[2022] UKFTT 00126 (TC)

TC 08457

Costs – third party application for copies of pleadings in main proceedings between Appellant and Respondents refused by Tribunal – main proceedings allocated to complex category – applications by Appellant and Respondents for order for costs against Third Party in respect of its failed application – analysis of whether application for documents amounts to separate "proceedings" subject to distinct costs regime – held yes – applications refused

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal number: TC/2020/04634

BETWEEN

CIDER OF SWEDEN LIMITED **Appellant**

-and-

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

-and-

ERNST & YOUNG LLP **Third Party**

TRIBUNAL: JUDGE KEVIN POOLE

The Tribunal determined the applications for costs by the Appellant and the Respondents respectively on 6 April 2022 without a hearing having first read the two applications for costs dated 18 and 15 March 2022 respectively ("the Applications") and the Third Party's notice of objection to the Applications dated 22 March 2022.

DECISION

INTRODUCTION

1. This decision relates to two applications for costs made in somewhat unusual circumstances.

2. In brief, the Third Party ("EY") had become aware of the existing proceedings between the Appellant and the Respondents before the Tribunal ("the Main Proceedings") and on 22 July 2021 had made an application to the Tribunal for access to copies of the pleadings and certain other documents in the Main Proceedings ("the Access Application").

3. Following a contested hearing on 21 January 2022, the Tribunal issued a decision rejecting the Access Application 18 February 2022. This decision ("the Decision") was issued under neutral citation [2022] UKFTT 76 (TC).

4. The Main Proceedings having previously been allocated to the complex category by the Tribunal, both the Respondents (on 15 March 2022) and the Appellant (on 18 March 2022) submitted applications to the Tribunal (together "the Costs Applications" and respectively "the HMRC Application" and "the Appellant Application") for orders, pursuant to rule 10(1)(c) of the Tribunal's Procedure Rules, that their respective costs of and in connection with the Access Application be paid by EY.

5. EY objected to the Costs Applications in writing on 22 March 2022 ("the Objection").

THE COSTS APPLICATIONS AND THE OBJECTION

The HMRC Application

6. The HMRC Application was short. It sought an order for payment of £31,157.80 in costs, attaching a short schedule of the costs claimed. The stated grounds for the application were brief:

> 1. **THE GROUNDS** for this application are that this appeal is allocated to the complex category pursuant to rule 23 of the Rules and that the Appellant has not made any election pursuant to Rule 10(1)(c)(ii) of the Rules to be excluded from potential liability for costs. The consequence of the Appellant not having made such an election is that, pursuant to the operation of rule 10(1)(c), the Tribunal has a full costs jurisdiction in the appeal which applies to the Third Party as it applies to the Appellant and the Respondents.
>
> 2. The Third Party made an application dated 22 July 2021 for the disclosure of the Appellant and the Respondents' pleadings. Both the Appellant and Respondents objected to that application and, following a contested hearing on 21 January 2022, the Tribunal dismissed the application by its Decision released on 18 February 2022. On the ordinary basis that costs follow the event, and in the absence of any reasons to the contrary, the Third Party is liable to pay the Respondents' costs of and in connection with its application.

The Appellant Application

7. The grounds stated in the Appellant Application, seeking payment of £20,449.50 (again, shown on an attached schedule), outdid those in the HMRC Application for brevity, albeit spread across more numbered paragraphs:

> **THE GROUNDS** for this application are that:
>
> (1) this appeal is allocated to the complex category pursuant to rule 23 of the Tribunal Rules;
>
> (2) the Appellant did not made *[sic]* any election pursuant to Rule 10(1)(c)(ii) of the Tribunal Rules to be excluded from costs regime *[sic]*;

> (3) the Third Party made an application dated 22 July 2021 for the disclosure of certain documents including pleading *[sic]* held by the Appellant and the Respondents;
>
> (4) the Appellant objected to the Third Party's application and following a contested hearing on 21 January 2022, the Tribunal dismissed the application by its Decision released on 18 February 2022; and
>
> (5) the Third Party is therefore liable to pay the Appellant's costs.

