



TC06243

Appeal number: TC/2015/00014, 00016 and 00017

PROCEDURE - Application to reinstate appeals struck out - appellants failed to comply with Directions repeatedly in face of warnings - criteria to be applied - application refused

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

**RONNIE DECKER, HELEN DECKER and
ADMIRA CLEMENS**

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE ANNE SCOTT

Sitting in George House, Edinburgh on Monday 23 October 2017

The appellants were not represented but Mr Decker submitted an email statement

Graham McIver, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

5 **The issue**

1. This was an oral hearing of an application by the appellants to reinstate the three appeals that had been struck out on the basis that the appellants had failed to comply with Directions issued by the Tribunal.

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The relevant legislation

2. In terms of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (“the Rules”) the Tribunal has a wide discretion when considering applications such as these. However, as can be seen from paragraph 39 below, since Mr Decker is seeking relief from the sanction of striking out the appeals, a relatively strict approach is to be taken.

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The substantive appeals

3. These appeals relate to Section 29 Taxes Management Act 1970 (“TMA”) discovery assessments and Section 7 TMA penalty assessments issued on 15 September 2014 and 23 February 2015 respectively. As far as Mr Decker is concerned, these cover the years 1999/00 to 2002/03, Mrs Decker the years 1999/00 to 2001/02 and Admira Clemens the years 2000/01 to 2002/03. Very large sums of money are involved.

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4. The appeals have been assigned to proceed under the Complex category.

Background to the Directions

5. Directions were issued by the Tribunal on 28 November 2016 and were also attached to the full Decision on the respondent’s (“HMRC’s”) application for strike out of these appeals. That was issued on 3 December 2016. That decision (“the Decision”) set out the history of these appeals, the appellants’ lack of engagement in the process and explained at paragraph 87 the consequences of failure to comply with Directions. HMRC’s application was refused.

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6. A copy of the Decision with the Directions is annexed at Appendix 1.

7. For the purposes of this application, it is of particular relevance that, as the Decision narrates at paragraphs 13, 14 and 70, although the appeals had been set down for a substantive hearing from 11 to 18 November 2016, the appellants had failed to lodge witness statements or Skeleton Arguments in compliance with the previous Directions. The grounds of appeal were largely unspecified and insofar as specified not founded on material which had been lodged in process.

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8. I also found at paragraph 71 that all three appellants had failed to co-operate with the Tribunal.

9. The Decision referred to, and included, the Directions issued on 28 November 2016 which stated that failure to comply with those Directions would lead to the appeals being struck out. The first deadline for compliance was 16 December 2016 for Mr Decker for himself and as representative for his wife and mother.

10. There was no compliance at all. Apart from a very belated suggestion at the end of May 2016, that at an unspecified time he had a health problem, which transpired to be simple “piles” (see paragraphs 22-25 below) the Tribunal still has no evidence as to why the appellants failed to comply with Directions. The most serious of the three failures (for each appeal) was that he did not lodge amended Grounds of Appeal for each appeal, as directed.

11. By letter and email dated 20 December 2016, the Tribunal notified the appellants that the appeals had been struck out, and of their right to apply for reinstatement within 28 days. That letter was erroneous as it referred to the appeal being struck out by a judge. The appeal had not been struck out by a judge but simply by operation of Rule 8(1) of the Rules.

The reinstatement application and subsequent correspondence

12. Mr Decker represents all three appellants and lodged the application by email on 10 January 2017. It is of note that the appellants had been professionally represented until September 2016.

13. The background to the reinstatement application is set out in the Directions issued by the Tribunal on 20 March 2017, a copy of which is annexed at Appendix 2. As can be seen from those Directions, I made it very clear that, notwithstanding Mr Decker’s protestations, there had been no compliance with Directions by any of the appellants. Nevertheless he was given a final opportunity to comply with those Directions, and in the event that he did so, he was directed to lodge a reasoned argument for reinstatement supported by detailed amended Grounds of Appeal and, as appropriate, applications in regard to lodgement (late) of witness statements and evidence and that within 14 days.

14. HMRC responded on 27 March 2017 vigorously opposing the application and pointing out that there had been a failure to comply with Directions 1, 5 and 6, not only by 16 December 2016, but that the failure was ongoing. Their grounds of opposition are set out at paragraph 32 below.

15. There was limited, and belated, compliance (one week too late) on 3 April 2017 in that Mr Decker sent an email giving dates to avoid and an address and what he called amended Grounds of Appeal but not for each appellant (as Directed).

16. Sadly, the allegedly amended Grounds of Appeal reiterated in shorter form and, in general, in less detail than those set out in the email of 22 November 2016. In the

Directions I had cited the lack of specification in that email as the reason for requiring amended Grounds of Appeal. Further I had pointed out at paragraphs 75 to 79 of the Decision some of what might be required in amended Grounds of Appeal. That was not addressed in the email of 3 April 2017.

5 17. Mr Decker did not comply with the Direction to provide applications for lodgement of witness statements and evidence.

18. The argument for reinstatement was largely restricted to the Grounds of Appeal and a simple argument that it would be unfair not to reinstate.

10 19. No explanation was offered for the failures in compliance in December 2016 or previously.

15 20. HMRC addressed that in a response dated 19 May 2017, pointing out that the limited compliance had been late and there had been no substantive compliance in that there had been no application in respect of witness statements and evidence and there had been no explanation of the failure in compliance. Furthermore, there was no explanation as to why substantive legal points, insofar as there might be any, had not been raised at an earlier stage.

21. Mr Decker responded on 26 May 2016 pointing out that there was no requirement for an oral hearing.

20 22. He offered the explanation that “I was delayed in replying due to Health Issues, if the Tribunal requires documentation for the Rectal Bleeding and Hemorrhage (sic) of Anus and Rectum I will provide it”. He also stated that he had already provided witness statements and evidence so there was no requirement to make an application for admission thereof.

25 23. HMRC replied on 14 June 2017 stating, amongst other matters, that Mr Decker had made “unsubstantiated and inaccurate assertions” to the Tribunal and pointed out (correctly) that no witness statements had been lodged and therefore the information about his health might be similarly misleading and it was not vouched. They reiterated their request for an oral hearing.

30 24. Mr Decker responded on 4 July 2017 reiterating his view that there was no necessity for an oral hearing, stating that several documents and evidence had been sent by email to the Tribunal on 22 November 2016 and producing a colonoscopy report dated 6 February 2017.

25. In response thereto, on 16 August 2017, I issued further Directions, a copy of which are annexed at Appendix 3. As can be seen from that I made it clear that:

35 (a) No reasoned argument for reinstatement had been provided and, in particular, amended Grounds of Appeal for **each** of the appellants had not been lodged by 16 December 2016.

(b) The Grounds of Appeal that had been intimated were neither detailed and nor had relevant substantive arguments been deployed in support thereof.

(c) No witness statements had been lodged.

(d) The medical evidence simply indicated that Mr Decker had suffered from the most basic form of piles and there was no explanation as to why that should have affected his ability to comply with Directions over a long period.

5 (e) It would be in all of the appellants' interests to comply with all of the Directions in full before the reinstatement application was decided.

(f) Lastly, I repeated again that failure on the part of Mr Decker to comply on time with any of the Directions would automatically lead to strike out of the reinstatement application.

10 26. On 26 September 2017, an oral hearing having been fixed to coincide with Mr Decker's available dates, he sought a postponement on the basis that that date "is conflicting with my previous engagement".

15 27. On 3 October 2017, I issued Directions, a copy of which are annexed at Appendix 4, and in particular that drew Mr Decker's attention to the fact that no witness statements or detailed Grounds of Appeal for each appellant had been lodged and that there was a need to comply with all of the Directions in full.

20 28. On 4 October 2017, Mr Decker responded, again stating that he had complied with every Direction and that his reason for being unable to travel was because he was due to appear in court in Dubai and a "travel ban" was in place. He stated that he would inform the Tribunal about the outcome of that case on 30 October 2017 and would intimate when he would be free to travel to the UK. As at 20 November 2017, nothing has been heard from Mr Decker in that regard.

25 29. HMRC responded on 5 October 2017 objecting to any discharge of the hearing and arguing that Mr Decker had deliberately drip fed information to the Tribunal. He had not co-operated in any meaningful way.

30 30. On 10 October 2017, further Directions were issued, a copy of which are annexed at Appendix 5. Those Directions not only stated that the hearing would proceed in his absence on 23 October 2017 but again pointed out that no witness statements had been lodged by any of the appellants. Mr Decker was encouraged to reread the Decision and the various Directions that had been issued, all of which had been sent to him electronically on 9 October 2017 and were included in the Bundle.

35 31. His attention was drawn to the various paragraphs dealing with witness statements and amended Grounds of Appeal for each appellant. He was told that he was at liberty to submit any further evidence and/or arguments relating to the repeated and ongoing failures and he should give reasons why the appeal should be reinstated. It was pointed out that it was in the appellants' interests that he should do so and as soon as possible.

32. On 19 October 2017, he lodged only what he described as "Statement of Ronnie Decker" and that confirmed the following:-

(a) He was unable to attend the hearing scheduled for 23 October 2017 because he had to attend Court in UAE on 30 October 2017 and could not travel out of UAE until that court case was resolved. No detail was provided. He anticipated a monetary fine if found guilty.

5 (b) He raised four issues, namely:-

(i) “I have been accused of not cooperating or compiling with Directive (sic). This is wholly untrue, I have complied with every Directive through the various emails sent on the following dates: 16th June 2017, 26th May 2017, 3rd April 2017, 10th Jan 2017, 22nd November 2016.”

10 (ii) The reinstatement application is just and fair since HMRC had used the strike out application because “they can’t prove the accuracy of the assessment”.

15 (iii) HMRC claims that they made a discovery on or around December 2011 because the appellants had been in receipt of income by way of unexplained bank deposits in the years to which the assessments pertain and those deposits had not been assessed and taxed. He alleged that HMRC had charged him with VAT fraud in the sum of £42m in 2001 and the criminal proceedings were finally dropped some 10 years later. He alleged that he had produced information in his email of 22 November 2016 showing that HMRC was aware of his tax status.

20 (iv) He alleges that the Court Order from the Court of Session referred to in the attachment sent with his email of 3 April 2017 indicated that income should not be taxable if it is allegedly derived from unlawful conduct as confirmed by the Court of Session.

