



[2019] UKFTT 618 (TC)

TC07402

PROCEDURE – application to set aside decision– non-attendance at hearing- failure to comply with Directions-criticism by appellant of his representative- application refused

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2018/01961

BETWEEN

JAMES QUINN

Appellants

-and-

**THE COMMISSIONERS FOR
HER MAJESTY’S REVENUE AND CUSTOMS**

Respondents

TRIBUNAL: JUDGE ANNE SCOTT

Sitting in Chambers at George Street, Edinburgh on 4 October 2019

Decided on the basis of written representations from Aidan Quinn, Solicitor for the Appellant dated 17 July 2019, Joseph Millington instructed by the Respondents dated 15 August 2019 and a response thereto from Jonathan Williamson instructed by the Appellant dated 3 September 2019

DECISION

INTRODUCTION

1. On 2 July 2019 the appellant's appeal against a decision of the respondents ("HMRC") wherein they refused to restore his van, which had been seized, was listed for hearing at 2.00pm. Although the appellant's counsel, Mr Williamson, was present, there was no appearance by the appellant. For the reasons set out in my decision ("the Decision") at paragraphs 2 to 15 we decided to proceed with the hearing. The Decision also records that HMRC were considering making an application for wasted costs.
2. The Decision was released to the parties on 15 July 2019.
3. On 17 July 2019, the appellant's solicitor, another Mr Quinn, wrote to the Tribunal acknowledging receipt of the Decision and making an application under Rule 38 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 ("the Rules") to have the disposal of 2 July 2019 set aside. It was stated that the appellant and his witness were "... in attendance in advance of the Hearing, but not located or (sic) by Counsel so as to attend the Hearing itself".
4. On 23 July 2019, HMRC lodged two alternative applications for costs totalling £1,062 and £841.59. I am not aware of any response from the appellant in that regard and pending resolution of this matter, reserve the position.
5. On 15 August 2019, Mr Millington, instructed by HMRC, lodged a formal opposition to the application for set aside.
6. On 3 September 2019, Mr Williamson, instructed by Mr Quinn, replied to that opposition reiterating the argument that the appellant and Mr Kelly had been in the building but that he, as instructed Counsel, had failed to locate and to escort the appellant and his witness.

The primary facts

7. I annex at Appendix 1 the Decision with its own Appendix; being the Directions issued by me showing the extensive lack of cooperation by the appellant with HMRC and the Tribunal.
8. On 4 April 2019, the Tribunal listed the appeal for hearing and that letter which was sent to the appellant himself read:

"The appeal has been listed for a half day hearing on Tuesday, 2 July 2019 at Tribunal Hearing Centre, 2nd Floor, Chichester Street, Belfast, BT1 3JF at or as soon as possible after 2:00 PM. Please make sure you arrive half an hour before the hearing.

If you do not attend, the Tribunal may decide the matter in your absence."

Discussion

9. Quite apart from any arrangement that the appellant may, or may not have made with Counsel, he should have been in no doubt that he should go to the 2nd floor. The room utilised for the tax hearing is signposted. There are a number of administration offices that are open to the public on that floor and directions can be sought. Indeed I have done so when looking for Chambers.
10. No explanation has been offered as to where the appellant might have been, why he did not ask for directions or respond to Mr Williamson's attempt to contact him. I do not accept that the appellant made every effort to attend.
11. In the course of hearing, as I indicate at paragraph 2 of the Decision, Mr Williamson was very clear that he had endeavoured to contact both the appellant and the solicitor. Quite why

his current submission now states that “Instructed Counsel made insufficient efforts to locate the Appellant ...” has not been explained.

