



Neutral Citation: [2023] UKFTT 375 (TC)

Case Number: TC08796

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Decided on the papers

Appeal reference: TC/2018/04372

PROCEDURE – late submission of additional witness evidence and documents – Denton considered and applied – refusal to admit – consequential directions issued

**Decided on 14 April 2023
Judgment date: 14 April 2023**

Before

TRIBUNAL JUDGE ANNE REDSTON

Between

THARIQ MOHAMMED

Appellant

and

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

Respondents

DECISION

INTRODUCTION

1. By this interlocutory decision:
 - (1) permission is refused for the Appellant to admit into evidence the documents included on his 13th List of Documents (“LoD”), including the witness statement of the Appellant’s sister, Zeibeda Sattar, dated 4 April 2023; and
 - (2) permission is also refused for the Appellant to rely on his second witness statement, except to the limited extent explained at §66(2) and subject to the condition there set out.
2. This interlocutory decision deals only with those two matters. The Tribunal has come to no view on the substantive issues in dispute and will only do so after the hearing of the appeal.
3. This decision is followed by Directions, which include a number of “Unless Orders”.

BACKGROUND FACTS

4. The background facts are based on the material in the Bundle submitted for the hearing and various other communications between the parties and the Tribunal made available to me in the course of case managing this appeal.

The appeal

5. On 22 June 2018, the Appellant appealed against HMRC’s discovery decisions relating to the tax years ending 5 April 2002 to 5 April 2016 and to related penalties. The Notice of Appeal was filed by Rainer Hughes, the Appellant’s solicitors.

Directions and Lists of Documents

6. Directions were issued and amended several times. On 13 June 2019, Judge Popplewell directed that LoDs were to be exchanged by 26 July 2019. On 2 August 2019, Rainer Hughes filed and served the Appellant’s LoD, which ran to 749 items.
7. On 8 November 2019, Rainer Hughes filed and served an application to rely on a further 15 documents. The grounds for the application were that the Appellant previously “could not locate and/or have” the documents on the new list.
8. On 25 November 2019, Rainer Hughes filed and served an application to rely on a further 177 documents, also on the basis that the Appellant previously “could not locate and/or have” the documents on the new list.
9. On 27 August 2020, Rainer Hughes filed and served an application to rely on a further 83 documents. The reason given for the late application was the same, with the additional statement that the documents were stored in “very disorganised boxes” which were not easily accessible to the Appellant, and he had been “unable to access the premises where the boxes were stored until recently”.
10. On 11 October 2020, Rainer Hughes filed and served an application to rely on a further document (a letter from HMRC dated 27 August 2020) on the basis that it had only recently become available.
11. On 17 November 2020, Rainer Hughes filed and served an application to rely on a further 10 documents, on the basis that they had “only recently become available to the Appellant”.
12. On 22 November 2020, Rainer Hughes filed and served an application to rely on a further 25 documents, again on the basis that they had they had “only recently become available to the Appellant”.

13. On 9 June 2021, Rainer Hughes filed and served an application to rely on a further 19 documents, on the basis that the Appellant had taken advice from Counsel and now wished to rely on these documents. On 17 June 2021, Rainer Hughes filed and served an application to rely on a further 10 documents on the same basis.

14. On 5 January 2022, Rainer Hughes filed and served an application to rely on a further 17 documents which dated from 2002 though to 2017, on the basis that they had only recently become available.

15. HMRC did not object to the inclusion of any of these documents into evidence and they were admitted.

Witness statements

16. On 22 November 2019, Judge Cannan directed that witness statements were to be provided by 8 November 2019. The Appellant's witness statement dated 7 November 2019 was filed and served in compliance with that direction. It ran to 38 paragraphs. A witness statement from Mr Sajit Mohammed, the Appellant's brother, was similarly dated 7 November 2019 and filed and served by the due date. HMRC also complied with the direction, serving a witness statement from Officer Martin Bland, dated 7 November 2019.