The Third Party's Objection

8. EY's Objection (which, perhaps understandably, did not share the brevity of the Applications) was based on two main lines of argument:

> (1) EY was not a party to the complex category Main Proceedings, accordingly no costs order could be made against it;
>
> (2) even if it had been a party to the Main Proceedings, it would be contrary to the overriding objective for it to be made subject to a costs order.

Not a party to the Main Proceedings

9. As to the first point, it submitted that whilst the "Third Party" label applied by the Tribunal to EY represented a convenient approach, the true position was that EY was not a party at all to the Main Proceedings. It referred to CPR Rule 5.4C "by analogy" – which provides that "a person who is not a party to proceedings" may obtain certain documents from the court records. This Rule was of course one of the main planks of EY's argument in the Access Application.

10. EY also pointed out that under rule 1(3) of the Tribunal's Procedure Rules, "party" is defined as "a person who is (or was at the time that the Tribunal disposed of the proceedings) an appellant or respondent in proceedings before the Tribunal". It argued that it had been party not to the Main Proceedings, but to separate proceedings "between the Third Party and the FTT"; the Appellant and the Respondents had been "interested parties" in relation to those proceedings, had accordingly been given the opportunity to object to EY's application and had in fact done so. It pointed out the apparent absurdity of a supposed party to the Main Proceedings having to make an application to the Tribunal to obtain copies of the pleadings in proceedings to which it was supposedly a party, submitting it was "bizarre" for the Appellant and the Respondents to argue that EY should be liable as a party to the proceedings to pay costs when they had vigorously opposed its Access Application effectively on the basis that it was not a party to the proceedings.

11. In support of this, and again relying on there being a parallel between the current case and proceedings in the Courts under CPR 5.4C, EY also referred to the judgment of Master McCloud in *Mr Dring (Applicant) v Cape and others (Interested Parties)* [2017] EWHC 2103 (QB) where she said this at [62]:

> I accept the basic proposition that an application under rule 5.4C(2) is an application made between a member of the public and the court. It is permitted to be made ex parte and it concerns the court's own powers over what it does with the contents of its own files and record. That is the starting point but it is of note that the court can direct that an affected person should be given notice. That is in effect what happened here of necessity.

12. It was also accepted, at [75(i)], that "the starting point is that the application is a matter between Mr Dring and the Court, and nobody else".

13. EY also drew a parallel between the current situation and cases where a public authority makes representations to a Court at the permission stage of a judicial review claim. It argued

that the position of the Appellant and the Respondents here was analogous. Intended respondents who make representations at that stage are not generally entitled to their costs if permission is refused, on the basis that they are not required to attend the application hearing and do so entirely on their own initiative. EY cited *R. (on the application of Mount Cook Land Ltd) v Westminster City Council* [2003] EWCA Civ 1346 and *CPRE Kent v Secretary of State for Communities and Local Government* [2021] UKSC 36. Such, it was argued, should be the case here.

14. Finally, it was argued that since applications for access to pleadings could be made after the proceedings had concluded, it must be the case that the applicant did not become party to those proceedings, but was making a separate and standalone application, involving just the applicant and the Tribunal (at the hearing of which the original parties might be invited to make submissions, but would not themselves be parties). This had been the position in *FastKlean v HMRC* [2020] UKFTT 0511 (TC). And by analogy with CPR Rule 5.4C, this argument was strengthened by the finding of Park J in *Chan U Seek v Alvis Vehicles Ltd* [2004] EWHC 3092 (Ch) to the effect that applications under that rule were made to the Court in general, not to the particular court which was hearing or had heard the underlying proceedings; this emphasised the point that the application involved the Court (or, in the present case, the Tribunal) "as an institution", which "does not entail the applicant being joined as a party to the underlying proceedings".