12. Even if it were the case that the appellant was not present because of some omission on the part of Counsel, and I do not accept that given what was said at the hearing and the fact that the appellant appears to have made absolutely no effort to find the hearing room on the 2nd floor, would that be a reason for setting aside the Decision? I think not. The case was not referred to me but I agree with Judge Cannan at paragraph 21 of *Askew v HMRC*¹ when he stated:-

“Since the hearing of this application the Upper Tribunal has released its decision in *HM Revenue and Customs v Katib* [2019] UKUT 0189 (TCC). That decision concerned an application for permission to appeal a decision of the FTT on an application for permission to make a late appeal. It is relevant for present purposes for what is said in relation to reliance on an incompetent representative. There was a striking degree of incompetence in that case which bears some similarity to that alleged by the appellant in the present application. The Upper Tribunal found that as a general rule a litigant must bear the consequences of the incompetence of his advisers, although it recognises that there may be exceptions to that rule. The decision does not cause me to revisit my conclusions that there has been no procedural irregularity in the present case and that it is not in the interests of justice to set aside the Decision”.

13. The allegations of a failure by the representative in those cases were far more serious than in this case but the underlying principle is the same.

14. I am far from persuaded that any fault lies at the door of Mr Williamson but, even if there was more that he could or should have done, the primary obligation lies on the appellant to attend the Tribunal. The appellant had been warned that if he did not attend then the appeal would proceed in his absence. He knew or should have known that the appeal would be heard at 2.00 pm and on the second floor. Prior to the Hearing the Clerk told the Tribunal that there was no trace of the appellant. It appears that the appellant made absolutely no effort to check with the Tribunal reception or even check the hearing room, if for some reason he had decided that that reception did not relate to tax hearings.

15. He should have been concerned long before 2.00 pm having been asked to attend an hour early by Counsel and having been instructed to attend half an hour early by the Tribunal. He should have been even more concerned after 2 pm yet he did not come to the hearing. In summary, I do not accept that the appellant made any adequate attempt to ensure that he was in the right place at the right time. It was his responsibility notwithstanding his attempt to blame Counsel.

16. The decision as to whether or not to grant the application for set aside is an exercise of judicial discretion. I have not been referred to the case but the Upper Tribunal at paragraph 43 of *Martland v HMRC*² (“Martland”) states that:

“...in exercising judicial discretions generally, particular importance is to be given to the need for ‘litigation to be conducted efficiently and at proportionate cost’, and ‘to enforce compliance with Rules, Practice Directions and Orders...’.

17. Although *Martland* was concerned with late appeals that principle applies here as do the principles set out in the following paragraphs (44-47). The Tribunal must evaluate all the circumstances of the case. That involves a balancing exercise which assesses the merits of the arguments advanced and the prejudice that would be caused to both parties by granting or refusing permission.

¹ [2019] UKFTT 455 (TC)

² [2018] UKUT 178 (TCC)

18. Of course, I have in mind at all times the overriding objective which is set out at Rule 2 of the Rules and reads as follows:-

“2.—Overriding objective and parties’ obligations to co-operate with the Tribunal

- (1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.
- (2) Dealing with a case fairly and justly includes—
 - (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;
 - (b) avoiding unnecessary formality and seeking flexibility in the proceedings;
 - (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
 - (d) using any special expertise of the Tribunal effectively; and
 - (e) avoiding delay, so far as compatible with proper consideration of the issues.
- (3) The Tribunal must seek to give effect to the overriding objective when it—
 - (a) exercises any power under these Rules; or
 - (b) interprets any rule or practice direction.
- (4) Parties must—
 - (a) help the Tribunal to further the overriding objective; and
 - (b) co-operate with the Tribunal generally.”

19. It is argued for the appellant that “While it cannot be denied that compliance with all directions did not occur, it is the case that every effort was made by legal representatives on behalf of the Appellant to resolve these issues, albeit late in the day”. I simply do not accept that.

20. As can be seen from paragraph 2 of the Directions issued by me on 21 June 2019, the appellant was on notice that if he did not deliver a witness statement then he may not be permitted to give evidence. No witness statement has ever been lodged. No explanation for that omission has been offered in the face of HMRC’s argument that they would have opposed any application by the appellant to give evidence in those circumstances.