25 (c) He then went on to say that HMRC should have raised a discovery assessment in May 2001 and that to do so 11 years and eight months later is not timely.

30 (d) It is not fair that HMRC do not pursue Netflix and Ebay where billions of pounds passed through their bank accounts but they paid less tax than the quantum of the assessments in these appeals. That is not fair.

(e) Lastly he wished a full substantive hearing within three months. HMRC would not be prejudiced as the funds cannot be depleted because there is an inhibition in place.

35 33. As can be seen, that Statement did not address the failures in compliance. Indeed it stated that there had been no such failures.

HMRC’s arguments

34. HMRC opposed the appellants’ application for reinstatement on the basis that:

- 5 (a) The conduct of these appeals has been indicative of the appellants' deliberate frustration of their progress. Although the appeals were brought at the appellants' instigation there has been no substantive engagement to date. If the appeals were to be reinstated then there would be yet further delay in the disposal of the appeals.
- (b) The Tribunal had good reason to strike out the appeals due to the appellants' failure to comply with Directions because the Tribunal had had to make those Directions because there had been previous non-compliance.
- 10 (c) The breach was serious and followed upon the earlier breaches by the appellants relating to the submission of witness statements, skeleton arguments and their non-attendance at the hearing of 18-24 November 2016.
- (d) The failure to submit amended Grounds of Appeal for each of the parties and indeed addresses at which all of the parties could be reached demonstrated a continuing lack of candour towards, and a lack of co-operation with, the Tribunal.
- 15 (e) Whilst it was acknowledged that there was potential prejudice to the appellants if reinstatement was refused, due to the amounts due under the discovery assessments, there was also the risk of prejudice to the public interest in finality of litigation in light of the history of delay employed in these appeals. It was argued that the appellants' actions demonstrated an intention to keep the appeals alive but not to actively pursue them or comply with their obligations to the Tribunal.
- 20 (f) There had been no adequate explanation or justification of the delay in compliance with the Directions dated 28 November 2016 and 20 March 2017.

25 **The Hearing**

35. HMRC had lodged two Bundles, being copies of the Decisions and Directions in these appeals and correspondence between the parties and the Tribunal. They also produced and relied upon Rules 2 and 8 of The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 ("the Rules") and two authorities, namely, 30 *Tophayat Limited v HMRC*¹ and *BPP Holdings Limited v HMRC* ("BPP")².

36. The Tribunal had the email Statement from Mr Decker.

37. Firstly, I make it absolutely explicit that Mr McIver for HMRC raised no new points or arguments in the course of the oral hearing. Accordingly, the appellants were fully aware of all of the arguments deployed. Secondly despite the guidance in 35 the numerous Directions the only additional information for the appellants that was submitted was Mr Decker's statement.

¹ 2017 UKFTT 0187

² 2017 UK SC 55

Discussion

Mr Decker's statement

38. In that regard, before coming to the detail of the reasons for my decision I comment thereon as follows:

5 (a) Mr Decker did not advance any arguments in regard to the other two appellants.

(b) It is wholly untrue to say that there has been compliance with every Direction and that for the reasons set out in the various Directions and as described above.

10 (c) Points (b) (ii), (iii) and (iv) of paragraph 32 above relate to the substantive appeals.

(d) As far as (b) (ii) is concerned, these appeals were not struck out on HMRC's application.

15 (e) In the interests of clarity, I explain that the attachment referred to in (b)(iv) was simply a letter from The Civil Recovery Unit to Mrs Decker stating that the Court of Session had refused her appeal and that recovery would proceed. It has no impact on these proceedings.

(f) In these proceedings this Tribunal has no jurisdiction to look at other taxpayers' tax returns. Therefore Ebay and Netflix are irrelevant.

20 (g) I deal with timely Discovery assessments at paragraph 47 below.

When should an appeal that has been struck out be reinstated?

39. As I indicate in paragraph 33, HMRC relied on *BPP*. At paragraph 26 of *BPP* the Supreme Court stated that it was not for that Court to interfere with the guidance given by the Upper Tribunal and the Court of Appeal as to the proper approach to be adopted by this Tribunal in relation to the lifting or imposing of sanctions for failure to comply with time limits. The Court of Appeal in *BPP*³ set out the approach to be adopted at paragraphs 37 and 38 and those paragraphs read as follows:

“37.....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.

30 38. A more relaxed approach to compliance in tribunals would run the risk that non-compliance with all orders including final orders would have to be tolerated on some rational basis. That is the wrong starting point. The correct starting point is compliance unless there is good reason to the contrary which should, where possible, be put in advance to the Tribunal. The interests of justice are not just in terms of the effect on the parties in a particular case but also the impact of the non-compliance on the wider system including the time expended by the Tribunal in getting HMRC to comply with a procedural obligation. Flexibility of process does not mean a shoddy attitude to delay or compliance by any party.”

³ 2016 EWCA Civ 121

40. At no stage, let alone in advance of this hearing, has Mr Decker advanced any reasoned argument or explanation for the non-compliance.

41. As can be seen from the Decision and the extensive Directions in this case, the appellants have been given repeated opportunities to comply and, indeed, they have been offered repeated guidance.

42. Although the case was not cited to me, *Jumbogate Ltd v HMRC*⁴ is very much in point in this matter. In that case, Judge Sinfield referred to *Pierhead Purchasing Ltd v HMRC*⁵ (“Pierhead”), where Proudman J stated at paragraph 21 that:

“There is no guidance in the rules as to how such a decision is to be reached other than the application of the overriding objective.”

She then narrated the overriding objective at paragraph 22 (and it is set out in full at paragraph 40 of the Decision annexed hereto) and at paragraph 24 she confirmed that “all the circumstances need to be considered and there should be no gloss on the overriding objective.”

43. She had stated at paragraph 23:

“Although as I have said, there is no guidance in the rules, the FTT applied the additional principles set out (in the context of delay in lodging an appeal) in *Former North Wiltshire DC v HMRC* [2010] UKFTT 449 (TC). Those were the criteria formerly set out in CPR 3.9(1) for relief from sanctions: see the decision of the Court of Appeal in *Sayers v Clarke Walker* [2002] EWCA Civ 645 at [21]. In *North Wiltshire* (see [56]-[57]) the FTT concluded that it was not obliged to consider these criteria but it accepted that it might well in practice do so. The same reasoning applies to the present case. The criteria were,

- The reasons for the delay, that is to say, whether there is a good reason for it.
- Whether HMRC would be prejudiced by reinstatement.
- Loss to the appellant if reinstatement were refused.
- The issue of legal certainty and whether extending time would be prejudicial to the interests of good administration.
- Consideration of the merits of the proposed appeal so far as they can conveniently and proportionately be ascertained.”

44. Judge Sinfield made the point that although *Pierhead* had concerned an application under Rule 17(3) of the Rules (withdrawal of an appeal) the same principles apply to reinstatement after strike out. He confirmed that, of course, effect had to be given to the overriding objective to deal with cases fairly and justly.

45. He went on to state at paragraph 45 that the relevant factors to consider when considering whether to set aside the strike-out were:

“...In this case, I consider that the relevant factors that I should take into account when considering whether to set aside the strike-out are:

⁴ [2015]UKFTT 0064 (TC)

⁵ [2014] UKUT 0321 (TCC)

- (1) whether the appeal is arguable and has a reasonable prospect of success;
- (2) the reasons for the strike-out;
- (3) whether there has been any material change since the strike-out;
- (4) whether HMRC would be prejudiced if the strike-out were set aside;
- 5 (5) what prejudice would Jumbogate suffer if the strike-out were not set aside; and
- (6) the conduct of the parties.”

46. I adopt that approach for this Reinstatement Application. What then are the relevant circumstances underpinning those criteria?

Are the appeals arguable?

10 47. Before dealing with that point I address the question of the timeliness, or otherwise, of the discovery assessments. As I indicated in the Decision at paragraph 80 the onus of proof for that lies with HMRC. Until September 2016 the appellants were professionally represented. Their experienced representative had raised no challenge to the timing or the competency of the assessments. Indeed, as
15 Mr Decker has indicated negotiations were in hand in order to settle tax that was admitted to be due and payable. Further, I note that although Mr Decker suggests that HMRC were investigating him many years ago, HMRC’s Statement of Case makes it clear that it was the Crown Office, not HMRC, who had been investigating. That is consistent with Mr Decker’s arguments about the criminal proceedings. HMRC’s
20 investigation appears to have commenced on 22 December 2011. That was not challenged by the representative.

48. On the balance of probability, given the very large amounts involved in these appeals, had there been any possible technical argument on timing and competency it would have been raised. Undoubtedly timeliness and competency of the discovery
25 assessments are amongst the circumstances which must be borne in mind but that has to be weighed in the balance with all other circumstances.

49. Insofar as Mr Decker’s email of 3 April stated amended Grounds of Appeal, very little relates to Helen Decker or Admira Clemens. Effectively Grounds 1 and 6 are identical and Mr Decker is arguing that illegal earnings cannot be taxed. They can.

30 50. In the Decision I addressed the Proceeds of Crime proceedings in the Court of Session and explained at paragraphs 57 to 63 that the proceedings in the Court of Session do not impact on the Tribunal. In any event the Reclaiming Motion has been granted in respect of Mr Decker only and a procedural hearing set down for 21 December 2017. He is represented in those proceedings.

35 51. Although he avers that the proceedings are similar and relate to the same facts, none of the information which has presumably been collated for the Court of Session proceedings has been produced for these proceedings. Similarly, if anything had been collated for these proceedings prior to the resignation of the representative just weeks before the substantive hearing was due, nothing has been produced.

52. Helen Decker and Admira Clemens are no longer involved in the Court of Session proceedings and are being pursued for recovery.

53. In the absence of any witness statements from either of the ladies or from Mr Decker in support of their position, the prospects of success in any appeal are likely to be negligible. Any application at this stage to lodge witness statements is likely to be vigorously opposed by HMRC given the number of opportunities offered to the appellants to have done so long before now.

54. As far as Mr Decker himself is concerned, the information in Grounds 2-5 amount to little more than the original bullet points in the Reinstatement Application and less than what was considered at the previous Hearings. There may be stateable arguments about his gambling and his trade in cars and diamonds but, in the absence of witness statements and evidence, the prospects of success are remote.

