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**TC04096**

**Appeal number: TC/2012/10030**

*Costs – s10 Tribunal Procedure Rules 2009 – whether Appellant entitled to an order for costs on the basis that HMRC had acted unreasonably in defending an appeal by the Appellant against the imposition of a penalty for late payment of income tax – the Tribunal having found on the facts that the Appellant had reasonable cause to believe that a time to pay arrangement had been agreed – no – application dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**GORDON BROWN**

**Appellant**

**- and -**

**THE COMMISSIONERS FOR HER MAJESTY’S      Respondents  
REVENUE & CUSTOMS**

**TRIBUNAL: JUDGE MICHAEL S CONNELL**

**Sitting in public at King’s Court, Royal Quays, Earl Grey Way, North Shields on  
19 August 2014**

**Mr Michael Fleming, Accountant for the Appellant**

**Mrs Joanne Bartup, Officer of HM Revenue and Customs, for the Respondents**

## DECISION

1. This is an application by Gordon Brown ('the Appellant') for an order for costs against HMRC under rule 10 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009.

2. In the substantive appeal the Appellant appealed a late payment penalty imposed under Paragraph 3(2) of Schedule 56 Finance Act (FA) 2009 for his failure to pay tax on time in respect of his personal self-assessment liability for the year ending 5 April 2011.

3. Under s 59B Taxes Management Act (TMA) 1970, the Appellant was required to pay his income tax liability for the year ended 5 April 2011 by 31 January 2012. The tax paid late was £40,029 and was not paid in full until 17 May 2012.

4. On 10 April 2012 HMRC imposed a penalty of 5% of the tax paid late in the sum of £2,001.

5. The point at issue in the substantive appeal was whether Mr Brown had a reasonable excuse for the late payment of £40,029.43 tax, and if so, whether that excuse continued up to the date of payment.

### Background

6. On 28 February 2012, Mr Brown had telephoned HMRC to discuss payment of his outstanding tax. The notes taken by the officer who took the call read :

"Tele call from tp pay by 26-03-12" and "TP called to adv they will be making PIF by 26-03"

7. The appeal was heard on 10 June 2013. The Appellant gave evidence which indicated that HMRC's record of the above conversation was either incomplete or inaccurate, and that the Appellant had either been offered a time to pay arrangement ("TTP") or had reasonable grounds for believing that an offer had been made. This had not previously been argued by the Appellant in correspondence with HMRC when requesting a review of their decision, or in his Notice of Appeal to the Tribunal. Indeed the possible significance of the conversation only arose following questions put to the Appellant by the Tribunal.

8. The hearing was adjourned to allow HMRC to ascertain whether the conversation had been recorded and if so, to produce a full transcript in order to verify exactly what had been said. Directions were issued that HMRC should then submit written representations to the Tribunal, to be followed by the Appellant's submissions, limited to the issue as to whether or not a TTP arrangement had been agreed.

9. At the resumed hearing on 18 November 2013, HMRC said that the conversation of 28 February 2013 had not in fact been recorded. However in their

written representations, they argued that what was said, simply amounted to a 'promise to pay' by the Appellant on or before 26 March 2012 and that as the Appellant did not adhere to his promise, the penalty had been correctly imposed.

5 10. HMRC said that a payment promise is distinct from a TTP arrangement as they are often a one-sided offer of payment from the customer rather than being a negotiated payment plan. A payment promise arises where the taxpayer informs HMRC that he will pay an amount outstanding by a specific date. No written acknowledgement would be issued. On some occasions HMRC can informally agree to withhold recovery action for a short period to allow the customer to make  
10 payments, but HMRC does not issue agreement letters or set up TTP arrangements on the computer systems.

11. HMRC said that it was clear the Appellant understood from the telephone conversation, that payment had been deferred to 26 March 2012 by way of a 'payment promise', and that was the reason why no written acknowledgement or TTP  
15 agreement was confirmed by HMRC.

12. The Appellant had broken his payment promise to discharge his tax liability by the agreed date and he had not contacted HMRC on or after 26 March 2012 to explain why payment had not been made and the penalty had been correctly imposed.

13. HMRC said that an agreement to accept a deferred payment is entirely within  
20 the discretion of HMRC. In order for the customer to be allowed a TTP arrangement they must meet set conditions. They must have the means to make the agreed payments. They must also have the means to pay other tax liabilities that become due during the TTP period. The TTP period must be as short as possible.

