



[2022] UKFTT 00115 (TC)

**(TC) 08446**

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**Appeal number: TC/2018/4753**

**BETWEEN**

**KAI PETER MIDGLEY**

**Appellant**

**-and-**

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

**Respondents**

**DECISION ON APPLICATION**

1. By an application submitted on 29 December 2021 (“**the Application**”) HMRC request that a decision by a staff member of the Tribunal be considered afresh by a Judge. The relevant decision (“**the Decision**”) is contained in a letter from the Tribunal dated 15 December 2021, which directed that HMRC should file an amended statement of case in the proceedings. The letter stated, “The correspondence [ie the statement of case] and appeal file were referred to a Tribunal Caseworker (Hasiba Begum) who has asked me [ie one of the Tribunal clerks] to write as follows.”

2. I have considered the Application, the Decision, and the Tribunal’s case file generally. I have also discussed matters with both the Tribunal’s Registrar and Mrs Begum, to understand the context of the Decision.

3. I have established that the Decision was made by Mrs Begum on the instructions of the Registrar, rather than Mrs Begum independently reaching the conclusions in the decision. That was not made clear in the 15 December 2021 letter, which can be read as though the staff member making the Decision was Mrs Begum. Rather, Mrs Begum was communicating a decision made by the Tribunal Registrar.

**BACKGROUND**

4. Tribunal Procedure Rule 4(1) provides, in summary, that if authorised by the Senior President of Tribunals, tribunal staff may carry out functions of a judicial nature permitted or required to be done by the Tribunal. The Tribunal Registrar is such an authorised person. Rule 4(3) states: “Within 14 days after the date that the Tribunal sends notice of a decision made by a member of staff under paragraph (1) to a party, that party may make a written application to

the Tribunal requiring that decision to be considered afresh by a judge.” I consider that Rule 4(3) requires me to remake the Decision, rather than only considering the reasonableness of the Decision.

5. The appeal concerns a dispute over the taxability of a redress payment received by Mr Midgley from a bank (HSBC) for mis-selling of financial products by that bank. The disputed HMRC decision dates back to 2018, and the tax liability would fall in the 2014-15 tax year. In common with a number of appeals by other taxpayers on the same topic, Mr Midgley’s appeal was stayed pending the outcome of that of *Darren Wilkinson*.

6. In January 2021 the Tribunal sent to Mr Midgley (who represents himself in these proceedings) a copy of the decision in the *Wilkinson* case (which held that Mr Wilkinson’s redress payment constituted a business receipt and/or interest income, and thus was taxable as HMRC had contended) and asked if he wished to withdraw his appeal. I note the Tribunal’s letter was short and did not give Mr Midgley any context or explanation of the *Wilkinson* decision; it merely enclosed a copy of the decision, stated that the stay had expired, and asked if he wished to withdraw his appeal.

7. Mr Midgley replied promptly, stating that he did wish to continue his appeal. He made a number of points but I believe it is fair to say his main contention was that he was still pursuing HSBC for a consequential loss claim and (as he put it) he refused to pay any tax until HSBC paid his consequential loss claim in full.

8. In May 2021 the Tribunal directed HMRC to produce their statement of case in defence of the appeal. In June 2021 HMRC applied for the Tribunal to require Mr Midgley to provide better particulars of his grounds of appeal, including why his appeal differed from that determined in the *Wilkinson* case.

9. On 8 September 2021 the Tribunal wrote again to Mr Midgley, this time much more helpfully, explaining the then position and asking for his response to HMRC’s June 2021 request. Mr Midgley again replied promptly, stating “I refute any tax liability by HMRC re redress from HSBC. I have not been compensated properly/ as agreed. Once I receive consequential loss in full (if I win in the High Court) then I will pay the appropriate tax. If I lose I will go into bankruptcy.”

10. On 14 September 2021 the Tribunal wrote to the parties stating that Mr Midgley had not provided any additional grounds of appeal, and HMRC should produce their statement of case. HMRC filed their statement of case on 15 November 2021.

11. On 15 December 2021 the Tribunal wrote the letter which comprises the Decision. Case management directions were issued - these are in standard form except for a requirement for HMRC to provide an amended statement of case, and the only contentious matter is that requirement. The letter to HMRC stated, so far as relevant:

“Your statement of case appears to be incomplete or corrupted. This may just be the electronic copy sent to the Tribunal, but for the avoidance of doubt please provide an amended Statement of Case in accordance with the enclosed Directions.

To clarify, I note the appeal was stayed behind the First Tier Tribunal’s decision of *Darren Wilkinson* (TC/2017/04466). Although the statement of case we have received refers to this decision, it does not explain how the case law applies to this appeal. Further, the statement of case does not set out the legislation under which the assessments were issued as well as the burden and onus proof in detail and makes no answer to the appellant’s contentions.

