Neutral Citation: [2024] UKFTT 00069 (TC)

Case Number: TC09041

**FIRST-TIER TRIBUNAL**
**TAX CHAMBER**

Location: Decided on the papers

Appeal references: TC/2021/02245
TC/2021/02307
TC/2021/02854
TC/2022/11336

*COSTS – whether HMRC acted unreasonably in opposing Appellant's application for specific disclosure – Rule 10, Tribunal Procedure (First-tier Tribunal)(Tax Chamber) Rules 2009*

**Judgment date:** 17 January 2024

**Decided by:**

**TRIBUNAL JUDGE ALEKSANDER**

**Between**

**ESSEX TRADING LIMITED**

**Appellant**

**and**

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

**Respondents**

## DECISION

### INTRODUCTION

1. On 5 December 2022, the Appellant, Essex Trading Limited ("ETL"), made an application for specific disclosure. Although both ETL and HMRC had consented to the application being determined "on the papers", the Tribunal decided that the application should be determined at an "in person" hearing. The application was heard by me on 21 June 2023. I gave an extempore decision immediately following the hearing, and subsequently released directions ordering disclosure by HMRC as if CPR 31.7 applied.

2. On 14 July 2023, ETL made an application under Rule 10 of the Tribunal's Rules for costs of and incidental to its application for specific disclosure on the grounds that its application for specific disclosure had been unreasonably opposed by HMRC.

3. The parties agreed that ETL's application for costs could be determined "on the papers".

### THE LAW

4. The relevant provisions of Rule 10, Tribunal Procedure (First-tier Tribunal)(Tax Chamber) Rules 2009, are as follows:

> **Orders for costs**
>
> 10 (1) The Tribunal may only make an order in respect of costs (or, in Scotland, expenses)—
>
> (a) under section 29(4) of the 2007 Act (wasted costs) and costs incurred in applying for such 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.
>
> (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 all issues in the proceedings; or
>
> (b) notice under rule 17(2) of its receipt of a withdrawal which ends the proceedings.
>
> (5) The Tribunal may not make an order under paragraph (1) against a person (the "paying person") without first—
>
> (a) giving that person an opportunity to make representations; and
>
> (b) if the paying person is an individual, considering that person's financial means.

> (6) The amount of costs (or, in Scotland, expenses) 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 or expenses, including the costs or expenses of the assessment, incurred by the receiving person, if not agreed.
>
> […]

5. ETL's application is made under Rule 10(1)(b) on the grounds that HMRC acted unreasonably in opposing its application for specific disclosure.

6. What constitutes "unreasonable conduct" for the purposes of Rule 10 was considered by the Upper Tribunal in *Distinctive Care Ltd v HMRC* [2018] UKUT 155 (TCC), and upheld on appeal by the Court of Appeal ([2019] EWCA Civ 1010). In its decision, the Upper Tribunal set out at [44] to [46] the basis on which conduct is to be assessed:

> 44. In *Market & Opinion Research International Limited v HMRC* [2015] UKUT 0012 (TCC) ("*MORI*") at [22] and [23], the Upper Tribunal endorsed the approach set out by the FTT in that case to the question of whether a party had acted unreasonably. That approach could be summarised as follows:
>
> (1) the threshold implied by the words "acted unreasonably" is lower than the threshold of acting "wholly unreasonably" which had previously applied in relation to proceedings before the Special Commissioners;
>
> (2) it is possible for a single piece of conduct to amount to acting unreasonably;
>
> (3) actions include omissions;
>
> (4) a failure to undertake a rigorous review of the subject matter of the appeal when proceedings are commenced can amount to unreasonable conduct;
>
> (5) there is no single way of acting reasonably, there may well be a range of reasonable conduct;
>
> (6) the focus should be on the standard of handling the case (which we understand to refer to the proceedings before the FTT rather than to the wider dispute between the parties) rather than the quality of the original decision;
>
> (7) the fact that an argument fails before the FTT does not necessarily mean that the party running that argument was acting unreasonably in doing so; to reach that threshold, the party must generally persist in an argument in the face of an unbeatable argument to the contrary; and
>
> (8) the power to award costs under Rule 10 should not become a "backdoor method of costs shifting".
>
> 45. We would wish to add one small gloss to the above summary, namely that (as suggested by the FTT in *Invicta Foods Limited v HMRC* [2014] UKFTT 456 (TC) at [13]), questions of reasonableness should be assessed by reference to the facts and circumstances at the time or times of the acts (or omissions) in question, and not with the benefit of hindsight.
>
> 46. In assessing whether a party has acted unreasonably, this Tribunal in *MORI* went on to say this (at [49]):

> "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 16 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."

