[2019] UKFTT 140 (TC)

# TC07006

**Appeal number: TC/2016/05600**

***COSTS – application for costs under Rule 10 Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 ("the Rules") - alleged wasted costs and unreasonable behaviour –***

**FIRST-TIER TRIBUNAL**
**TAX CHAMBER**

**GEMMA DANIELS** **Appellant**

**- and -**

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

**TRIBUNAL: JUDGE GUY BRANNAN**

**Sitting in in Chambers having received written submissions dated 16 October 2018, 9 November 2018, 7 January 2019 and 29 January 2019**

DECISION

## Introduction

1. By a decision released on 11 July 2018[1], this Tribunal allowed in part an appeal by the appellant, Ms Daniels, in respect of the deductibility of various expenses incurred for the purposes of her self-employed business as an exotic dancer. In broad terms, we allowed Ms Daniels' claim to expenses in respect of her dresses, lingerie, shoes, hair extensions and cosmetics etc but disallowed her claim in respect of her travelling expenses. It followed that penalties relating to the disallowed travelling expenses were, broadly, upheld but those relating to expenses which we found to be allowable were discharged. An appeal has been lodged with the Upper Tribunal in respect of the disallowance of the travelling expenses and the related penalty.

2. Ms Daniels now seeks her costs in respect of the proceedings before this Tribunal.

## The law

3. The Tribunal has only limited powers to award costs. These are set out in Rule 10 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 ("the Rules") as follows:

> "10.—(1) The Tribunal may only make an order in respect of costs (or, in Scotland, expenses)—
>
> (a) under section 29(4) of the 2007 Act (wasted costs) and costs incurred in applying for such costs;
>
> (b) if the Tribunal considers that a party or their representative has acted unreasonably in bringing, defending or conducting the proceedings;
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> (c) if—
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> (i) the proceedings have been allocated as a Complex case under rule 23 (allocation of cases to categories); and
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> (ii) the taxpayer (or, where more than one party is a taxpayer, one of them) has not sent or delivered a written request to the Tribunal, within 28 days of receiving notice that the case had been allocated as a Complex case, that the proceedings be excluded from potential liability for costs or expenses under this sub-paragraph; or
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> …
>
> (2) The Tribunal may make an order under paragraph (1) on an application or of its own initiative.

[1] The decision was amended under Rule 37 typographical errors and re-released on 19 September 2018.

(3) A person making an application for an order under paragraph (1) must—

(a) send or deliver a written application to the Tribunal and to the person against whom it is proposed that the order be made; and

(b) send or deliver with the application a schedule of the costs or expenses claimed in sufficient detail to allow the Tribunal to undertake a summary assessment of such costs or expenses if it decides to do so.

(4) An application for an order under paragraph (1) may be made at any time during the proceedings but may not be made later than 28 days after the date on which the Tribunal sends—

(a) a decision notice recording the decision which finally disposes of all issues in the proceedings; or

(b) notice under rule 17(2) of its receipt of a withdrawal which ends the proceedings.

(5) The Tribunal may not make an order under paragraph (1) against a person (the "paying person") without first—

(a) giving that person an opportunity to make representations; and

(b) if the paying person is an individual, considering that person's financial means.

(6) The amount of costs (or, in Scotland, expenses) to be paid under an order under paragraph (1) may be ascertained by—

(a) summary assessment by the Tribunal;

(b) agreement of a specified sum by the paying person and the person entitled to receive the costs or expenses (the "receiving person"); or

(c) assessment of the whole or a specified part of the costs or expenses, including the costs or expenses of the assessment, incurred by the receiving person, if not agreed.

(7) Following an order for assessment under paragraph (6)(c) the paying person or the receiving person may apply—

(a) in England and Wales, to a county court, the High Court or the Costs Office of the Senior Courts (as specified in the order) for a detailed assessment of the costs on the standard basis or, if specified in the order, on the indemnity basis; and the Civil Procedure Rules 1998(a) shall apply, with necessary modifications, to that application and assessment as if the proceedings in the tribunal had been proceedings in a court to which the Civil Procedure Rules 1998 apply;

…

(7A) Upon making an order for the assessment of costs, the Tribunal may order an amount to be paid on account before the costs or expenses are assessed.

