TC01908

Appeal number: TC/2010/07204

Statutory sick pay – entitlement depending on "normal weekly earnings" reaching NIC lower earnings limit – errors on one of two relevant payslips, supposedly corrected on the other – whether only the earnings actually paid during relevant period should be taken into account – not certain, but in present case yes – whilst in some cases the Tribunal might have power to substitute its view of the correct figure, this was not such a case – and even if it did so, "normal weekly earnings" would still be below the NIC lower earnings limit – sections 151, 153 and 162(2) to (4) and Schedule XI Social Security Contributions and Benefits Act 1992 and regulations 17 and 19 of Statutory Sick Pay (General) Regulations 1982 considered – appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

PENELOPE ANN SPENCE **Appellant**

-and-

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

TRIBUNAL: **JUDGE KEVIN POOLE**
ROGER FREESTON FRICS

Sitting in public in Nottingham on 27 September 2011

The Appellant did not appear and was not represented

Steven Duke, presenting officer, for the Respondents

DECISION

Introduction

1. This appeal concerns the entitlement of the appellant to statutory sick pay ("SSP").

2. In particular, it considers whether the appellant was disqualified from entitlement to SSP because her normal weekly earnings over the relevant period leading up to her sickness were too low.

3. The payslips received by the appellant for that period clearly showed earnings which were too low. The appellant disputed the correctness of those payslips and maintained that if her correct earnings for the relevant period were calculated, they would be above the relevant threshold amount. On that basis, she argued she should be entitled to SSP.

4. She also argued that if the rules, strictly interpreted, operated to disqualify her from SSP because of her low earnings, that was an unfair outcome in the circumstances of her case which the Tribunal ought to correct.

5. The appellant did not attend the hearing of the appeal (though she did not ask for it to be postponed, and she provided a written statement to be read out on her behalf). This was because she still did not feel sufficiently strong to do so following her husband's death from Alzheimer's disease on 31 July 2011. She had cared for her husband at home and that was a major factor in the circumstances giving rise to this appeal. The Tribunal repeats its condolences to Mrs Spence on her bereavement.

The facts

Introduction

6. The appellant worked part time for Lincoln Academy Limited ("LAL"), who had a non-statutory sick pay scheme for their staff.

7. The appellant was off work due to sickness from 27 August 2009 until 25 January 2010. Her sickness was attributable to the stress of looking after her husband. She returned to work on 26 January 2010 (though for the period up to 17 February 2010 she was taking paid holiday entitlement) until she was off work again due to sickness from 25 March 2010.

8. Her entitlement under her employer's non-statutory sick pay scheme having been exhausted after six months of sickness, the appellant applied for SSP.

9. After investigating her claim, HMRC determined that the appellant was not entitled to SSP, a decision against which she now appeals.

10. The main basis of the appeal is that the appellant says her payslips from LAL do not reflect her true entitlement to earnings from them, as a result of which those

earnings appear to fall below the threshold level which entitles her to SSP. She argues that her entitlement to SSP should be assessed on the basis of what she maintains to be her true entitlement to earnings from LAL, which would, she says, be above the relevant threshold and therefore give rise to an entitlement to SSP.

11. The background facts are that the appellant had for some eight years cared for her husband whilst also working part time. She informed us that for a short time she qualified for Carer's Allowance but this was stopped from 25 March 2010, apparently because she was refused SSP and paid Employment and Support Allowance instead. Thus her loss of SSP apparently caused other significant financial loss in the form of lost Carer's Allowance. The appellant qualified for her state pension in July 2010. Her husband unfortunately died on 31 July 2011.

12. This Tribunal has no specialist knowledge of or jurisdiction in relation to the other benefits mentioned by the appellant, but the appellant strongly felt it was unfair that she should be prejudiced as a result of the refusal of SSP. She asks the Tribunal, if it does not find in her favour in the present appeal, to take steps to have the law changed to rectify the position. Regrettably such matters lie beyond the jurisdiction of this Tribunal, which is limited to deciding the issue before it, namely whether the appellant was entitled to SSP or not within the statutory framework as it actually stood at the time.

The appellant's employment and earnings

13. The appellant was employed by LAL from 10 February 1997. She worked three full days per week (Wednesday to Friday) and was paid monthly on the 8th of each month in respect of the period of one month commencing on the 9th of the previous calendar month.