14. A structured TTP arrangement, agreed after discussions with HMRC, is always  
25 confirmed in writing and noted up on the appropriate computer records.

15. If the customer contacts HMRC to request time to pay before they become liable to a penalty and makes payment as agreed, they can be considered to have met the conditions in Schedule 56 (10) of the Finance Act 2009 and will not be liable to a late payment penalty.

30 16. The Appellant in his written representations disagreed with HMRC's interpretation of the 28 February 2012 conversation. He said that at the time of the conversation, he expected to be able to pay his outstanding tax liabilities by 26 March 2012, but no more than that. He thought he was being given time to pay generally, and that it was agreed, or he was led to believe, that HMRC would review the late  
35 payment position on 26 March 2012 before taking any further action. He argued that if HMRC refuted this, they did not give due consideration as to whether to offer a TTP arrangement.

17. The Appellant further argued that HMRC were relying on a re-classification of the payment arrangement from a 'time to pay arrangement' to 'payment by way of a  
40 payment promise'. To rebut HMRC's argument, the Appellant referred to an extract

from HMRC's Debt Management and Banking Manual Reference 800025, entitled 'DM8M800025 Time to Pay, introduction, payment promises.'

18. In the manual, reference to payment promises are limited to where payment is promised within 14 days. HMRC's internal manuals make a clear distinction between 'payment promises' and 'time to pay arrangements' and HMRC's internal instructions clearly place a number of obligations on HMRC where a payment promise arrangement is reached. None of the actions (which the Appellant argues were mandatory) and are set down in the manual had been taken by HMRC. It was clear from the instructions contained in the Debt Management and Banking Manual that the arrangement agreed with the Appellant could not have been regarded by HMRC as a payment promise because:

- i. the delay agreed was for a period of more than 14 days; and
- ii. none of the actions referring to issuing of advice to the tax payer regarding the penalty, nor the issue of an Enforcement Warning Letter was effected.

19. The Appellant said that the deferral period agreed on 28th February 2012 went well beyond the maximum 14 days period stipulated in HMRC's Debt Management Banking Manual. Also it was not until 70 days after the telephone conversation, on 9 May 2012, that notification of a late payment penalty was given to the Appellant.

20. The Appellant claimed that, on the facts, it was not unreasonable for him to have concluded from his conversation with HMRC that a TTP arrangement had been agreed and would remain in place until he was notified otherwise. On that basis, he submitted that he had a reasonable excuse for late payment.

21. On the facts, the Tribunal found that the Appellant believed that if he was unable to pay his tax liabilities by 26 March 2012, HMRC would review the position before taking any further action. HMRC would then have had the option of demanding payment immediately or allowing further time for payment. Because there was no further communication by HMRC the Appellant not unreasonably thought he was being given time to pay without penalty. The Tribunal therefore found that the Appellant had a reasonable excuse for the late payment, and discharged the penalty that had been imposed.

22. The decision was released on 20th February 2014

#### The Appellant's Costs application

23. On 17 March 2014 the Appellant lodged an application to the Tribunal, for an order for costs against HMRC under rule 10(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009, in respect of the costs which he had incurred in relation to the proceedings, such costs to be determined by assessment. The Appellant lodged a schedule of costs claimed in respect of the substantive hearing, which amounted to £3,100 inclusive of VAT.

24. Rule 10(1)(b) of the 2009 rules states:

‘10. The Tribunal may make an order in respect of costs (or in Scotland expenses)

(i)(b) If the Tribunal considers that a party or their representative has acted unreasonably in bringing defending or conducting the proceedings.’