(8) In this rule "taxpayer" means a party who is liable to pay, or has paid, the tax, duty, levy or penalty to which the proceedings relate or part of such tax, duty, levy or penalty, or whose liability to do so is in issue in the proceedings;"

4. This appeal was categorised as a standard case under Rule 23. The Tribunal can therefore only make an award of costs under paragraph (a) or (b) of Rule 10(1). In other words, the appellent must either have incurred wasted costs for the purposes of section 29(4) of the Tribunals, Courts and Enforcement Act 2007 ("TCEA"), or HMRC must have acted unreasonably in defending or conducting the appeal proceedings.

5. Section 29(4) of the TCEA gives the Tribunal power to order a legal or other representative to meet of a party to meet wasted costs in whole or in part. "Wasted costs" are defined in s29(5) TCEA as:

> "any costs incurred by a party—
>
> (a) as a result of any improper, unreasonable or negligent act or omission on the part of any legal or other representative or any employee of such a representative, or
>
> (b) which, in the light of any such act or omission occurring after they were incurred, the relevant Tribunal considers it is unreasonable to expect that party to pay."

6. I should add that section 29(6) TCEA provides:

> "In this section "legal or other representative", in relation to a party to proceedings, means any person exercising a right of audience or right to conduct the proceedings on his behalf."

7. I recently summarised case law addressing the principles which the Tribunal should apply in deciding whether or not a party has acted unreasonably in *British-American Tobacco (Holdings) Limited v. HMRC* [2017] UKFTT 99 (TCC) at [5] to [14] as follows:

> "5. The principles to apply in deciding whether a party acted unreasonably were helpfully summarised by Judge Raghavan in *Market & Opinion Research International Ltd v Revenue & Customs* [2013] UKFTT 475 (TC) at [8]:
>
> "(1) It was to be noted that the test in the Tribunal Rules that a party or representative had "acted unreasonably" required a lower threshold than the costs awarding power of the former Special Commissioners in Regulation 21 of the Special Commissioners (Jurisdiction and Procedure) Regulations 1994 which was confined to cases where a party had acted "wholly unreasonably". This was discussed in *Bulkliner Intermodal Ltd v HMRC* [2010] UKFTT 395 (TC) at [9].
>
> (2) It was suggested that acting unreasonably could take the form of a single piece of conduct. I was referred to [9] to [11] of the decision in *Bulkliner* by way of support for this proposition. In particular at [10] the decision highlights the actions that the Tribunal can find to be unreasonable may be related to any part of the proceedings
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> "…whether they are part of any continuous or prolonged pattern or occur from time to time".

(3) The point is I think mentioned in the context of contrasting the Tribunal's rules in relation to acting unreasonably across the span of proceedings with the former Special Commissioners' costs power which was in relation to behaviour which was "in connection with the hearing in question". Having said that there would not appear to be any reason why the proposition that a single piece of conduct could amount to acting unreasonably. It will of course rather depend on what the conduct is.

(4) Actions for the purpose of "acting unreasonably" also include omissions (*Thomas Holdings Limited v HMRC* [2011] UKFTT 656 (TC) at [39].)

(5) A failure to undertake a rigorous review of assessments at the time of making the appeal to the tribunal can amount to unreasonable conduct (*Carvill v Frost (Inspector of Taxes)* [2005] STC (SCD) 208 and *Southwest Communications Group Ltd v HMRC* [2012] UKFTT 701 (TC) ) at [45]).

(6) The test of whether a party has acted unreasonably does not preclude the possibility of there being a range of reasonable ways of acting rather than only one way of acting. (*Southwest Communications Group Ltd* at [39]).

(7) The focus should be on the standard of handling of the case rather than the quality of the original decision (*Thomas Maryam v HMRC* [2012] UKFTT 215(TC)).

(8) The fact that a contention has failed before the Tribunal does not mean it was unreasonable to raise it. In *Leslie Wallis v HMRC* [2013] UKFTT 81(TC) Judge Hellier stated at [27]:

"It seems to us that it cannot be that any wrong assertion by a party to an appeal is automatically unreasonable…before making a wrong assertion constitutes unreasonable conduct in an appeal that party must generally persist in it in the face of an unbeatable argument that he is wrong…"

(9) As cautioned by Judge Brannan in *Eastenders Cash and Carry Plc v HMRC* [2012] UKFTT 219 (TC) at [91] Rule 10(1)(b) should not become a "backdoor" method of costs shifting."

