



**TC07981**

*PROCEDURE – application by third party for access after decision issued to copy of an email within the document bundle– granted*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**Appeal number: TC/2019/02004**

**BETWEEN**

**FASTKLEAN LIMITED**

**Appellant**

**-and-**

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

**Respondents**

**-and-**

**KEITH GORDON**

**Third Party**

**TRIBUNAL: JUDGE KIM SUKUL**

**Application dealt with in chambers, in London, on 18 December 2020 on written submissions**

## DECISION

### INTRODUCTION

1. Mr Keith Gordon applied to the First-tier Tribunal for a copy of the e-mail dated 15 May 2019 (“the document”) contained in the bundle of documents presented in evidence by the Respondents (‘HMRC’) and referred to in the Tribunal’s decision.
2. The appeal was heard in public on 25 February 2020 and the Tribunal’s decision was issued on 8 June 2020 with neutral citation [2020] UK FTT 289 (TC). At [27] of the decision it is recorded that “HMRC also referred the Tribunal to their current internal procedure for issuing these penalties... as set out by HMRC in an email dated 15 May 2019; namely that the notices were computer generated, supervised by a HMRC officer and checked before they were issued”.
3. Mr Gordon was not a party to the appeal nor did he represent any party. Mr Gordon seeks the document requested as a barrister practising frequently in the Tribunal with a particular interest in the operation of the Taxes Management Act.
4. The Tribunal wrote to the parties in the appeal to give them the opportunity to make representations. The Appellant did not respond and HMRC’s response was that they have no representations to make, either in support of, or in opposition to this application and are content for the Tribunal to make a determination on the matter.
5. Having considered the Tribunal’s power to allow access to the document and the position of the parties, I have decided that Mr Gordon should be allowed access to the document.

### POWER OF THE TRIBUNAL

6. In *Hastings Insurance Services v HMRC* [2018] UKFTT 478 (TC) (“Hastings”) Judge Sinfield set out the power of the Tribunal to allow access to documents relating to proceedings as follows:

3. In the civil courts, Rule 5.4C of the Civil Procedure Rules (‘CPR’) provides that a person who is not a party to civil proceedings may obtain certain documents from the records of the court as of right and other documents with the permission of the court. In this Tribunal, the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (‘FTT Rules’) make no provision for granting a non-party access to documents. Accordingly, the First-tier Tribunal can only allow a non-party to have access to documents if it has an inherent jurisdiction to do so.

4. The inherent jurisdiction of a court or tribunal to allow a member of the public to have access to and inspect documents relating to proceedings in that court or tribunal is founded on the fundamental constitutional principle of open justice. Although it is a principle of common law, the principle of open justice applies to the tribunals, which were created by statute, as much as to the courts.

7. Judge Sinfield considered the appropriate test to be whether the non-party has a legitimate interest in the documents and stated that “the concept of legitimate interest is a broad one and certainly not confined to journalistic purposes” [15].
8. The Supreme Court in *Cape Intermediate Holdings Ltd v Dring (Asbestos Victims Support Group)* [2019] UKSC 38 (“Cape”) confirmed, at [36], that open justice applies to all courts and tribunals exercising judicial power.
9. With regard to the extent of that power, Lady Hale said, in *Cape*:

44. The default position is that the public should be allowed access to all documents which have been placed before the court and referred to during the hearing...

Although the court has the power to allow access, the applicant has no right to be granted it. The person seeking access must explain why and how granting access will advance the open justice principle. In this respect it may well be that the media are better placed than others to demonstrate a good reason for seeking access. But there are others who may be able to show a legitimate interest in doing so...

The court has to carry out a fact-specific balancing exercise. On the one hand will be the purpose of the open justice principle and the potential value of the information in question in advancing that purpose. On the other hand will be any risk of harm which its disclosure may cause to the maintenance of an effective judicial process or to the legitimate interests of others.

## **DISCUSSION**

10. Mr Gordon, relying on the principles set out in *Hastings*, submits that key documents relating to a decided case may be released to a non-party who has “a legitimate interest in the documents”. The key condition is that there must have been a public hearing or determination by the Tribunal. This condition is met in the present case as the decision records a public hearing took place at Taylor House in public on 25 February 2020.

11. Mr Gordon further submits that “legitimate interest” was to be construed broadly and was not confined to journalistic purposes. For example, it could include an interest in related litigation or his interest as a barrister practising frequently in the Tribunal with a particular interest in the operation of the Taxes Management Act.

12. I accept Mr Gordon’s submissions on this matter and I agree with Judge Sinfield’s view in *Hastings*, at [17], that legitimate interest does not require a direct personal or professional interest in the outcome of proceedings and that an interest in other related litigation, whether actual or in contemplation, is sufficient. Accordingly, I find that Mr Gordon has a legitimate interest in obtaining access to the document requested.

13. With regard to the fact-specific balancing exercise I am required to carry out to determine this application, as set out in *Cape*, I have concluded that granting access to this document will advance the open justice principle because Mr Gordon has a legitimate interest in obtaining access. I do not consider there will be any risk of harm which its disclosure may cause to the maintenance of an effective judicial process or to the legitimate interests of others and there are no representations from the parties to suggest otherwise.

## **DECISION**

14. For the reasons given above, I direct Mr Gordon be provided, by the Tribunal, with a copy of the e-mail dated 15 May 2019 contained in the bundle of documents presented in evidence by HMRC.

15. As set out in the final paragraph below, the parties have a right to apply for permission to appeal against this decision. In order to ensure that the right to appeal is not purely academic, I direct that the copy of the email shall not be provided to Mr Gordon until 60 days after the date of release of this decision.

## **RIGHT TO APPLY FOR PERMISSION TO APPEAL**

16. 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.

**KIM SUKUL  
TRIBUNAL JUDGE**

**Release date: 23 DECEMBER 2020**