Hearings

17. The Appellant's appeal was listed for a hearing in March 2021 and August 2021, but both these hearing dates were vacated. On 9 November 2022, the appeal was relisted for four days from Tuesday 9 May to Friday 12 May 2023 in accordance with both parties' dates to avoid, to be preceded by a reading day for the Tribunal.

18. On 17 November 2022 the Appellant applied for those hearing dates to be vacated to allow the parties to settle; HMRC objected and I refused the application on 31 January 2023. The Tribunal's reading day was subsequently confirmed as 5 May 2023.

Directions for the April hearing

19. On 2 February 2023, I issued directions for the May hearing which took into account the need for electronic bundles and the parties' submissions on the dates for the provision of skeleton arguments. Those directions required, *inter alia*, that:

- (1) the Appellant file and serve the electronic document Bundle by 23 February 2023;
- (2) the Appellant file and serve his skeleton argument by 6 April 2023;
- (3) HMRC file and serve their skeleton argument by 20 April 2023; and
- (4) the Appellant file and serve the electronic Authorities Bundle by 27 April 2023.

20. A documents Bundle ("the Bundle") entitled "complete bundle reordered" containing 3,831 pages was filed and served by Rainer Hughes. I have no record to hand of the date on which this took place, but a link was provided to the Tribunal panel on 14 March 2023. The Bundle appears to be incomplete, see further Direction 10 below.

THE 11TH AND 12TH LISTS OF DOCUMENTS

21. Meanwhile, on 6 March 2023, Rainer Hughes filed and served an application to rely on further documents ("the 11th LOD"). This contained 30 items, including the Appellant's tax returns. The reason given for the application was that the documents had "only recently become available" to the Appellant.

22. On 9 March 2023, Rainer Hughes filed and served another application to rely on further documents ("the 12th LOD"). The reason for the application was that the documents contained

work done by a third party (COR Business Services (Northern) Ltd) on documents relating to legal costs which were already in the Bundle.

23. On 14 March 2023, HMRC were asked by the Tribunal Service (at my direction) whether they objected to the new evidence. On 22 March 2023, the Tribunal's Service wrote again to the parties, clarifying that this earlier email related to the 11th and 12th LoDs, and continuing:

“If or to the extent that HMRC do not object, Judge Redston directs that by 4 April 2023 the Appellant is to file serve a supplementary bundle to contain all such documents, which complies with the Tribunal's guidance at <https://www.judiciary.uk/wp-content/uploads/2021/06/210607-FTT-Tax-Chamber-guidance-PDF-bundles-1.pdf>. Judge Redston gives this direction on the basis of her understanding that all other documents are already contained in the Bundle already filed and served which includes 3831 pages. The time by which the Appellant is to file and serve his skeleton argument remains at 6 April 2023 as directed.

If HMRC do object to (any of) the new evidence, Judge Redston will consider the position and issue a decision and fresh directions, if appropriate.

Given the proximity to the hearing, the extent of the material already submitted, the age of this case, and the need for both parties to consider all relevant evidence before the submission of their skeleton arguments, the parties are to note that it is unlikely that permission will be given for the Appellant to rely on any further new evidence.”

24. On 28 March 2023, HMRC said they did not object to the 11th and 12th LoDs, and set out in their email the timetable of the key steps remaining before the hearing.

THE NEW WITNESS STATEMENT AND EVIDENCE

25. On 6 April 2023, Rainer Hughes filed and served the Appellant's skeleton argument, drafted by Mr Julian Hickey of Counsel. He was instructed by the Appellant on a direct access basis rather than by Rainer Hughes. His skeleton runs to 78 pages and 183 paragraphs. It includes references not only to the 11th and 12th LoDs but also to a 13th LoD, as well as to a second witness statement from the Appellant.

26. On 11 April 2023, HMRC emailed Rainer Hughes and Mr Hickey, saying they had not been provided with the 13th LoD or with the new witness statement; that no application had been made to the Tribunal for this new evidence to be admitted, and that if such an application were to be made, HMRC would be likely to object to it.

