to court to conclude that the Executive, in reaching its decision on approve to scheme, had had regard to the relevant material.
38. Whilst this might avoid the problem that flows (on the Claimants' argument) from the full Council's inability to make a lawful decision, given the lack of materials supplied to it, the ratification argument raises a different problem. If the decision could not be delegated because of the wording of Section 67 of the 1992 Act, it equally could not be taken simply by ratification of the decisions of the Executive Committee. As Denning LJ put it in *Barnard v National Dock Labour Board* [1953] 2 QB 19 at p. 40, dealing with the argument that, if the defendant in that case could not delegate a decision to a port manager, it could ratify a port manager's decision: "*if the board has no power to delegate their functions to the part manager, they can have no power to ratify what he has done. The effect of ratification is to make it equal to a prior command: but just as a prior command, in the shape of delegation, would be useless, so also is ratification.*"
39. The Defendant accepts that it could not rely on an argument that the full Council had ratified a decision of the Executive Committee and it is therefore unnecessary to consider this argument further.

The Defendant's case

40. The Defendant contends that the chronology above shows that "*members had significant opportunity and oversight of clear and detailed information as to the CTR scheme being considered*" (see Defendant's skeleton argument at [22]). The Scheme was lawfully adopted at the full Council meeting on 3 March 2025. As Ms Sykes puts it in her statement:

“[8] As part of its budget making process, full Council considers all budget proposals, including Council Tax Scheme proposals, together with any alternative budget proposals submitted in accordance with its constitutional rules, before it approves and adopts a budget for the following financial period...

[28] The full Council met at 19.00 on the 3rd March 2025...The budget proposal was put to the vote and subsequently carried.

[29] [The minutes of that meeting] “record at (1)(i) that: “Notes the provisional income bands set for Council Tax Support Scheme discounts (Section 10 of the Revenue Budget Proposals report) and delegates approval of the final income bands to the Director of Finance and Systems, in consultation with the Executive Member for Finance, Change and Governance.

30. In such circumstances the requirement that the Council Tax Support Scheme be made by the full Council was complied with.”

41. In submissions, the Defendant contends that it is clear that the members of the Council were provided with the material to give them a clear understanding as to what was contemplated in the Council Tax Reduction scheme, how the scheme was formulated and how it would operate. Further, it argues that it is clear that the full Council understood that it was required to approve the scheme. There is, says the Defendant, no evidence that the full council was of the mistaken belief that the Executive Committee had already made the decision to adopt the Scheme in December.
42. In so far as minutes of resolutions do not seem to support this position, the Defendant contends that the Claimant is placing too much reliance on specific wording, rather than the full picture presented to Council members. In particular:
 - 42.1. All Council members were provided with detailed paperwork in advance of the Executive Committee meeting in December and in advance of their own full council meeting in March.
 - 42.2. Meetings were routinely broadcast live and so all Council members had the opportunity to watch should they wish to.
 - 42.3. Council members had an opportunity to raise concerns or queries (as demonstrated by the debate on the amendment to the budget proposed by Liberal Democrat members).
43. Accordingly, the Defendant submits that council members were provided with the necessary information to make an informed decision. Indeed, the Defendant argues that maximum democratic accountability cannot in reality be achieved in a full council meeting that lasts less than 2 hours. What is required is what has happened here, namely the provision of material

throughout the process of considering and refining the policy, allowing Councillors to assess the Scheme in the most comprehensive way.

44. In respect of the Claimant's alternative argument of ratification, the Defendant makes clear that it is not its case that the full Council either could or in fact did ratify the decision of the Executive. The full Council had the necessary material to make the decision and, on the Defendant's case, it did so.

