

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

By remote video hearing

Appeal references: TC/2021/00566

TC/2021/00568

TC/2021/00567

PROCEDURE – Application for disclosure of seven items – whether relevant to the matters in dispute – Application refused

Heard on: 30 September 2022

Judgment date: 13 October 2022

Before

TRIBUNAL JUDGE ANNE REDSTON

Between

**AIZIO ASSOCIATES LTD
TIMOTHY CAMPBELL
DAVID BILLARD**

Appellants

- and -

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

Respondents

Representation:

For the Appellant: Mr Campbell and Mr Billard attended in person, and Mr Campbell, director of Aizio Associates, also attended on behalf of that Appellant

For the Respondents: Ms Siobhan Brown, Litigator of HM Revenue and Customs' Solicitor's Office

DECISION

INTRODUCTION

1. On 21 September 2021, the Appellants made an application for HMRC to disclose various documents and/or information (“the Application”). The Tribunal directed a case management hearing to decide the Application.
2. Having considered the evidence provided and heard the submissions of the parties, I **refused** the Application.
3. At the same time as issuing this decision, I have also issued directions for the onward progress of this appeal. These have been issued to the parties in a separate document.

BACKGROUND

4. HM Revenue & Customs (“HMRC”) had issued Aizio Associates Ltd (“the Company”) with VAT assessments. HMRC subsequently issued a penalty to the Company, and Personal Liability Notices (“PLNs”) to Mr Campbell and Mr Billard. The VAT assessments were not appealed to the Tribunal, but on 19 February 2021, the Company appealed against the penalty, and on the same day, Mr Campbell and Mr Billard each appealed against the PLNs.
5. On 13 August 2021, Judge Dean issued Directions to the parties so that the appeals could move forward to a hearing. Direction 1 required each party, by 21 September 2021, to:
 - (1) send or deliver to the other party and the Tribunal a list of documents in its possession or control which that party intends to rely upon or produce in connection with the appeal (“documents list”); and
 - (2) send or deliver to the other party copies of any documents on that documents list which have not already been provided to the other party and confirm to the Tribunal that they have done so.
6. On 21 September 2021, the Appellants made the Application, saying that they were unable to prepare “significant and important documents in relation to proceedings” unless HMRC provided the documents in the Application.

THE PRINCIPLES

7. The principles to be applied by a Tribunal deciding an application for disclosure are well known, and were set out in HMRC’s skeleton for the hearing. In summary, the material must be relevant, and the request must be proportionate. In *HMRC v Smart Price Midlands* [2019] 1 WLR 5070, the Court of Appeal said at [40]:

“Disclosure of documents is not an end in itself but a means to an end, namely to ensure that the tribunal has before it all the information which the parties reasonably require the tribunal to consider in determining the appeal. It is only one step in the overall management of the case which should, as the appeal progresses towards a substantive hearing, identify and if possible narrow the issues between the parties.”

THE APPLICATION

8. The Application listed seven matters (“Items”). I deal with each below.

Missing company records

9. Item One was “Complaint in respect of missing company records taken by Chris Jacques (HMRC)”. Mr Jacques was the HMRC officer who had conduct of the enquiry into the Company. The parties agreed that following a visit (“the Visit”), and with Mr Campbell’s consent, Mr Jacques had taken records of the Company with him when the Visit ended.

10. Mr Jacques's contemporaneous note of the Visit recorded that these were "VAT working sheets, bank statements for January & February 2020, all the purchase invoices from Dams [a supplier] some smaller invoices". Mr Jacques or a colleague scanned the documents and so made electronic copies.

11. It was HMRC's position that the original documents were returned to Mr Campbell by Royal Mail special delivery; the Bundle included a receipt showing delivery on 6 August 2020 to Mr Campbell's address. This was during the pandemic, so customers were not asked to sign to evidence delivery. Mr Campbell denied he had received the documents.

12. On 11 May 2021, Mr Campbell made a formal complaint to HMRC saying that the documents had not been received. On 24 May 2021, HMRC emailed him 377 pages of documents, which were also included in the Bundle for the hearing. They comprised of VAT working sheets; bank statements for January and February 2020; purchase invoices from Dams and some smaller invoices, together with the Company's VAT registration certificate and a copy of its VAT returns.

13. At the hearing, I asked Mr Campbell why the Company was asking for disclosure. Mr Campbell said that the documents had only been "partially" returned electronically. However, the only document which he identified as not having been so returned was an index which had been placed on the front of the file taken by Mr Jacques; this had not been scanned.

14. I find as a fact that HMRC sent Mr Campbell copies of all the documents which had been taken from the Company at the time of the Visit, other than the Index. I also find that HMRC sent the original documents to Mr Campbell by post, and on the balance of probabilities those documents were received by him. But even if that were not the position, the Appellants have copies of all the documents containing evidence which may be relevant to their appeals. The Index is an internal record only. There is no basis for the Tribunal to order any further disclosure.

Delayed return

15. Item Two was "Complaint in respect as to why company records were withheld for over 18 months by Paul Addison (HMRC) and only partially returned despite numerous requests from the company".

16. I have already found that all relevant documents were returned. HMRC accept that there was a delay in returning them, and Mr Campbell has already made a complaint about this. That complaint is not a matter which can be encompassed in a disclosure direction. In other words, there is nothing here which the Tribunal can direct that HMRC disclose.

17. Mr Campbell said that as a result of the delay, the Company had suffered a penalty charged by Companies House. That too is not a relevant matter in the context of a disclosure application.