7. ETL also referred me to the decision of the Upper Tribunal in *Catana v HMRC* [2012] UKUT 172 (TCC). I find that the decision of the Upper Tribunal in *Catana* (which was primarily directed at whether the FTT had unreasonably exercised its discretion in refusing to make an award of costs) does not provide any material assistance in the determination of this application.

**BACKGROUND**

8. Appeal reference number TC/2021/02307 and part of TC/2022/11336 relate to a seizure by HMRC of 132,375.45 litres of mixed alcoholic products on 20 and 21 September 2019.

9. The underlying factual background is in dispute. Those disputed facts remain to be determined at the substantive hearing of this appeal. I did not make any findings of fact in my decision to direct specific disclosure, should anything in this decision on costs be treated as having made any factual findings.

10. ETL's account is that in August 2019 it purchased Hi Line Wines Limited's ("Hi Line") entire stock. Hi Line was unable to pay rent due to its landlord, and the landlord was threatening to forfeit the lease and repossess its premises. Hi Line was therefore under commercial pressure to sell its stock. ETL did not undertake a stocktake, but agreed to purchase all the stock at Hi Line's premises together with racking and other equipment. The consideration was the assumption of a loan Hi Line owned to another company. The sale was documented in a manuscript invoice which described the stock being sold as "warehouse stock clearance".

11. The stock was delivered over 14-17 August 2019 to premises in Croydon, where ETL say it was going to be stored temporarily pending ETL being ready to take the stock to new permanent premises nearby. At some point, Hi Line provided printed invoices. The goods sold were described in the printed invoices by reference to Hi Line's stock sheets, copies of which accompanied the invoices. ETL say that it did not check the stock sheets against the physical stock, and assert that the stock sheets did not accurately record the alcoholic products purchased from Hi Line. It is ETL's case that all the goods stored at the Croydon premises had been purchased from Hi Line, even if they were not listed on the stock sheets.

12. On 19 September 2019, HMRC visited ETL's premises. On 20 September 2019 they came back to the Croydon site and seized and removed all the stock at that location on the grounds that ETL was trading from premises that did not have AWRS approval and there was no evidence of the alcohol having been duty paid. HMRC's officers recorded the seized goods on tally sheets. A comparison of HMRC's tally sheets with Hi Line's stock sheets indicates that more goods had been seized than had been recorded on Hi Line's stock sheets.

13. Unbeknown to ETL, one of Hi Line's creditors had presented a winding up petition on 24 July 2019. Accordingly, by virtue of s127 Insolvency Act 1986, the sale by Hi Line was void as it took place after the presentation of the petition. On 18 February 2020, Farleys Solicitors LLP (acting for the liquidators of Hi Line) wrote to ETL asserting that the sale of

132,375.45 litres of mixed alcoholic goods to ETL was void. Farleys demanded that ETL abandon all claims for restoration and all challenges to the seizure of those goods by HMRC on the basis the goods did not belong to ETL. On 2 March 2020, Mr Thornton (acting on behalf of ETL) confirmed that ETL would abandon its claim for restoration of the goods from HMRC, and acknowledged that the sale by Hi Line was void.

14. A central legal issue in this appeal is whether ETL was holding goods when a duty point arose, and whether they were holding non-duty paid goods. It is agreed that goods which had been acquired by ETL from Hi Line should not give rise to an excise duty assessment or penalty assessment on ETL. The origin of the goods seized by HMRC is therefore key – in particular the excess goods recorded on HMRC's tally sheets that were not recorded on Hi Line's stock sheets. HMRC have assessed ETL to duty and penalties in respect of the excess stock on the grounds that these goods had not been acquired from Hi Line. ETL's case is that the excess stock had been purchased from Hi Line, and as this purchase was void, it was Hi Line and not ETL that owned the excess stock.

15. Included in the hearing bundle were copies of correspondence between Farleys and ETL relating to the goods seized by HMRC, from which it appeared that Hi Line may have sought restoration of all of the goods seized by HMRC. ETL submit that (at the date of the hearing) they did not know whether Hi Line's liquidators had sought restoration for all, or only some, of the goods seized by HMRC. ETL submit that the extent of Hi Line's restoration claim is material to the determination of whether all (or only some) of the goods seized were held by ETL at the duty point.

