Neutral Citation: [2023] UKFTT 00960 (TC)

Case Number: TC08984

FIRST-TIER TRIBUNAL
TAX CHAMBER

Decided on the papers

Appeal reference: TC/2020/03909
TC/2020/04591
TC/2020/04592
TC/2020/04594
TC/2021/02910

INCOME TAX – procedure – earlier listing of substantive hearing adjourned on two days' notice after Respondents identified documents omitted from bundles – Appellants' application for costs – whether Respondents acted unreasonably – no – application for costs refused

VALUE ADDED TAX – procedure – earlier listing of substantive hearing adjourned on two days' notice after Respondents identified documents omitted from bundles – Appellants' application for costs – whether Respondents acted unreasonably – no – application for costs refused

Judgment date: 08 November 2023

Decided by:

TRIBUNAL JUDGE BAILEY

Between

SYLVIA HOOK (trading as SYLMIS PUPPIES also known as SYLML PUPPIES)
and
SYLVIA HOOK (as nominated partner of the firm PEDIGREE PUPPIES also known as PINETREES PUPPIES)

Appellants

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

The Tribunal determined the application for costs on 10 October 2023 without a hearing under the provisions of Rule 29 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 and with the consent of the parties.

DECISION

INTRODUCTION

1. A paper hearing of the Appellant's application for costs was listed before me on 10 October 2023, and a summary decision issued to the parties on 20 October 2023. Following receipt of that summary decision, the Appellants made an in-time application for full written findings and reasons under Rule 35(4) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (the "Tribunal Rules").

2. This decision sets out the full written findings and reasons for refusing the Appellants' application, dated 26 June 2023, for costs totalling £6,596.60 which they say were incurred as a result of the Respondents' unreasonable conduct in relation to the preparation of bundles for a hearing listed to take place in November 2022.

BACKGROUND FACTS

3. The substantive hearing of the five appeals filed by the Appellants were listed to be heard by the Tribunal on 23-25 November 2022.

4. On 22 July 2022, the Respondents filed and served three bundles for use at the substantive hearing.

5. On 8 November 2022, the Respondents filed replacements for two of the three bundles. On 10 November 2022, the Tribunal required further revisions to be made to the bundles that had been filed on 8 November 2022.

6. On 18 November 2022, updated versions of the three bundles were filed with the Tribunal and a set of the bundles was posted to the Appellants' representative, Mr Kendrick.

7. On 21 November 2022, the Respondents contacted the Appellants to ask them to consent to an adjournment application. The basis of this application was the Respondents' concern that some documents had been omitted from the bundles filed on 18 November 2022. While a further bundle could be prepared, if it was sent through the post then it would not arrive at the Appellants representative's address before the hearing.

8. The Appellants agreed to the adjournment of the hearing listed for 23-25 November 2022.

9. On 23 November 2023, Judge Poole presided over a video case management hearing which he had directed take place instead of the substantive hearing. On 25 November 2023, Directions were issued by Judge Poole, requiring the Respondents to prepare a revised bundle, and to serve that on the Appellants. Both parties were required to file and serve updated skeleton arguments no later than 21 days before the hearing.

10. On 30 November 2022, the Appellants emailed the Respondents to ask for their costs to be paid. In a response sent on 15 December 2022, the Respondents asked the Appellants to explain the basis on which they contended that the Respondents behaviour was unreasonable, and also to provide a detailed breakdown of the quantum:

> including hourly rates, time spent and details of the work carried out in relation to this.

11. In their response, sent to HMRC on 20 December 2022, the Appellants asked HMRC to pay the costs they believed they had incurred as a result of the postponement of the November 2022 hearing. Mr Kendrick, on behalf of the Appellants, stated:

> In the circumstances I feel the claim for £3,695 (net of VAT) and £4,315 inclusive of VAT to be a justifiable reclaim. These costs amount to 17.5 hours of chargeable time which is believed to have been wasted. I can