15. As a general overarching observation, EY also submitted that the structure of the costs rules in the Tribunal's procedure rules made it clear that the FTT is "by default a cost-bearing regime and only in specific circumstances… a cost-shifting regime." It was implicit in the structure of the rules that potential liability to costs should be something of which a participant in proceedings should be aware in advance and about which it should have some choice, not an unwelcome surprise which might arise simply because proceedings in which it had no prior involvement had been allocated to the complex category (an allocation of which it had no means of knowledge) and the appellant in those proceedings had not opted out of the costs shifting regime.

A costs order would be contrary to the overriding objective

16. Even if the Tribunal had power to award costs, it must exercise that power in accordance with the overriding objective of dealing with cases fairly and justly. In the present case, EY argued that it would not be fair or just to make an order for costs.

17. EY pointed out that Judge Brooks had initially been inclined to grant the Access Application in the light of the prior authorities, but felt that the parties to the Main Proceedings should be given the opportunity to respond to it: the Access Application was clearly therefore not unreasonable or without merit. Furthermore, I had expressed myself grateful in my decision on the Access Application for the "comprehensive and thoughtful submissions from all counsel on what is clearly a matter of much wider significance" and it was clear that the full participation of all participants in the hearing was welcome. I had accepted that EY had a "legitimate interest" in access to the pleadings, and it was refused only on the basis that the Access Application had been made prematurely.

18. EY also repeated in this context the point made at [15] above. Even if a power to award costs existed, it would not be fair or just to exercise it simply because the substantive appeal had been allocated to the complex category (an allocation of which EY had no means of knowledge) and no opt-out from the costs shifting regime had been exercised, without EY even being informed of the fact and given an opportunity to decide whether or not to pursue the Access Application in the light of it.

19. Finally, it was argued that an award of costs would have an undesirable wider freezing effect on future applications for access to pleadings, due to the risk of an adverse costs award. This was inimical to the principle of open justice.

DISCUSSION AND DECISION

The legislative framework

20. Relevant extracts from the Tribunals, Courts and Enforcement Act 2007 ("TCEA") and from the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 ("the Procedure Rules") are set out in an Appendix to this decision. References below to "Rules" are to rules in those Procedure Rules.

21. The power of the Tribunal to order costs derives from Section 29 TCEA. The power applies to costs of and incidental to all "proceedings" in the Tribunal. The word "proceedings" is not defined, but on general principles is a word of wide import, which I would take to include all activity involving one or more external participants in which the Tribunal is called upon to adjudicate on matters falling within its jurisdiction.

22. Clearly before being able to consider whether costs should be payable in respect of any proceedings, the Tribunal must first identify the proceedings involved. In a straightforward appeal involving just two "sides", this gives rise to no problems. In a situation such as the present, however, matters are not so straightforward. EY argue that they are not party to the Main Proceedings at all, and that argument brings into focus the question of the scope of those proceedings.

Identifying the relevant "proceedings" – one set or two?

23. It is clear that the appeal made to the Tribunal by the Appellant against the substantive decision of the Respondents amounts to "proceedings" before the Tribunal. A key question, however, is whether the making and determination of the Access Application forms part of those same proceedings, or whether it should properly be regarded as separate and distinct proceedings and, as such, potentially subject to a separate and distinct costs regime.

24. Rules 20 and 21 (respectively headed "Starting appeal proceedings" and "Starting proceedings by originating application or reference") cast some light on this question. In either case, the right to "start" proceedings under the relevant Rule must derive from an "enactment". There is no express provision in the Procedure Rules for "proceedings" to be started in any other way (in this case, for example, by the delivery to the Tribunal of the Access Application). Clearly there was no "enactment" giving rise to EY's right to make the Access Application: that right derived from the Tribunal's inherent jurisdiction (see the Decision at [25]). This supports the proposition that the Access Application should not be regarded as constituting "proceedings", separate and distinct from the substantive appeal, as the Procedure Rules make no explicit provision for proceedings of this type to be "started"; if this proposition is correct, then the determination of the Access Application would simply form part of one set of overall proceedings.