6. This summary was approved by the Upper Tribunal in that case, [2015] UKUT 12 (TC) at [23]. The Upper Tribunal added:

"We would add only what this Tribunal (Judge Bishopp) said in *Catanã v Revenue and Customs Commissioners* [2012] STC 2138 , at [14] concerning the phrase "bringing, defending or conducting the proceedings" in rule 10(1)(b) :

'It is, quite plainly, an inclusive phrase designed to capture cases in which an appellant has unreasonably brought an appeal which he should know could not succeed, a respondent has unreasonably resisted an obviously meritorious appeal, or either party has acted unreasonably in the course of the proceedings, for example by persistently failing to comply with the rules or directions to the prejudice of the other side.'"

7. The Upper Tribunal went on to describe the test as follows at [49]:

"It would not, we think, be helpful for us to attempt to provide a compendious test of reasonableness for this purpose. The application of an objective test of that nature is familiar to tribunals, particularly in the Tax Chamber. It involves a value judgment which will depend upon the particular facts and circumstances of each case. It requires the tribunal to consider what a reasonable person in the position of the party concerned would reasonably have done, or not done. That is an imprecise standard, but it is the standard set by the statutory framework under which the tribunal operates. It would not be right for this Tribunal to seek to apply any more precise test or to attempt to provide a judicial gloss on the plain words of the FTT Rules."

8. The Upper Tribunal in *Market & Opinion Research* at [55] and [56] also made it clear that the attributes of the party concerned should be taken into account:

"55. There is one point we should make in this respect. In his skeleton argument, Mr Bremner submitted that if it were suggested that HMRC should be subjected to some higher standard than other litigants, then HMRC would submit that such a suggestion was wrong. There was, it was argued, no justification for subjecting different litigants to different standards.

56. To the extent this argument is concerned with the application of a test of reasonableness, and not some different or higher standard, we agree. However, the test of reasonableness must be applied to the particular circumstances of a case, which will include the abilities and experience of the party in question. The reasonableness or otherwise of a party's actions fall to be tested by reference to a reasonable person in the circumstances of the party in question. There is a single standard, but its application, and the result of applying the necessary value judgment, will depend on the circumstances."

9. I should note two important limitations on the Tribunal's powers under section 29 TCEA and rule 10(1)(b) …. The power to award costs is limited to costs "of and incidental" to the proceedings, rather than costs in respect of other matters, such as a prior investigation by HMRC: *Catanã v HMRC* [2012] STC 2138 at [7]….

10. Secondly, the power to award costs under rule 10(1)(b) relates to unreasonable conduct in bringing, defending or conducting proceedings. As explained in *Catanã* at [8] and [9], whilst conduct or actions prior to commencement of an appeal might inform actions taken during the proceedings, unreasonable behaviour prior to commencement of proceedings cannot be relied upon to claim costs under rule 10(1)(b)….

11. Finally, I should also refer to two additional decisions of this Tribunal. First, in *Roden and Roden v HMRC* [2013] UKFTT 523 (TC) Judge Mosedale, having observed that the Tribunal in *Leslie Wallis* was of the opinion that a party would not be acting unreasonably when pursuing a case without merit unless he ought to have known his case was without merit, stated at [15]:

> "…The Tribunal should not be too quick to characterise pursuing what is found to be an unsuccessful case is unreasonable behaviour: the Tribunal rules provide for a no-costs regime in virtually all tax cases (and the exception for complex cases does not apply in this case). So if in this case HMRC's view had no reasonable prospect of success, HMRC would have been acting unreasonably if they ought to have known this but not otherwise. In considering whether HMRC ought to have known whether the case had a reasonable prospects of success, I consider that I should consider HMRC as a whole and not just the individual officer presenting the case."
>
> 13. I respectfully agree with Judge Mosedale's comments.
>
> 14 Secondly, in *John Scofield v Revenue & Customs* [2012] UKFTT 673 (TC) I noted that:
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> "… Rule 10(1)(b) must also be read in the light of the overriding objective (Rule 2(1)) of the Rules which is "to enable the Tribunal to deal with cases fairly and justly." In particular, Rule 2 (4) provides that:
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> "Parties must
>
> (a) help the Tribunal to further the overriding objective; and
>
> (b) co-operate with the Tribunal generally.""