55. I agree with Mr McIver that, at best for Mr Decker, the prospects of success in any of these appeals is at most neutral. By Mr Decker's own admission in relation to himself, any success would only be partial since he concedes that there is tax outstanding.

56. Obviously Mr Decker is a party litigant and the other two appellants have chosen that he should represent them. However, I must take into account the fact that he has been litigating in the Court of Session and he has clearly been actively involved in the multi million pound business which was associated with the alleged VAT fraud. In his email of 22 November 2016 which is referred to in the Decision, he argued that "HMRC has lied under oath to several courts in their reasons for pursuing me". That suggests litigation experience. That email also gave information about the substantial sums that he has staked in gambling which presumably requires some acumen.

57. He therefore has a responsibility to display at least a rudimentary grasp of the relevant processes in the Tribunal and he has been expressly warned on numerous occasions about the consequences of failure to comply. Tellingly, as I pointed out at paragraph 46 of the Decision, none of the appellants took any action when their representative resigned agency and yet they knew, or should have known, that the substantive hearing was imminent. That is not dissimilar to his approach in this instance. He has repeatedly been told that before the hearing on reinstatement he should present relevant arguments explaining the failure to comply. He has not done so.

The reasons for the strike out

58. The reason for the strike out in each appeal is quite simply that the appellants did not comply with the Directions.

Has there been any material change since the strike out?

59. Regrettably there has been very little material change since the appeals were struck out. Mr Decker has slightly amplified the Grounds of Appeal for himself but only in a more minimal context than the email which caused me to issue the

Directions of 28 November 2016. He has added little or nothing for the other two appellants. Pertinently in the face of continued explicit warnings he has failed to lodge Grounds of Appeal for each of the appellants or to lodge witness statements or other evidence to supplement that which was produced previously and was found to be lacking.

Would HMRC be prejudiced if the strike out were set aside?

60. Undoubtedly. Although the Statement of Case was lodged a long time ago, in the absence of any witness statements or amended Grounds of Appeal for each appeal, HMRC would have serious difficulty in expanding thereon to produce a skeleton argument. The cost to the public purse would be considerable. Mr Decker's history, personally and as a representative, shows an almost total lack of cooperation in these appeals and that would suggest that any proceedings would be likely to be expensive and protracted.

What prejudice would the appellants suffer if the strike out were not set aside?

61. Clearly there would be significant prejudice since they would be unable to litigate. That is undeniable. However, that must be considered in the context of the progress of the litigation to date.

The conduct of the parties

62. I have set out at length, not only in the Decision but also in the Directions and, of course, in this Decision, the very limited engagement by any of the appellants. The appellants' engagement in this process is highlighted and characterised by their failure to contact the Tribunal when their representative withdrew agency. There has been no substantive engagement throughout.

63. I find that the delay in this matter is a significant and serious delay. I agree with Dyson LJ in *R (on the application of Cook) v General Revenue Commissioners*⁶ at paragraph 22 which reads:-

“... there was prejudice to HMRC in not being able to close its books. Thirdly, there is a public interest in these cases in achieving finality in litigation.”

64. I say that it is a significant delay because I agree with Judges Berner and Falk at paragraph 96 of *Romasave (Property Services) Ltd v HMRC*⁷ which reads:

“The exercise of a discretion ... is a matter of material import, since it gives the Tribunal a jurisdiction it would not otherwise have. Time limits imposed by law should generally be respected. In the context of an appeal right which must be exercised within 30 days from the date of the document notifying the decision, a delay of more than three months cannot be described as anything but serious and significant”.

⁶ 2009 STC 1212

⁷ 2015 UKUT 254

65. We are not here dealing with a right to appeal but rather with very clear Directions specifying time limits explicitly and where (a) in the case of the witness statements which were due to be lodged in October 2016, no witness statements have yet been lodged, and (b) in relation to the November 2016 Directions no amended Grounds of Appeal have been lodged for each of the parties.

66. Mr Decker has been extended extensive latitude but has not availed himself of the opportunities offered.

Conclusion

67. Quite apart from the obligation on the parties to co-operate with the Tribunal and help the Tribunal to further the overriding objective, including avoiding delay, taxpayers are expected to act with reasonable prudence and diligence in dealing with their affairs.

68. Every application depends on its own facts and circumstances and in this decision, with its appendices, I have set those out at length. At all stages in the consideration of this matter I have had Rule 2 of the Rules very much in mind. It is imperative that any decision should be fair and just to **all** of the parties. I have weighed every factor that was brought to my attention in the balance.

Decision

69. Taking all of these considerations into account, I decline to exercise my discretion and refuse permission to reinstate the appeals.

70. 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: 27 NOVEMBER 2017



Appeal number: TC/2015/00014, 00016 and 00017

Income Tax – Procedure – adjournment – no – sist – no – Discovery - strike-out application – refused - Directions issued

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

**RONNIE DECKER, HELEN DECKER and
ADMIRA CLEMENS**

Appellants

- and -

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

Respondents

TRIBUNAL: JUDGE ANNE SCOTT

Sitting in public at George House, 126 George Street, Edinburgh on Friday 18 November 2016 and Thursday 24 November 2016.

No appearance by or for the Appellants. Written submissions dated 22 November 2016 from Mr Decker

Graham McIver, Counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

Background

5 *The substantive appeals*

1. These appeals relate to Section 29 Taxes Management Act 1970 (“TMA”) discovery assessments and Section 7 TMA penalty assessments issued on 15 September 2014 and 23 February 2015 respectively. As far as Mr Decker is concerned, these cover the years 1999/00 to 2002/03, Mrs Decker the years 1999/00
10 to 2001/02 and Admira Clemens the years 2000/01 to 2002/03. Very large sums of money are involved.

Procedural history

2. Notices of Appeal were received by the Tribunal on 29 December 2014 with a request that they be joined since they all arose from the same set of circumstances.
15 Directions were then issued on 29 January 2015 to the effect that the three cases should proceed together and be heard together by the same Tribunal. They were then assigned to proceed under the Complex category.

3. Shortly thereafter, the respondents (“HMRC”) issued the Notices of Penalty Assessments. The appellants’ representative wrote to the Tribunal on 16 March 2015,
20 requesting that that letter be treated as a Notice of Appeal against the penalty assessments and an application to amend the Grounds of Appeal in the existing appeals to include those penalty assessments. HMRC consented. That application was granted on 6 July 2015.

4. On 9 September 2015, the Tribunal issued Case Management Directions and
25 acknowledged receipt of the Statement of Case.

5. Both parties complied with the Directions in regard to Lists of Documents on 23 October 2015 and a Joint Application for variation of the Directions was endorsed by the Tribunal on 3 December 2015 to extend a deadline in relation to confirmation of the expected duration of the hearing.

30 6. On 30 December 2015, the Tribunal consented to a stay of proceedings until 29 January 2016.

7. On 12 February 2016, the appellants complied with the Directions in regard to duration of the Tribunal hearing but lodged an application for sist. That application, which was vigorously opposed by HMRC, was on the basis that there were litigation
35 proceedings ongoing in the Court of Session.

8. As the appellants’ representative subsequently confirmed, the Court of Session granted the prayer of the Scottish Ministers’ Petition for a Recovery Order under the Proceeds of Crime Act 2002 against all three appellants in these appeals on the basis

that they had not lodged Answers to the Petition. Warrants for Inhibition and Arrestment against Mr Decker were granted. That was a final disposal of that litigation at first instance. In fact, there were also another two respondents in the matter of the Petition being Mr Decker's son and a family Trust for that son.

5 9. A Reclaiming Motion has been lodged and that will be heard in the Court of Session on 31 January 2017 (in other words that is an appeal whereby an attempt is made to have the Recovery Order set aside and the proceedings reinstated).

10 10. On 20 May 2016, I issued Directions in regard to the opposed application for sist seeking written submissions from both parties on the basis that the parties had agreed that a hearing was not necessary.

11. Judge Mosedale refused that application for sist on 5 July 2016. She also refused the appellants' alternative application for unspecified revisions to HMRC's Statement of Case.

15 12. On 17 August 2016, the parties were notified that the substantive hearing in these appeals was set down to take place on 11-18 November 2016.

20 13. On 25 September 2016, the appellants' representative resigned agency. None of the appellants made contact with either the Tribunal or HMRC, notwithstanding the fact that, in terms of the Tribunal Directions dated 9 September 2015, the appellants had been required to serve the witness statements on whose evidence they intended to rely on at the hearing and that no later than 14 October 2016.

25 14. No witness statements have been lodged by any of the appellants. Further, by no later than 28 October 2016 the parties were required to provide to the Tribunal and each other the skeleton arguments including the details of any legislation and case law authorities to which they intended to refer at the hearing. No skeleton argument has been lodged by, or for, the appellants.

15. On 21 October 2016, HMRC intimated an application dated 20 October 2016 for strike out of the appellants' appeals under Rule 8(3) of The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 "the Rules".

30 16. On 28 October 2016, Judge Mosedale issued Directions stating that the appeals would be struck out unless the appellants confirmed their wish to continue with the appeals. A letter was also sent to each of the parties indicating that unless objections were received the substantive hearing would not proceed but 18 November 2016 would be reserved to hear HMRC's strike out application at the same time and in the same venue as previously notified.

35 17. Only Mr Decker responded purporting to represent all three appellants although no mandate had been lodged in regard to Ms Clemens. He again sought a sist of the proceedings. HMRC vigorously objected on 4 November 2016.

18. Mr Decker subsequently requested a postponement of the hearing. That application was refused. Mr Decker stated two grounds neither of which was

accepted. The first ground was that there was short notice and that was not accepted in light of the procedural history. The second ground was that none of the appellants had legal representation (see paragraph 35 below).

5 19. The appellants were notified that they could renew their application for postponement of the hearing and/or a sist of the appeal at the hearing on 18 November 2016. It was pointed out that there was no mandate from Ms Clemens.

20. On 17 November 2016, Mr Decker advised the Tribunal that none of the appellants would be attending the hearing and indicated that they had asked for it to be postponed.

10 Preliminary issues

The documentation

15 21. On 4 November 2016, HMRC had emailed the Tribunal with written copies to Mrs Decker and Ms Clemens (as they were unable to contact Mr Decker) making “Observations” on Mr Decker’s request for a sist. I had a long email from Mr Decker responding to that email and containing his “Observations”. There were also copies of all correspondence with, and copied to, the Tribunal.