Discussion

45. The material set out above under the heading "Adoption of the Scheme" demonstrates that all Council members had available to them significant material about how it was proposed that the Scheme would operate. Whilst it is correct that the documents provided specially for the meeting on 3 March 2025 could not be sufficient to meet the *Stratford Taxis* test for the provision of the material which underlies the main lines of debate (because, for example, neither the proposed method of calculating deemed income for the purposes of the Scheme, nor the final income bands that were to be applied were included in the documentation), material provided at earlier times showed that basis of the Scheme and the proposed income bands.
46. If it were clear that the full Council on 3 March 2025 understood that it was voting on whether to adopt the Scheme and determined that it should do so, I would not consider that the mere failure to provide the relevant information for that specific meeting deprived Council members of the opportunity to make an informed judgment as to whether the Scheme should be adopted, given the materials provided earlier. However, the difficulty with the Defendant's position lies in showing why this material was being provided and what it was that the full council was being asked to do.
47. One approach to these issues is to consider whether there is any outward or objective marking of the decision to approve the Scheme having been taken in full council on 3 March. I can see nothing within the minutes of that meeting that would cause the informed observer to think that the Scheme was approved then; on the other hand, having regard to the minutes of the Executive Committee meeting on 18 December 2024, the Statement of Executive Decision following that meeting, and the Medium Term Financial Strategy, it would appear the decision to approve had already been taken. Another approach is to consider whether a member of the Council attending the full meeting on 3 March 2025 would consider that they were being asked to take a decision to approve the Scheme. Again there is nothing in the documents to give that impression and everything to indicate that the decision had already been taken.
48. The only person who might realise that the decision had not been taken would be the person who was aware that in fact the decision could not be taken by the Executive Committee but rather had to be a decision of the full council. That person might understandably have raised a question as

to whether the full Council was to take the decision. There is no record or suggestion of any such issue being raised, again consistent with the impression that this was a decision that had already been taken.

49. The material produced by the Defendant shows unequivocally that:
 - 49.1. The public were told in the consultation that the Executive Committee would make the “final decision” on the proposed scheme in December 2024;
 - 49.2. The Executive Committee was asked in its meeting on 18 December 2024 to approve the changes in the Scheme by the agenda for that meeting and the report of Officers presented to it;
 - 49.3. The Executive Committee approved those changes;
 - 49.4. The Council thereafter said in the Medium Term Financial Strategy presented to the meeting of the Executive Committee on 3 March 2025 that the changes had been approved.
50. On the other hand, none of the material produced by the Council shows that the full Council on 3 March 2025 was asked to approve the Scheme, nor that it in fact did so. In particular, taking the material presented to the Council together with the minutes of the decision taken at that meeting, there is no reference either express or implied to a decision to approve the Scheme.
51. Accordingly every outward manifestation of this decision-making process is that it was taken by the Executive Committee rather than the Full Council. Indeed, if Council members were in fact being asked to approve the Scheme when they voted on the budget proposals on 3 March 2025, I can see no material from which they would have realised that this was the case, even though if they had been asked to approve it, I would for reasons set out above have been satisfied that their decision was not vitiated by the lack of adequate information to make that decision. There is no evidence from individual Councillors as to what they thought they were being asked to approve in the full Council meeting. Given the lack of outward manifestation of a decision to approve the scheme, I would have some doubt that, even if some members believed they were taking such a decision, it could properly be supposed that they had done so but in the event that is not a judgment that it is necessary for me to make.
52. It is of course self-evident that the mere fact that a decision-maker is provided with the material necessary to make a decision and might well have made the same decision in any event cannot save the decision from a finding of unlawfulness if in fact it was taken by someone else. It follows that the decision of the Defendant to adopt the Scheme was unlawful.
53. It might be considered that because determination of the first ground is sufficient to dispose of this challenge, it is unnecessary of the court to rule on the second ground. Indeed, during

submissions I briefly canvassed with the parties whether the case could conveniently be dealt with by the first ground being ruled upon first and only turning to the second ground if the first ground were dismissed. However, that course of action would have the consequence that the Defendant might in future re-adopt the Scheme (or something similar), in which case the challenge on the Second Ground (which the parties had fully prepared for the hearing before me) would again be a potential ground of challenge. In any event, a determination in principle of the discrimination arguments will assist in the later resolution of any issues about a damages claim in that regard. I therefore agreed with the position of the parties that I should determine both grounds, even if I were against the Defendant on the first.