It would be helpful to both parties and the Tribunal if the statement of case could set out for the appellant and the Tribunal the above details.”

### **Consideration**

12. In the Application (paragraph 6) HMRC state: “The Respondents further respectfully observe that if unprompted interventions by Tribunal staff in the drafting of statements of case (or grounds of appeal) are to become a common feature of litigation in this Tribunal, there is a real danger that this will lead to delay and increased costs while serving no useful purpose.” I do not feel that is a fair criticism of the Tribunal’s case management processes. Throughout the course of proceedings the Tribunal has a duty to deal with cases fairly and justly (Tribunal Procedure Rule 2) and may at any time give directions in relation to the conduct of proceedings (Tribunal Procedure Rule 5). That requires an ongoing oversight of the conduct of the proceedings; given the restricted judicial resources available to the Tribunal, part of that oversight role is one of the functions delegated to Tribunal staff pursuant to Rule 4. Performance of those delegated functions should not be described as “unprompted interventions by Tribunal staff” or “serving no useful purpose”. Although HMRC may disagree with particular exercises of those functions (as they have in this case), and as may a taxpayer likewise in different circumstances, the performance of those functions is an essential part of the Tribunal’s role of independently determining tax disputes between HM Government and citizens.

13. In remaking the Decision it is convenient to deal with the points made by the Decision in the same order, which may be fairly summarised as being: The statement of case,

- (1) Does not explain how the caselaw (ie *Wilkinson*) applies to this appeal;
- (2) Does not set out the legislation under which the assessments were issued;
- (3) Does not set out the burden and onus of proof in detail; and
- (4) Does not answer the Appellant’s contentions.

14. The statement of case cites *Wilkinson* (and also *Gadhavi*) but does not explain how those cases apply to Mr Midgley’s appeal. Both cases are decisions of this Tribunal and therefore are not binding on the Tribunal panel who will determine Mr Midgley’s appeal, although they are of persuasive value. The *Wilkinson* decision (which was decided in favour of HMRC) is relevant (hence the previous stay awaiting that decision) but I do not consider it is adequate for HMRC merely to cite the case without further explanation. This is especially important where (as HMRC fairly recognise in the Application) the appellant is self-represented. If HMRC intend to follow identical arguments to those which were successful in *Wilkinson* then it is sufficient to raise those by reference to the relevant parts of the *Wilkinson* decision, but the (self-represented) appellant is entitled to know the arguments which HMRC intend to deploy in their defence of the appeal. Where (as here) part of HMRC’s case depends on caselaw determined after the issue of the disputed decision which forms the subject matter of the appeal, then it is particularly important that the appellant appreciates the significance of the caselaw being cited by HMRC.

15. I consider that the statement of case (in paragraph 7) does set out the legislation under which the assessments were issued.

16. In relation to the onus of proof, this is not fully set out in the statement of case (I have seen the partial reference in paragraph 9). While the position is familiar to professionals, it does require to be stated for the information of a self-represented appellant; I have seen a brief

formulation often used by HMRC in these circumstances and I assume it was omitted in this case by oversight.

17. Mr Midgely has put forward some contentions which are summarised at [7] and [9] above, and are mentioned in paragraph 8(4) of the Application. HMRC may feel those contentions have no merit (and I make no comment on that point) but they should still address those in the statement of case.

18. The outcome of the above is that, for the above reasons, I consider HMRC should submit a revised statement of case, but that it need only address the points described below.

19. This document contains the full reasons for the decision.

#### **DECISION**

20. No later than **60 days** after the date of issue of this decision the Respondents shall file with the Tribunal (with a copy to the Appellant) a revised statement of case which shall include:

(1) An explanation of how the Respondents contend the *Wilkinson* decision assists the Respondents' case in the current proceedings;

(2) A brief statement of where the onus of proof lies as to the various contentions of the parties; and

(3) A statement addressing the Appellant's contentions set out in his email dated 9 September 2021 (as well as his grounds of appeal).

21. The case management directions issued on 15 December 2021 are VARIED as follows:

(1) Direction 1 (amended statement of case): replaced by [20] above.

(2) Directions 2 & 3 (list of documents): revised deadline 17 June 2022.

(3) Direction 4 (witness statements): revised deadline 15 July 2022.

(4) Direction 5 (listing information): revised deadline 12 August 2022, with a listing window of 1 October 2022 to 31 January 2023.

(5) Direction 6 (bundles): revised deadline 12 September 2022.

(6) Directions 7-12: as drafted.

**PETER KEMPSTER**  
**TRIBUNAL JUDGE**  
**RELEASE DATE: 22 March 2022**