20 22. HMRC had lodged a Note of Argument but that had not been copied to Mr and Mrs Decker primarily because, notwithstanding the fact that Mr Decker had given the Tribunal his address and email address, he had contacted HMRC at 13:00 on 16 November 2016 stating that he did not consent to email exchanges and that all documents should be sent to his registered address in Dubai, UAE. Service by mail to that address had failed.

25 23. He was, or should have been, very well aware that it had not proved possible to send the documents to his registered address. Indeed Mrs Decker had met the Sheriff Officers when they had failed to attempt to effect delivery. She then gave them a further new address for herself albeit it is a c/o address in Glasgow.

30 24. I therefore issued Directions on 18 November 2016 serving the Note of Argument by email on Mr Decker together with copies of two pieces of documentation to which HMRC referred but with which it was possible that Mr Decker might not be conversant. A copy of those Directions, without the Note of Argument and copy documentation is annexed at Appendix A.

35 25. I had identified those Documents in the excised bundle prepared for the substantive appeal and lodged for this hearing. The majority of the documents contained therein were wholly uncontentious (in the sense that in regard to most of them the parties should have been aware of them for years) being, for example the Notices of Appeal, Notices of Assessment, Tribunal Directions, parties’ previous submissions, correspondence between the parties and the Tribunal etc. The two documents attached to my Directions are the only documents to which HMRC referred and where there might be a slight doubt as to whether the appellants’ representative had copied those to the appellants. The appellants must be aware of the
40

Interlocutor from the Court of Session dated 22 April 2016 (since Mr Decker states that has been appealed) and the Petition to which that relates.

26. All documents, including the complete bundle, had been served on Admira Clemens and, if Mr Decker is correct in saying that he represents her, then he should have had access to everything in any event. However, I considered it only fair to allow him the opportunity to make comment if he so wished.

27. The remaining Bundles were copies of the Tribunal Rules and copies of correspondence with the Tribunal and evidence of attempts to serve documentation on Mr Decker.

28. On 22 November 2016, in response to my Directions, Mr Decker emailed the Tribunal at length. He expanded upon the Grounds of Appeal and referred to abortive correspondence in relation to a potential settlement in 2014 before the discovery assessments which are the subject matter of these appeals were issued. He also referred to the Independent Police Complaints Commission's ("IPCC") Venison Report, advanced an argument on his need for legal representation, in particular, pointing out that he did not know the difference between a strike-out hearing or an appeal hearing and challenging the competency of the discovery assessments. He stated that he enclosed nine documents but, in fact, 11 were included. With the exception of details of his gambling history, and a self-assessment statement dated 15 September 2016, much of the remaining information had already been furnished by HMRC.

Absence of the appellants

29. The first issue for the Tribunal was whether or not the hearing on the various applications should proceed in the absence of any of the appellants. I had due regard to Rules 33 and 2 of the Rules.

30. I am entirely satisfied that all of the parties have been notified of the hearing and that has happened repeatedly. They should have been in no doubt whatsoever that the hearing would proceed. At all times the appellants ought to have been expecting to be present in the Tribunal on 18 November 2016.

31. The remaining question is whether or not it is in the interests of justice to proceed with the hearing on the applications. Clearly Mr Decker anticipated that the application for postponement would be considered since he emailed the venue in Edinburgh stating:

"...we are unable to attend the hearing....We have already requested for the hearing to be postponed.

Thank you for your understanding in this matter

Ronnie Decker
Helen Decker
Admira Clemens".

32. In terms of Direction 1 of the Directions dated 18 November 2016, since Admira Clemens had not intimated that her son should not represent her, Mr Decker was now recognised as her representative.

5 33. I decided to proceed on the basis that it was right and proper to proceed to consider the various applications.

Postponement/Adjournment/Sist applications

34. An application for postponement becomes an application to adjourn if reiterated at a hearing.

10 35. When Judge Mosedale refused the November postponement request she made it explicit that her preliminary view was that "...this is a Tribunal where justice may be obtained without legal representation, and in any event it is only an interim hearing; moreover it is for the appellant to ensure that they have funds to instruct lawyers if they wish to do so; moreover, it is inappropriate to grant the sist applied for by the appellant by the back door so it is inappropriate to further delay the progress of this appeal". I agree. If I were minded to grant an adjournment it would in fact amount to a sist given the time frames involved as Mr Decker is arguing for a sist to February 2017. Accordingly, since the arguments overlap, I address both applications together.

36. Mr Decker argued that these appeals should not proceed "until my legal representation is sorted out".

20 37. Tribunals are designed to be used by unrepresented appellants. As I indicated in the summary decision, and reiterate here, unrepresented appellants frequently appear in tribunals and it is by no means unusual for them to be opposed by Counsel. The key fact is that these are the appellants' appeals. It is their choice as to whether or not they wish to proceed with them. That is a matter for each individual appellant. If they are unable to access funding then they must decide whether they wish to proceed themselves or with the assistance of a friend or other representative, whether professionally qualified or not. Alternatively, they can decide whether or not they wish to withdraw the appeals.

30 38. The appellants have had at least two months to attempt to arrange alternative representation. The usual timescale allowed by the Tribunal in such circumstances is four to six weeks. This is not an unusual situation. Indeed, I would draw Mr Decker's attention to the case which he cited at page 2 in his email dated 22 November 2016. On the first page of that case, if one accesses it through the link, as he requested me to do, it is recorded that one of the parties "Andreas Charalambous appeared with his litigation friend". I observe that that gentleman is identified as one of the *Dramatis Personae* in The Petition in the Court of Session (at 7.4) and that is presumably why that reported case is known to Mr Decker.

The law

40 39. The Tribunal's Case Management powers are to be found at Rule 5 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 and, in particular,

Rule 5(3)(h) which states that the Tribunal may, by direction, adjourn or postpone a hearing.

40. Rule 2 of the Rules provides the overriding objective which is to deal with cases fairly and justly:-

5 **Rule 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—

10 (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

15 (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—

20 (a) help the Tribunal to further the overriding objective; and

(b) co-operate with the Tribunal generally.

41. It is made quite clear in *Transport for London v Greg O’Cathail*⁸ that the overarching fairness factor must be taken into account in assessing the effect of the decision as to whether or not to adjourn on **both** sides. *Terluk v Berezovsky*⁹ identifies
25 the fact that a late adjournment involves a significant loss of time and money. If this hearing were to be adjourned there would undoubtedly be a waste of scarce Tribunal time, no possibility of recovery of costs from this hearing from the appellants and a further delay in access to justice for the parties since, at a minimum, there would be no case management directions and there would be an outstanding application for
30 strike out. HMRC contend that an adjournment would result in prejudice to HMRC, the administration of justice and the public purse.

⁸ 2013 EWCA Civ 21 at paragraph 42

⁹ 2010 EWCA Civ 1345

42. Both parties are entitled to have cases dealt with fairly and justly. The appellants do not have the monopoly of the fairness factors. *Dhillon v Asiedu*¹⁰ confirms that the decision as to whether or not to adjourn is a balancing exercise.

43. Of course, I am also aware of Article 6 of the European Convention on Human Rights and the relevant part provides:-
5

“In their determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law ...”.

44. In the case of *Teinaz v Wandsworth London Borough Council*¹¹ Gibson LJ
10 commented on Article 6 and stated at paragraphs 21 and 22:

“...but the tribunal or court is entitled to be satisfied that the inability of the litigant ... is genuine, and the onus is on the applicant for an adjournment to prove the need for such an adjournment ... all must depend on the particular circumstances of the case”.

What then are the particular circumstances of this case?

15 45. Like Judge Mosedale before me, I do not accept that the appellants have had short notice of this hearing. The substantive hearing was notified on 17 August 2016. The appellants should have expected to be in the Tribunal on 18 November 2016. The proposed intention to substitute a one day interim hearing was notified on 28 October 2016.

20 46. At the latest, the appellants have known that they have not had representation since 25 September 2016. Had they been engaged in these appeals it would have reasonably been expected that at a bare minimum they would have contacted the Tribunal at, or before, that point to look for an extension of time to comply with Directions and/or to find new representation. They did not. The Tribunal had to ask
25 them whether they intended to proceed.

47. Mr Decker has blandly stated that “We are unable to get legal representation until money is released to pay for it.” and “We are waiting for the Judicial Factor who appointedon our behalf to make available funds which was held by our previous Lawyers to be released to our client accounts.” He went on to explain in an email to HMRC and others dated 3 November 2016, that
30 that funding issue would be resolved through Legal Aid or a variation of the restraint order.

48. Legal Aid would not be available for these Tribunal proceedings. I have no information on the funding, or not, for the Court of Session proceedings.

35 49. The Petition of The Scottish Ministers in the Court of Session narrates that the restraint orders granted by the Court (not the CRU as stated by Mr Decker) were recalled on 19 August 2011 (48.1 - 48.4 of The Petition). It may be that there are other

¹⁰ 2012 EWCA Civ 1020

¹¹ 2002 ICR 1471

restraint orders but I have been provided with no information in that regard and Mr McIver was unable to assist.

50. Mr Decker states that he has no assets that are not covered by the Recovery Order granted on 22 April 2016 (see paragraphs 8 and 9 above). By implication, the same holds good for all three appellants. At that Hearing Mr Decker (only) was represented. I note that the funds held by previous lawyers form part of the Recovery Order (4.2.3 of the Petition).

51. Like Judge Mosedale, I have been provided with absolutely no information as to the Reclaiming Motion or the possibility or probability of success. Unlike her, however, I have had the opportunity to read the Petition and the Decision of Lord Brailsford dated 22 April 2016.

52. That Decision certainly did grant the Recovery Order but that was on the basis that Lord Brailsford had refused Mr Decker's Motions to allow Answers to the Petition to be enrolled late. The implication of that is that:

(a) the Reclaiming Motion which is to be heard in the Inner House in January 2017 relates to the refusal to allow Answers,

(b) if that is successful it appears to relate only to Mr Decker, since he is the only Respondent (of the five) mentioned in the Decision, and

(c) if it is successful it would mean that the Petition would be remitted back to be dealt with "As Accords" and therefore proof of, and challenges to, the Crown's case would then be heard in the Outer House.