21. In considering whether or not his evidence would have been I would undoubtedly have had regard to Judge Mosedale at paragraph 8 of *Masstech Corporation Limited v HMRC*³ where, having reviewed the relevant authorities, she said:

“8. The conclusions I draw from these cases and from general considerations of fair hearings are as follows:

- Only relevant evidence should be admitted;
- Such evidence should nevertheless be excluded where there is a compelling reason to do so;
- Whether there is a compelling reason to do so will be a balancing exercise the object of which is to achieve a trial that reaches the correct decision by a process fair to all parties;
- To conduct that balancing exercise the Tribunal must consider the likely probative value of the evidence, any unfair prejudice caused to either party, good case management and any other relevant factor.
- Unfair prejudice includes the factors listed by Lord Bingham which were particularly relevant in that case but in this case, not being a trial by jury, perhaps of less relevance. Unfair prejudice would include a party being ambushed so that it is strategically disadvantaged or put in a position that it has no time to bring evidence in rebuttal.
- Considerations of good case management will include the need for a sanction against a party which adduces late evidence particularly where the evidence could have been produced earlier; it will recognise the desirability of adhering to trial dates and avoiding unnecessary costs.”

³ [2011] UKFTT 649 (TCC)

22. As no excuse has been advanced for the failure to comply with the Direction to lodge a witness statement and Judge Poole had made it explicit in January 2019 that the appellant had been given a last opportunity to file a witness statement, it is extremely unlikely that the appellant would have been allowed to give evidence even if he had appeared. Further there was a potentially serious prejudice to HMRC who would have been ambushed.
23. Mr Williamson argues that the transcript of the interview with the appellant acted effectively as a witness statement and "... contained all information and details regarding the position of the Appellant ...".
24. Conversely, Mr Williamson also argues that although I have made eight Findings in Fact in regard to that transcript at paragraph 22 of the Decision, nevertheless there is "... potential for further, deeper and detailed evidence". There is no indication of what that might be and in any event, even if the Decision were to be set aside any such evidence, if it exists, would not necessarily be admitted.
25. There is no dispute that the appellant was not present at the hearing and it is now argued that he was unable to instruct Counsel. The responsibility lies with the appellant to instruct Counsel and to do so timeously.
26. As can be seen, he was represented by Counsel who had furnished the Tribunal with a Skeleton Argument. Any failure to provide adequate instructions, if that is now the assertion as it seems to be, is a failure by the appellant. If there is more evidence then it should have been provided to Counsel before the due date for lodging the Skeleton Argument. Clearly it was not.
27. The appellant has had every opportunity to put forward any evidence in support of his case and all that has been provided has been analysed in the Decision. There is a bland assertion at paragraph 18 of the response from Mr Williamson that "There are important factors which have arisen and which now show it to be in the interests of justice that the initial Decision be set aside". Apart from the assertion that the appellant was in the building, there is no evidence of any other factors which should come to the Tribunal's attention.
28. Re-listing the appeal would mean that the public purse, being HMCTS, would incur further cost.
29. HMRC argue that they are entitled to finality in litigation. If the Decision is set aside then they would face further uncertainty, delay and cost. They are correct. Counsel and the witness would again have to travel from England and Scotland respectively.
30. By contrast it is argued for the appellant that the prejudice to the appellant in a refusal to set aside the Decision is disproportionate to any prejudice to the respondent as the respondent would suffer only additional costs which could be sought from the appellant. Nothing has been produced to substantiate that assertion that the appellant would be in a position to meet any costs.
31. On the balance of probabilities, I find that the appellant's lamentable track record in this appeal of failing to cooperate with the Tribunal and HMRC is such that no reasonable reliance could be placed on him cooperating were the appeal to be set aside.
32. It is indeed the case that the Decision can only be set aside if I "...consider that it is in the interests of justice to do so"⁴. The arguments advanced for the appellant were fully considered. I agree with HMRC's assertion at paragraph 17 of their opposition that it would not be in the interests of justice to set aside this Decision where there is no sensible suggestion that the outcome would have been any different had the appellant and/or the witness been present.

⁴ Rule 38(1)(a)

33. Undoubtedly the appellant will be prejudiced if I do not set aside the Decision as he will be unable to litigate. However, even Mr Williamson has conceded that if the Decision were to be set aside it may be that the same decision would be arrived at again.