GROUND 2 - DOUBLE COUNTING

The Claimants' Case

54. The Claimants' second ground of challenge has four elements to it, all connected by the fact that they are the consequence of what is said to be a fundamental flaw in the scheme, namely the double counting of certain income as explained above:
 - 54.1. That the Scheme Fails to comply with the Defendant's obligation to enact only rational policy - "the Rationality Challenge;"
 - 54.2. That it fails to ensure that the Defendant complies with Section 149 of the Equality Act 2010 - "the Public Sector Equality Duty Challenge;"
 - 54.3. That it causes the Defendant to be acting in a discriminatory fashion, contrary to its obligations under Section 29 of the Equality Act 2010 - "the Equality Act Discrimination Challenge;"
 - 54.4. That it causes the Defendant to be acting in a discriminatory fashion, contrary to its obligations under the Human Rights Act 1998 - "the Human Rights Act Discrimination Challenge."
55. These grounds of challenge are closely connected in that all turn on the disputed question of whether the "double counting" flaw referred to above is, as the Claimants contend, a fundamental feature of the Scheme, written into its terms or, as the Defendant contends, simply a feature of how income is actually calculated because of a flaw in the computer programming.
56. Turning to the individual bases of challenge, the Claimants contend first that the Scheme is irrational whether looked at from the point of view of process or from the point of view of outcome.
 - 56.1. The process for calculating income is irrational because it involves double counting in the manner described above. To operate rationally, the scheme would need, when

calculating Deemed Income, to disregard sums that have already been taken into account in reduction of a person's entitlement to Universal Credit.

- 56.2. The outcome of the Scheme is irrational because it produces a result which is perverse and arbitrary.
57. The irrationality of outcome in LL's case is said to be:
- 57.1. her income is deemed to be at a level that gives her no Council Tax Reduction, as a result of the combination of occupational pension and contributory Employment Support Allowance;
- 57.2. Without an occupational pension or contributory Employment Support Allowance she would, in the same situation, have an identical cash income to now because her Universal Credit payment would no longer be reduced by the amount of her occupational pension or contributory Employment Support Allowance;
- 57.3. If she had an identical actual income to that which she actually receives but no part of it comprised an occupational pension or contributory Employment Support Allowance but rather was Universal Credit unreduced on the basis of the receipt of those other sources of income, her income would be deemed to be at a level giving her 100% Council Tax Reduction. So she is excluded from reduction under the Scheme based on the source rather than the amount of her income; moreover it is a source (her own engagement in the employment market) which, to the extent it could justify different treatment, could only reasonably justify more favourable treatment, not less favourable treatment.
58. Indeed LL's case shows that the failure here lies not just with the software but with the Scheme itself. If the only issue with the operation of the Scheme was the inability of the software adequately to process income from different sources, all that would be required to put right the obvious unfairness in the case of LL would be for a paper exercise to be carried out, applying the rules of the Scheme, to make the right calculation. However, that is not what the Defendant has done. Rather it has granted discretionary relief to LL, reflecting the fact that it is the Scheme itself rather than the calculation of the amount of relief by software which is the flaw.
59. The irrationality in AU's case is asserted to be that her income for the purpose of the Scheme is treated as including Universal Credit and Carer's Allowance and as a result gives her no Council Tax Reduction. If she stopped receiving Carer's Allowance, her Universal Credit would increase by the amount of that benefit so her actual income would be unchanged but her Deemed Income would fall pound for pound with the removal of Carer's Allowance. The result would be that she would be entitled to 100% Council Tax Reduction under the Scheme.

60. As noted above, the Claimants contend that this irrationality is not saved by the Defendant's decision in fact to give each of them 100% Council Tax Reduction. In LL's case, this is a discretionary concession, one that can be removed at any time such that she could be required to pay something towards her Council Tax. In AU's case, the Defendant asserts that her income entitles her to 100% Council Tax Reduction. However the Claimant says that this is incorrectly calculated, that the error could be put right at any time and that therefore she is at risk of having to make at least some payment towards her Council Tax.
61. A scheme which requires the exercise of discretionary support is not sufficient to rescue it from a finding of irrationality:
 - 61.1. From the point of the view of a claimant, the fact that entitlement to Council Tax Reduction is determined by the exercise of a discretion rather than as a right is inherently less satisfactory. The billing authority would by definition be entitled to change how it exercised the discretion depriving the claimant of what they rationally should be entitled to as of right;
 - 61.2. Discretionary grant of relief is not the payment of Council Tax support and therefore is not subject to the statutory appeals mechanism – see the Defendant's policy entitled "Discretionary Council Tax Support Policy" ("the DCTS Policy").
 - 61.3. The award of discretionary relief is subject to a normal maximum period of 13 weeks, though in exceptional circumstances the maximum period of 12 months may be allowed – again see the DCTS Policy.
 - 61.4. In any event, the idea of discretionary remedy in circumstances such as these is inconsistent with the statutory requirement that a billing authority have a Council Tax Reduction scheme. If the existence of a discretionary power to determine council tax reduction was sufficient compliance with the statutory obligation of the billing authority, this would make the obligation to have a scheme unnecessary; as a corollary, any scheme must operate rationally without the need to invoke the discretionary power to reduce any individual's Council Tax by a higher sum. The discretionary power is aimed at the exceptional or unusual case which cannot be anticipated by a reasonable and rational scheme rather than the kind of routine circumstance of the Claimants here which were known and predictable when the Scheme was adopted and should have been rationally dealt with in the Scheme itself.
62. The Claimants further argue that the actual circumstances of those in their position demonstrates the inadequacies of the discretionary relief:

- 62.1. Ms Shaw’s witness statement at [27] states that, as at 2 May 2025, there were 280 claimants who were in receipt of Universal Credit who were worse off under the newly enacted Scheme. Of those, it would appear that either 190 (the figure given in that same paragraph) or 120 (the figure given at [30] of the same statement in respect of the same category of people) have been identified and granted discretionary relief. There is a significant number of people in respect of Universal Credit who are worse off because of the Scheme, whether the figure is 90 (280 less 190) or 160 (280 less 120).
- 62.2. Ms Shaw acknowledges that the take up of discretionary council tax relief is “poor” (see here first statement at [10]). It is only through the Defendant taking a proactive policy (which of course is to be congratulated) that such good take up figures as those referred to in the previous sub-paragraph have been achieved.
- 62.3. As LL’s case shows, there is inconsistency and confusion in how the discretionary relief scheme is actually applied in individual cases. This underlines the unsatisfactory nature of such an approach to dealing with anomalies.
63. The Claimants note the Defendant’s reliance on *R (on the application of Logan) v London Borough of Havering* [2015] EWHC 3193, in support of the proposition that an apparently discriminatory rule may be justified by the existence of a discretion to depart from the rule. As Blake J puts it at [41], “*There is a rich appellate jurisprudence that either justifies the discriminatory impact of a bright line rule by reference to a discretion to mitigate, or castigates the absence of such a discretion as unlawful inflexibility.*” However, the point is made earlier in that paragraph that “*to award one group a right to exemption from liability and require another group to apply for the exercise of discretion, may itself constitute discriminatory treatment.*”
64. Turning to the second basis of challenge in Ground 2, the Claimants argue that the Scheme is inconsistent with the Defendant’s Public Sector Equality Duty. Section 149(1) of the Equality Act 2010 provides:
- “(1) A public authority must, in the exercise of its functions, have due regard to the need to—
- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- ...

(3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—

(a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;

(b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;

(c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.”

65. Those directly adversely affected by the flaw in the calculation of income identified in this case are households with entitlement to Universal Credit elements beyond the basic adult and child allowances, and with additional income which is fully taken into account by Universal Credit. That group is disproportionately likely to include households with disabled people because:

65.1. The additional elements that increase the figure which is treated as income for the purpose of the Scheme are available only to disabled people or members of the same household as disabled people.

65.2. Disabled people and those who live in the same household as disabled people are more likely to receive benefits from sources such as contributory Employment Support Allowance and Carer’s Allowance which are deducted in the calculation of Universal Credit and therefore are subject to the double counting flaw which has been identified.

66. However even though the position of disabled people in respect of Universal Credit and other benefits/income is likely to be particularly adversely affected by the Scheme, the Defendant failed to recognise this risk in its Equality Impact Assessment that was carried out before the Scheme was adopted. In Section E of the Equality Impact Assessment, it is said that the potential impact of the scheme on those with a protected characteristic of disability is “neutral” and that “there are protected disability groups in the existing scheme and it is planned to keep those.” However, the Claimants contend that the Defendant has failed to demonstrate that it even appreciated that the income calculation method in the Scheme would have a disproportionate adverse impact on disabled people, let alone that the full Council had due regard to the need to avoid that outcome.

67. The third basis of challenge under this ground is that of discrimination under the Equality Act 2010. It is not in dispute that, in providing Council Tax reduction, the Defendant is providing a service and comes under an obligation not to discriminate against a person in the provision of the service (see Section 29 of the Equality Act 2010).