53. In summary, even if the Reclaiming Motion is successful (and presumably funding for representation for that may well be an even more expensive and competing issue) all that that would mean is that the appellant(s) would revert to the position that they were in in April 2016 and would then have the potential to litigate the Petition in the Court of Session. The outcome and timescale for that is impossible to predict, let alone the possibility, however remote, of further appeals.

54. In those circumstances, presumably, even if a sist were granted now a further application would be lodged in February.

55. If the Motion is unsuccessful, then there are no assets to fund anything and any delay would have been pointless.

56. The prospect of funding for these proceedings being made available in any reasonable time frame, if at all, seems remote.

57. Judge Mosedale's reasons for refusing the previous application to sist (which was to a date three months after the conclusion of the Court of Session proceedings) were issued on 5 July 2016 so the appellants have been on notice for a long period as why they had not been successful. In particular, her conclusion was that:

5 “It is not enough to aver, as the appellants do, that both proceedings concern the origin of money in the appellants’ bank accounts, and/or both concern the same or similar issues, or that (in the appellants’ view) HMRC’s and the views of the Scottish Ministers in the respective proceedings are not the same. The appellants have failed to identify, let alone make out, any real risk of unfair prejudice to them in the FTT proceedings if the FTT proceedings are not stayed behind the PCA proceedings.”

10 58. Those are still the arguments being advanced. Mr Decker argues that “...the funds and assets in dispute in the Court of Session and ...in this Tribunal are the same...” and that the crucial issue is the source of funds in the appellants’ bank accounts so the two sets of proceedings are inextricably linked. He argues that the Court of Session will determine issues of fact that are relevant to these proceedings.

59. The only new arguments that he has advanced since the last refusal of an application to sist are that:

15 (a) if the Court of Session finds that the funds in question are the proceeds of crime then they cannot be taxed, and

(b) the various departments of HMRC are, and have been, engaged in a “witch hunt” whereby the appellants are pursued by HMRC who “...pound us with legal procedure until we go broke”.

20 60. Quite apart from the issue as to whether there will be any litigation in the Court of Session, the averments in the Petition span a far greater period than the years of assessment in these appeals and deal with a very extensive range of property in the names of a number of individuals and legal entities not involved in these appeals. Accordingly, if that matter proceeds to litigation it involves a very different factual matrix to these appeals.

25 61. The only parties who are potentially the same are the three appellants. I say potentially because it would appear that neither Mrs Decker nor Ms Clemens (nor the other two respondents) have lodged Answers in the Court of Session. Mr Decker states that they are parties but whether they are, or not, is not material to this Decision. Findings in fact in the Court of Session would not bind the Tribunal. Each case depends on the evidence led before it.

62. Further, the two litigations are completely different and deal with different legislative provisions. In these appeals, HMRC bear the burden of proof in establishing that discovery assessments were competently and timeously raised and, if so, that the law in regard to penalties has been properly applied.

35 63. If they succeed in that, then the burden of proof changes and it is for the appellants themselves to produce evidence to show that the assessments in the years in question are excessive, whether because the source of some funds may or may not be taxable or for other reasons. To date, as I find in regard to HMRC’s application for strike out below, extremely little indeed has even been argued for or by the appellants.

40 64. It is quite different in the Court of Session. Firstly, the appellant(s) have to be successful in the Reclaiming Motion which appears to be likely to be predicated

5 purely on matters of fact relating to the failure to lodge Answers timeously and the law relating to that. Secondly, in the absence of any information as to the substance of any such Answers, if admitted, it is impossible to even conjecture as to the evidence that might be led. The burden of proof lies with the Scottish Ministers if the Petition is litigated.

10 65. The allegations of a “witch hunt” or persecution are entirely irrelevant to the question of adjournment or sist but I confirm that I did consider the arguments advanced. Mr Decker referred me to a case in 2010 referring to matters many years previously and to the IPCC Venison reports. In regard to the latter, it has nothing whatsoever to do with these appeals.

15 66. For completeness, I should point out that although I read paragraph 16 of the case to which I was referred and the witness did refer to Mr Decker, albeit not in relation to these appeals, the Judge stated at paragraph 19 in regard to the evidence of that witness that “...I have come to the conclusion that his whole story...is incredible and untrue”. It is not relevant to these appeals.

Decisions on adjournment and sist

20 67. As I indicated in the summary decision I refuse these applications. I have weighed all the relevant factors in the balance and find that there are very high sums of money potentially at stake, the facts at issue occurred between 13 and 17 years ago and it is in the interests of justice to progress these appeals as expeditiously as possible.

HMRC’s Application to strike out the Appeals

68. HMRC relied on Rule 8(3) of the Rules and that reads:

8(3) The Tribunal may strike out the whole or a part of the proceedings if—

- 25 (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
- 30 (c) the Tribunal considers there is no reasonable prospect of the appellant’s case, or part of it, succeeding.”

Rule 8(3)(a)

35 69. It is conceded that this is of potential application only to Admira Clemens. She certainly did not comply with the Directions dated 28 October 2016 and that Direction indicated that failure to comply could lead to strike out. Technically I could strike out her appeal on that basis. However, Mr Decker, in the absence of a mandate, purported to speak for her and intimated that she wished to continue with the appeal. I have remedied the lack of a mandate and therefore it would not be proportionate, fair or

just to strike out her appeal on the basis of noncompliance where her son and his wife had complied with those Directions.

Rule 8(3)(b)

5 70. Undoubtedly, there has been minimal engagement by the appellants with the Tribunal, HMRC and the appeal process particularly as evidenced by:

10 (a) Following the resignation of their representative on Sunday 25 September 2016, only six and a half weeks before the six day hearing, the appellants did not contact either HMRC or the Tribunal. The first contact of any note was Mr Decker's email of 3 November 2016 in response to the Directions intimating the possibility of strike out.

15 (b) None of the appellants have complied with Directions in regard to the production of witness statements or skeleton arguments and that is particularly significant in that the grounds of appeal stated in the Notices of Appeal are very brief and lacking in specification. HMRC are indeed currently in a position where they find themselves having to answer appeals which are largely unspecified, and insofar as specified are not founded on material which has been lodged in process.

20 (c) Whilst it has been possible for the Tribunal to contact Mr Decker by email and for service of all documentation to be made on Almira Clemens, Mrs Decker has never intimated her apparent change of address to the Tribunal. HMRC only found out about it on 15 November 2016 after repeated attempts by Sheriff Officers to effect service at the given address had failed. Mr Decker only confirmed his address (which is not identical to that on the Notice of Appeal perhaps because of a typing error) on 12 November 2016. HMRC had previously attempted service at that and a similar address (the only difference being the PO Box numbers) and had failed and one was returned "recipient moved". On 16 and 22 November 2016, Mr Decker confirmed that he refuses to accept service of documentation from HMRC by email.

30 (d) The repeated applications for postponement and sist, where the grounds for previous refusal were explicit, do not sit well with the requirement in terms of Rule 2 of the Rules to avoid delay.

35 71. I have considerable sympathy with HMRC's entirely understandable frustration at the lack of progress in these appeals. I find that all three appellants have failed to cooperate with the Tribunal but that is not the whole point. The question is whether that lack of co-operation means that the proceedings cannot be dealt with fairly and justly. This is a discretionary sanction. Strike out of proceedings has sometimes been referred to as a "Draconian remedy" and obviously should not be undertaken lightly.

40 72. Clearly, HMRC have been prejudiced and there has been delay. On the other hand, although the issues in the substantive appeals relate to some 13 to 17 years ago, these appeals only came to the Tribunal two years ago. They are complex cases. I find

that, viewed through the prism of the procedural history, the delay, which is to be deprecated, is not inordinate.

73. I have very carefully weighed all of the circumstances in the balance and given that the appellants had not been put on notice that failure to comply with the September 2015 Directions could lead to strike out, I find that the lack of co-operation can be remedied in order to achieve fair and just proceedings by issue of appropriate case management directions. I therefore do not strike out these proceedings in terms of Rule 8(3)(b).

Rule 8(3)(c)

74. Finally, I considered Rule 8(3)(c) and the prospects of success. Again this is a discretionary sanction so I had to weigh all relevant factors in the balance.

75. As I indicate above, I agree with HMRC that the grounds of appeal specified in the Notices of Appeal are very brief and lacking in specification. In the case of the two ladies it is simply argued that the monies allegedly received are being taxed in the hands of Mr Decker so there is double taxation. That fails to take into account his appeal.

76. The onus of proof in regard to the quantum of the assessments lies with the appellants. In plain English, it is for the ladies to prove, on the balance of probabilities, where and when any monies apparently passing through their bank accounts came from. They have produced no argument or evidence. If the Tribunal does not permit them to lodge witness statements out of time then, in relation to the tax allegedly due for the years in question, their prospects of success seem unlikely.

77. As far as Mr Decker is concerned, again the Notice of Appeal is minimalist, suggests double counting on the basis of monies allegedly moving between accounts, and in addition it is suggested that Mr Decker had assumed that some monies had been received net of PAYE. As with the ladies, since no evidence has been produced, in the absence of permission to lodge witness statements and/or other evidence out of time, the prospects of success seem unlikely because of the burden of proof.

78. As I indicate in the Directions issued after this hearing, there is a further complication in that Mr Decker's email of 22 November 2016 with enclosures raised what purported to be new and more extensive Grounds of Appeal than those intimated in the three Notices of Appeal.

79. I am treating that, together with his email of 12 November 2016, as an application to lodge amended Grounds of Appeal. On the face of it, it would appear that he is now advancing arguments as to the competency of taxing illegal income, his non-residence in the United Kingdom, the overlap between his appeal and the Court of Session action and the relevance of his gambling income, none of which appears in his own Notice of Appeal.

80. Furthermore, it would appear that in respect of all three appellants an argument is now being advanced as to the timing and competency of the assessments issued.

81. Even if that had not now been raised, the primary reason why I do not strike out these appeals on the basis of Rule 8(3)(c) is because, as HMRC acknowledge in their Note of Argument, the onus of proof in regard to the discovery assessments and utilisation of the extended time limit to do so in terms of sections 29 and 36 TMA lies with HMRC. That is the case whether or not the appellants raise a challenge. If HMRC do not discharge that burden then the appellants' appeals succeed. In these circumstances it is not appropriate to strike out these proceedings in terms of Rule 8(3)(c).