14. In August 2009, the appellant was signed off work by her GP as a result of illness brought on by the stress of caring for her husband. Under LAL's non-statutory sick pay scheme, she received a gradually reducing percentage of her normal monthly pay from then on over the next few months.

15. After discussions with her GP, the appellant agreed with LAL that she would start work again on 25 January 2010 but working 14 hours per week (spread over Wednesday, Thursday and Friday) rather than her previous 22.5 hours per week. Her salary was adjusted downwards in direct proportion to this reduction in working hours.

16. The appellant technically restarted work on 25 January 2010, but in fact took some accrued holiday first at the request of LAL, as a result of which she physically returned to work on 18 February 2010. She then worked (apart from taking a few days' paid holiday entitlement from the current year) until 24 March 2010, after which she was signed off sick again. Her first day of this sickness was therefore 25 March 2010.

17. The appellant's payslips for the two months to 8 February and 8 March 2010 (which are the critical months for this purpose – see below) are complex. The

February payslip contained an admitted error, which the March payslip was supposed to correct.

18. It is to be remembered that the February payslip showed payment in respect of a complicated month:

(1) During the month in question (ie from 9 January to 8 February 2010) the appellant had 12 normal working days (Wednesday to Friday inclusive).

(2) For the first part of the month (up to 24 January 2010), the appellant was still being paid under LAL's non-statutory sick pay scheme, and was still contracted to work 22.5 hours per week. For the first six working days, therefore, she should have been paid at a rate of one half of her normal monthly rate, less a deduction of 60% (due to the fact that she was, by then, in her fifth month of sickness).

(3) For the second part of the month (from 25 January to 8 February 2010), she should have been paid at her full "new" monthly rate for the other six normal working days (Wednesday to Friday) falling within that period.

19. In fact, the February payslip showed gross pay for tax purposes as £211.53. This was arrived at by starting with a "basic pay" figure of £586.24, adding £5.86 (which was a normal 1% addition paid by LAL on gross pay to enable employees to purchase extra private sickness insurance) and then deducting £380.57 in respect of the discount from full pay which was considered to be applicable under LAL's long term sickness scheme. No satisfactory explanation of this calculation has been forthcoming, either at the time or since, and all our attempts to make sense of it have come to nothing.

20. It was however immediately acknowledged that the February pay calculation was wrong, and in the March payslip (which covered the period from 9 February to 8 March 2010), LAL attempted to correct the error.

21. Apart from the correction of the error, the March payslip should have been much more straightforward. What it should have shown was a normal monthly salary at the new agreed rate.

22. The March payslip in fact showed gross pay for tax purposes as £555.08. It reached this figure by starting with a "basic pay" figure of £429.67 and adding the 1% sickness insurance payment as above. It then went on to make some very confusing adjustments for February's error. The net effect of those adjustments was to add a further £121.11 to the appellant's pre-tax pay. This was actually done by adding a figure of £147.25 as "owed from previous month" into the payments column on the payslip and deducting another figure of £26.14 as "overpaid from previous month" in the deductions column. This latter deduction appeared in the place previously used to show the deduction that had been applied to "normal" basic wages to arrive at the non-statutory sick pay amount.

23. Overall, LAL and its advisers maintained that the total of the two payslips for February and March was correct, adding up to total gross pay for tax purposes of £766.61.

Our concerns over the accuracy of the two payslips

24. All efforts to explain precisely how the calculations in the two payslips conformed with the factual history failed.

Our calculation of the appellant's correct earnings

25. For reasons set out below, we consider that the total £766.61 figure set out in the two payslips is the relevant figure for the purposes of this appeal. However, the appellant maintains that this figure is incorrect and that if a correct figure is used instead, it will take her above the relevant threshold.

26. In case we are wrong in believing the £766.61 figure to be determinative, we have carried out our own calculation of the correct figures to see whether we believe the appellant's assertion is correct.

(a) February 8 payslip

27. As mentioned above, this was a complicated month for the appellant's pay. The appellant's normal working days were Wednesday, Thursday and Friday. There were twelve such days during the period 9 January to 8 February inclusive. On six of those days, the appellant was still off sick from a normal 22.5 hour week, and for the other six she was working a normal 14 hour week (she was actually taking accrued holiday, but that does not affect the calculation).