25. There is however at least one indication to the contrary elsewhere in the Procedure Rules. The definition of "party" in Rule 1(3) specifically encompasses only persons who are (or were) either "an appellant or respondent in proceedings before the Tribunal". "Appellant" is defined as including a person who starts proceedings "(whether by bringing or notifying an appeal, by making an originating application, by a reference, or otherwise)", *[emphasis added]*. Clearly this provision contemplates the possibility that "proceedings" involving an "appellant" as a "party" might be started by it in some way which does not fall within either Rule 20 or Rule 21, pointing to the possibility that the making of the Access Application could have amounted

to the starting of separate and distinct proceedings, potentially subject to a separate and distinct costs regime from the Main Proceedings.

26. If this view were correct, one might expect Rule 10 of the Procedure Rules to provide a coherent regime capable of sensible application to the separate and distinct proceedings in question. So far as Rules 10(1)(a) and (b) are concerned, this appears to be the case: the "wasted costs" and "unreasonable conduct" provisions can be made to work perfectly sensibly by reference to the separate and distinct proceedings.

27. However, on close examination the same cannot be said of the "complex appeals" provisions in Rule 10(1)(c). The first difficulty here arises by reference to Rule 23(1), which requires the Tribunal, when it "receives a notice of appeal, application notice or notice of reference", to give a direction allocating "the case" (interestingly, not "the proceedings") to one of the stated categories (default paper, basic, standard or complex). Having done so, it is also empowered (by Rule 23(3)) to give a further direction at any time "re-allocating a case to a different category". The requirement to allocate a "case" to a category therefore only arises upon receipt of a "notice of appeal, application notice or notice of reference", which appears at first sight to echo the provisions of Rules 20 and 21 referred to above, therefore arguably only applying to proceedings which have been "started" under those Rules (which the Access Application cannot have been, as identified at [24] above). If Rule 23 does not allow for an application such as the Access Application, if regarded as constituting separate and distinct "proceedings", to be allocated to the complex category, then *a fortiori* Rule 10(1)(c) cannot apply to it.

28. If one adopts a less rigorously (or one might say pedantically) analytical approach, it is however possible fairly to describe the Access Application, without having regard to Rules 20 and 21, as amounting to an "application notice" (as referred to in Rule 23(1)), indeed its heading started with the words "Application for copies…"

29. Thus I consider there to be some ambiguity on the point of whether Rule 23 requires an application such as the Access Application to be allocated to a category. However, to the extent it is necessary to resolve this ambiguity in order to deal with the costs of the Access Application "fairly and justly", I consider that Rule 2(3)(b) provides a basis (under a wider interpretation of the phrase "application notice" than simply referring it back to the same phrase in Rule 21) for interpreting the reference in Rule 23(1) as applying to the receipt of the Access Application. As a result, at least there would be a mechanism for the Access Application to be allocated to the complex category, allowing for Rule 10(1)(c) to be engaged.

30. However, the problems of applying Rule 10(1)(c) rationally and coherently do not end there. If the Tribunal treated the Access Application as amounting to separate proceedings, which it allocated to the complex category after applying the criteria in Rule 23(4), the normal expectation would then be that "the taxpayer" would have the right to opt out of the costs regime under Rule 10(1)(c)(ii). However, "the taxpayer" is defined for this purpose in Rule 10(8) as "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". If the determination of the Access Application is being regarded as "the proceedings", then there is quite simply no "taxpayer" involved in those proceedings and accordingly no right to opt out of the costs regime can be exercised. This hardly seems a rational or coherent result.