5 25. The Appellant submitted that HMRC had acted unreasonably, both in defending the proceedings and in their manner of conduct of the proceedings, for the following reasons:

- 10 “1) The Tribunal found in my favour, as a matter of fact, that I had a reasonable excuse for late payment of the tax due, and discharged the penalty imposed upon me.
- 15 2) To HMRC, the procedures on which the Tribunal were required to adjudicate should be ingrained: as a taxpayer, unknowing of the procedures, I was entitled to depend on HMRC to follow their published procedures. As the Decision states, these procedures were not followed, leading to the ambiguity in respect of which the Tribunal found in my favour.
- 20 3) If HMRC had followed the necessary actions set out in their own internal procedures, they would have allowed either my initial or my subsequent written appeal against the penalty and this matter would not have progressed to the Tribunal.
- 25 4) HMRC misled me from the outset as to the grounds of appeal available to me by not referring to the telephone conversation of 28 February 2012 (the telephone conversation) and considering the possibility that a time to pay arrangement had been made.
- 30 5) HMRC had available to them all the records necessary for them to see that I had telephoned them within statutory time limits to make a "time to pay" arrangement and avoid a penalty.
- 35 6) If they had referred to their procedures and internal notes, HMRC would have known that the telephone conversation, which the Tribunal regarded as "crucial to the outcome of the case", had not established the "Promise to Pay" arrangement which, at the adjourned hearing they attempted to plead.
- 40 7) The papers prepared by HMRC for the initial hearing of the Appeal contained a note of the telephone conversation. If, in considering the initial written appeals, or in preparing the papers for the Tribunal hearing, HMRC had referred to their own notes, they should have allowed the appeal, without the need for it to be heard in Tribunal. HMRC had three opportunities before the Tribunal met to consider the appeal to see that I had a reasonable excuse for the late payment of tax, but failed to see this. When the question of a time to pay arrangement was pleaded at Tribunal by me, Mr Boal asked for an adjournment on the basis that "he had no instructions from HMRC" on this issue.
- 8) At the conclusion of the initial hearing on 3 June 2013 the Tribunal ordered an adjournment specifically (and only) in order:
- i. For HMRC to produce a transcript of the telephone conversation (on the basis that the HMRC employee who was the other party to the telephone conversation had indicated that the conversation was being recorded) to ascertain whether they were able to disprove the veracity of my account of the telephone conversation.

Otherwise, as the Tribunal states in its Decision, the Tribunal was inclined to accept my version of what was said; and

- ii. To make further written representations to the Court upon the basis of the transcript, if they wished.
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- 9) Notwithstanding that no transcript of the telephone conversation was produced, HMRC made written representations (which were not substantiated either by production of the transcript or by reference to HMRC written procedures for establishing a Promise to Pay arrangement) that they had agreed a "Promise to Pay" arrangement with me, which I had subsequently broken. This demonstrates that there was malice in the actions of HMRC.
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- 10) Not only was the content of HMRC's representations misleading and malicious, but the representations were not in compliance with the directions of the Tribunal because the representations did not arise from a transcript of the telephone conversation. The representations should not have been made, and if they had not been, the second, final hearing would not have taken place.
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- 11) Because HMRC made representations when they should not have done, I was forced into the expense of making counter representations.
- 12) Both the representations of HMRC and my counter representations were lodged with the Tribunal Appeals service but were not placed on file nor brought to the attention of the Tribunal prior to the second hearing. The Tribunal only had the opportunity to see and consider them when copies were made available to the Tribunal members at the second (final) hearing. If the representations and counter-representation had been seen by the Tribunal, on the basis of the declaration at the initial hearing that the Tribunal was inclined to accept my version of the content of the telephone conversation, the second, final hearing could have been avoided.
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- 13) The Appeal proceeded to a hearing, and I was put to cost because:
    - i. HMRC failed to follow their procedures right from the outset, from the time of the telephone conversation, when (as the Tribunal determined, it was reasonable for me to believe that) a time to pay arrangement had been made.
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- ii. HMRC twice wrongly refused my written appeal because they unreasonably failed to consider the effect of the telephone conversation.
- iii. HMRC failed again to consider the effect of the telephone conversation when preparing the papers for the Tribunal hearing, despite the directions given by the Tribunal at the conclusion of the first hearing.
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- iv. HMRC made malicious representations alleging a "time (sic – promise) to pay" arrangement, when;
    - a) such an arrangement had never been mentioned;
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- b) such an arrangement was inconsistent with HMRC's note of the telephone conversation;
- c) the actions of HMRC following the telephone conversation were inconsistent with their internal published procedures for documenting such an arrangement; and

d) HMRC were only supposed to make further representations if they were able to produce a transcript of the telephone conversation