28. LAL's practice was to pay salary in equal monthly instalments, regardless of the length of the month or the number of working days in it. Thus the appellant's basic salary for the period 9 January to 8 February 2010 would have been £690.55 (plus the 1% sickness insurance payment) before any adjustment to reflect her change of hours on her return to work.

29. For the first half of her working days in that month, the appellant was off sick, receiving payment under LAL's non-statutory sick pay scheme. By that time, she was in the 5th month of her sickness, so under the scheme, she would have been entitled to 40% of her normal salary. Thus she would have been entitled to:

[£690.55 + £6.90] x 0.5 x 40% = £139.49

30. However, one proviso of LAL's non-statutory sick pay scheme was that "where percentages are applied the resulting amount shall not be less than the level of SSP at the time, unless the earnings fall below the National Insurance lower earnings level".

31. There is an argument that this proviso would not have applied in the appellant's case to bring her entitlement up to an amount equal to SSP. This is

because the National Insurance lower earnings limit for 2009-10 was £95 per week (see below) and the appellant's entitlement under LAL's non-statutory scheme before considering the proviso would have been well below that level. This is demonstrated by converting her "normal" monthly non-statutory sick pay to a weekly amount by the following calculation:

[£690.55 + £6.90] x 40% x 12 ÷ 52 = £64.38

32. During 2009-10, the standard weekly rate of SSP was £79.15, therefore it can readily be seen that if the proviso was intended to operate in this way, it would never in fact operate because whenever the non-statutory sick pay was below the normal SSP rate, it would by definition always also be below the NI lower earnings limit. To give the proviso a sensible meaning, therefore, we consider that the reference to "earnings" in it must be taken as referring to the employee's normal earnings before the relevant percentage reduction is applied to arrive at the non-statutory sick pay.

33. On this interpretation of the proviso, for the first two weeks of the period covered by the February 8 payslip, the appellant should have received £79.15 x 2 = £158.30.

34. For the second half of the month comprised in the 8 February payslip, the appellant was back in work, but on agreed reduced hours. Her base monthly salary was therefore reduced to reflect her reduced hours (from 22.5 per week to 14 per week) as follows:

[£690.55 + £6.90] ÷ 22.5 x 14 = £433.96

35. Her actual salary for the second half of the month should therefore have been:

£433.96 ÷ 2 = £216.98.

36. Her total taxable salary in her February 2010 payslip should therefore have been:

£158.30 + £216.98 = £375.28

(b) March 8 payslip

37. The 8 March 2010 calculation is more straightforward. The appellant should simply have received a full month's salary at her new rate, ie £433.96.

(c) Our conclusion on the correct aggregate gross earnings in 8 February and 8 March 2010 payslips

38. It follows that we consider the correct aggregate earnings for the two periods in question should have been £375.28 + £433.96 = £809.24. It will be noted that this is £42.63 more than the figure actually contained in the appellant's two payslips for the periods.

The law and its application in this case

Basic entitlement to SSP

39. Section 151(1) Social Security Contributions and Benefits Act 1992 ("SSCBA") provides as follows:

> "Where an employee has a day of incapacity for work in relation to his contract of service with an employer, that employer shall, if the conditions set out in sections 152 to 154 below are satisfied, be liable to make him, in accordance with the following provisions of this Part of this Act, a payment (known as "statutory sick pay") in respect of that day."

The "period of entitlement" condition

40. It is common ground that the condition set out in section 152 and 154 SSCBA are satisfied in relation to the appellant's claim. The dispute that has arisen centres on whether the condition in section 153 SSCBA is satisfied.

(a) The general "period of entitlement" rule

41. Section 153(1) to (3) SSCBA provide as follows:

> "(1) The second condition is that the day in question falls within a period which is, as between the employee and his employer, a period of entitlement.
>
> (2) For the purposes of this Part of this Act a period of entitlement, as between an employee and his employer, is a period beginning with the commencement of a period of incapacity for work and ending with whichever of the following first occurs—
>
> (a) the termination of that period of incapacity for work;
>
> (b) the day on which the employee reaches, as against the employer concerned, his maximum entitlement to statutory sick pay (determined in accordance with section 155 below);
>
> (c) the day on which the employee's contract of service with the employer concerned expires or is brought to an end;
>
> (d) in the case of an employee who is, or has been, pregnant, the day immediately preceding the beginning of the disqualifying period.
>
> (3) Schedule 11 to this Act has effect for the purpose of specifying circumstances in which a period of entitlement does not arise in relation to a particular period of incapacity for work."