8. As noted above, the Rules allow the Tribunal to make in any case an order for costs under section 29(4) of the TCEA. This is known as a 'wasted costs' order. As Judge Mosedale observed recently in *Humphries v Revenue & Customs* [2019] UKFTT 88:

> "13. 'Wasted' costs have a very specific meaning under s 29(4) and they are limited to orders against the representative of the litigant to pay the whole or part of costs (s 29(5)) which were incurred:
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> (a) as a result of any improper, unreasonable or negligent act or omission on the part of any legal or other representative or any employee of such a representative, or
>
> (b) which, in the light of any such act or omission occurring after they were incurred, the relevant Tribunal considers it unreasonable to expect that party to pay.
>
> 14. In other words, a wasted costs order is an order against a representative to pay the other party's costs because of the representative's own behaviour.
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> 15. The use of the word 'wasted' sometimes misleads litigants to believe that they can recover from the other party costs they incur but regards as being 'wasted' in a colloquial sense. Reading Mrs Humphries' costs application, it seems likely that Mrs Humphries did not appreciate the distinction. She does not expressly state she is seeking an order against any particular HMRC officer but seems to be seeking costs against HMRC itself.
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> 16. I am going to proceed on the assumption that Mrs Humphries intended to make an application for costs under rule 10(1)(b) on the

> basis she alleges HMRC acted unreasonably in its defence or conduct of the proceedings. While there is no specific provision allowing me to treat one type of application as another, the Tribunal has power to award costs of its own motion."

## The costs application

9. Ms Daniels' appeal was lodged with the Tribunal on 18 October 2016.

10. On 19 September 2018, at my behest, the Tribunal service wrote to the parties stating that:

> "… The Appellant wishes to pursue its application for wasted costs… The tribunal is prepared to treat the… application as an application under Rule 10 (1) (a) and (b) of [the Rules]. The Appellant shall supply a schedule of costs as required by Rule 10(3)(b). Any application shall be made within 28 days of the date of this letter and *contain full details of the conduct and events which the Appellant considers justifying the application*." (Emphasis added)

11. The appellant's representative, Mr Maunders, applied for costs in a letter dated 13 October 2018 which appended a Schedule of Costs. The letter stated that it was making an application Rule 10 (1)(a) and (b) for "wasted costs" in the light of the Tribunal's decision released on 11 July 2018. After setting out the qualifications and experience of Mr Maunders and the history of his involvement in the enquiry into the appellant's tax affairs, Mr Maunders referred to the conduct of Mr McGivern (the HMRC officer dealing with the enquiry) and described it as heavy-handed and over-zealous. Mr Maunders referred to the Tribunal's decision which mentioned Mr McGivern's conduct (see [29] and [110] of the decision). Mr Maunders then gave details of Mr McGivern's conduct. I set out, in an appendix to this decision, paragraphs 10-19 of Mr Maunders' letter which, he says, describe the unreasonable conduct of HMRC. This was followed by a description of the statutory review[2]

12. Mr Maunders' letter then referred to the fact that an attempt had been made to settle the enquiry by Alternative Dispute Resolution ("ADR") which resulted in certain penalties being cancelled. Mr Maunders alleged that the ADR efforts were unsuccessful "mainly due to the intransigence" of Mr McGivern, although no details were given. Mr Maunders said that his involvement arose because of the "heavy-handed over-zealous approach of [Mr McGivern] to the appellant's expenditure claims. He said that those claims had hitherto been made according to the prevailing law and practice (particularly the Business Income Manuals of HMRC themselves). Mr Maunders also alleged that the disallowance by HMRC of expenditure on costumes and cosmetics was an indication of Mr McGivern's "intransigence". Mr Maunders said he had to spend extra time making complaints about Mr McGivern's unreasonable conduct in not allowing genuinely incurred business expenditure.

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[2] Although Mr Maunders refers to the review having been conducted by HMRC's "solicitor", there is no evidence that members of HMRC's legal staff were involved at the review stage and, indeed, in my experience it would be unusual for them to be so involved.