34. HMRC are entirely correct to say that the strength of the appellant's case is one of the circumstances that I should consider⁵. As can be seen from paragraph 37 of the Decision, the Tribunal's jurisdiction is limited and the burden is on the appellant to show that the refusal to restore the vehicle was one that could not reasonably have been arrived at by the Officer.

35. The appellant has been professionally advised not only by a solicitor but also by Counsel. He should therefore have been aware that the Tribunal is not limited to a consideration of the evidence that was before the Officer and that it was open to him to provide other evidence⁶. However, for an unknown reason he did not do so and therefore we were limited to the evidence in the Bundle and the evidence of the Officer viewed in the light of the appellant's Skeleton Argument. As I indicate above, unless there was a very good reason for the failure to file a witness statement, and none has been advanced, oral evidence would not have been admitted even if the appellant had attended. Put at its highest the appellant's case is not strong.

Conclusion

36. Every application for set aside depends on its own facts and circumstances. As I indicate above, at all stages in the consideration of this matter I have had Rule 2 of the Rules in mind. I have weighed in the balance every factor that has been brought to my attention. Quite apart from the obligation to co-operate with the Tribunal, taxpayers are expected to act with reasonable prudence and diligence in dealing with their affairs. Patently the appellant has not.

37. I find that although the appellant certainly was not present at the hearing, he was represented and he had been notified as to the time and place of the hearing. Therefore, for the reasons given in the Decision, it was in the interests of justice to proceed with the hearing in his absence.

38. I also find that it is not in the interests of justice to set aside the Decision. I therefore decline to exercise my discretion and the application for set aside is refused.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

39. 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.

**ANNE SCOTT
TRIBUNAL JUDGE**

Release date: 09 October 2019

⁵ Martland and also *Pierhead Purchasing Ltd v HMRC* [2014]UKUT 321(TC)

⁶ *HMRC v Bezaad Fuels (UK) Ltd* [2019] EWCA Civ 319 at paragraph 7



[2019] UKFTT ***** (TC)

TC *****

EXCISE DUTY- smuggled fuel – laundered rebated fuel - restoration of vehicle – no – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2018/01961

BETWEEN

JAMES QUINN

Appellants

-and-

**THE COMMISSIONERS FOR
HER MAJESTY'S REVENUE AND CUSTOMS**

Respondents

**TRIBUNAL: JUDGE ANNE SCOTT
MEMBER CELINE CORRIGAN**

Sitting in public at Belfast on 2 July 2019

Having heard Mr Jonathan Williamson BL for the Appellant and Mr Joseph Millington instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

INTRODUCTION

40. By Notice of Appeal dated 16 March 2018, the appellant appeals against a decision of the respondents (“HMRC”) dated 23 February 2018 to uphold a decision refusing to restore to him his Citroen Panel Van, registration number LY08 HUA (“the vehicle”) which had been seized on 27 August 2017.

Preliminary issue

41. This case was listed for hearing at 2.00pm on the afternoon of 2 July 2019. The letter from the Tribunal intimating the listing instructed the appellant to turn up half an hour before the listed time. In fact, Mr Williamson had asked that the appellant arrive one hour before the appointed time. The appellant did not appear. Mr Williamson had attempted to contact both him and the instructing solicitors but to no avail. The appellant did not appear during the hearing.

42. The history of this case is one of extensive non-cooperation by the appellant and his agent. I annex at Appendix 1 the Directions issued by me putting the appellant on notice that the Tribunal might strike out the proceedings if there was further non-cooperation. I point out that although the Directions were issued on 21 June 2019 that was due to delay on the part of the administration. I prepared the Directions on 20 June 2019 and had anticipated that they would be issued on that day. That is not material.

43. In fact the Skeleton Argument and the Bundle of Authorities were lodged with the Tribunal, albeit late.

44. Mr Williamson confirmed that he had only been instructed at the end of May 2019.

45. Mr Millington confirmed that he would have taken no action in relation to the late lodging of the Skeleton Argument and the Authorities. The problem was the non-attendance at the hearing with no explanation. The witness, Miss Beattie, had travelled from Scotland and Counsel had travelled from England.