Application for Directions and other matters

82. Mr McIver orally amended his application for Directions in the event that the strike out applications were not successful. The terms of the Directions relating to case management and issued by me with the Summary Decision were agreed at the hearing.

83. In his email dated 22 November 2016, Mr Decker raised a number of other matters which I have not canvassed in this decision. In that email, Mr Decker now concedes that some tax is due and points to abortive settlement negotiations in 2014 where he had offered to settle all three appeals with HMRC in the sum of £750,000. He argues that that is the extent of the liability rather than figures in excess of £3 million.

84. He has effectively requested disclosure of correspondence in regard thereto on the basis that that would establish his actual liability. That correspondence ante-dated the assessments which are the subject matter of this appeal. HMRC have pointed to that correspondence in the bundle served on Almira Clemens and in the excised bundle lodged for the hearing. That correspondence makes it explicit that as long ago as 31 May 2013, HMRC were negotiating "...in order to reach agreement that is satisfactory to both parties...by taking a pragmatic approach" and that the verbal agreement fell through because in September 2014 Mr Decker was not prepared to sign the letter of offer as drafted.

85. Abortive settlement negotiations would not be of relevance to the quantum of these appeals. I therefore make no Directions for disclosure in that regard.

86. Lastly, Mr Decker also referred to, and by inference sought disclosure of, unspecified documents that had been allegedly requested by his former representative. There have been no previous applications for disclosure, HMRC's list of documents has not been challenged and Mr McIver was not aware of any formal requests for documentation. In the absence of further specification I make no Direction for disclosure in that regard.

Directions

87. I annex at Appendix B the Directions issued with my Summary Decision following this hearing. I draw the appellants' attention to the "warning" that if there is a failure in compliance then the appeals could be struck out. In the said email, Mr Decker alleges that he does not understand the meaning of strike out. In plain English, it means that the appeals will not be allowed to continue. HMRC have quite

properly asked that all Directions carry that “warning” and I have honoured that request given the procedural history.

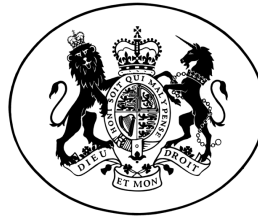
5 88. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received 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.

10

**ANNE SCOTT
TRIBUNAL JUDGE**

15

RELEASE DATE: 5 December 2016



Appeal number: TC/2015/00014, 16 & 17

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

**RONNIE DECKER, HELEN DECKER and
ADMIRA CLEMENS**

Appellants

- and -

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

Respondents

TRIBUNAL: JUDGE ANNE SCOTT

Sitting in public at Edinburgh on Friday 18 November 2016

The appellants did not appear and were not represented

Graham McIver, Counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

WHEREAS a hearing was set down for today to consider the respondents' ("HMRC") application for strike out and the appellants' applications for postponement and sist and

- (a) It transpired that HMRC's Note of Argument had not been copied to Mr and Mrs Decker;
- (b) HMRC had been wholly unable to serve the bundle on Mr and Mrs Decker because Mr Decker had refused to receive service by email and service by other means on his given address had failed; and
- (c) Notwithstanding Mr Decker's protestations no mandate has been received by the Tribunal in respect of his mother, Admira Clemens.

NOW THEREFORE IT IS DIRECTED that in the interests of justice

(1) Unless Admira Clemens formally intimates to the Tribunal by no later than 5:00pm on Wednesday 23 November 2016 that she does **not** wish her son to represent her, I waive the requirement for a mandate and accept that Mr Decker can and should represent his mother.

(2) The said Note of Argument is annexed hereto at Appendix 1 and is formally served on all of the parties.

(3) Admira Clemens has been served the HMRC bundle not all of which has been referred to by HMRC in argument today. The only items therein to which HMRC referred that would not necessarily be known to or in possession of the appellants are Notes of meeting dated 8 May 2013 (in the bundle at tab 61, page 433) and that is annexed at Appendix 2 and a letter from Mr Decker's former representative dated 13 May 2013 (in the bundle at tab 63 at page 437) and that is annexed at Appendix 3. Both are hereby formally served on all of the parties.

(4) The hearing today did not consider the postponement or sist applications since the strike out application has not been decided. I therefore adjourn the hearing to 2:00pm on Thursday 24 November 2016 at George House, 126 George Street, Edinburgh.

(5) If Mr Decker, both for himself and his family, wishes to make any representations to the Tribunal in regard to the three documents hereby served, then he should do so by emailing the Tribunal by no later than 5:00pm on Tuesday 22 November 2016. The email address should be that which he has used hitherto, namely taxappeals@hmcts.gsi.gov.uk. The strike out application will be determined at the adjourned hearing.



TRIBUNAL JUDGE
RELEASE DATE: 18 November 2016

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Appeal number: TC/2015/00014, 00016 and 00017

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**FIRST-TIER TRIBUNAL
TAX CHAMBER**

10

**RONNIE DECKER, HELEN DECKER and
ADMIRA CLEMENS**

Appellant

- and -

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

Respondents

15

TRIBUNAL: JUDGE ANNE SCOTT

20 **Sitting in public at George House, 126 George Street, Edinburgh on Thursday
24 November 2016**

No appearance by or for the Appellants but written communications were received from Mr Decker

25 Having heard Graham McIver, Counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

WHEREAS at the Hearing on Friday 18 and Thursday 24 November 2016

30 1. I received a long email with enclosures from Mr Decker on behalf of all three appellants and that raised what purported to be new and more extensive Grounds of Appeal than those intimated in the Notices of Appeal. I am treating that, together with his email of 12 November 2016, as an application to lodge amended Grounds of

Appeal. On the face of it, it would appear that he is now advancing arguments as to the competency of taxing illegal income, his non-residence in the United Kingdom, the overlap between the appeal and the Court of Session action and the relevance of his gambling income, none of which appears in his own Notice of Appeal.
5 Furthermore, it would appear that in respect of all three appellants an argument is now being advanced as to the timing and competency of the assessments issued.

2. HMRC made an application that, in the event that the strike-out application was not granted, and it has not been, then detailed Case Management Directions should be issued as promptly as possible.

10 NOW THEREFORE IT IS DIRECTED that

1. Mr Decker, as representative for the appellants is to lodge amended Grounds of Appeal with the Tribunal for **each** of the three appeals and that by no later than noon on 16 December 2016.

15 2. Those amended Grounds of Appeal must also be served on HMRC within the same timescale.

3. In the event that the said new Grounds of Appeal are lodged then HMRC shall lodge with the Tribunal an amended Statement of Case and that by no later than 16 January 2016.

20 4. HMRC are relieved of the obligation to intimate documents to Mr Decker by post since it has thus far proved impossible to serve documentation on Mr Decker and it appears Mrs Decker has changed address without notifying the Tribunal or HMRC. Sheriff Officers had provided HMRC with a new address for her but Mr Decker is her representative. Mr Decker has declined to accept service by email from HMRC. He communicates with the Tribunal by email and the Tribunal will therefore, by email,
25 send Mr Decker copies of any documentation lodged by HMRC.

5. Mr Decker is directed to lodge with the Tribunal details of address(es) where service of documents for both himself and his wife will be **accepted** and that by no later than noon on 16 December 2016. I observe that Mr Decker acts for both Mrs Decker and Ms Clemens and both have furnished UK addresses. There is some
30 doubt about Mrs Decker's address. In the absence of provision of a new address for Mr Decker himself, Ms Clemens' address will be taken to be the address for Mr Decker.

6. **Listing information:** Both parties are directed to lodge with the Tribunal by no later than noon on 16 December 2016 details of dates to avoid for a hearing during the
35 months of May and June 2017. I draw the parties' attention to the fact that six days have been allocated for these appeals. The Tribunal will list the hearing on or shortly after this date **even if any party did not provide its dates to avoid or said that no dates are available.** The parties must cooperate with the Tribunal to make themselves available for this hearing. A request for postponement on the grounds the
40 date of the hearing is inconvenience is unlikely to succeed if that party did not provide its dates to avoid.

7. **Appellants witness statements:** Not later than noon on 16 February 2017 each of the appellants shall send or deliver to the Tribunal and the respondents, statements from all witnesses on whose evidence it intends to rely at the hearing setting out what that evidence will be (“witness statements”).

5 8. **Respondents’ witness statements:** Not later than noon on 16 February 2017 the respondents shall send or deliver to the Tribunal for onward transmission to the appellants, statements from all witnesses on whose evidence it intends to rely at the hearing setting out what that evidence will be (“witness statements”).

10 9. **Index for hearing bundle:** Not later than 42 days before the commencement of the hearing, the appellant shall serve on the respondents (and notify the Tribunal that it has done so) a draft index to the bundle of documents. The index shall include:

- a. the notices of appeal, as amended, provided under Tribunal Procedure Rule 20;
- b. the statements of case provided under Tribunal Procedure Rule 25;
- c. all documents on the lists of documents provided; and
- 15 d. the witness statements provided as directed above.

10. **Additions to index:** Not later than 35 days before the commencement of the hearing the respondents shall lodge with the Tribunal for onward transmission to Mr Decker any additions to the draft index to the bundle of documents

20 11. **Hearing bundle:** Not later than 28 days before the hearing the appellant shall send or deliver to the respondents the indexed, paginated and bound bundle of documents in accordance with the draft index and the additions to it;

25 The appellants shall ensure that the copy in the documents bundle of the witnesses’ statements shall, where there is a reference to an exhibit in the text, have added in its margin a cross-reference to the exhibit by its place in the documents bundle.

12. **Appellants’ outline of case:** Not later than 21 days before the hearing the appellants shall send or deliver to the respondents an outline of the case that it will put to the Tribunal (a skeleton argument) including the details of any legislation and case law authorities to which it intends to refer at the hearing.

30 At the same time the appellant will file with the Tribunal an electronic copy of its skeleton argument together with electronic copies of the witness statements (without exhibits) on which it relies.

35 13. **Respondents’ outline of case:** Not later than 14 days before the hearing the respondents shall send or deliver to the appellant an outline of the case that they will put to the Tribunal (a skeleton argument) including the details of any legislation and case law authorities to which they intend to refer at the hearing.

At the same time the respondents will file with the Tribunal an electronic copy of their skeleton argument together with electronic copies of the witness statements (without exhibits) on which they rely.