> confirm that the £4,315 was paid to Roger Millett and A K Employment Tax Services Ltd respectively and so the claim should be settled with Sylvia and Mike Hook.
>
> The costs include
>
> 1. Contracting (sic) all the witnesses to arrange their availability for the hearing and agreeing with the FTT time slots for their appearance – either remotely or in person. It also included ensuing the witnesses had the appropriate links (if required) to give their evidence and to ensure they understood the protocol. Given the delay before the hearing is to go ahead it will be necessary to repeat the same process again.
>
> 2. My time included having to phone all these individuals to tell them the case had been adjourned and their appearance at the Tribunal was not necessary.
>
> 3. Organising the travel and accommodation for the time of the hearing for myself and Sylvia and Mike Hook and to sort out travel arrangements for Roget Millett. There is also the time taken in cancelling these arrangements and obtaining the necessary refunds.
>
> 4. The time spent in going through my records to try to deal with your concerns over whether your document bundles were complete. This involved a significant amount of time given the mass of papers which had been supplied and how the records provided by HMRC had been organised.
>
> 5. There was also the time taken with you when you sought my agreement to the adjournment and me then having to explain the position to Mike and Sylvia Hook and to calm them down given the shortage of notice which had been given and the shattering of their hopes that the matter was going to be settled by the Tribunal in that week.
>
> 6. There was in addition my attendance at the virtual hearing arranged by the Judge to consider the adjournment and my commitment to review the documents he requested I review ready for the document bundle to be re-presented in a format acceptable to the FTT.
>
> 7. In addition there was time spent by Roger Millett and myself in preparation for the hearing in considering the third party evidence which Amy Biney of HMRC had supplied on 5/7/22. This was essential for the hearing. In light of the latest version of the bundle with the evidence at Section G it will be necessary to repeat that exercise.
>
> 8. It should be noted that the skeleton argument papers and my speaking briefs will all need to be updated following the re-referencing at the request of the Judge of the document bundles to reflect the right links.
>
> In light of my review, I do consider that the sums claimed from HMRC are reasonable and fair. If HMRC is not prepared to settle I would ask that this note is considered a formal complaint.

12. In response, the Respondents stated that they did not consider their behaviour to be unreasonable, and they provided Mr Kendrick with a link to make an online complaint. At the conclusion of that email, the Respondents stated:

> Should you wish continue with your claim for recovery of costs and make an official application, the Respondents would request further information, including the following:
>
> 1. The exact time spent on each task

2. The name of each person carrying out the work
3. The chargeable rates of each person

> The Respondents contend that should quantum become an issue, this information will be required.

13. A hard copy of the revised bundle was posted to the Appellants on 6 January 2023, with an electronic copy sent on 11 January 2023.

14. Rather than making an online complaint following the link provided, Mr Kendrick (as he explained to the Tribunal in an email dated 21 July 2023) "picked up the address from the HMRC website" and on 13 January 2023, he sent a letter of complaint to the Respondents. Unfortunately, that was an incorrect address for complaints. In that letter, Mr Kendrick described the additional work that had been, or would be, undertaken as follows:

> To be clear, the costs involved are for wasted time spent on matters like organising availability of witnesses and liaising with the First-tier Tribunal for links so the evidence could be provided remotely. It also includes time in contacting my clients and witnesses to inform them of the adjournment of the case. There was considerable time spent by Mr Millett and myself going through the evidence bundles in preparation for the hearing which have now all been superseded. In addition, there was my time spent attending the virtual hearing with Judge Poole when HMRC was asked for their reasons for the adjournment request. In all there have been 17.5 hours of time wasted to date…

15. Mr Kendrick wrote again to the incorrect address in February and March to try to progress the complaint.

16. The substantive hearing was re-listed for 12-14 June 2023.

17. Prior to the re-listed substantive hearing, the Appellants emailed the Tribunal seeking an order for their costs, and asking that this costs application be determined at the substantive hearing. That application did not comply with Rule 10 of the Tribunal Rules because it was not accompanied by a schedule of the costs claimed, as required by Rule 10(3)(b).

18. I was part of the panel that heard the substantive hearing in June 2023. At the beginning of that hearing, I advised the Appellants that the application that they had submitted at that time did not comply with Rule 10 of the Tribunal Rules and so, if they wished to pursue that application at the substantive hearing in June 2023, then the application would be rejected because it was deficient. I reminded the Appellants that if they chose to withdraw that deficient application then a further application could be submitted, and that any fresh application must comply with every part of Tribunal Rule 10.

19. On 26 June 2023, the Appellant filed the current application. The covering email to the Tribunal refers to seeking a "direction under Rule 10". However, despite being advised on 12 June 2023 that their application must comply with all of Rule 10, the Appellants did not include a schedule with their claim. In the complaint to HMRC, the Appellants had sought £4,315, including VAT, in costs; however, the current application seeks £6,595.60, including VAT. There is no explanation for the increase.