27. Later that day, Rainer Hughes sent HMRC and the Tribunal an email with the text “please see attached email 2 of 2”. The Appellant's second witness statement was attached to that email.

28. The witness statement was dated 14 March 2023 and runs to 50 pages and 87 paragraphs. From my review, only paragraphs 5, 6 and 46 relate to the 11th and 12th LoDs. The Appellant says at paragraph 2 of the witness statement that its purpose is “to assist the Tribunal in explaining how the documents link to HMRC's Revised Statement of Case (25 April 2022)”.

29. HMRC responded at 19.34 that day, saying:

“...there is no application to admit this document out of time. It is also unclear why a document dated 14 March 2023 was not served with an application for its admission before today when it has been available for nearly a month.

This is not an insignificant document. It is 50 pages and appears to provides a mixture of evidence which has not previously been submitted, as well as comments on evidence in the original hearing bundle and therefore, could and

should have been provided within the first statement. To sufficiently analyse the document will need a significant amount of additional work to be done in preparation for the Respondents' skeleton and for the Respondents' Officer to consider and provide additional comments.

From the Appellant's skeleton argument at para 39, this document appears to form a significant foundation into the challenge that Officer Bland did not make a discovery and he will therefore need to provide rebuttal evidence. With only 3 weeks before the reading day, the Respondents submit that it is wholly unacceptable that a document containing such evidence be admitted so late into the proceedings, and that admitting this document into evidence will be significantly prejudicial to the Respondents' case as well as prejudicial to the Tribunal in being able to hear the case fairly and justly."

30. On 12 April 2023, Rainer Hughes filed and served an application to admit the Appellant's second witness statement into evidence. They said that:

(1) The focus of the witness statement was to explain the documents already set out in the first 12 LoDs.

(2) It would take "a considerable amount of time" for the Appellant to explain the relevance of those documents and the reliance placed on them by the Appellant in the course of examination in chief and it would therefore be helpful to HMRC and the Tribunal to have the second witness statement.

(3) In addition to the material in the first 12 LoDs, further important evidence "needed to be added [to the Appellant's evidence] on 4 April 2023"; this evidence arose from the 13th LoD.

(4) Although the Appellant had signed his witness statement on 14 March 2023, there were "miscommunications" between the Appellant and Rainer Hughes "regarding instruction as to when it was to be filed" because of the further evidence in the 13th LoD.

(5) HMRC "have the burden of proof in respect of their purported discovery and accordingly they should in any event be ready to justify their discovery assessments that have been issued in the context of the documents in the hearing bundle".

(6) The Tribunal "has the benefit of a full reading day" to understand the Appellant's case including the new material.

(7) The new evidence was relevant, and Lightman J in *Mobile Export 365 Ltd v HMRC* [2007] EWHC 1727 (Ch) ("*Mobile Export*") said at [20(2)] that "the presumption must be that all relevant evidence should be admitted unless there is a compelling reason to the contrary".

(8) Rainer Hughes nevertheless accepted that, in deciding whether to allow late evidence, the Tribunal should apply three stage process set out in *Denton v White* [2014] EWCA Civ 90 ("*Denton*"). In Rainer Hughes's submission, the application of those principles should result in the Tribunal admitting the Appellant's second witness statement, as it would assist HMRC and the Tribunal in understanding the documents in the Bundle and those the 11th and 12th LoDs.

31. On 12 April 2023, Rainer Hughes also filed and served the documents comprising the 13th LoD, but without an index or an application that they be admitted into evidence. The documents run to 60 pages, and include a witness statement dated 4 April 2023 from Zeibeda Sattar, the Appellant's sister, to which two exhibits were attached.

32. Later the same day, HMRC emailed Rainer Hughes saying they had not received any application to admit the 13th LoD or an index of those documents.