31. Does this apparent flaw in the operation of Rule 10(1)(c) militate strongly against the view that the determination of the Access Application should be regarded as separate and distinct "proceedings"? In my view it does not, because the same criticism could be levied in relation to, for example, appeals purely against withdrawal of approval under the

Warehousekeepers and Owners of Warehoused Goods Regulations, or of gross payment status under the Construction Industry scheme – such appeals do not involve any issue about payment (or liability for payment) of any tax, duty, levy or penalty, there is accordingly no "taxpayer" to exercise a right of opt-out and therefore similar issues about the validity of any opt-out from the costs regime in such cases would arise. Therefore insofar as this feature of Rule 10(1)(c) might be regarded as a flaw, it is a flaw of general application and not one which precludes the Access Application from being treated as separate and distinct proceedings. It is a problem which would not arise often in practice, except perhaps in WOWGR approval cases which can involve complex evidence, lengthy hearings and (indirectly at least) very large financial sums.

32. In the context of this slightly unsatisfactory situation, under Rule 2(3) I must (as mentioned above) seek to give effect to the overriding objective (of dealing with cases fairly and justly) when interpreting the Procedure Rules. It has already been established that the Main Proceedings have been allocated to the complex category, and the Appellant has not delivered any request to opt out of the costs-shifting regime. At the end of the Main Proceedings, therefore, the loser would (all other things being equal) be expected to pay the winner's costs of and incidental to the proceedings. It is difficult to see how it would be fair and just for the loser in the Main Proceedings to have to pay the winner's costs of dealing with the Access Application (especially if such costs have already been the subject of an application such as the present), but argument around that issue becomes unnecessary if those costs are regarded as arising from separate and distinct "proceedings".

33. For the reasons set out above, I therefore consider that the better view is to regard the Access Application (and its determination) as constituting entirely separate proceedings from the Main Proceedings. The Tribunal has not issued a direction allocating those separate proceedings to the complex category and therefore no right to an award of costs can arise in relation to them under Rule 10(1)(c). To the extent necessary, I would allocate those proceedings to the basic category (and I hereby direct accordingly).

Consequences of there being two sets of "proceedings"

34. I regard EY, for the purposes of the Procedure Rules, as the appellant in respect of the Access Application proceedings (having started those proceedings "otherwise" than by bringing or notifying an appeal, making an originating application or reference under Rule 1(3)). I see no basis for also regarding it as a party to the Main Proceedings for the purposes of Rule 10: It does not fall within any of the limbs of the definition of "party" in Rule 1(3) in relation to those proceedings, nor has it been added as a respondent to them pursuant to Rule 9. I therefore do not consider it to be susceptible to a costs order as a party to those proceedings under the Procedure Rules.

35. I should mention that I consider it clear, by reference to the caselaw on the parallel provisions to section 29 TCEA contained in section 51 of the Senior Courts Act, that the Tribunal has the power to order costs against persons who are not party to the proceedings: see *Aiden Shipping Co. Limited v Interbulk Limited* [1986] AC965. This power in the courts is now regulated under CPR 46.2. There is nothing in the Procedure Rules to preclude its exercise in the Tribunal, and there is no principled reason why the same case law should not apply to the Tribunal, the basis of whose statutory power to award costs is exactly parallel to that of the courts. It is though equally clear that an order for costs against a non-party is "exceptional", and any application for such an order should be treated with "considerable caution": see *Symphony Group plc v Hodgson* [1994] QB 179, especially the guidance at 192H to 194D. I would see no basis for this power to be exercised in the present case in relation to the Main Proceedings.