42. It is common ground that, in the absence of subsection (3), a period of entitlement would have arisen in this case, starting on 25 March 2010.

(b) The Schedule 11 paragraph 2 exception to the general "period of entitlement" rule

43. The dispute in this case arises from a particular provision in schedule 11 to SSCBA, namely paragraphs 1 and 2 which provide (so far as relevant) as follows:

> "1. A period of entitlement does not arise in relation to a particular period of incapacity for work in any of the circumstances set out in paragraph 2 below or in such other circumstances as may be prescribed.
>
> 2. The circumstances are that—
>
> ...
>
> (c) at the relevant date the employee's normal weekly earnings are less than the lower earnings limit then in force under section 5(1)(a) above;"

44. In general terms, therefore, paragraph 2(c) of schedule 11 SSCBA takes effect to disqualify an employee from SSP if the employee's earnings are too low. There are however three phrases in that paragraph which are further defined elsewhere in the extensive and complicated legislation relating to this matter: "relevant date", "normal weekly earnings" and "lower earnings limit".

45. The reference in paragraph 2(c) to "the relevant date" is explained by paragraph 3 in schedule 11, which provides as follows:

> "3. In this Schedule "relevant date" means the date on which a period of entitlement would begin in accordance with section 153 above if this Schedule did not prevent it arising."

46. It is common ground that the appellant's "period of entitlement" to SSP for these purposes would, if not prevented from arising by schedule 11, begin in accordance with section 153 SSCBA on 25 March 2010. That date is therefore the "relevant date" for the purposes of paragraph 2(c) of schedule 11.

47. 25 March 2010 is therefore the date at which the appellant's "normal weekly earnings" are to be tested to see whether they are high enough to avoid the appellant being disqualified from entitlement by paragraph 2(c) of schedule 11.

48. The "lower earnings limit", against which the appellant's earnings are to be tested, was fixed for the tax year 2009-10 (which includes 25 March 2010) at £95, by virtue of regulations 3(a) and (b) of the Social Security (Contributions) (Amendment No. 2) Regulations 2009.

49. Accordingly, if the appellant's "normal weekly earnings" as at 25 March 2010 were less than £95, she is not eligible for SSP by reason of para 2(c) of schedule 11 SSCBA.

What were the appellant's "normal weekly earnings" at 25 March 2010?

(a) Definition of the phrase in SSCBA

50. The phrase "normal weekly earnings" is defined by subsections 163(2) SSCBA, which (with the associated interpretation provisions in 163(3) and (4)) provides as follows:

> "(2) For the purposes of this Part of this Act an employee's normal weekly earnings shall, subject to subsection (4) below, be taken to be the average weekly earnings which in the relevant period have been paid to him or paid for his benefit under his contract of service with the employer in question.
>
> (3) For the purposes of subsection (2) above, the expressions "earnings" and "relevant period" shall have the meaning given to them by regulations.
>
> (4) In such cases as may be prescribed an employee's normal weekly earnings shall be calculated in accordance with regulations."

51. It is notable that this definition is expressed to apply "for the purposes of this Part of this Act", ie sections 151 to 163 SSCBA. The phrase we are seeking to interpret does not appear in that part of SSCBA, it appears in schedule 11. However, schedule 11 is so closely interlinked with sections 151 to 163 that it is difficult to see how it can sensibly be interpreted without regarding the definition in sections 163(2) to (4) as applying to the phrase "normal weekly earnings" in schedule 11. If this is not correct, then the legislation would be silent as to the detailed interpretation of this very important phrase in schedule 11, which we consider the draftsman could not have intended.

(b) The content and relevance of the Statutory Sick Pay (General) Regulations 1982

52. Subsections 163(3) and (4) refer to "regulations" for the meanings of the expressions "earnings" and "relevant period" and for the method of calculation of "normal weekly earnings".