14. **Authorities bundle:** Not later than 7 days before the hearing the appellant shall send or deliver to the respondents one copy of a bundle of authorities (comprising the authorities mentioned in both parties' skeleton arguments).

5 15. **Delivery of bundles to Tribunal:** The appellant shall deposit with the Tribunal three copies of the document bundle not later than 3pm on the 7th day before the hearing.

10 16. **Witness attendance at hearing:** At the hearing any party seeking to rely on a witness statement may call that witness to answer supplemental questions (but the statement shall be taken as read) and must call that witness to be available for cross-examination by the other party (unless notified in advance by the other party that the evidence of the witness is not in dispute).

17. **Right to request new directions:** Either party may apply at any time for these Directions to be amended, suspended or set aside, or for further directions.

15 18. The appellants are put on notice that failure to comply with any of these Directions will lead to the striking out of the proceedings or part of them, all in terms of Rule 8 of The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009.

19. Both parties are directed to lodge with the Tribunal their skeleton arguments.



20

TRIBUNAL JUDGE

RELEASE DATE: 28 November 2016

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30 **NOTE:** Grounds of Appeal should outline the arguments that will be advanced in the substantive hearing. Therefore, the amended Grounds of Appeal for each appellant should simply state why HMRC's decision(s) are wrong and give the reasons. It should not be a history; that is a matter, if appropriate, for witness statements.

35



Appeal number: TC/2015/00014, 00016 and 00017

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

**RONNIE DECKER, HELEN DECKER and
ADMIRA CLEMENS**

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE ANNE SCOTT

WHEREAS

1. Following hearings on 18 and 24 November 2016 I issued Directions which were sent to the parties on 28 November 2016. Direction 18 specified clearly:

“The appellants are put on notice that failure to comply with any of these Directions will lead to the striking out of the proceedings or part of them, all in terms of Rule 8 of The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009.”

2. The first date for compliance was 16 December 2016. In terms of Directions 1 and 2, Mr Decker, as representative for the appellants was directed to lodge amended Grounds of Appeal with the Tribunal for **each** of the three appeals and serve same on HMRC. He was also directed to lodge with the Tribunal details of address(es) where service of documents for both himself and his wife will be accepted. Lastly both parties were directed to lodge with the Tribunal details of dates to avoid for a hearing during the months of May and June 2017. The said Directions drew to the appellants’ attention the fact that

“Grounds of Appeal should outline the arguments that will be advanced in the substantive hearing. Therefore the amended Grounds of Appeal for each appellant should simply state why

HMRC's decision(s) are wrong and give the reasons. It should not be a history; that is a matter, if appropriate, for witness statements."

3. On 5 December 2016 I issued a full decision which included at Annex B the said Directions. Furthermore that full decision made explicit at paragraphs 75 to 80 what was required in terms of amended Grounds of Appeal.

4. Paragraph 70(b) pointed out that the appellants had failed to comply with previous Directions in regard to the production of witness statements and at paragraph 77 it was pointed out that the appellants would have to seek permission to lodge witness statements late.

5. On 13 December 2016, the respondents complied with the Directions. There was no compliance, in any shape or form by any of the appellants.

6. Accordingly on 20 December 2016 Mr Decker, for the appellants was advised that the appeals had been struck out.

7. In response on 10 January 2017, Mr Decker sent an email to the Tribunal which constituted an application to reinstate the appeal hearing. I annex a full copy at Appendix A. Regrettably a copy was not forwarded to either HMRC or to me. It has now been referred to me and I am therefore issuing these Directions.

8. In the interests of clarity and to enable HMRC to respond and Mr Decker to understand the precise issues, I now quote the relevant arguments advanced by Mr Decker and my preliminary observations thereon:-

"I am writing this email to apply for our Appeal Hearing to be re-enstated.

The reasons for this is as follows:

We have not breached any of the Case Management's instructions given by Judge Scott on her released Decision and Directions dated 5th December 2016.

The reason for the strike out application has not been disclosed to us and we were not given an opportunity to defend it.

The only date mentioned in the Case Management Directions that has passed is the 16th of December 2016: We were suppose to tell the Tribunal if there is any dates in May/June 2017 we would not be available? The Directions also state that if there is no objections put forward then the hearing would go forward around that timeframe.

Secondly I was suppose to provide an address for HMRC to serve documents on me, by the 16th of December 2016, but if this was not provided then HMRC was suppose to make documents available to the Tribunal who will in turn send it to my email.

Finally amended ground of Appeal: This was already addressed and accepted by Judge Scott on my emails dated 12th and 22nd of November 2016."

9. There was no new application for strike-out. The Directions made it explicit that if there was no compliance then the appeals would be struck out. As I have made explicit above there has not been compliance with the Directions. No dates to avoid have been provided, and no address has been provided.

10. The "amended ground of Appeal" specified in the emails dated 12 and 22 November 2016 were addressed in the decision, were explicitly not accepted as

amended Grounds of Appeal and indeed were the reason why the Directions were issued. I observe that (a) bullet points do not suffice and (b) as indicated in the decision at paragraphs 75 and 76 different grounds of appeal may be relevant for the other two appellants and they may wish to make appropriate applications in regard to witness statements and evidence.

NOW THEREFORE IT IS DIRECTED AS FOLLOWS:-

1. The Respondents are hereby served with the application for reinstatement and any submission in that regard shall be lodged with the Tribunal within seven days of the issue of these Directions.
2. In the interim, although the appeals have not been reinstated, Mr Decker has a final opportunity to comply with Directions and supply address(es) and dates to avoid to the Tribunal and that within seven days of the issue of these Directions.
3. In the event that Mr Decker does decide to comply with the preceding Direction, Mr Decker, for himself, and the other appellants shall lodge with the Tribunal a reasoned argument for reinstatement supported by detailed amended grounds of appeal and, as appropriate, applications in regard to witness statements and evidence and that within 14 days of issue of these Directions.



TRIBUNAL JUDGE

RELEASE DATE: 20 March 2017

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APPENDIX

Dear Sir/Madam

I am writing this email to apply for the our Appeal Hearing to be re-enstated.

The reasons for this is as follows:

We have not breached any of the Case Management's instructions given by Judge Scott on her released Decision and Directions dated 5th December 2016.

The reason for the strike out application has not been disclosed to us and we were not given an opportunity to defend it.

The only date mentioned in the Case Management Directions that has passed is the 16th of December 2016: We were suppose to tell the Tribunal if there is any dates in May/June 2017 we would not be available? The Directions also state that if there is no objections put forward then the hearing would go forward around that timeframe.

Secondly I was suppose to provide an address for HMRC to serve documents on me, by the 16th of December 2016, but if this was not provided then HMRC was suppose to make documents available to the Tribunal who will in turn send it to my email.

Finally amended ground of Appeal: This was already addressed and accepted by Judge Scott on my emails dated 12th and 22nd of November 2016.

The grounds of appeal are the same which is listed below:

- 1: Competency of Taxing Illegal Income/Funds
- 2: My non residence status in the UK after 2001
- 3: Gambling Income be Taxed
- 4: Double Taxation
- 5: Timing and Competency of the Assessments raised?
- 6: If Court of Session finds that the funds in question are Proceeds of Crime then they cannot be Taxed.
- 7: Q-Tech distributions Ltd, my employer at the time, has the Onus and responsibility to make sure my PAYE during the years of 2000/2001 is paid.

In Section 29 and 36 TMA the Onus of Proof lies with HMRC:

If HMRC is establishing that discovery assessments were competency and timeously raised,

10/01/2017

and if so that the Law in regards to penalty has been properly applied? That is the case whether or not the appellants raise a challenge. If HMRC do not discharge that burden then the appellants appeals succeed.

HMRC in this case has not raised discovery assessment timeously or competently. HMRC could and should have raised these assessments in 2001 or latest 2002 when they become involved in the investigations of myself and Q-Tech since the year 1999/2000. Its not enough to say that Inland Revenue was not involved in the investigations; it is insulting to the Tribunal for any experienced Customs and Excise Officer to tell us that he or she didn't ask his counterpart in Inland Revenue whether someone that is being investigated for VAT Fraud has paid its correct taxes. Especially someone with Personal Funds and assets in excess Gbp 1million, which they were aware of because they went and seek an Inhibition preventing us from dealing with any of these properties.

Tribunal Procedure Rules 2009-Rule 2 -: Overriding Objective and Parties Obligations; Rule 2 Part 2A

"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."

The strike out is draconian response to an issues where there is no significant breach or no time lost involved. The hearing is set for May/June 2017 and even if there was a issue of misunderstanding of Directions, this breach does not constitute or deserve a strike out penalty. The Case Management is not delayed in any way nor the hearing.



Appeal number: TC/2015/00014, 00016 and 00017

5

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

10

**RONNIE DECKER, HELEN DECKER and
ADMIRA CLEMENS**

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE ANNE SCOTT

15

DIRECTIONS

20 1. I last issued Directions in this matter on 20 March 2017. The respondents complied with Direction 1.

25 2. In terms of Direction 2, Mr Decker had a final opportunity to comply with previous Directions and supply address(es) and dates to the Tribunal and that before 27 March 2017. He did not. He submitted an email to the Tribunal on 3 April 2017 and that was therefore out of time. In particular that email did not include the witness statements that should have been lodged by 16 December 2017 (see below).

3. Regrettably the Tribunal administration did not forward a copy of that email until 21 April 2017 and there was a further unfortunate delay in forwarding his email and enclosures dated 16 June 2017. The delays are not attributable to the respondents.

30 4. Direction 3 dated 20 March 2017 stated that Mr Decker should lodge with the Tribunal:

- (a) A reasoned argument for reinstatement;
- (b) That should be supported by detailed amended grounds of appeal; and
- (c) Applications in regard to witness statements (meaning applications to extend the time to lodge same).

5 5. As far as a reasoned argument for reinstatement is concerned, absolutely nothing has been provided. Such an argument would have to address the reasons why he did not, or was not able to, comply with the Directions referred to at paragraph 87 of the Decision issued on 5 December 2016 and set out in full at Appendix B of that Decision.

10 6. Specifically he has not explained why he has not complied with Direction 1 of those Directions which is to lodge amended grounds of appeal for **each** of the appellants by 16 December 2016.

15 7. As indicated above he has, on 3 April 2017, which is long out of time, provided what he states are amended grounds of appeal but those are largely a reiteration of the previous bullet points and there is not one for each appellant. Certain of the grounds, such as gambling, presumably apply only to him. The grounds of appeal are not detailed and nor are relevant substantive arguments deployed in support thereof.