33. Given the proximity of the hearing; the need for HMRC to know the position so that they can produce their skeleton argument, and the fact that HMRC had pointed out to Rainer Hughes on 11 April that no application had been made in relation to the 13th LoD, I decided it was not in the interests of justice to wait for further correspondence or applications from Rainer Hughes, but to proceed to determine:

- (1) their application to admit the Appellant's second witness statement; and
- (2) whether the documents comprising the 13th LoD (referred to both in the skeleton argument and in the application to admit the second witness statement, and filed and served albeit without an application to admit) should be admitted into evidence.

THE RELEVANT PRINCIPLES

34. There have been clear failures to comply with the Tribunal's directions.

(1) Witness statements were required to be filed and served by 8 November 2019. The Appellant's second witness statement was filed and served on 11 April 2023, and Ms Sattar's witness statement was filed and served the following day; both were subsequent to the filing of the Appellant's skeleton argument and the Bundle.

(2) Lists of Documents were required to be filed and served by 26 July 2019. The documents within the 13th LoD were filed and served on 12 April 2023, but without the list or index which sets out what those documents are, and also without an application for those documents to be admitted into evidence.

35. It was common ground that in deciding whether to admit this late evidence, the Tribunal must apply the three-stage process set out in *Denton*. That this is correct can also be seen from *Wolf Rock (Cornwall) Ltd v Langhelle* [2020] EWHC 2500 (Ch) at [35]. It is also well-established that the Tribunal should apply a similar approach to the courts in relation to compliance with directions, see *BPP v HMRC* [2016] EWCA Civ 121, where the Senior President of Tribunals said at [37]:

“...the terms of the overriding objective in the tribunal rules likewise incorporate proportionality, cost and timeliness. It should not need to be said that a tribunal's orders, rules and practice directions are to be complied with in like manner to a court's. If it needs to be said, I have now said it.”

The *Denton* approach

36. The three stages are as follows:

- (1) establish the length of the delay and whether it is serious and/or significant;
- (2) establish the reason(s) why the delay occurred; and
- (3) evaluate all the circumstances of the case, using a balancing exercise to assess the merits of the reason(s) given for the delay and the prejudice which would be caused to both parties by granting or refusing permission, and in doing so take into account “the particular importance of the need for litigation to be conducted efficiently and at proportionate cost, and for statutory time limits to be respected”.

The length of the delay and the reasons

37. The delay is over three years, and the Appellant's second witness statement, his sister's witness statement and the other documents which make up the 13th LoD were provided after the Appellant had filed his skeleton argument, and some six days into the two week period

allocated for HMRC to produce their own skeleton. The Appellant's failure to comply is extremely serious and significant.

38. The only reason given for the delay in filing the Appellant's second witness statement was that there had been "miscommunication" between the Appellant and his adviser after 14 March 2023. No reason, let alone a good reason, has been provided for why the Appellant did not provide further witness evidence:

- (1) by the due date (to the extent that it relates to the Appellant's comments on documents originally provided by HMRC);
- (2) shortly after the filing of the revised Statement of Case on 25 April 2022, nearly a year ago, given that this was stated to be the purpose of the Appellant's new witness statement; and/or
- (3) alongside the multiple LoDs already filed and served late, to the extent that the Appellant wanted to clarify those documents.

39. No reason has been given for the late filing and service of Zeibeda Sattar's witness statement. No reason has been given for the late filing and service of the other documents within the 13th LoD.

The third stage

40. The third stage is to evaluate all the circumstances of the case.

Efficiency and proportionate cost

41. It is clear from *Denton* that significant weight must be given to "the need for 'litigation to be conducted efficiently and at proportionate cost'". The provision of extensive new material at this extremely late stage is manifestly inefficient. It puts unreasonable and unacceptable stress on the timetable for the hearing and on HMRC's litigators, and dealing with the application has required the Tribunal to divert time from other tasks to respond.

Compliance with the directions

42. It is also clear from *Denton* that significant weight must also be given to enforcing "compliance with rules, practice directions and orders" see the earlier citation from *BPP*.