20. In their application the Appellants state:

> The costs cover the following:
>
> 1. Contacting all the witnesses to arrange their availability for the proposed hearing on the 23-25 November 2022 and agreeing with the FTT the time slots for their appearance – either remotely or in person. It also included ensuring the witnesses had the appropriate links (if required) to

give their evidence and to ensure they understood the protocol. Given the delay before the re-scheduled date for the hearing it was necessary to repeat that same process again.

2. My time included having to telephone all these individuals to tell them the case had been adjourned and their appearance at the Tribunal was not required.

3. Organising the travel and accommodation for the time of the hearing for myself and Sylvia and Mike Hook and to sort out travel arrangements for Roger Millett. There is also the time taken in cancelling these arrangements and obtaining the necessary refunds.

4. The time spent going through my records to try to deal with concerns over whether the documents provided by HMRC were complete. This involved a significant amount of time given the number of papers which had been supplied and how the records provide by HMRC had been organised.

5. There was also time taken with HMRC when they sought my support in respect of the adjournment application and of me having to discuss and agree the position with Michael and Sylvia Hook and to calm them down given the shortage of notice which had been given and the shattering of their hopes that the matter was going to be settled by the Tribunal in that week.

6. There was in addition my attendance at the virtual hearing arranged for Judge Poole for 23 November 2022 to consider the adjournment.

7. In addition, there was time spent with Roger Millett and myself in preparation for the hearing in considering the third party evidence which Amy Biney of HMRC (sic). Evidence had been supplied in July 2022 and it was difficult to reconcile this to the bundle of documents which had been included in the evidence bundle.

8. A considerable amount of time was spent going through the revised evidence bundle released following the virtual hearing of the 23 November 2022 to ensure this was accurate and complete and in the format prescribed by Judge Poole. It was also then necessary to revise my speaking brief for the hearing to ensure I was picking up the correct page number of the pack.

9. It was necessary at the direction of Judge Poole to prepare an updated skeleton paper.

10. Dealing with the claim for costs with HMRC in firstly the call with Mr Khan and then the formal complaint and now this application to the FTT.

21. With this application the Appellants included a copy of the order made following the case management hearing on 23 November 2022, and the email and postal correspondence between the parties about the complaint. The Appellants included an invoice from Mr Millett, which referred to a meeting Mr Millett had attended. Two invoices were provided from Mr Kendrick. Neither of those two invoices itemised the work undertaken by Mr Kendrick.

22. The work undertaken by Mr Millett was broken down in the invoice he provided to the Appellants as:

3 hours attendance at the Appellants premises on 18 November 2022

1.5 hours preparation for the meeting on 18 November 2022

Rail fair for "attendance at the hearing £70.50 less refund of £50.30 = £14.20"

Mileage to attend meeting on 18 November 2022 of £18.90

23. That amount totalled £595.60. Had Mr Millet calculated the refund of his rail fare correctly then the claim would have been £601.60. No VAT was charged on the fees charged by Mr Millett.

24. As there is no schedule supporting the Appellants' application, and there is no itemisation is the invoices produced by Mr Kendrick it is not possible to make any findings about the time Mr Kendrick spent on any particular aspect of his preparation. However, I note that the 17.5 hours that Mr Kendrick mentioned in his complaint to HMRC does not match the 15.5 hours invoiced by Mr Kendrick in the first invoice of the two invoices accompanying the Appellants application. This first invoice was sent by Mr Kendrick to the Appellants shortly after the November postponement. The total claimed in that invoice was £3,720, including VAT. That was said to be for "assistance with tax enquiry". It is impossible to know, from that description, what work was undertaken by Mr Kendrick in those 15.5 hours.

25. The second invoice sent by Mr Kendrick and included with the application, was for 9.5 hours taken by Mr Kendrick to "review revised documentation provided". This was undertaken prior to the June 2023 hearing but there are no dates for when the work was undertaken and no more detailed breakdown of what work was completed.

RULE 10 OF THE TRIBUNAL RULES

26. The relevant parts of Rule 10 of the Tribunal Rules provide:

> **10.**-(1) The Tribunal may only make an order in respect of costs … -
>
> (b) if the Tribunal considers that a party or their representative has acted unreasonably in bringing, defending or conducting the proceedings;
>
> (2) The Tribunal may make an order under paragraph (1) on an application or of its own initiative.
>
> (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.
>
> (6) The amounts of costs … 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 …, including the costs …. of the assessment, incurred by the receiving person, if not agreed.