68. The Claimants contend that the Scheme discriminates in four ways:

- 68.1. Discrimination arising from disability under Section 15 of the Equality Act 2010. By treating disabled people such as LL ‘unfavourably’ in reducing their Council Tax Reduction entitlement ‘because of’ their additional Universal Credit elements and their unearned income from other sources, these being sources of income that arise ‘in consequence of’ LL’s disabilities.
 - 68.2. Indirect discrimination under Section 15 of the Equality Act 2010 by including, in the case of Universal Credit recipients, income which has also been taken into account by Universal Credit, this being a ‘provision, criterion or practice’ which is applied to disabled and non disabled people alike but one that puts LL, and disabled people in the same category, at a ‘particular disadvantage’ in comparison with non disabled people;
 - 68.3. Indirect discrimination: same disadvantage under Section 19A of the Equality Act 2010. The Scheme is a provision that is applied to disabled and non disabled people alike but it puts disabled people generally at a ‘particular disadvantage’ in comparison with non disabled people and also puts AU as a carer to that same disadvantage.
 - 68.4. Failure to make reasonable adjustments as required by section 20 and 21 of the Equality Act 2010, since the Scheme is a provision which puts LL, and disabled people generally, at a substantial disadvantage in comparison with non disabled people. It would be reasonable for the Defendant to have taken the step of designing the Scheme so as to disregard Universal Credit recipients’ unearned income where it has also been taken into account by Universal Credit.
69. In respect of the first three sub-paragraphs of the previous paragraph, the relevant statutory scheme would not prohibit discrimination which was “*a proportionate means of achieving a legitimate aim.*” The Defendant has failed to show that the Scheme is a proportionate means of achieving a legitimate aim. The flaw identified above is simply that – the scheme is badly drafted. It cannot be the case, as the Defendant suggests, that the flaws in the scheme was an inevitable consequence of how the Department for Work and Pensions awards and calculates Universal Credit, since if this were so the same problems would arise in every Billing Authority yet there is no evidence of this problem arising other than in the Defendant’s area, and as a result of the Defendant’s scheme.
70. Finally the Claimants say that the Scheme is discriminatory under Article 8 of the European Convention on Human Rights (“right to respect for private and family life”) and Article 1 of the First Protocol (“protection of property”), the Claimants relying on the status of disability or of being the carer for a person with a disability and being a claimant for Universal Credit who has unearned income which is taken into account in reducing entitlement to Universal Credit. It is

fair to say that the Claimants acknowledge that this ground is likely to add little to the other sub-grounds of Ground 2.

The Defendant's case

71. The Defendant denies that the Scheme is fundamentally flawed in respect of its calculations of income. As it is put in its written submissions, it “*does accept that there is an unforeseen consequence of double-counting in that the current software parameters are unable to disregard all of the element of U[niversal] C[redit] that are intended to be disregarded...*” In support of the contention that the flaw here is simply in the software, the Defendant points to the care taken in the framing of the system as is apparent from the statement of Mr Gardner. My attention is also drawn to Ms Shaw’s second witness statement at [10] where reference is made to a request to the software suppliers to amend the software, pending which the Council has implemented what is called “*a manual workaround.*” Indeed, the Defendant asserts that the manual workaround is the only way for the Claimant currently to adjust the calculation in which the double counting problem arises.
72. Accordingly, the Defendant asserts that there is no irrationality in the Scheme itself sufficient to justify the grant of relief under Ground 2(a). In particular:
- 72.1. Whilst the outcome in some cases may be flawed, this is not a failing of the Scheme, but rather a temporary problem which is being put right through the use of the Defendant’s discretion to grant relief, in accordance with the DCTS Policy.
- 72.2. The DCTS Policy is itself an essential part of the totality of the Council Tax Reduction Scheme. it is not there to put right flaws in the Scheme but it allows defective outcomes to be put right.
- 72.3. The evidence of Ms Shaw at [27] in her first witness statement is that, even before the exercise of the powers under the DCTS policy, the vast majority of people are either better off (11% of residents) or no worse off (65%) as a result of the Scheme than they were under its predecessor. Even of the 24% who were potentially worse off as a result of the Scheme, the larger part received relief under the DCTS Policy so were in fact no worse off.
73. The Defendant contends that the Claimants are in fact now no worse off than they would have been had the Scheme not been adopted. As with the facts before Blake J in *Logan*, it is not just and convenient to grant relief where any potential prejudice under a Council Tax Reduction scheme is avoided by the grant of discretionary relief by the billing authority.
74. As to the Public Sector Equality Duty, the Defendant points to the fact that the statutory duty is one to have “*due regard*” to factors rather to achieve a particular outcome. The Defendant carried