43. Although this interlocutory decision deals only with the late filing and service of the Appellant's witness statement and the documents which make up the 13th LoDs, there have been repeated previous failures to comply with the Tribunal's direction that the LoD be produced by 26 July 2019. Although HMRC have not objected to the provision of the earlier LoDs, the applications could plainly have been challenged: it is, for example, difficult to understand why the Appellant did not have access to his tax returns until 6 March 2023.

44. There has also been a significant and serious failure to comply with the direction that witness evidence be filed and served by 8 November 2019. The Appellant's second witness statement was filed on 11 April 2023, and that of Zeibeda Sattar on 12 April 2023.

Relevant evidence

45. Rainer Hughes submitted that the evidence in the new witness statements and the 13th LoD is "relevant". For the purposes of this decision, I am prepared to accept that this is the position.

46. Although Rainer Hughes sought to rely on *Mobile Export*, the passage on which reliance was placed is followed by the statement that springing surprises on opponents and the Tribunal was "not acceptable conduct today in any civil proceedings" and was "clearly repugnant to the Overriding Objective" and to the duty of the parties and their legal representatives to help the court to further that objective. The Appellant is here "springing surprises" on HMRC by

producing a significant quantity of new evidence at a very late stage, without giving any good reason for that delay.

Prejudice to the Appellant

47. If the Appellant is refused permission to rely on his second witness statement, Rainer Hughes has said that the relevance of those documents in the Bundle which were filed after his first witness statement will be dealt with by way of examination in chief.

48. The extent and nature of examination in chief will be a matter for the Tribunal panel at the time of the hearing in the light of the interest of justice, taking into account any submissions made by the parties' representatives. It is however clear that the Appellant will have some opportunity to answer questions put by his counsel on documents filed after the date of his first witness statement, and this partly mitigates the prejudice he will suffer as the result of relevant documentary and witness statement evidence not being admitted.

Prejudice to HMRC

49. HMRC said in their email of 11 April 2023 that the late evidence is prejudicial to them because the Appellant's 50 page witness statement is "not an insignificant document" and will "need a significant amount of additional work" during a period when HMRC should be preparing their skeleton in response to the existing evidence and to Mr Hickey's submissions based on that evidence. It is also likely that Officer Bland would, at this very late stage, have to give a further witness statement. I agree that there is significant prejudice to HMRC for the reasons given in that email.

The hearing

50. If the Tribunal were to admit this late evidence, it would be unfair and unjust to HMRC to require them to consider and respond by way of a skeleton argument in the very short time remaining. It would also be unfair and unjust for them to have to file and serve a further witness statement from Officer Bland, within the same limited time period.

51. Even or to the extent that HMRC were able to consider and respond to the new evidence, the timetable for the hearing is likely to be inadequate: there would be a further witness, Ms Sattar, who would be required to be tendered for cross-examination, and the Appellant's own witness statement has been expanded by some fifty pages; the material in the 13th LoD is also additional.

52. For all those reasons, if the new evidence were to be admitted, the overriding objective would require the Tribunal to vacate the hearing and relist it. That would plainly not be in the interests of justice. This is a very old case: the disputed years begin in 2001-02, over two decades ago; the decisions under appeal were made in April and May 2017 and in June 2018, between five and six years ago. The hearing has already been arranged and cancelled twice.

53. In *Denton* at [45] the Court referred to scarce public resources, saying that this "made it "all the more important that court time is not wasted and hearings, once fixed, are not adjourned". In his concurring judgment, Jackson LJ added this passage:

"There are many hidden costs flowing from adjournment of the trial: witness statements and reports need updating; fee earners handling the litigation may change with a need for newcomers to read into the case; both legal teams continue to work upon the litigation and so forth. In addition to the increased costs there is wastage of resources. Lawyers, experts, factual witnesses and other busy people who had cleared their diaries to attend the trial (probably cancelling other commitments) will have to clear their diaries yet again for another trial a year later. There is also the continuing strain on the parties to consider. What litigants need is finality, not procrastination."