Freedom of Information ("FoI") request

18. Item Three was "FOI request remains outstanding in respect of reported incidents relating to lost records by HMRC staff and subsequent penalties". It was common ground that on 17 May 2021, Mr Campbell had made the following FoI request:

"For the benefit of this case and wider public benefit we wish to understand in the last 2 years how many instances have been reported whereby you have lost customers records? In addition, during the same period, how many financial penalties have you sought to issue in instances whereby records have been lost, stolen or unavailable through no fault of the Directors?"

19. On 11 June 2021, HMRC refused the request on the basis that it would be disproportionate to respond. Mr Campbell was told that he could appeal the refusal decision to the Information Commissioner's Office ("ICO"), but has not done so.

20. This Tribunal has no jurisdiction (broadly, that means "no power") to require HMRC to respond to FoI requests. As HMRC said, that is a matter for the ICO.

21. I considered whether the information requested by Mr Campbell was relevant to the Appellants' case, and agree with HMRC that it was not. The issue in the appeals is whether the Appellants acted deliberately in filing incorrect VAT returns. Whether HMRC have reported lost records, or have issued penalties to others, is not a relevant matter in the context of the Appellants' appeals. I refuse to order disclosure.

Subject Access Request ("SAR")

22. Item Four was as follows:

"SAR request remains outstanding in respect of information and documents held by HMRC. The [Appellants] require unredacted correspondence as the assumed information is in relation [to] the [Appellants] and likely demonstrate further errors on the part of HMRC."

23. The Bundle contained several communications between Mr Campbell and HMRC in which the procedure for making an SAR request was explained; the most recent of these was sent to Mr Campbell on 1 August 2022. Ms Brown checked the HMRC system before the hearing and confirmed that no SAR request had been logged. Mr Campbell said the Appellants had made an SAR request for an unredacted copy of all material on HMRC's files which contained references to the Appellants, but provided no supporting evidence.

24. Ms Brown responded by saying that if such an application had been made, it would amount to a "fishing expedition" which well beyond what was either relevant or proportionate and that there was no requirement for HMRC to give disclosure on those terms.

25. I agree with Ms Brown. The issue in dispute is whether the Appellants acted deliberately. That is a matter which will be decided on the basis of the evidence as to what the Appellants did or did not do, and the reasons why they took (or failed to take) those actions. That evidence will not be located on HMRC's files. Moreover, the application is disproportionate, being not limited in time or by issue. As a result, I refuse to order disclosure of all material relating to the Appellants held in HMRC's files.

The redacted meeting notes

26. HMRC had provided the Appellants with

- (1) the (unredacted) handwritten meeting notes taken at the time of the Visit; and
- (2) a typed "Caseflow – VAT visit report" ("the Caseflow") relating to the Company.

27. The Caseflow included the material from the meeting notes and other information. Some of the latter had been redacted in the copy of the Caseflow provided to the Appellants. By Item Five, the Appellants applied for an unredacted copy of the Caseflow.

28. Ms Brown submitted that the redacted passages should not be disclosed because:

- (1) none of the redactions were relevant to the issues in dispute; and
- (2) some related to HMRC's internal processes and procedures, the disclosure of which would be prejudicial to the collection of tax

29. HMRC provided the Tribunal with an unredacted copy, and at the end of the hearing, I asked HMRC about the reasons for the redactions. With the agreement of the Appellants, they

did not attend this part of the hearing: as they accepted, their attendance would have in effect decided this part of the Application in their favour because they would become aware of the redacted text.

30. Having considered the redacted passages, I agree with HMRC that none is relevant to the matters in dispute, and I refuse to direct disclosure.

The ICO

31. Item Six reads “Data loss by HMRC has been reported to the ICO yet no confirmation or actions have been taken by HMRC and communicated to the [Appellants]”. It was common ground that Mr Campbell had written to the ICO saying that HMRC had lost the Company’s documents. On 28 July 2021, HMRC replied to four questions posed by the ICO. HMRC has not received any further correspondence from the ICO and has therefore treated the matter as closed.

32. As Ms Brown said, the Tribunal has no jurisdiction in relation to the ICO. Item Six does not provide any basis for a disclosure direction.

Mr Billard and Officer Shaw

33. Item Seven reads “Mr Billard has suffered prolonged discrimination per correspondence with Karen Shaw (HMRC)”. Mr Billard told the Tribunal at the hearing that Officer Shaw had communicated with him about a separate business he was operating, and that in his view she had done so because of the penalties/PLNs which are under appeal. He said that it “raised alarm bells” that HMRC staff were sharing information between themselves about the operation of different companies.

34. Ms Brown responded by saying that Officer Shaw had no involvement in the Appellants’ appeals and any concerns relating to another company were therefore not relevant. I agree. The issues before the Tribunal do not relate to Mr Billard’s other companies. I refuse to direct disclosure under Item Seven.

Co-operation

35. The Application ends by saying “we require cooperation from HMRC to allow further evidence to be collected and presented to Tribunal”. Ms Brown said that it was unclear whether this was an additional request, or a summary of the earlier seven Items, and if the former, it was unparticularised – in other words, it is not possible to know to what it relates.

36. The Appellants did not further expand on the seven Items at the hearing, and I have therefore taken it that there is no additional request for disclosure. If I were to be wrong in that conclusion, I agree with Ms Brown that the request should be refused as it is unparticularised.

DECISION ON THE APPLICATION

37. For the reasons set out above, the Application is refused.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

38. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this preliminary 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 REDSTON
TRIBUNAL JUDGE**

Release date: 13TH OCOTBER 2022