53. Mr Duke referred us to what he said were the relevant regulations referred to in section 163 SSCBA, namely the Statutory Sick Pay (General) Regulations 1982 ("SSPGRs"), which provide, so far as relevant, as follows:

> "**17. Meaning of "earnings"**
>
> (2) For the purposes of section 163(2) of the Contributions and Benefits Act, the expression "earnings" refers to gross earnings and includes any remuneration or profit derived from a person's employment ....
>
> ....
>
> **19. Normal weekly earnings**

(1) For the purposes of section 26(2) and (4), an employee's normal weekly earnings shall be determined in accordance with the provisions of this regulation.

(2) In this regulation—

"the critical date" means the first day of the period of entitlement in relation to which a person's normal weekly earnings fall to be determined, or, in a case to which paragraph 2(c) of Schedule 1 applies, the relevant date within the meaning of Schedule 1;

"normal pay day" means a day on which the terms of an employee's contract of service require him to be paid, or the practice in his employment is for him to be paid, if any payment is due to him; and

"day of payment" means a day on which the employee was paid.

(3) Subject to paragraph (4), the relevant period (referred to in section 26(2)) is the period between—

(a) the last normal pay day to fall before the critical date; and

(b) the last normal pay day to fall at least 8 weeks earlier than the normal pay day mentioned in sub-paragraph (a),

including the normal pay day mentioned in sub-paragraph (a) but excluding that first mentioned in sub-paragraph (b).

(4) In a case where an employee has no identifiable normal pay day, paragraph (3) shall have effect as if the words "day of payment" were substituted for the words "normal pay day" in each place where they occur.

(5) In a case where an employee has normal pay days at intervals of or approximating to one or more calendar months (including intervals of or approximating to a year) his normal weekly earnings shall be calculated by dividing his earnings in the relevant period by the number of calendar months in that period (or, if it is not a whole number, the nearest whole number), multiplying the result by 12 and dividing by 52."

54. It is not immediately apparent that the SSPGRs are the regulations referred to in section 163 SSCBA, indeed the reference in regulation 19 of the SSPGRs to "section 26(2) and 26(4)" is not to the SSCBA at all, but to a predecessor Act, the Social Security and Housing Benefits Act 1982 ("SSHBA"). However, further research indicates that the provisions of sections 163(2) and (4) SSCBA mirror exactly the provisions which were contained in sections 26(2) to (4) SSHBA. Those sections of SSHBA were repealed by Social Security (Consequential Provisions) Act 1992 ("SSCPA") Schedule 1, but by virtue of section 2(4) SSCPA:

"(4) Any reference, whether express or implied, in any enactment, instrument or document to a provision of the repealed enactments shall

> be construed, so far as is required for continuing its effect, as including a reference to the corresponding provision of the consolidating Acts."

55. It is clear that subsections 163(2) and (4) SSCBA are a "corresponding provision" of this type (corresponding exactly to subsections 26(2) and (4) SSHBA) and therefore the references in regulation 19 of the SSPGRs can be read as a reference to those subsections in SSCBA.

56. We therefore find that the SSPGRs are "regulations" to which subsections 162(3) and (4) SSCBA refer and accordingly:

(1) They provide the definitions of "earnings" and "relevant period" for the purposes of subsection 162(2); and

(2) They provide the method of calculation of "normal weekly earnings" for the purposes of subsection 162(2) SSCBA.

57. Mr Duke invited us to hold that, whilst we should as a general proposition calculate the "normal weekly earnings" by reference to regulation 19 of the SSPGRs, subsection 162(2) SSCBA required us to take into account only earnings which "in the relevant period have been paid". The effect of this, if correct, would be that we would have to perform our calculation of "normal weekly earnings" solely on the basis of the payments made pursuant to the two payslips, no matter how demonstrably wrong they were.

58. It seems to us that it would wrong to accept this invitation. This is because it seems to us that subsection 162(2) SSCBA expressly provides that its method of calculating "normal weekly earnings" is subject to subsection 162(4) and that subsection provides that "in such cases as may be prescribed", the method of calculation set out in the relevant regulations must be followed. There is no halfway house under which those regulations are to be followed but only within parameters laid down in subsection 162(2).

(c) The effect of the SSPGRs

59. First, the "relevant period" needs to be fixed. By reference to regulation 19 SSPGRs, it is clear that the "critical date" is 25 March 2010; the last normal pay day before that date was 8 March 2010; the last normal pay day to fall at least 8 weeks earlier than 8 March 2010 was 8 January 2010 and the "relevant period" is therefore the period between 8 January and 8 March 2010. Regulation 19(3) goes on to make it clear that the last day (i.e. 8 March 2010) is to be included in the "relevant period" but the first day (i.e. 8 January 2010) is not.