16. HMRC opposed the application for disclosure on the grounds that they had already given disclosure in accordance with Rule 27 of the Tribunal Rules. Whilst HMRC recognised that the Tribunal had discretion to order further disclosure, requiring additional disclosure was exceptional and not to be given routinely. In this case, HMRC submitted that the documents sought by ETL related to the tax affairs of another taxpayer, and HMRC were under a duty not to disclose them pursuant to s19, Commissioners for Revenue and Customs Act 2005 ("CRCA") (the notice of objection referred to *Good Law Project v HMRC* [2019] EWHC 3125 (Admin) at [35]). Further, HMRC submitted that the documents in respect of which disclosure was sought did not relate to the goods that were the subject of the assessment of duty and penalties, and the documents were not therefore relevant to ETL's appeal.

17. I gave an extempore decision immediately following the hearing, and subsequently released directions ordering disclosure by HMRC of evidence relating to the seized goods as if CPR 31.7 applied.

**ETL's submissions**

18. ETL acknowledge that HMRC had given disclosure in accordance with the requirements of Rule 27 of the Tribunal Rules, and that ETL had to apply to the Tribunal for any additional disclosure. For this reason, ETL have not sought to claim the costs incurred in making the application for disclosure itself. However, ETL submit that once the application for specific disclosure had been made, HMRC acted unreasonably in opposing it. ETL submit that HMRC had no good reason for opposing the application. In particular:

> (1) HMRC had unreasonably asserted that it was not appropriate for the Tribunal to order disclosure of documents relating to any claim by Hi Line for restoration of goods as they are confidential communications with a third party. ETL referred to s18(2)(c) CRCA which permits HMRC to disclose otherwise confidential information for the purposes of civil proceedings, and to *Mitchell and anor v HMRC* [2023] EWCA Civ 261(handed down on 10 March 2023, so before the date of the hearing of ETL's application) in which the Court of Appeal confirmed that HMRC did not require a

direction from the Tribunal in order to give voluntary disclosure of such material for the purposes of civil litigation. If HMRC believed that it had no power to consent to ETL's application for specific disclosure, ETL submit that HMRC should not have opposed the application, but remained neutral, leaving it as a matter for the Tribunal to determine.

(2) HMRC had unreasonably asserted that the ETL's application was based on speculation that Hi Line had claimed ownership of all the goods seized in Croydon. HMRC asserted in their notice of objection and submissions at the hearing that the goods claimed by Hi Line were not the subject of ETL's appeal, and the documents relating to Hi Line's claim are therefore not relevant to ETL's appeal. ETL referred to the comment that I made at the hearing that Farleys' letter to ETL of 18 February 2020 was strong evidence that Hi Line had supplied all of the alcohol under assessment to ETL. ETL also submit that this letter raises the question of how Farleys became aware of the figure of 132,375.45 litres without having been given this figure by HMRC in the first place.

(3) In compliance with my directions for disclosure, HMRC disclosed to ETL a letter from Farleys to HMRC dated 18 February 2020. ETL submit that this was clearly written in parallel with their letter to ETL of the same date. The letter to HMRC encloses HMRC's seizure information notice and HMRC's tally sheets. ETL note that it is HMRC's tally sheets, and not Hi Line's stock sheets, that are enclosed with Farleys' letter to identify the items for which restoration is claimed. ETL submit that this is evidence that Hi Line had claimed ownership and restoration of all of the alcohol seized by HMRC, and not just the alcohol listed in Hi Line's stock sheets.

(4) ETL submit that HMRC must be aware that Hi Line had claimed ownership and restoration of all of the stock that they had seized. The tally sheets (copies of which were enclosed with Farleys' letter to HMRC) had been signed by Ms Hydrie, the HMRC officer who had asserted the excess alcohol had not been claimed by Hi Line. ETL submit that HMRC's submissions to the Tribunal at the hearing of the application for disclosure were misleading, and that HMRC had plainly acted unreasonably in resisting the application.

(5) HMRC's notice of objection ran to 13 pages. ETL submit that many of the points of objection were abandoned by the time it came to HMRC's skeleton argument. ETL submit that majority of HMRC's objections to disclosure were wrong, irrelevant, or excessive. ETL incurred costs in having to deal with these, which necessarily required referring to a substantial number of documents. But for HMRC taking these unreasonable points, ETL would have had shorter responses and required fewer documents for the hearing. The fact that HMRC limited its submissions at the hearing to fewer points of relevance does not relieve them of responsibility for having taken the earlier approach.