13. The schedule of costs commenced with entries in October 2015 and ran through until 11 July 2018 and totalled £21,446.84. It is evident that prior to 18 October 2016, the costs related to the conduct of the enquiry by HMRC.

**Wasted costs**

14. As explained above, "wasted costs" are defined narrowly as being costs being incurred as a result of "improper, unreasonable or negligent act or omission on the part of any legal or other representative or any employee of such a representative". A legal or other representative means any person exercising a right of audience or right to conduct the proceedings on behalf of a party.

15. It seems plain to me that Mr Maunders has misunderstood the concept of "wasted costs". He sets out no particulars of the conduct of the legal representatives about which he complains nor indeed does he specify which legal representatives engaged in such conduct. Mr McGivern appeared as a witness on behalf of HMRC – he was not acting as a "representative" within the meaning of section 29(6) TCEA as set out in paragraph 8 above.

16. In my view, therefore, there is no merit in the application in respect of "wasted costs". To be clear, my view is that none of the legal or other representatives of HMRC, within the meaning of section 29(6) TCEA acted improperly, unreasonably or negligently. Accordingly, in so far as the application is made under Rule 10 (1)(a), I dismiss the application.

**Unreasonable conduct**

17. As HMRC point out in their written submissions, paragraphs 5 to 13 and 17 of the appellant's application (see appendix) relate to matters outside the proceedings. As the Upper Tribunal (Judge Bishopp) stated in *Catanã v Revenue and Customs Commissioners* [2012] STC 2138:

> "**[6]** Subsections (1) and (2) [TCEA], taken alone, give a tribunal the power to make a costs direction in respect of proceedings in that tribunal without limitation, save that the 'discretion' to which the provisions refer is judicial discretion. That is to say, a tribunal asked to make a costs direction may properly do so only when it is appropriate, taking into account all of the relevant circumstances and leaving out of account the irrelevant. There are, however, two important limitations to the power.
>
> **[7]** First, the tribunal may make an order in respect of *costs 'of and incidental to' the proceedings.* There is no power to make an order in respect of anything else, and particularly, in the context of this case, in respect of the investigation into Mr Catanã's tax affairs which preceded the proceedings.
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> ...
>
> [8] The question whether the transfer of the Special Commissioners' jurisdiction to the First-tier Tribunal and the consequent rewriting of

> the relevant legislation had the result of changing the power to make a costs direction in an significant way was considered by the First-tier Tribunal in *Bulkliner Intermodal Ltd v Revenue and Customs Comrs* [2010] UKFTT 395 (TC), [2010] SFTD 1198, in which it said, at [11]:
>
> '[11] … one thing that has not changed is that the Tribunal's jurisdiction continues to be limited to considering actions of a party in the course of "the proceedings", that is to say proceedings before the Tribunal whilst it has jurisdiction over the appeal. It is not possible under the 2009 Rules [Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009, SI 2009/273], any more than in was under the Special Commissioners' Regulations [Special Commissioners (Jurisdiction and Procedure) Regulations 1994, SI 1994/1811], for a party to rely upon the unreasonable behaviour of the other party prior to the commencement of the appeal, at some earlier stage in the history of the tax affairs of the taxpayer, nor, even if unreasonable behaviour were established for a period over which the Tribunal does have jurisdiction, can costs incurred before that period be ordered. In these respects the principles in *Gamble v Rowe* … remain good law. That is not to say that behaviour of a party prior to the commencement of proceedings can be entirely disregarded. Such behaviour, or actions, might well inform actions taken during proceedings, as it did in *Scott and anor (trading as Farthings Steak House) v McDonald* (Inspector of Taxes) [1996] STC (SCD) 381, where bad faith in the making of an assessment was relevant to consideration of behaviour in the continued defence of an appeal.'
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> [9] I respectfully agree with that proposition…."

18. It is clear to me, therefore, on the basis of these authorities that the costs claimed by the appellant prior to the date on which the Notice of Appeal was lodged with the Tribunal cannot be recovered. Furthermore, it seems to me that the costs of the ADR proceedings are not costs of "the proceedings" and cannot be recovered.