46. The original Directions released by the Tribunal on 18 July 2018 were very clear in their terms and had been accompanied by two pages of notes explaining them. That should have made everything abundantly clear to an unrepresented appellant. In this instance the appellant was represented by solicitors.

47. There should have been compliance by the appellant with those Directions on various matters by 24 August, 21 September and 5 and 19 October 2018. There was none.

48. The appellant’s solicitors wrote to the Tribunal on 14 January 2019 requesting information about procedure and costs and stating that they were still awaiting instructions from the appellant.

49. On 17 January 2019, HMRC understandably pointed out that there had not been compliance and enquired whether or not the appellant was proceeding with the appeal.

50. On 30 January 2019, the Tribunal wrote to the solicitors making it absolutely clear, on Judge Poole’s instructions, that the appellant was being given a last chance to comply and that if witness statements were not lodged, including one for the appellant, then those witnesses may not be permitted to give evidence at the hearing. No witness statement has been delivered for the appellant at any juncture.

51. That letter was obviously received since the representative complied with the Directions for lodging a list of documents. That list referred to a “To Whom It May Concern” document

dated 16 December 2018. The best that can be said of that document is that there is a possibility that that might be stated to be a witness statement from a Mr Kelly. At paragraphs 10 and 11 of HMRC's Skeleton Argument, Mr Millington put the appellant on notice that Mr Kelly's statement was not accepted and "...Martin Kelly is required to attend for cross-examination on the contents of this document." Mr Kelly did not attend.

52. In summary, Mr Millington argued that the appellant had "wasted everyone's time". We agree. He reserved his position in relation to a possible application for wasted costs.

53. We had due regard to Rules 2 and 33 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 ("the Rules") and decided to proceed to determine the appeal.

54. We were satisfied that the appellant had been notified of the hearing and that it was in the interests of justice to proceed.

55. Mr Williamson offered no challenge to Ms Beattie's evidence.

Decision

56. The appeal is dismissed and the decision refusing to restore the van is upheld. For completeness, and the avoidance of doubt, we set out the Findings and Facts and reasons for the decision.

The facts

57. On 27 August 2017, officers from the HMRC Road Fuel Testing Team ("RFTU") attended the appellant's home. The vehicle was present and unlocked. In the rear of the vehicle the officers found an Intermediate Bulk Container ("IBC") containing approximately 5 litres of fuel. Preliminary testing at the roadside indicated that the fuel was ROI rebated fuel. A formal sample was taken. Officers also found within the vehicle an invoice addressed to the appellant's son for 5,000 litres of kerosene, a "milk filter", gas caps and gloves.

58. The vehicle and its contents were seized by the RFTU officers. On 29 August 2017 a Notice of Seizure was issued in respect of the vehicle, the IBC and the fuel therein.

59. The legality of the seizure has not been contested.

60. Subsequent testing of the fuel within the running tank of the vehicle confirmed that the fuel was Laundered Rebated Gas Oil. The tests on the fuel in the IBC confirmed that that was ROI rebated gas oil.

61. On 23 October 2017, the appellant was interviewed under caution. He conceded that:-

- (a) He had owned the vehicle since May or June 2017.
- (b) He was currently unemployed.
- (c) The purpose of the vehicle was to travel to Motocross in Carlow, ROI.
- (d) The vehicle was used by both himself and his son Joshua. The vehicle was fuelled by whoever had been using it when it required to be fuelled.
- (e) The IBC was purchased to hold water to wash bikes following their use in Motocross.
- (f) He was unaware that there was fuel in the IBC and he did not know what use had been made of the IBC by its previous owner.
- (g) The gas caps were played with by his grandson.
- (h) The milk filter was used to filter kerosene in a home heating tank.