**HMRC'S SUBMISSIONS**

19. HMRC dispute ETL's submission that HMRC knew that it could not have reasonably defended the application for specific disclosure.

20. HMRC assert that a reasonable person in the same position would have objected to the ETL's application for specific disclosure. This is because an order for specific disclosure in the First-tier Tribunal is the exception rather than the rule and the outcome of the application was dependent upon the Tribunal's exercise of discretion. The documents sought by ETL relate to a third-party taxpayer and HMRC was not permitted to disclose them as they were confidential. Therefore, a court order was required pursuant to section 18 CRCA in order to avoid HMRC breaching that confidentiality.

21. Rule 27 of the Tribunal Rules require the parties to disclose only documents on which they intend to rely. HMRC had complied with that rule, and there is no suggestion that they did otherwise.

22. HMRC submit that the fact that I agreed with the ETL's submission that the letter of 18 February 2020 from Farleys to the ETL raised questions does not make HMRC's opposition to the disclosure application unreasonable, as it was not a foregone conclusion that specific disclosure would be ordered. HMRC further submit that this is not a case where they ought to have known that the disclosure application would be successful, given that directions for specific disclosure were the exception rather than the rule, and my decision to make such an order followed a consideration of both written and oral submissions from both sides and application of the overriding objective.

23. HMRC therefore submit that their objection to the disclosure application was reasonable.

24. HMRC dispute ETL's submission that their handling of their opposition was unreasonable.

25. As regards the length of the notice of objections, HMRC assert that a substantial part of the notice set out the background facts relevant to the application and the relevant law. These are not indicators of unreasonable conduct. HMRC had also stated that as it was content for the application to be dealt with "on the papers", in these circumstances it is standard practice for a party to set out the background facts to assist the Tribunal. The notice set out the background facts and law relating to HMRC's case on the basis that they would be the sole representations that the Tribunal would be considering on behalf of HMRC. HMRC submit that there is no correlation between the length of HMRC's Notice of Objection and the Tribunal listing the application as an "in person" hearing.

26. HMRC disputes ETL's assertion that HMRC's skeleton abandoned the majority of the claims raised in its notice of objection. It was agreed between Ms. Brown and Mr. Thornton prior to the hearing that given the detailed written submissions that had been served by both parties, the Tribunal would not need to be taken through every point made in those written submissions. It was on that basis that the parties' oral submissions were considerably shorter than the written submissions relied upon by each of them.

**DISCUSSION**

27. My starting position is that these appeals have been allocated to the standard category. It follows that there is no costs shifting regime and the default position is that each party bears its own costs. This is clear from the Court of Appeal judgment in *Distinctive Care Ltd* at [7] where it held that:

> […] the First-tier Tribunal is designed in general to be a "no costs shifting" jurisdiction, not least because many appellants are not legally represented. Rule 10 should therefore be regarded as an exception to this general expectation that both sides will bear their own costs, whatever the result of the appeal.

28. If there has been unreasonable conduct in the proceedings there is a discretion, but not an obligation for the Tribunal to award costs, but such discretion must be exercised judicially (see *Tarafdar v HMRC* [2014] UKUT 0362 (TCC) at [20]).

29. There is no definition of "unreasonable conduct". The Upper Tribunal in its decision in *Distinctive Care* gave guidelines as to the factors that should be taken into account in assessing conduct, of which I consider the most relevant to this application is set out at [44](7), namely:

> (7) the fact that an argument fails before the FTT does not necessarily mean that the party running that argument was acting unreasonably in doing so; to

> reach that threshold, the party must generally persist in an argument in the face of an unbeatable argument to the contrary;

30. In considering whether opposing specific disclosure is unreasonable, I take note of the fact that an order for specific disclosure is exceptional, and it is not unreasonable for a party against whom such an order is sought to test the strength and validity of the application. It is only if the opposition to the application persists in the face of an unbeatable argument to the contrary that the conduct of that party rises to being unreasonable for the purposes of Rule 10.