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- v. Because HMRC's second submission to the Tribunal was clearly not supported by the terms and conditions underpinning a Promise to Pay arrangement, and HMRC would (and certainly should) have known that, in advancing their argument HMRC demonstrated, at best, a flagrant disregard for their own internal rules and procedures, and at worst a stubborn, malicious intent to continue defending their actions. The Tribunal members will remember the extremely detailed narration by my representative at the second hearing of extracts from HMRC's own Collection Manual (which had also been set out in the counter representations to HMRC's fallacious representations after the first hearing, neither of which came to the attention of the Tribunal members until the second hearing took place), which set out in the clearest terms possible the conditions which must be applied in agreeing a Promise to Pay arrangement. In advancing their argument in support of their case, HMRC failed to provide the Tribunal with all necessary information concerning a Promise to Pay arrangement, and as such deliberately misled the Tribunal. If it were not for the detailed knowledge of my representative of HMRC procedures they may have succeeded in doing so. At the very least, in doing so, HMRC failed in their statutory duty under the Care and Management provisions of the Taxes Acts.
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- vi. Because HMRC failed, even-handedly, to reappraise their position following the first hearing - as demonstrated by their actions at the second."

26. At the hearing, Mr Fleming for the Appellant, said that the Appellant was lodging a costs application because, firstly the appeal should have been allowed by HMRC at the outset, HMRC having failed procedurally in their care and management role as set out in the Taxes Acts and secondly, a record of the Appellant's telephone contact with HMRC on 28 February 2012, which was not available to the Appellant until the exchange of documents prior to the June 2013 hearing, should have been made available at the outset, when the Appellant appealed HMRC's decision.

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27. Notwithstanding the existence of the record of the telephone conversation on 28 February 2012, as part of the appeal process, HMRC instigated a process which is designed to provide an independent review of issues in dispute. It is only after this process has been exhausted that a decision is made whether or not HMRC accept or refuse an appeal. This decision is undertaken by a suitably trained senior officer of HMRC Appeals Unit. On 26 July 2012, HMRC informed the Appellant that HMRC did not agree that he had a reasonable excuse for not paying his tax liability by the due date.

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28. On 22nd August 2012 the Appellant requested an independent review of HMRC's decision. Mr Fleming argued that, at this stage in the review process, the appeal had been examined twice by experienced HMRC appeals review officers, and on both occasions, HMRC refused to accept the appeal. Both of the officers concerned made no reference to the Appellant's contact with HMRC by telephone on 28 February 2012. Mr Fleming submitted that HMRC made no attempt to thoroughly review the full circumstances surrounding the Appellant's appeal.

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29. Mr Fleming argued that having carried out a third independent review, HMRC upheld the two previous reviews, the reviewing officer saying that 'I have considered all of the points'. This was despite letters from the Appellant, of 19 May 2012 and 22 August 2012 clearly and unequivocally stating that he had telephoned HMRC on 28 February 2012 and had made an arrangement which he regarded as amounting to a TTP arrangement.

30. Mr Fleming said that this critical piece of information appeared to have been totally ignored by all of the officers who participated in the appeals review process. On this basis, HMRC failed in their duty of care to the Appellant. HMRC's failure to carry out a thorough review placed the Appellant in the position of having to incur unnecessary expense in pursuing an appeal.

31. With regard to the hearing which took place on 18 November 2013, the officer who was representing HMRC said that he had not been briefed on the issue as to whether there had been a TTP arrangement. Even at this stage HMRC had not appreciated the significance of the conversation transcript in HMRC's own evidence bundle. An adjournment had to be granted, directions issued and further representations made on issues which it should have been obvious from the outset were crucial to the outcome of the appeal. Mr Fleming argued that it would have been reasonable for HMRC, given the Appellant's arguments made at the hearing in June 2012, to review and reconsider their position or at least be in a position to rebut or debate whether a TTP arrangement had been agreed.

32. HMRC perversely interpreted their evidence so as to skew its meaning in support of their new argument that although there may have been an arrangement in place, that arrangement was a 'payment promise'. HMRC had therefore changed their original position but were nonetheless requesting the Tribunal to dismiss the appeal.

33. Mr Fleming argued that there had been a failure by HMRC to carry out a thorough and fair review of Mr Brown's appeal, in accordance with their own internal and published guidelines, and in accordance with the taxpayers rights under HMRC's Taxpayers Charter.