36. In passing, I should mention that I do not consider the Appellant or the Respondents to have been parties to the proceedings comprising the Access Application. In line with EY's submissions, I consider the Access Application to have been addressed to the Tribunal alone, but with the Tribunal, in exercise of its powers under Rule 5(3)(d), considering it appropriate to give the Appellant and the Respondents the opportunity to provide their submissions to the Tribunal on the matter before it reached a decision. It is not appropriate to consider the Tribunal to be party to EY's application, as it suggested: the Tribunal's role is to adjudicate on the proceedings before it, not to become part of them. It would of course have been possible for the Tribunal to make a direction under Rule 9 to add the Appellant or the Respondents as respondents to the Access Application, thereby bringing them within the definition of "party" in Rule 1(3) and bringing them explicitly within the scope of Rule 10(1)(b) (which permits costs orders where "a party or their representative has acted unreasonably…) and arguably within the scope of Rule 10(1)(c) (if the proceedings had been categorised as complex), but this was not done.

37. It follows that no power to award costs to the Appellant or the Respondents arises under Rule 10(1)(c) in relation to the Access Application and the Costs Applications must therefore be dismissed.

If there is only one set of "proceedings"?

38. If my above analysis is wrong and the true position is that there is in fact only one set of proceedings, what then?

39. EY would still not be a "party" to the proceedings, as it would not fall within any of the limbs of the definition of "party" under Rule 1(3). Thus the only possible basis for a costs order would be pursuant to the third party costs order caselaw referred to at [35] above. If there were only one set of proceedings, EY's position would be slightly different, in that it could not rely on an argument that any costs liability should be dealt with in the proceedings concerned solely with the Access Application, but I do not consider that difference should affect the outcome. I would still decline to make any third party costs order against it. In any event, neither the Appellant nor the Respondents have argued that the Tribunal should make such an order.

What if the Tribunal had a power to award costs?

40. If, notwithstanding the above analysis, the true position were that the Tribunal had jurisdiction to make costs orders against EY in relation to their costs of the Access Application, the question would then arise as to whether that jurisdiction should actually be exercised in favour of the Appellant and the Respondents.

41. No suggestion has been raised of any potential liability other than under Rule 10(1)(c).

42. The general thrust of Rule 10(1)(c) is that a taxpayer (generally but not necessarily an appellant), once notified of being at risk in costs, should have the option to eliminate that risk by delivering a request under Rule 10(1)(c)(ii) (subject to the potential flaws in the regime identified at [30] above).

43. What the Appellant and the Respondents in this case are seeking to do is impose a costs liability on EY without it either being warned of the risk of incurring costs before making its application or being given the opportunity to eliminate that risk (if possible) upon receiving the warning. In those circumstances, whilst the general rule where the costs-shifting regime applies is that "costs follow the event", that is not a hard and fast rule and I consider this would be one of the cases in which the Tribunal, in pursuance of the overriding objective of dealing fairly and justly with the matter, should refuse to exercise any jurisdiction which it was found to have.

SUMMARY, CONCLUSION AND FURTHER COMMENTS

Summary and conclusion

44. I consider the Access Application to have constituted a separate and distinct set of "proceedings", in which no jurisdiction to make an award of costs pursuant to Rule 10(1)(c) can have arisen – see [33] and [37] above.

45. Even if the Access Application were considered part of one overall set of "proceedings", there would still be no jurisdiction to make an award of costs pursuant to Rule 10(1)(c) – see [39] above.

46. Even if the Tribunal had jurisdiction to make an award of costs under Rule 10(1)(c) in respect of the Access Application, I would have declined to do so – see [43] above.

47. The Costs Applications are therefore DISMISSED.

Further comments

48. As a matter of administrative convenience, the Tribunal arranged for the Access Application to be dealt with on the same file and under the same TC reference number as the Main Proceedings. It appears to have done exactly the same in relation to previous similar applications.

49. Given that I have found the Access Application to have constituted separate and distinct proceedings, the correct administrative approach of the Tribunal in future should be to register any similar application under a separate appeal reference number and conduct it on a discrete file, independent of the file for the substantive proceedings.