DISCUSSION AND DECISION

27. As the Respondents have noted in their objection to this application, an award of costs should be the exception rather than the norm. In part this is because in order for an award of

costs to be considered, the person applying for costs – the Appellants in this case – must demonstrate that the other party has behaved:

> unreasonably in bringing, defending or conducting the proceedings.

28. If that cannot be demonstrated then (unless the appeals have been allocated to the Complex category, which is not the case here) the Tribunal does not have the power to consider an award of costs.

29. Therefore, the first issue to be decided is whether the Appellants have shown that the Respondents behaved unreasonably in their defence or conduct of these appeals. The standard of proof is the balance of probabilities. If the Respondents did not behave unreasonably then no award of costs can be made, however much was expended by the Appellants.

Did the Respondents behave unreasonably in their conduct of this appeal?

30. As the Respondents have correctly identified, the test for the Tribunal to apply has been considered by the Upper Tribunal in *Mori v HMRC* [2015] UKUT 0012 and *Distinctive Care Limited v HMRC* [2018] UKUT 155, with the latter approved by the Court of Appeal (see [2019] EWCA Civ 1010). In *Distinctive Care* the Upper Tribunal quoted with approval the approach set out in paragraph 49 of *Mori*:

> 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.

31. Therefore, the test I should apply is what a reasonable person would reasonably have done, or not done, in the circumstances of this appeal.

32. As set out above, the circumstances of this appeal are that the Respondents contacted the Appellants on 21 November 2022, and asked them to agree to the adjournment of the hearing due to start just two days later, on 23 November 2022.

33. The reason for this postponement was that the Respondents presenting officer had identified that the bundles (which must be the 18 November version) did not include all the documents on the parties lists of documents. It seems that some of the missing documents had been put forward by the Appellants and some had been put forward by the Respondents. It also seems that while an electronic copy (possibly) could have been complied in time for a hearing on 23-25 November, there was not enough time for a paper copy to be sent to the Appellants.

34. It is unclear whether the errors were present in the original bundles, sent to the Appellants on 22 July 2022, or whether they first appeared in either the version filed on 8 November 2022 or in the version filed on 18 November 2022. It seems unlikely that the omissions appeared in the July version of the bundles because, if documents had been missed from the July version of the bundles, that omission would have been picked up either by the Respondents when they prepared the 8 November version, or by the Appellants during the course of their preparations for the substantive hearing. Having had regard to the fact that the Appellants held a meeting on 18 November 2022 with Mr Millett, with what must have been

the 8 November bundles (as a paper copy of the 18 November bundles could not have been received in time) and the Appellants did not identify that documents were missing from those bundles, I find on the balance of probabilities that the Respondents' omission of documents first occurred in the 18 November version when attempting to correct the formatting errors that appeared in the 8 November version.

35. The test I should apply is what a reasonable person would reasonably have done or not done in the circumstances of this appeal. The circumstances of this appeal are that the Respondents accidentally omitted documents from the hearing bundles on the second occasion that they had revised those bundles in the fortnight before the appeal. I have not ignored the fact that it seems that there were other issues with the 8 November version of the bundles, including poor numbering and a lack of hyperlinks that Judge Poole directed be corrected. However, it seems that no relevant documents had been omitted from the 8 November bundles. I have not been shown any complaint about the bundles from the Appellants to the Respondents prior to 21 November 2022, and so I find that both parties would have been willing to proceed with the substantive hearing using the 8 November version of the bundles, despite the formatting issues identified by Judge Poole. Therefore, the hearing would have proceeded on 23-25 November 2022 with the 18 November bundles (which corrected the formatting issues) had it not been for the omission of relevant documents from those bundles. It was the omission of documents that caused there to be an adjournment.

36. Given that, on 21 November 2022, the bundles were unsuitable for use at the hearing because relevant material was not included, I do not consider that the Respondents acted unreasonably in seeking an adjournment. On the contrary, if the adjournment had not been sought, the omission of the missing documents would have had to be revealed at the commencement of the hearing, or would have come to light during the course of the substantive hearing, resulting in the hearing either being adjourned on 23 November or going part-heard (depending on when the omissions were revealed). This would have resulted in greater expense to both parties, and possibly longer delay in the long run. It is unlikely that a hearing that was part-heard in November 2022 would have resumed prior to June 2023. Not to disclose the discovery of the omitted material would have been unreasonable.