60. Next, the "normal weekly earnings" need to be calculated. This is done (under regulation 19(5) SSPGRs) by "dividing [the appellant's] earnings in [the period between 8 January and 8 March 2010] by the number of calendar months in that period (or, if it is not a whole number, the nearest whole number), multiplying the result by 12 and dividing by 52".

61. The final piece of data that is required before the regulation 19 calculation can be performed is the amount of the appellant's "earnings in the relevant period", to which the calculation is then applied.

62. In a situation where the correctness of the earnings stated in the relevant payslips (and paid) is disputed, the question arises as to whether we are bound to accept the earnings stated and paid, or whether we are at liberty to substitute what we consider to be the correct figure.

63. Because subsection 162(2) SSCBA is drafted so that its method of calculation is wholly superseded by any method of calculation prescribed in regulations made under subsection 162(4) SSCBA, the wording in subsection 162(2) about only taking account of earnings "which ... have been paid" in the relevant period is not directly relevant to this question. However, we take the view that subsection 162(2) could be regarded as giving an indication of the general intention of Parliament in approaching the matter. As such, we take the view that it is more likely than not that in normal situations, only earnings actually paid during the relevant period are to be taken into account and not earnings to which the employee was actually entitled in respect of the relevant period.

64. In a situation (as here) where admitted mistakes in one month's payslip (and payment) were supposedly corrected by adjustments to the second month's payslip, this should not cause any distortion (as long as the correction is properly carried out): the aggregate of the two payslips (and payments) should be correct. But if we had here been concerned with the January and February payslips (and payments) rather than the February and March ones, we would be faced with a very different situation. In such a case, we cannot believe that it would have been the intention of Parliament to disentitle a worker from SSP simply because of an admitted mistake by his employer in the operation of its payroll in a crucial month. In such a case, we consider the legislation allows scope for the "earnings" figures to be retrospectively corrected if the employer accepts it has made a mistake, and confirms the correct figures.

65. In the present case, the employer has stood by the overall aggregate figures given in the February and March payslips. On balance, in this case we feel we should accept those figures for the purposes of the regulation 19 calculation.

66. The calculation therefore proceeds as follows:

Normal weekly earnings = £766.61 ÷ 2 x 12 ÷ 52 = £88.46

67. In case we are wrong in our view that the figure actually paid by the employer is the correct starting point for "earnings", we have also performed the calculation based on our own assessment of what the appellant should have received under the terms of her contract. This calculation proceeds as follows:

Normal weekly earnings = £809.24 ÷ 2 x 12 ÷ 52 = £93.37

Conclusion on entitlement calculation

68. It can readily be seen that whichever method of calculation is adopted, the resulting normal weekly earnings are below the £95 threshold.

69. It follows that no "period of entitlement" arises under section 153 SSCBA, by reason of paragraph 2(c) of Schedule 1 SSCBA.

70. Accordingly, the condition in section 153 SSCBA is not satisfied and therefore, under section 151 SSCBA no liability for (or entitlement to) SSP can arise.

The appellant's alternative argument

71. The appellant also argued that her employer's sick pay deductions from her previous period of sickness had affected her salary for the qualifying period, which would not have happened if she were paid weekly. She thought this was unfair and ought to be corrected by the Tribunal.

72. We do not have jurisdiction to override the rules, even if we agreed with the appellant's submission. We must apply the rules as they stand and on that basis we have reached the conclusion set out above.

Conclusion

73. With regret, therefore, the appeal must be dismissed.

74. We are aware this means that the appellant has lost her eligibility for Carer's Allowance for a period of time, and it is extremely unfortunate if this has happened simply as a result of her attempts to "do the right thing" and get back to work on reduced hours whilst caring for her very ill husband and coping with the recovery from her own illness. This certainly gives rise to a debate about whether the rules of our extremely complex benefit system work fairly in all situations, but unfortunately that is not a debate which can influence us in reaching our decision.

75. 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.

KEVIN POOLE
TRIBUNAL JUDGE

RELEASE DATE: 23 March 2012