34. Mr Fleming argued that although HMRC's case was untenable from the outset, not only did they chose to continue, but they also chose to mount a new argument based on what they knew to be information that was incomplete and even misleading. The information submitted to both the Tribunal and the Appellant, had what amounted to a section redacted. That section contained the mandatory restrictions placed by the Board of HMRC on its officers in offering a payment promise. Extracts from their own manuals in support of their case, which clearly did not fully and clearly reflect HMRC's position as to how their officers were to offer the opportunity of a payment promise to taxpayers, were not disclosed. Restrictions placed on HMRC officers in offering payment promises were mandatory and unequivocal and could not have been applied in the circumstances of this case. Nevertheless HMRC chose to advance this argument and proceeded to provide the Tribunal with incomplete and misleading information, which further protracted the proceedings at further cost to the Appellant.



35. Mr Fleming referred to the decisions in:

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- i. *Ho v HMRC* (2010) UK FTT 387(TC) where he says it was found that HMRC lacked sufficient evidential foundation and in addition failed to correctly interpret available evidence and on that basis their case was from the very start unsustainable. Costs were accordingly awarded against HMRC.
  - ii. *Eclipse Film Partners No. 35LLP v HMRC* (No. 2)(2010) UK FTT448(FT). In that case HMRC failed to comply with the Case Management Directions of the Tribunal, which can be equated to HMRC's attempt in this case to introduce further flawed argument in support of their position in the process responding to Directions.
  - iii. *Earthshine Limited (No. 2) v HMRC* (2010) UK FTT 314(TC) where the Tribunal, having permitted HMRC to introduce evidence late in the proceedings under Rule 15, allowed the Appellant's costs incurred in responding to this late admission of evidence.

#### HMRC's Case

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36. Ms Bartup for HMRC submitted that as HMRC were the Respondents, they did not 'bring' the proceedings, and whilst in certain cases there may be exceptional, incidental, pre-proceedings costs which the Tribunal may consider, for the purposes of this application, there are no such costs. Any costs incurred whilst HMRC were 'defending the proceedings', can only be from the date the proceedings were first notified to HMRC by the Tribunal i.e. 15 November 2012, *G Wilson (Glaziers) Ltd v HMRC* (TC/2011/5954).

37. The issue for the Tribunal to consider is whether HMRC acted unreasonably whilst defending or conducting the proceedings? Ms Bartup argued that HMRC did not act unreasonably for the following reasons:

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- 1) HMRC believed that the penalty imposed on the Appellant (£2,001) was correctly charged. HMRC have a duty to pursue duties which it considers to have been correctly charged under the provisions of the Taxes Acts.
  - 2) References to HMRC's internal manuals by the Appellant are irrelevant in that such guidance only exists to assist HMRC staff in the implementation of the Taxes Acts.
  - 3) The relevant legislation in this case is Paragraphs 10 and 16 of Schedule 56 Finance Act 2009. Paragraph 10 is concerned with the suspension of a penalty when an agreement is in place; Paragraph 16 is concerned with the existence of a reasonable excuse.

- 5 4) What constitutes a “reasonable excuse” is not defined by legislation and therefore, where HMRC do not accept that a reasonable excuse exists, as in this case, a Tribunal hearing is required to decide the matter. HMRC were aware of the telephone conversation of 28 February 2012, but did not consider that a TTP arrangement had been agreed. In HMRC’s view they were suspending the imposition of the penalty until 26 March 2012, at which point matters would be reviewed. The Appellant admitted that he regarded 26 March 2012 as a “deadline” but did not pay his tax by that date. There was never any suggestion by him in correspondence prior to the appeal that he was relying upon a TTP arrangement. That was not mentioned until he gave evidence at the first Tribunal hearing.
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- 15 5) The case became protracted because part of the Appellant's reasonable excuse argument surrounded HMRC's actions in their implementation of Paragraph 10 of Schedule 56 Finance Act 2009. The Appellant contended that it was this action which provided the Appellant with the reasonable excuse required under Paragraph 16 of Schedule 56 Finance Act 2009. HMRC contended that it did not.
- 20 6) Following the representations made by both sides at the hearings on 3 June 2013 and 18 November 2013, Judge Connell, after hearing the parties representations on the matter, found in favour of the Appellant on the basis that although a TTP arrangement had not been agreed, the Appellant had, on the basis of his conversation, reasonable grounds to believe that he had been given time to pay.
- 25 7) HMRC consider that their actions throughout the proceedings were entirely appropriate given the circumstances of the case in that all contact with the Appellant and the Tribunal was in accordance with recognised protocol. All Tribunal directions were adhered to.