54. In this case, an adjournment will waste HMRC's time, as well as the time and resources of HMCTS and the judiciary, who will be required to allocate further resources to cancelling and relisting this hearing.

Other taxpayers

55. A linked issue is the effect on other court users. In *Chartwell Estate Agents Ltd v Fergies Properties SA* [2014] EWCA Civ 506, Davis LJ (with whom Sullivan LJ and Laws LJ agreed) said at [28] that the purpose of the Jackson reforms was:

“to change a litigation culture...with a view to protecting the wider interests of justice including the interests of other court users: who themselves stand to be affected in the progress of their own cases by satellite litigation, delays and adjournments occurring in other cases by reason of non-compliance.”

56. At [33] he said:

“The emphasis thus under the new CPR 3.9 is not to be placed simply on the interests of the parties in the individual case; a wider approach is mandated, calling for protection of the position of court users generally.”

57. HMCTS has allocated five days of judicial and court time for the Appellant's case. It is now far too late to reallocate that time to other appellants, who are waiting to have their appeals decided. If the appeal is relisted, the allocation of those new dates will also adversely affect other appellants.

The burden of proof

58. Rainer Hughes put forward as one reason in support of their application that HMRC “have the burden of proof in respect of their purported discovery and accordingly they should in any event be ready to justify their discovery assessments that have been issued in the context of the documents in the hearing bundle”. The fact that, and to the extent that, a party has the burden of proof is not a good reason for providing further extensive evidence for that party to consider, in breach of the Tribunal's directions and without a good reason.

The Tribunal's reading day

59. Rainer Hughes also relied on the fact that the Tribunal had a reading day. The Tribunal has already received Mr Hickey's skeleton, which currently runs to 78 pages (although this is likely to be reduced in the light of Direction 3 below); HMRC's skeleton is unlikely to be short. The Hearing Bundle as filed contains 3,831 pages. To that are to be added:

- (1) a supplementary bundle containing the documents in the 11th and 12th LoDs (which has not yet been received by the Tribunal, see Direction 1 below); and
- (2) those HMRC documents which have been incorrectly omitted by the Appellant from that Bundle, see Direction 10 below.

60. A reading day is only required where (as here) there is significant material for the Tribunal to consider in advance of the hearing. The time required for reading is decided at the time the hearing is listed, on the basis of the material then known to be before the Tribunal.

61. The allocation of a reading day does not give a party *carte blanche* to add more material at the last minute, on the premise that the Tribunal will make time within that reading day to consider it. The Tribunal reading day is thus not a relevant factor in the balancing exercise.

Not a litigant in person

62. Had the Appellant been a litigant in person, unfamiliar with the Tribunal Rules, directions and procedures, that *may* have been a factor to be considered in the balancing exercise.

However, in this case the Appellant has been represented since at least 22 June 2018 by Rainer Hughes, and Counsel was instructed before 9 June 2021 (see §13).

The balancing exercise

63. The factors in favour of admitting the late evidence are that it is relevant, and its exclusion will cause some prejudice to the Appellant. That prejudice can however be mitigated in part by questions asked during evidence in chief. All other factors are against admitting the late evidence.

64. The balancing exercise is thus overwhelmingly in favour of refusing to allow any of the documents included in the 13th LoD to be admitted into evidence, and refusing to admit the Appellant's second witness statement.

65. I make an exception for paragraphs 1, 3, 5 and 46 of the Appellant's second witness statement on the basis that they provide an explanation for the documents contained in the 11th and 12th LoDs, which were only recently admitted into evidence.

CONCLUSION

66. For the reasons set out above, the Appellant is refused permission to rely on:

- (1) any of the documents included in the 13th LoD; or
- (2) any part of the Appellant's second witness statement other than paragraphs 1, 3, 5 and 46, and those paragraphs are admitted only if Direction 7 below is complied with by the time there specified.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

67. This document contains full findings of fact and reasons for this interlocutory decision. Any party dissatisfied with this interlocutory 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 Tribunal Rules").