50. An independent decision can then be taken upon receipt of the application as to its correct categorisation and whether the parties to the substantive proceedings should be joined as respondents to the new proceedings, or simply permitted to make submissions in them without becoming parties. In the ordinary course, I would normally expect the new proceedings to be categorised as basic and for the parties to the main proceedings not to be added as respondents to the new proceedings unless some application in that behalf was made and judicially granted. In the absence of such a judicial decision, the parties to the substantive proceedings should simply be invited to make their submissions on the application before it is decided by the Tribunal.

51. In many cases, the decision of whether to add the parties to the substantive proceedings as respondents to the new proceedings (or simply to invite their submissions on the application) should have few practical consequences either way. In some cases, however, particularly if the Tribunal is considering allocating the application to the complex category, there may be significant potential consequences (not least in costs) and as a result the applicant and potential respondents may wish to make detailed submissions before the Tribunal makes its decision, both on adding them as respondents and as to the categorisation of the proceedings.

52. Unless and until any of the parties to the main substantive proceedings are added as respondents to such a new application, it should be recorded on the Tribunal's system as an ex parte application with no other parties apart from the applicant (as the Tribunal already does with a number of other applications of various types).

RIGHT TO APPLY FOR PERMISSION TO APPEAL

53. 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: 08 April 2022

APPENDIX

EXTRACTS FROM LEGISLATION

Extract from TCEA

1. Section 29 TCEA provides, so far as relevant, as follows:

> **29 Costs or expenses**
>
> (1) The costs of and incidental to –
>
> (a) all proceedings in the First-tier Tribunal, and
>
> (b) all proceedings in the Upper Tribunal,
>
> shall be in the discretion of the Tribunal in which the proceedings take place.
>
> (2) The relevant Tribunal shall have full power to determine by whom and to what extent the costs are to be paid.
>
> (3) Subsections (1) and (2) shall have effect subject to Tribunal Procedure Rules.
>
> (4) In any proceedings mentioned in subsection (1), the relevant Tribunal may–
>
> (a) disallow, or
>
> (b) (as the case may be) order the legal or other representative concerned to meet,
>
> the whole of any wasted costs or such part of them as may be determined in accordance with Tribunal Procedure Rules.
>
> …

Extracts from Procedure Rules

2. Rule 1(3) of the Procedure Rules includes the following definitions:

> "appellant" means –
>
> (a) the person who starts proceedings (whether by bringing or notifying an appeal, by making an originating application, by a reference or otherwise);
>
> (b) in proceedings started jointly by more than one person, such persons acting jointly or each such person, as the context requires;
>
> (c) a person substituted as an appellant under rule 9 (substitution and addition of parties):
>
> …

"party" means a person who is (or was at the time that the Tribunal disposed of the proceedings) an appellant or respondent in proceedings before the Tribunal;

…

"respondent" means—

(a) in a case other than an MP expenses case or a devolved Welsh case —

(i) HMRC, where HMRC is not an appellant;

(ii) in proceedings brought by HMRC alone, a person against whom the proceedings are brought or to whom the proceedings relate;

(b) in a MP expenses case, the Compliance Officer;

(ba) in a devolved Welsh case—

(i) WRA, where WRA is not an appellant;

(ii) in proceedings brought by WRA alone, a person against whom the proceedings are brought or to whom the proceedings relate; and

(c) in any case, a person substituted or added as a respondent under rule 9 (substitution and addition of parties);

…

"Tribunal" means the First-tier Tribunal;

3. Rule 2 of the Procedure Rules provides as follows:

2.— Overriding objective and parties' obligation 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—

(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

(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—

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

(b) co-operate with the Tribunal generally.

4. Rule 5 of the Procedure Rules provides, so far as relevant, as follows:

5.— Case management powers

(1) Subject to the provisions of the 2007 Act and any other enactment, the Tribunal may regulate its own procedure.

(2) The Tribunal may give a direction in relation to the conduct or disposal of proceedings at any time, including a direction amending, suspending or setting aside an earlier direction.