30 38. HMRC refute any suggestions by the Appellant that HMRC ‘deliberately misled the Tribunal’ or ‘acted maliciously’ during the course of the proceedings.

### Conclusions

35 39. The penalty was imposed by HMRC on 10 April 2012. The Appellant appealed HMRC’s decision on 19 May 2012. His grounds of appeal were that he had been late making payment of tax due because of an insufficiency of funds caused by unforeseeable events entirely outside his control and that this constituted a reasonable excuse. Contrary to what Mr Fleming says, the Appellant did not suggest that a TTP arrangement had been agreed in his conversation with HMRC of 28 February 2012.

40 40. HMRC responded on 6 June 2012 and rejected the Appellant’s appeal saying that there had been no unforeseeable events beyond the Appellant’s control

preventing him from paying his tax on time and that in any event any reasonable excuse must have existed throughout the whole period when payment was overdue.

41. Payment was eventually made by the Appellant on 17 May 2012. If there had been any suggestion by the Appellant that a TTP arrangement had been agreed, HMRC would have responded that the reasonable excuse did not endure throughout the whole period when payment was due.

42. It is against the background outlined above, that HMRC requested an adjournment at the first hearing on 6 June 2012 in order to ascertain whether there was a transcript of the 28 February 2012 conversation, and that the Tribunal issued directions to the effect that the parties were to submit written representations limited to the issue as to whether or not a TTP arrangement had been agreed.

43. When HMRC replied to the Appellant on 6 June 2012, rejecting his appeal, they appear to have been under the erroneous impression that the Appellant had not paid the outstanding tax and they promised to contact him again once payment had been made. On 26 July 2012 HMRC wrote to the Appellant upholding the penalty decision, reiterating their reasons for doing so.

44. The Appellant requested an independent review on 22 August 2012. Again, in his letter there was no suggestion that a TTP arrangement had been agreed. He reiterated his grounds of appeal, that he had suffered an insufficiency of funds due to unforeseeable events beyond his control. Clearly therefore there was no reason for HMRC to address whether or not a TTP arrangement had been agreed.

45. Similarly in his Notice of Appeal to the Tribunal there was no mention by the Appellant of a TTP arrangement.

46. The Tribunal found that although a TTP arrangement had not been agreed the Appellant, not unreasonably, thought that such an arrangement was in place and that his request for time would be reviewed on 26 March 2012. The fact that this provided the Appellant with possible grounds of appeal did not become apparent until after he had given oral evidence to the Tribunal at the first hearing on 3 June 2012, when he expanded on his recollection of what had been said in the conversation.

47. We therefore do not accept the Appellant's arguments that he was put to unnecessary expense in having to lodge an appeal with the Tribunal, or that should have allowed his appeal at the outset. Nor do we accept that HMRC failed procedurally in their care and management obligations to the Appellant under the Taxes Acts. HMRC were entitled to argue that, what had been agreed on 28 February 2012, was a 'payment promise' by the Appellant. Although the Tribunal found that a payment promise had not been agreed, and that there had been an agreed temporary deferral subject to review, HMRC were entitled to allow the Appellant more than 14 days if they chose to do so, without that meaning that a TTP arrangement been agreed.

48. It was because the Tribunal accepted the Appellant's oral evidence that he had given HMRC no absolute assurance that payment of his tax would be made by 26

March 2012 and that his request for further time to pay would be reviewed on that date that we found no payment promise or TTP arrangement been agreed.

5 49. It is clear from the above that there is no evidence that HMRC acted unreasonably in “defending or conducting the proceedings”. Costs do not follow the event and although the Tribunal found in favour of the Appellant in the substantive appeal it does not follow that he is entitled to payment of his costs. Clearly that is not the purpose or intention of rule 10 of the 2009 Rules. The fact that HMRC advanced a case which ultimately was found by the Tribunal to be wrong does not mean that it acted unreasonably in doing so.

10 50. For the above reasons the Appellant’s application for costs is refused

15 51. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

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**MICHAEL S CONNELL  
TRIBUNAL JUDGE**

**RELEASE DATE: 24 October 2014**

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