out an Equality Impact Assessment when strictly speaking one was not needed. The assessment had regard to the possibility that there might be discriminatory outcomes. It is not to be criticised for failing to acknowledge the detail of the Scheme and the actual outcomes and the failure to achieve such outcomes does not mean that the Defendant “*failed to have regard*” to them.

75. The Defendant denies that the Scheme is discriminatory under any of the provisions of the Equality Act that are advanced or under the Human Rights Act 1998. Quite simply, the Scheme is a proportionate result of addressing the needs of claimants generally and, in so far as it contains any flaws, these are capable of being, and are in fact being, adequately addressed through the residual discretion.
76. In respect of the agreement under Section 19A, the Defendant contends that AU is not capable of taking advantage of that provision. In order for her to do so, she would have to establish that she is put at substantially the same disadvantage as a disabled person. However the disadvantage to her is that (at least until reassessment) she was required to pay full Council Tax even though she is a carer. This is different from someone such as LL who pays full or partial Council Tax because they have the protected characteristic of disability.

Discussion

77. The first matter to consider in respect of Ground 2 is the competing arguments as to whether the flaw here lies with the Scheme itself or simply the calculation of sums due under the Scheme. Whilst the Defendant does not concede that the Scheme is irrational or otherwise unlawful if the Claimants’ reading of the scheme is correct, most of the arguments advanced by it fall away if that reading is correct.
78. In my judgment, the flaw that has been identified clearly lies in the Scheme itself. The wording of the Scheme produces the result identified above. To put matters another way, if one took the computer software out of the equation, and carried out the calculation of entitlement with pen and paper, LL would still not qualify for full Council Tax Relief. There is simply no way of reading the Scheme which permits income which has reduced her Universal Credit entitlement to reduce the income figure used in her entitlement to relief under the Scheme.
79. The Defendant’s argument that the flaw lies in the software is indeed disproved by the circumstances of LL, but also is contrary to the express words of the Scheme. No other reading of those words has been put forward that would remove the double counting flaw from the entitlement of relief. I acknowledge the point made by the Defendant that, if the terms of the Scheme are such that it does indeed operate in the way contended for by the Claimant (rather than the flaw simply being a feature of the software that I used), this is an error that has occurred notwithstanding the involvement of experienced consultants and Local Authority employees. I have no reason to doubt the competence of any of those involved in this scheme, but sadly error

has crept in as I have identified. It may be that the cause of that error is the understandable desire to ensure that the computer software and the Scheme itself are aligned. If the software is unable to distinguish the different types of benefit causing a practical problem in assessing the income from people in the position of the Claimants, it is possible to understand how the Scheme might have been drafted to follow that methodology and produce the same result. However, if that is the explanation for what has happened, it is a case of the tail wagging the dog in the sense that a perceived need to align the Scheme with the software (rather than the other way round) has caused the Scheme to be formulated on terms which are not what was intended.

80. In so far as the Defendant argues that schemes may have logical errors within them that render them flawed without being irrational, I accept that this is so. As Mr Williams said in oral submission, it is clear that the purpose of the Scheme was to create a system that was efficient with the minimum of administration, dealing with Council Tax Reduction speedily but fairly and in a budget neutral fashion. The difficulty however is that, once one reads the Scheme with knowledge of how Universal Credit works, it is an inevitable that a result will be achieved which the Defendant acknowledges is unfair (by creating different outcomes for people whose true income is the same and whose circumstances cannot rationally be distinguished) and is not what was intended. If a scheme of this nature creates a result which is obviously unfair, it is no answer to say that schemes of this nature are not always perfect. The flaw is so serious that it undermines the rationality of what is being operated.
81. In so far as the discretionary scheme of the DCTS policy provides a remedy for the Claimants (or at least LL), sufficient to defeat an argument of irrationality, I accept that there may be cases where this will be so. In particular where a person in unusual circumstances is treated unfairly for reasons that may have been difficult to anticipate, the existence of a discretionary scheme to put right the wrong may be sufficient to defeat an argument of illegality (or at least to influence the court in its judgment as to whether to grant relief).
82. But here, on any version of events, a significant number of people are affected by a flaw, and the flaw is one which I have indicated is readily apparent to anyone reading the Scheme who was reasonably knowledgeable as to how the payment of Universal Credit is calculated. Furthermore, to qualify under the discretionary scheme, a person has to make application to a potentially limited fund that makes usually short-term award payments and from which application there is no right of appeal. The Defendant's own evidence shows that take up of discretionary relief in circumstances such as this is relatively poor and demands the Defendant to be proactive in seeking out those who are the subject of detriment because of the change in the system for the calculation of reduction.