62. On 23 October 2017, the appellant's representative requested restoration of the vehicle.

63. On 7 November 2017, Officer Killen issued a decision not to restore the vehicle.
64. On 21 December 2017, the appellant's representative intimated an intention to appeal the decision and that was treated as a request for a review.
65. On 23 February 2018, Officer Beattie issued the decision which is the subject matter of this appeal notifying the appellant of her conclusion that the decision to refuse restoration should be upheld.

The appellant's case

66. The Skeleton Argument for the appellant argued that the appellant had had no reasonable cause to suspect that the fuel on which the vehicle was running was anything but lawful. The fuel had been purchased from a recognised and reputable provider of fuel.
67. The appellant had purchased the IBC from one Martin Kelly and the appellant was unaware of the use to which it had been put by Mr Kelly. The Notice of Appeal stated that he had provided details of the purchase to the officers.
68. Whilst it is conceded that he was technically culpable in respect of the allegations, he had cooperated fully and HMRC had failed to take relevant considerations into account and/or had ignored relevant considerations.
69. The decision not to restore the vehicle was not proportionate.
70. The illicit fuel in the IBC is attributable to the previous owner.
71. The Skeleton Argument stated that:

“... in determining not to restore the vehicle, HMRC took into account to a material degree irrelevant factors; namely that the Appellant was aware that the running tank of vehicle contained illicit fuel and that the Appellant was aware of and/or caused there to be illicit fuel within the IBC....Furthermore HMRC failed to take into consideration the conduct and co-operation of the Appellant along with the fact that this was a first ‘offence’”.

HMRC's case

72. The officer had considered the restoration policy. This was a first offence. Although the appellant claims to have made legitimate fuel purchases there is no evidence thereof. The presence of laundered rebated fuel in the running tank and ROI rebated gas oil in the IBC strongly suggests both use of the former and probable smuggling of the latter.
73. HMRC have acted reasonably, proportionately and in accordance with their policy and have taken into account the extent of the appellant's cooperation.

Statutory Framework

74. The legality of the seizure is not in dispute.
75. Section 16 Finance Act 1994 sets out the jurisdiction of the Tribunal on an appeal against the review carried out in the present case. As such the jurisdiction of the Tribunal is limited to considering whether the decision of the review officer was reasonable. Section 16(4) provides as follows:

“ 16(4) In relation to any decision as to an ancillary matter, or any decision on the review of such a decision, the powers of an appeal tribunal on an appeal under this section shall be confined to a power, where the tribunal are satisfied that the Commissioners or other person making that decision could not reasonably have arrived at it, to do one or more of the following, that is to say —

- (a) to direct that the decision, so far as it remains in force, is to cease to have effect from such time as the tribunal may direct;
- (b) to require the Commissioners to conduct, in accordance with the directions of the tribunal, a review or further review as appropriate of the original decision; and

(c) in the case of a decision which has already been acted on or taken effect and cannot be remedied by a review or further review as appropriate, to declare the decision to have been unreasonable and to give directions to the Commissioners as to the steps to be taken for securing that repetitions of the unreasonableness do not occur when comparable circumstances arise in future.”

Reasons for the Decision

76. The appellate jurisdiction of the Tribunal is confined to the reasonableness of the discretionary decision not to restore the seized goods. The burden of proof lies with the appellant. If we are satisfied that the review decision is unreasonable then we can direct HMRC to carry out a further review of the decision.

77. The penalties imposed by Parliament for taking rebated fuel into a road vehicle and for using rebated fuel in a road vehicle do not depend on knowledge or intention on the part of the person responsible. They involve what is called strict liability.

78. In our view the decision of Officer Beattie was well reasoned and proportionate. In particular the officer pointed out that there was no evidence of any legitimate fuelling of the vehicle which had been owned by the appellant for a number of months. Furthermore rebated ROI fuel was found in the IBC and that fuel is not available for sale in the UK. No explanation as to why the fuel was found in the IBC has been offered. The appellant has offered no evidence as to when he acquired the IBC. On the balance of probability the presence of that fuel indicated a smuggling offence. We agree. Officer Beattie correctly weighed that aggravating factor in the balance with the fact that this was a “first offence”.