19. Furthermore, the instance of unreasonable conduct on the part of Mr McGivern to which the Tribunal referred in its Decision (see [29] and [110]) took place well before the Notice of Appeal was lodged. Moreover, the allegations made about HMRC and Mr McGivern, in particular, are vague and un-particularised. It is baldly asserted, several times, that Mr McGivern was "intransigent" or displayed "intransigence" or was "overzealous". I suspect, however, that Mr McGivern simply did not agree with Mr Maunders. An honest divergence of view (even if Mr McGivern's view was ultimately mistaken), does not necessarily involve intransigence.

20. In any event, from the date of the commencement of proceedings (i.e. the date on which the Notice of Appeal was lodged), I do not consider that HMRC behaved unreasonably in defending or conducting the proceedings. The circumstances of the appellant's case were unusual and the application of the law to the facts was not straightforward. The mere fact that HMRC's arguments were ultimately unsuccessful (at least as regards expenses other than travelling expenses) does not mean that they acted unreasonably in defending or conducting the appeal. I think this Tribunal should be very wary of too readily assuming that because a party has lost the argument

before the Tribunal that that argument was therefore always obviously wrong and unreasonable. This would be to judge the reasonableness of a party's conduct with the benefit of hindsight rather than judging it at the time. It is true that the Tribunal drew an analogy with parts of HMRC's Manuals but that does not mean that HMRC, looking at the facts in the round, acted unreasonably. The relevant passages in the Manuals did not exactly contemplate the unusual circumstances of the appellant. In my view, therefore, HMRC did not act unreasonably.

21. For these reasons, I dismiss the application under Rule 10 (1)(b).

## Conclusion

22. The appellant's costs application is dismissed.

23. 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.

**GUY BRANNAN**
**TRIBUNAL JUDGE**

**RELEASE DATE:26 FEBRUARY 2019**

## Appendix – extracts from Mr Maunders' letter of 13 October 2018

"10. At the time I contacted [Mr McGivern] initially, I was preparing to travel to Australia for a month to attend my daughter's wedding, and informed him of this, and that I would continue to deal with the case and provide any required information upon my return after 19 November. [Mr McGivern] was not prepared to wait, and unreasonably issued a Schedule 36 Notice. I complained about this, and it was subsequently withdrawn by the Compliance Office of HMRC, who agreed that it should not have been issued. Time was spent needlessly on this.

11. In 2016, as [Mr McGivern] was most intransigent, I requested a Formal Review. This was not received by me all the Appellant at the time, and I discovered that the Review had been issued only towards the end of the month later. It took several emails and letters over three months to obtain a copy from HM IT, who continually ignored my requests. This was also the subject of a complaint by me.

12. In the course of the Review, HMRC's Solicitor concluded:

– That the additional assessments for 2008/9 and 2009/10 were out of time and should be cancelled.

– That the substantial expenditure totalling £8603 on costumes and cosmetics was allowable business expenditure, but he was prepared to allow only 20% due to the lack of evidential invoices, despite the contemporaneous cashbook record.

– That the expenditure of £1112 on travel was not allowable.

13. Subsequently, an attempt to settle by ADR was made, but was unsuccessful due mainly to the intransigence of [Mr McGivern], although he conceded that penalties would be cancelled.

14. At the First-tier Tribunal Hearing, [Mr McGivern] stated in his evidence that he was not prepared to allow ANY expenditure claimed, notwithstanding the fact that the Review Solicitor had agreed that the expenditure on costumes and cosmetics was business expenditure with no dual purpose.

15. The Tribunal agreed with the Review Solicitor, and allow the full amount shown in the Appellant's cashbook, whilst noting the absence of some invoices. The allowability of travel expenses is being referred to the Upper Tribunal on appeal.

16. The appellant, who comes from a modest background, living with her poorly mother in a council house, has always paid her taxes on time and in full. She has suffered enormous distress as a result of her treatment at the hands of [Mr McGivern].

…

17. My whole involvement arose because of the heavy-handed over-zealous approach of [Mr McGivern] to the Appellant's expenditure claims, which had hitherto been made according to the prevailing law and practice, not to mention the Business Income Manuals of HMRC themselves.

18. The fact that the whole of the expenditure on costumes and cosmetics previously disallowed were then allowed in Tribunal, is an indication of HM IT's intransigence, despite the fact that on several occasions I had pointed out to him that they were in compliance with HMRC's own Manuals.

19. I had to spend extra time in making complaints about his unreasonable conduct in not allowing genuinely incurred business expenditure."