(3) In particular, and without restricting the general powers in paragraphs (1) and (2), the Tribunal may by direction—

…

(d) permit or require a party or another person to provide documents, information or submissions to the Tribunal or a party;

(e) …

(f) hold a hearing to consider any matter, including a case management hearing;

(g) decide the form of any hearing;

(h) adjourn or postpone a hearing;

(i) require a party to produce a bundle for a hearing;

(j) stay (or, in Scotland, sist) proceedings;

…

5. Rule 9 of the Procedure Rules provides as follows:

9.— Substitution and addition of parties

(1) The Tribunal may give a direction substituting a party if—

(a) the wrong person has been named as a party; or

(b) the substitution has become necessary because of a change in circumstances since the start of proceedings.

(2) The Tribunal may give a direction adding a person to the proceedings as a respondent.

(3) A person who is not a party to proceedings may make an application to be added as a party under this rule.

(4) If the Tribunal refuses an application under paragraph (3) it must consider whether to permit the person who made the application to provide submissions or evidence to the Tribunal.

(5) If the Tribunal gives a direction under paragraph (1) or (2) it may give such consequential directions as it considers appropriate.

6. Rule 10 of the Procedure Rules provides, so far as relevant, as follows:

10. Orders for costs

(1) The Tribunal may only make an order in respect of costs… –

(a) …

(b) if the Tribunal considers that a party or their representative has acted unreasonably in bringing, defending or conducting the proceedings;

(c) if –

(i) the proceedings have been allocated as a Complex case under rule 23 (allocation of cases to categories); and

(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 has been allocated as a Complex case, that the proceedings be excluded from potential liability for costs or expenses under this sub-paragraph; or

(d) …

(2) The Tribunal may make an order under paragraph (1) on an application or on its own initiative.

(3) …

(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 the proceedings; or

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

(5) …

…

(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.

7. Rule 20 of the Procedure Rules provides, so far as relevant, as follows:

20.— Starting appeal proceedings

(1) A person making or notifying an appeal to the Tribunal under any enactment must start proceedings by sending or delivering a notice of appeal to the Tribunal.

…

8. Rule 21 of the Procedure Rules provides, so far as relevant, as follows:

21.— Starting proceedings by originating application or reference

(1) Where an enactment provides for a person or persons to make an originating application or reference to the Tribunal, the appellant must start proceedings by providing an application notice or notice of reference to the Tribunal within any time limit imposed by that enactment.

…

9. Rule 23 of the Procedure Rules provides as follows:

23.— Allocation of cases to categories

(1) When the Tribunal receives a notice of appeal, application notice or notice of reference, the Tribunal must give a direction—

(a) in an MP expenses case, a financial restrictions civil penalty case or a CAA case, allocating the case to one of the categories set out in paragraph (2)(c) or (d); and

(b) in any other case, allocating the case to one of the categories set out in paragraph (2).

(2) The categories referred to in paragraph (1) are—

(a) Default Paper cases, which will usually be disposed of without a hearing;

(b) Basic cases, which will usually be disposed of after a hearing, with minimal exchange of documents before the hearing;

(c) Standard cases, which will usually be subject to more detailed case management and be disposed of after a hearing; and

(d) Complex cases, in respect of which see paragraphs (4) and (5) below.

(3) The Tribunal may give a further direction re-allocating a case to a different category at any time, either on the application of a party or on its own initiative.

(4) The Tribunal may allocate a case as a Complex case under paragraph (1) or (3) only if the Tribunal considers that the case—

(a) will require lengthy or complex evidence or a lengthy hearing;

(b) involves a complex or important principle or issue; or

(c) involves a large financial sum.

(5) If a case is allocated as a Complex case—

(a) rule 10(1)(c) (costs in Complex cases) applies to the case; and

(b) rule 28 (transfer of Complex cases to the Upper Tribunal) applies to the case.