79. We are persuaded that the decision is certainly not one that HMRC “could not reasonably have arrived at”. Indeed, we find that the decision is eminently reasonable and HMRC has neither taken into account irrelevant matters nor omitted to consider relevant matters.

80. For all these reasons the appeal is dismissed and the decision upheld.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

81. 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.

**ANNE SCOTT
TRIBUNAL JUDGE**

Release date:



**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2018/01961

BETWEEN

JAMES QUINN

Appellant

-and-

**THE COMMISSIONERS FOR
HER MAJESTY'S REVENUE AND CUSTOMS**

Respondents

DIRECTIONS

1. This appeal is listed for hearing in Belfast on the afternoon of 2 July 2019. On 30 January 2019, the Tribunal wrote to the appellant's representative stating:

“... Judge Poole has instructed that the Appellant should be given a last opportunity to comply with the outstanding case management directions. “

2. It went on to state that if the appellant did not comply then he may not be permitted to rely at the hearing on any documents or witness statements that had not been delivered.

3. The appellant was also reminded that the Directions required the appellant to produce hearing bundles for the appeal hearing by no later than 27 March 2019.

4. The appellant has not complied with that Direction and on 21 May 2019, HMRC wrote to the Tribunal confirming that the hearing bundle had not been received. HMRC required the bundle as a matter of urgency. They had chased the appellant's representative on 3 April and 10 May and 21 May 2019 but there had been no response.

5. In terms of the Directions the appellant's Skeleton Argument should have been lodged with the Tribunal and HMRC by no later than 18 June 2019.

6. No Skeleton Argument has been lodged.

7. The Tribunal administration contacted the appellant's representative's office on 19 June 2019 indicating that they required to hear from him as a matter of urgency. There has been no response.

8. I am the Judge listed to hear this appeal and I have today received the file and relevant papers.

9. I also observe that the appellant is required to produce a List of Authorities by no later than Tuesday 25 June 2019.

10. I remind the appellant and his representative of the terms of Rule 2 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (“the Rules”) which read as follows:

2.—Overriding objective and parties' obligations to co-operate with the Tribunal

- (1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.
- (2) Dealing with a case fairly and justly includes—
 - (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;
 - (b) avoiding unnecessary formality and seeking flexibility in the proceedings;
 - (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
 - (d) using any special expertise of the Tribunal effectively; and
 - (e) avoiding delay, so far as compatible with proper consideration of the issues.
- (3) The Tribunal must seek to give effect to the overriding objective when it—
 - (a) exercises any power under these Rules; or
 - (b) interprets any rule or practice direction.
- (4) Parties must—
 - (a) help the Tribunal to further the overriding objective; and
 - (b) co-operate with the Tribunal generally.

11. It is evident from the file and the non-compliance with Directions that there has been a lack of co-operation on the part of the appellant.

12. I refer the appellant to Rule 8(3) of the Tribunal Rules (I have highlighted in bold Rule 8(3)(b)) which reads:

Rule 8(3)

The Tribunal may strike out the whole or a part of the proceedings if—

- (a) the appellant has failed to comply with a direction which stated that failure by the appellant to comply with the direction could lead to the striking out of the proceedings or part of them;
- (b) the appellant has failed to co-operate with the Tribunal to such an extent that the Tribunal cannot deal with the proceedings fairly and justly; or**
- (c) the Tribunal considers there is no reasonable prospect of the appellant's case, or part of it, succeeding.

13. The appellant is put on notice that UNLESS:

- (a) The bundle is lodged with HMRC, and
- (b) The Skeleton Argument is lodged with both HMRC and the Tribunal

by not later than noon on Monday 24 June 2019 and the bundle of authorities is lodged timeously by 25 June 2019, the Tribunal may strike out the proceedings in terms of Rule 8.

14. Any party may apply for these Directions to be amended, suspended or set aside or for further Directions.

15. Whilst of course the parties should correspond with the Tribunal in the usual way it would be helpful and would expedite matters if all correspondence with the Tribunal were copied to AShaw3@scotcourtribunals.gov.uk.

ANNE SCOTT
TRIBUNAL JUDGE
Release date: 21 June 2019