68. However, the Appellant is to note that if he were to appeal this interlocutory decision, the Tribunal would not in consequence vacate the hearing. The time limit for an appeal against this interlocutory decision is therefore extended, so that it must be received by this Tribunal not later than 56 days after the substantive decision is sent to that party.

DIRECTIONS

SUPPLEMENTARY BUNDLE

1. As far as I have been able to establish, the Appellant has not as yet filed the supplementary hearing bundle (containing the documents on the 11th and 12th LoDs) which he was directed to file and serve by 4 April 2023. That it has not been so filed or served is also indicated by the absence of page references in Mr Hickey's skeleton argument.

(1) If the supplementary bundle has not yet been filed and served, it must be so filed and served by noon on Monday 17 April 2023. That bundle is to comply with the Tribunal's guidance at [Tax Chamber PDF bundles guidance \(June 2021\)](#).

(2) If it has been filed and served, the Appellant is by the same date and time to forward to my judicial email address a copy of the original email including the attached Bundle.

2. Unless the above direction is complied with in full and by the time and date specified, the Appellant will be unable to rely on the documents on the 11th and 12th LoDs.

APPELLANT'S SKELETON ARGUMENT

3. The Appellant's skeleton argument is to be refiled with all references to the 13th LoD and to the excluded paragraphs of the Appellant's witness statement having been excised. It was improper for the skeleton to be submitted in reliance on evidence which was had not yet been provided to the Tribunal, for which no application to admit had been made, let alone granted.
4. If the supplementary bundle is not filed and served in accordance with Direction 1, the skeleton is also to remove all references to the documents in the 11th and 12th LoDs.
5. The resubmitted skeleton is to be filed and served by noon on 18 April 2023.
6. Unless the Appellant complies with this direction, the Tribunal may strike out the appeal under Rule 8(3)(b) of the Tribunal Rules, on the basis that 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.

APPELLANT'S SECOND WITNESS STATEMENT

7. The Appellant has permission to file and serve an amended version of his second witness statement containing only paragraphs 1, 3, 5 and 46, but only if that amended version is filed and served by noon on 18 April 2023. Unless the Appellant complies with this direction, no part of the second witness statement will be admitted into evidence.

HMRC'S SKELETON AND THE HEARING BUNDLE

8. HMRC's time limit for filing and serving their skeleton argument is extended to 4 pm on 26 April 2023. This is because it is unreasonable to expect HMRC to respond to the current version of the skeleton argument provided by the Appellant.
9. As far as I was able to establish, the version of the Hearing Bundle uploaded onto the Tribunal's Document Upload Centre entitled "complete bundle reordered" and containing 3,831 pages does not contain HMRC's amended Statement of Case, which was filed and served on 22 April 2022.
10. HMRC are to check the Hearing Bundle to ensure that all the documents already included on their Document List(s) are included, and are to file and serve a supplementary Bundle containing any omitted documents by 4pm on 26 April 2023. HMRC also have permission to apply for an order to cover the related costs. Any such supplementary bundle is to comply with the Tribunal's guidance at [Tax Chamber PDF bundles guidance \(June 2021\)](#).

THE AUTHORITIES BUNDLE

11. The Appellant is to file and serve the electronic copy of the Authorities bundle by 4pm on 2 May 2023. The shorter time limit (compared to that normally required for the production of an Authorities Bundle) has been caused by the Appellant's failure to comply with the other directions, as set out in the above interlocutory decision.
12. Unless the Appellant complies with this direction, the Tribunal may strike out the appeal under Rule 8(3)(b) on the basis that he has failed to co-operate with the Tribunal to such an extent that the Tribunal cannot deal with the proceedings fairly and justly.

**ANNE REDSTON
TRIBUNAL JUDGE**

RELEASE DATE: 14TH APRIL 2023