83. I conclude that the Scheme is irrational in its manner of treatment of certain sources of income for the purpose of calculation of Council Tax reduction. I am not persuaded either that such irrationality is cured by the existence and application of a discretion that may alleviate the effect of the express terms of the Scheme.
84. Turning to the application of the Public Sector Equality Duty, there are three separate problems:
- 84.1. The full Council had no regard either to the Scheme generally or the Equality Impact Assessment in particular;
 - 84.2. The Executive Committee (which in any event did not have the power to adopt the policy) was not shown the Equality Impact Assessment;
 - 84.3. The Equality Impact Assessment was perfunctory in failing to identify the double counting flaw that lies behind this challenge to the Scheme.
85. The Defendant's argument that the Equality Impact Assessment was enough to discharge the Defendant's duty to have "*due regard*" to the dual needs of eliminating discrimination and advancing equality of opportunity in the terms of Section 149 of the Equality Act 2010 suffers two problems:
- 85.1. Procedurally, the relevant decision-making body was not presented with the material to assess the implications of the Public Sector Equality Duty for the proposed scheme;
 - 85.2. Substantively, the Defendant failed to recognise the true nature of the scheme that it was proposing, as demonstrated both by the failure of the Equality Impact Assessment to identify the flaw of the double counting issue and indeed by the Defendant's defence of the allegations in this case on the ground that the flaw lies in the software rather than the Scheme itself, as a result of which the impact of the Scheme on those with disabilities was not properly assessed.
86. In my judgment, a proper regard to the Public Sector Equality Duty, whether through the Equality Impact Assessment or an independent review of how the Scheme would operate should have thrown up the irrationality that I have found there to be. In these circumstances, I am not persuaded that the Defendant shows discharge of the Public Sector Equality Duty because the impact of the Scheme was not properly recognised. I have no doubt that any breach of equality law here is inadvertent. However, the failure to acknowledge the flaws in the Scheme itself lead me to the conclusion that the Defendant cannot be said to have discharged the Public Sector Equality Duty. If it makes so fundamental an error in the consequences of its own Scheme for those with disabilities, it is in reality impossible to conclude that "*due regard*" was had to those needs.

87. For the same reason, the Defendant has considerable difficulty with meeting the argument that it has acted in a discriminatory fashion under the 2010 Act. The Scheme amounts to discrimination under Section 15 of the Equality Act 2010 in LL's case because she has the protected characteristic of disability and it treats her differently (in an unfavourable way) on account of something arising from that disability, namely the receipt of a particular benefit. I see no scope for the argument that this is an appropriate means of achieving a legitimate aim where the legitimate aim that is said to be engaged, namely that of enacting a scheme under Section 13A of the Local Government Finance Act 1992 engages the obligation to consider the reducing of council tax for those resident in its area who are in financial need, but the Scheme operates in an irrational way in dealing with this group of people. It is not necessary to consider separately the issue of indirect discrimination when discrimination under Section 15 has been established.
88. As regards AU, the position is somewhat different in that she is not disabled and therefore lacks the necessary protected characteristic. She however falls squarely within the ambit of Section 19A of the Equality Act. The disadvantage she suffers (the loss of full council tax reduction) is a disadvantage that a disabled person might suffer because of the application of a provision, the Scheme, to that disabled person. AU suffers substantially the same disadvantage (loss of the relief) because the provision applies to her as well, even though she does not share the protected characteristic. The decision of the Grand Chamber in *Chez Razpredelenie Bulgaria AD v Komisia za Zashtita ot Diskriminatsia* [2016] CMLR 14 (the case which led to the amendment of the Equality Act 2010 to include the new Section 19A so as to protect the right against discrimination in this form even following the United Kingdom leaving the European Union) shows how discrimination of this kind works. The position of AU is akin to that of N in that case and she is equally the victim of discrimination if indeed the Scheme operates in a way that does not give her full Council Tax relief. This was the initial assessment of the Defendant and was the basis on which she was assessed as liable to pay and to that extent she was the victim of unlawful discrimination.
89. Given the calculations at paragraphs 28 and 30 above, I am unclear whether AU continues to be the victim (at least on paper) of discriminatory treatment. Given that she is not in fact having to meet any liability to pay Council Tax, any injury flowing from such discrimination would be non-pecuniary and may be minimal, but given the difficulty that I have had in understanding how the Defendant calculates her entitlement, I cannot at this stage categorically rule on whether the discrimination has continued after the reassessment. If necessary, that issue will have to be addressed further.
90. For the avoidance of doubt, I reject the Defendant's argument that AU does not qualify for protection under Section 19A because she suffered disadvantageous treatment (the initial loss of Council Tax Reduction) for a different reason than a disabled person would have. The