20 8. I understand that Mr Decker is not represented but he has experience of litigation and I had indicated that (a) his wife and Mrs Clemens almost certainly do not have precisely the same grounds of appeal as himself, so separate grounds of appeal require to be lodged for each party and (b) the grounds of appeal as previously stated were not adequate.

25 9. Further he has not explained why he has not complied with Direction 7 of the Directions referred to in paragraph 5 above. That is to say why he has not sent or delivered to the Tribunal and the respondents, statements from all witnesses on whose evidence he intends to rely at the hearing, setting out what that evidence will be.

10. If Mr Decker is in any doubt as to what a witness statement comprises then he simply needs to google those words and he will find specimen templates in multiple formats.

30 11. The medical evidence furnished by Mr Decker is a colonoscopy report dated 6 February 2017 and indicates solely that Mr Decker suffered from first degree haemorrhoids. The first point in that regard is that those are simply piles. They are “first degree” which means that they are lowest grade (of four), and they are a very common complaint. Secondly, and more importantly, there is no explanation
35 whatsoever as to why that should have affected his ability to comply with the original or subsequent Directions and, furthermore, it does not explain his frequent failures to comply with Directions over a long period.

40 12. Lastly in this context, not only is it clear from the tenor of the respondents’ opposition that, in the absence of witness statements and detailed grounds of appeal for each appellant, the respondents will vigorously oppose reinstatement but also it is

evident from the respondents' submissions that if I did grant reinstatement, then they would seek a preliminary hearing addressing adequacy on the grounds of appeal, particularly in the absence of witness statements. It is for that reason that, in fairness to Mr Decker, I make it explicit what is required.

5 13. It would be in all of the appellants' interests to comply with all of the Directions in full before I decide the reinstatement application.

14. I note that Mr Decker does not want an oral hearing in respect of his application for reinstatement. In terms of the Tribunal Rules, any party has the right to an oral hearing, however any party can choose whether or not to attend such a hearing.
10 Accordingly, an oral hearing will be fixed but Mr Decker need not attend, if he and the other appellants choose not to do so. That is precisely what happened for the two hearings in November 2016. The respondents still seek an oral hearing.

NOW THEREFORE I DIRECT as follows:-

(1) By no later than noon on the seventh day of issue of these Directions Mr Decker
15 is to confirm to the Tribunal whether or not he intends to attend the oral hearing of the reinstatement application at George House, Edinburgh. In the event that he does not wish to attend the hearing, a hearing will be listed for the first available date that is convenient for the respondents and myself.

(2) In the event that Mr Decker, indicates that he does wish to attend an oral hearing,
20 then within the same timescale, that is by no later than noon on the seventh day of issue of these directions, he must confirm to the Tribunal any dates to be avoided in the months of September and October 2017.

(3) In the event that Mr Decker, indicates that he does wish to attend an oral hearing,
25 the respondents are directed to confirm to the Tribunal any dates to be avoided in the months of September and October 2017 and that within seven days of receipt of confirmation from the Tribunal as to the tenor of Mr Decker's response.

(4) For the avoidance of doubt, failure on the part of Mr Decker to comply on time
30 with any of these Directions will automatically lead to strike out of the reinstatement application in terms of Rule 8 of The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 ("the Rules").

(5) Lastly, I note Mr Decker's implicit application that a substantive hearing be set down. That is not possible in terms of the Rules. His reinstatement application must be decided first. If that succeeds then the respondents' implicit application for a

(6) hearing on preliminary matters would have to be considered before matters could progress any further.

Anne Scott

5

TRIBUNAL JUDGE

RELEASE DATE: 16 August 2017

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Appeal number: TC/2015/00014, 00016 and 00017

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**FIRST-TIER TRIBUNAL
TAX CHAMBER**

10

**RONNIE DECKER, HELEN DECKER and
ADMIRA CLEMENS**

Appellants

- and -

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

Respondents

15

TRIBUNAL: JUDGE ANNE SCOTT

20 WHEREAS

(a) At paragraph 14 of the most recent Directions issued by me, notwithstanding Mr Decker's wish for no oral hearing, I directed that an oral hearing be listed. Mr Decker then decided that he wished to attend an oral hearing.

25 (b) In response to those Directions, on 17 August 2017, Mr Decker furnished dates to avoid for this hearing. For all of the months of September and October 2017 Mr Decker was only available for the last week of October 2017.

(c) The hearing has been listed for 23 October 2017 in order to accommodate Mr Decker.

30 (d) On 26 September 2017 Mr Decker emailed the Tribunal stating "I regret to inform you that due to personal circumstances the hearing schedule (*sic*) for the October 23rd is conflicting with my previous engagement. Can the Tribunal please provide another date for the hearing".

(e) HMRC have responded to that strongly opposing that application on the basis that the appellants, having sought re-instatement, should pursue it as expeditiously as possible. The hearing has been fixed for some time and it is in the interests of justice that it should proceed.

5 NOW THEREFORE I DIRECT that, having had due regard to Rule 2 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 and, in particular, the need to avoid delay, the hearing **WILL** proceed at George House on 23 October 2017 whether or not Mr Decker chooses to attend. An unspecified prior arrangement certainly provides no grounds for discharge of the hearing and indeed, in the
10 circumstances, indicates a lack of co-operation. Co-operation is required in terms of Rule 2.

Lastly I draw Mr Decker's attention to Direction 13 from the previous Directions which reads:

15 "It would be in all of the appellants' interests to comply with all of the Directions in full before I decide the reinstatement application."

20 Nothing has as yet been lodged. Specifically there are no witness statements or detailed grounds of appeal for each appellant.



25 **TRIBUNAL JUDGE**

RELEASE DATE: 3 October 2017

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Appeal number: TC/2015/00014, 00016 and 00017

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**FIRST-TIER TRIBUNAL
TAX CHAMBER**

10

**RONNIE DECKER, HELEN DECKER and
ADMIRA CLEMENS**

Appellants

- and -

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

Respondents

15

TRIBUNAL: JUDGE ANNE SCOTT

20 WHEREAS

1. These appeals had all been struck out in terms of Rule 8 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (“the Rules”) because of a failure to comply with Directions. Mr Decker applied for reinstatement and in further Directions dated 20 March 2017 I pointed out the various compliance failures.
25 HMRC’s Opposition dated 27 March 2017 again lists the failures.

2. On 26 May 2017 Mr Decker indicated in blunt terms that “The Tribunal does not need an Oral hearing to determine the reinstatement application, this is un-necessary (*sic*) and a delay tactic, it is better to set a date for the Tribunal Proof Hearing than wasting more time.”

3. However, in response to Directions issued on 16 August 2017, which confirmed
30 that an oral hearing would be listed, he decided that he wished to attend. On 17 August 2017 he confirmed that he would be available for a hearing between October 21 to October 28, 2017.

4. The hearing was listed for 23 October 2017. That hearing is purely on the reinstatement application. The said Directions dated 16 August 2017 made it explicit that Mr Decker was required to comply with previous Directions and he had not yet done so. Nothing has been received since.
5. The Directions issued on 3 October 2017 made it clear that I was not prepared to discharge the hearing set down for 23 October 2017 on the basis that Mr Decker had “a prior engagement”. For Mr Decker’s benefit I again set out what was required in order to comply with Directions.
6. On 4 October 2017, Mr Decker responded to those Directions stating that he is unable to attend because he cannot leave the country as he has an ongoing criminal case in UAE. No other detail or supporting evidence has been produced.
7. There is no information about the extent of the “travel ban”, whether or when it might be lifted or whether he faces imprisonment.
8. He says that he will hear the judgment in that case on 30 October 2017. He alleges that he was made aware of that on 12 September 2017 but it was only on 26 September 2017 that he emailed the Tribunal asking for an adjournment.
9. He does not explain why he thought that the case would have been finished on 12 September 2017 but the dates to avoid included the following eight days.
10. HMRC vigorously oppose the application for postponement.
11. In his email of 4 October 2017, he complains that “This matter has been going on for 17 years which is clear violation of my Human Rights”. The discovery assessments certainly date back as far as 1999/00 but these appeals were only lodged in 2015.
12. Mr Decker also says that he has clearly stated his argument for reinstatement and asserts that he has lodged witness statements. I have to assume that he does not intend to lodge any witness statements either for himself or for his wife or mother. In an email of 16 June 2017, when arguing the case for reinstatement and rebutting HMRC’s argument that he had failed to lodge witness statements, he explained that he denied that and referred to the attachment to his email dated 22 November 2016. That email was sent to the Tribunal before the hearing on 24 November 2016 but no witness statements were attached. I make it clear at paragraph 14 of the Decision that “No witness statements have been lodged by any of the appellants...No skeleton argument has been lodged by, or for, the appellants.” There certainly are no witness statements from the appellants, including Mr Decker.
13. There has already been considerable delay in these appeals. Mr Decker originally sought a sist, which was refused on 5 July 2016, and did so again immediately before the listed substantive Hearing and that too was refused.
14. I have had due regard to Rules 2 and 33 of the Rules.

NOW THEREFORE I DIRECT AS FOLLOWS

(1) Since this is the appellants' application and

(a) Mr Decker has repeatedly told the Tribunal that he has explained his position fully and provided all that is required of him, and

5 (b) there can be no certainty as to when, if ever, Mr Decker would be able to leave UAE and/or fund travel to Scotland (he has pled lack of funding),

the hearing of the reinstatement application **will** proceed on 23 October 2017.

(2) Mr Decker is at liberty to submit further evidence and/or arguments relating to

(a) the alleged repeated and ongoing failure to comply with Directions and

(b) the reasons why the appeal should be reinstated.

10 Indeed, it is in the appellants' interest that he should do so and as soon as possible.

(3) Mr Decker is encouraged to re-read the Decision released on 5 December 2016, the various Directions that have been issued by the Tribunal and HMRC's formal communications with the Tribunal. Those are all included in the Bundle that was sent to him electronically on 9 October 2017. They all narrate at length what is required in
15 order to comply with Directions. I draw particular attention to the various paragraphs dealing with witness statements and amended Grounds of Appeal for each appellant.



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TRIBUNAL JUDGE

RELEASE DATE: 12 October 2017

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