37. I have moved on to consider why it was that the bundles filed on 18 November did not contain the missing documents. The Respondents have stated that this was a "genuine error" but not explained further. It was open to the Appellants to challenge this explanation or to seek further information from the Respondents but they have not done so. That is perhaps surprising as the Appellants bear the onus of demonstrating that the Respondents behaviour was unreasonable. However, given that lack of challenge, and bearing in mind that some of the missing documents were ones that the Respondents wished to rely upon, I accept the Respondents' explanation and I find that the omission of documents was a genuine error (and not deliberate).

38. I have considered whether a genuine error in omitting documents from a hearing bundle could constitute unreasonable conduct; I have concluded it is not. There is a difference between making a mistake, and conduct that is unreasonable. It is implicit in the latter that the conduct is either a result of some thought or consideration, a chosen way of proceeding, or it is behaviour that is so wholly careless or neglectful that it crosses a line. For example, if the Respondents had deliberately left documents out of the bundle because they did not want to have to address them, then that would be very likely to be considered unreasonable conduct. Here the Respondents did not mean to make a mistake with the bundles, it was simply human error. It is clearly not ideal, particularly not when there were formatting issues

with the previous version of the bundles, but that does not make the accidental omission of documents from the 18 November version of the bundles unreasonable.

39. Given the short period of time between the bundles being filed on 18 November and the omission coming to light on 21 November, I also do not consider the Respondents were unreasonable in not noticing the omission at an earlier date. It took the Respondents three days to notice that some documents were not present in document bundles that together exceeded 1,800 pages. I have concluded that the Respondents did not act unreasonably in not noticing the omission any sooner.

CONCLUSION

40. I have concluded that in the circumstances of these proceedings, the Appellants have not demonstrated, on the balance of probabilities, that the Respondents acted unreasonably in their defence or conduct of these proceedings.

41. Therefore, the application for costs is refused.

OTHER ISSUES

42. Given my conclusion that the Appellants have not shown that the Respondents behaved unreasonably in their defence or conduct of these appeals, it is not necessary to go on to consider the other issues raised by this application, i.e., whether the application complies with Rule 10(3)(b) and how to proceed in light of the omission of a schedule. However, as the Appellants have now sought full findings and reasons, I will touch upon those points.

Does the 26 June 2023 application comply with Rule 10(3)(b)?

43. I explained to the Appellants at the June 2023 hearing that any application for costs must comply with each aspect of Rule 10. This explanation was given in the context of the Appellants being informed that if they did not withdraw an earlier application for costs that was not accompanied by a schedule, then that application would be rejected. In the correspondence with the Respondents, the Appellants were informed twice that they should provide a detailed breakdown of the hours they spent that they considered had been thrown away by the adjournment and the production of revised bundles.

44. Despite those warnings, the Appellants chose not to file a schedule with their 26 June 2023 application. The invoice submitted by Mr Millett shows that he attended a meeting on 18 November 2023. However, there is not even that very limited amount of information in either of the two invoices submitted by Mr Kendrick. In the Appellants' request for full written findings and reasons, Mr Kendrick says he is not aware of any requirement on him to provide a detailed summary on the invoices he issues to his clients. Irrespective of how Mr Kendrick chooses to invoice his clients, Rule 10(3)(b) is clear that an application to the Tribunal for costs must be accompanied by a schedule of the costs claimed.

45. In *Patel v HMRC* [2023] UKFTT 00128, a decision involving a case allocated to the Complex category, Judge Alexsander commented as follows:

> 48. As noted by the Upper Tribunal in Distinctive there is no detailed guidance as to the specifics of what is to be contained in schedule of costs so as to conform to rule 10(3)(b). The Upper Tribunal summarised the requirements as it saw them without explicit reference to the provisions of either PD 44.9.5(2) or to Form 260. However, PD 44.9.5 provides useful guidance on the level of detail required in a costs schedule for a summary assessment. PD 44.9.5(2) requires the written statement show separately: 1) the hours claimed, 2) the hourly rate to be claimed, 3) the grade of the fee earner, 4) the amount and nature of the disbursements (other than counsel's fees for appearing at the hearing), 5) the amount of the representatives' costs for attending the hearing, 6) counsel's fees and 7) any VAT to be claimed on