disadvantageous treatment is the objective harm suffered by the person (in N's case in *Chez Razpredelenie Bulgaria AD*, the presence of overbearing pylons in the neighbourhood where she lived, in AU's case the loss of Council Tax Reduction). The fact that she did not suffer the characteristics of those who could claim discrimination on other grounds (the Roma people in *Chez Razpredelenie Bulgaria AD* by way of indirect discrimination on the basis of ethnic origin, LL by way of direct discrimination because she is disabled) is irrelevant – the very reason for the existence of a right to relief for discrimination in *Chez Razpredelenie Bulgaria AD* and in Section 19A is the fact that the person who suffers the same objective disadvantage does not share the characteristic that gives them a remedy by a different route.

91. Having found that both Claimants were the victims of discrimination under the Equality Act 2010, it is unnecessary to consider whether there was a failure to make reasonable adjustments or that they were equally the victim of discrimination or breach of rights under the European Convention.

DISCRETIONARY FACTORS

92. As I have noted above, although the Defendant originally raised an issue of delay, that has not been pursued. However the Defendant has raised arguments that go to the grant of discretionary relief, namely the ability on its part to give discretionary relief to people in the position of the Claimants and the actual exercise of that power in favour of LL.
93. In my judgment, such arguments could not apply where the court finds that the scheme itself has never been lawfully adopted. Once the court has reached that conclusion, a quashing order is appropriate to ensure that the proper rules of administration are followed.
94. As to the argument that relief be refused on the second ground because, regardless of the lawfulness of the Scheme itself (rather than its adoption), the Claimants are not in fact in any worse position following the adoption of the Scheme, I would have been doubtful even if I had not found for the Claimants on the first ground. It is to the credit of the Defendant that it has actively sought out people such as AU and LL who have suffered disadvantage because of the terms of the Scheme and has seemingly been willing to exercise its discretionary powers to ensure that the disadvantage is avoided.
95. But that does not mean that the court should not grant relief. The Claimants have rightly identified a series of difficulties with reliance on the discretionary power to grant relief. In particular the absence of a right of appeal for those who seek such relief is potentially a real disadvantage. As counsel for the Claimants point out, a person might be refused Council Tax Reduction for a reason that relates to the calculation of income under the Scheme, forcing them to rely on the discretionary power of the Defendant to seek relief, but then be refused relief on factual grounds. In circumstances where they were claiming Council Tax Reduction as of right, the failure to grant

relief would then be appealable to the Valuation Tribunal. It would not be appealable under the discretionary scheme.

96. Whilst in some circumstances a discretionary scheme may be sufficient to militate against the grant of relief, the decision in *Logan* itself shows that this will depend on the particular circumstances. Here, I am not persuaded that the mere fact that the Claimants now have full Council Tax Reduction means that I should not grant relief.

CONCLUSION

97. It follows that I grant permission on both grounds and allow the application for judicial review on both grounds. I quash the Scheme and grant declaratory relief consistent with this judgment. I am grateful to the parties for having lodged an agreed order consequent to receiving a draft of this judgment.