> those amounts. 44.9.5(3) then provides that the written statement of the costs "follows as closely as possible" Form N260. Form N260 provides for a description of each fee earner by name, grade and hourly rate claimed. It then provides for a breakdown of the time for each fee earner in respect of: attendance on the party (by reference to a further breakdown of personal attendances, letters/emails out, telephone attendances), attendance on the opponent (by reference to the same further breakdown) and similarly for attendance on others; site inspection and attendance at hearing. There is then a schedule of work done on documents which provides for a description of the work and hours per fee earner. N260 also requires the person signing it to certify that the costs set out do not exceed the costs which the party is liable to pay in respect of the work which the statement covers. This statement gives an assurance to the court that the indemnity principle has not been breached.
>
> 49. Under the FTT Rules there appears to be an assumption that all cases may be appropriate for summary assessment whether or not the matter has required a hearing or been determined on the papers, or indeed settled. The rules require the claiming party to produce a schedule of costs so as to facilitate summary assessment, should it be appropriate, and, for the paying party, pursuant to FTT Rule 10(5), to make representations on the schedule prior to any decision being taken on summary assessment.
>
> 50. As a consequence, I find that a compliant costs schedule must include as a minimum the level of particularisation as is required under the CPR. More detail may be required where, as here, there has been no judicial determination of the appeal. The schedule of costs needs to provide a sufficient summary of the time and cost incurred in relation to key stages/activities (most specifically critical documents) in the appeal.
>
> 51. I therefore find that the Upper Tribunal's guidance that "the time spent by each fee earner should also be given, together with a breakdown showing when the time was spent and giving a brief description of the work done on each occasion" must be interpreted so as to reflect the level of particularisation which would facilitate a rough, but swift assessment of the costs incurred in the appeal.

46. It is clear that the application filed by the Appellants on 26 June 2023, with no schedule at all, does not meet the requirements of Rule 10(3)(b).

How to proceed in light of the omission of a schedule

47. As discussed in *Patel*, where a schedule is insufficient (or not provided at all) the Tribunal has the power to decide whether to require the breach to be remedied, whether to waive the breach or whether to make such order as it considers appropriate in the circumstances.

48. Here, I have concluded that HMRC did not act unreasonably so no order for costs is required. However, if I had concluded that HMRC did act unreasonably then – taking into account the three previous occasions when it had already been suggested to the Appellants that they should provide a breakdown of the amount they claimed (twice by the Respondents in correspondence, and once again when I noted to the Appellants at the substantive hearing that any application must conform with Rule 10) – I would have concluded that requiring the Appellants to remedy their breach was unlikely to be productive. The Appellants were already aware that the onus was on them with regard to an application for costs, and they were already aware that any application they made must comply with Rule 10.

49. Against that background, I would have gone on to conclude that there was so little information about the time taken by Mr Kendrick on each aspect claimed that it would have been impossible to make any kind of assessment of the time claimed. For example, with no breakdown of how the time spent by Mr Kendrick was allocated, it would be impossible to make an assessment on whether the time spent on each aspect was reasonably incurred or even whether it related to the appeal at all (rather than the complaint, which is outside of the Tribunal proceedings). There is also no explanation of why it was appropriate for the hourly rate claimed by the Appellants in respect of Mr Kendrick's work to exceed the October 2021 guideline rate for a National 1 fee earner of his grade.

50. Unfortunately, there are also difficulties with the claim made in respect of the time taken by Mr Millett. I accept that Mr Millett spent three hours in a meeting with the Appellants on 18 November 2022, and that there were associated costs such as preparation for that meeting and the costs of attending the meeting. However, there is no description of the purpose of, or what occurred at, this meeting, so it is not possible to assess whether work undertaken by Mr Millett at, or for, this meeting was wasted or whether that work provided value to the Appellants that subsisted to the substantive hearing in June 2023.

51. In the circumstances, I would have gone on to refuse all costs that were not appropriately itemised. That is in line with the approach outlined by Judge Redston in *Fox v HMRC* [2022] UKFTT 00138 where insufficient detail was provided in a schedule.

52. The only element itemised in sufficient detail is the claim for £20.20 that Mr Millett was unable to recover when he sought a refund of the train ticket he no longer required due to the postponement of the substantive hearing. Therefore, if I had considered that the Respondents behaviour was unreasonable, in the circumstances of this case I would have made an order for costs in the sum of £20.20. However, as I did not consider the Respondents behaviour to be unreasonable, for the reasons set out above, no order for costs is made.

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.

JUDGE JANE BAILEY
TRIBUNAL JUDGE

Release date: 08th NOVEMBER 2023