31. I therefore find that the mere fact that HMRC opposed ETL's application does not of itself amount to unreasonable conduct. Nor am I persuaded that the HMRC's conduct was unreasonable merely because its notice of objection ran to 13 pages, and that many of the issues raised in that notice were not pursued in HMRC's skeleton or in the course of oral submissions. I was concerned from my pre-reading about the volume of documents before me, that there might be insufficient time available to deal with the evidence and submissions in the time that had been listed. At the beginning of the hearing, I therefore told the representatives that I had read the suggested pre-reading, and that the skeletons and written submissions were to be taken as read. This allowed the representatives to give focus to their submissions at the hearing.

32. HMRC assert that their objection to disclosure on the grounds of confidentiality was well founded, and could only be overruled by an order of the Tribunal. Reference was made in the notice of objection to *Good Law Project*. In that case, HMRC had submitted that in order to avoid any suggestion that HMRC may have committed an offence under s19 CRCA, they made an application to the court for disclosure under s18(2)(e), rather than simply relying in s18(2)(c). The court held at [44] that:

> 44. […]. It was not in my view necessary for this application to be made. Section 18(2)(c) is rendered pointless if an application is made under (e) because HMRC are not prepared themselves to make the decision under (c). However, having said that, I can see why on the facts of this case HMRC decided it was best to be sure of the position by making the application, and I do not criticise them for doing so. But in future, they should make the decision themselves as to whether (c) applied. If they wish to give the taxpayer a chance to challenge such a decision they can always give advance notice, so that the taxpayer could apply for an order prohibiting disclosure if so advised.

33. The decision of the Administrative Court in *Good Law Project* is supported by the decision of the Court of Appeal in *Mitchell* which held:

> [42] I reach a similar conclusion in relation to section 18(2)(c). That permits HMRC to make disclosure for the purposes of civil proceedings. The term "civil proceedings" is not defined in the CRCA but Mr Puzey submits that the term extends to FTT appeals, a proposition with which no one takes issue, and which I do not doubt. Section 18(2)(c) seems particularly apt on the facts of this appeal, where civil proceedings are extant and where HMRC wishes to make disclosure to assist one of the parties to those proceedings. Mr Hickey maintains his submission that this provision too is subject to an implied condition that the documents which HMRC proposes to disclose must be relevant to the issues pleaded by the parties in the course of the civil proceedings; for reasons similar to those I have already articulated in the context of section 18(2)(a), I disagree. The language does not suggest the existence of such a condition and the scheme and purpose of section 18 does not warrant such a condition being read in. Indeed, the apparent purpose of the provision, to enable HMRC to make disclosure of confidential documents in fulfilment of their statutory functions, would be thwarted if such a condition was read in. In the context of civil proceedings, the example of HMRC

> wishing to disclose potentially exculpatory material is even stronger. It shows that section 18(2)(c) can operate as a safeguard where the procedural code of the tribunal (or other litigation forum) contains a narrow disclosure rule – for example, in the FTT, where the basic rule under Rule 27(2) is limited to disclosure of documents on which a party intends to rely - but HMRC is in possession of documents on which HMRC do not wish to rely but which would assist another party to that appeal. I conclude that section 18(2)(c) would apply, at least in principle, if HMRC wished to make disclosure of the Disputed Documents to Mr Bell.

34. I therefore agree with ETL that HMRC's objection to giving disclosure on the grounds that they owed a duty of confidentiality to Hi Line was misplaced. As these are civil proceedings, they had discretion to give disclosure under s18(2)(c) without the need for an order for disclosure – and if they were concerned about their duty to Hi Line, they could have given notice to Hi Line to give them an opportunity to object. Nonetheless, if there were any residual concerns about the duty of confidentiality owed under s19 CRCA, HMRC could – as suggested by ETL – have taken a neutral stance on the issue, drawing the attention of the Tribunal to the issues and the relevant statute and cases, and leaving the point to be determined by the Tribunal. I find that, in the light of the case law, HMRC's argument that they were bound by a duty of confidentiality was unsustainable, and that in actively opposing disclosure on this ground, they acted unreasonably.

35. I find HMRC's objection to disclosure on grounds of relevance to raise more serious issues. I find that ETL's application for specific disclosure was not speculative. The correspondence between Farleys and ETL that was included in the hearing bundle clearly raised the question of whether Hi Line had claimed ownership of, and sought restoration of, all of the alcohol seized by HMRC. This issue is then brought into sharper focus by the letter of 18 February 2020 from Farleys to HMRC, to which were attached HMRC's tally sheets, and which were disclosed pursuant to my direction for additional disclosures. This supports ETL's submission that Hi Line had claimed ownership, and restoration, of all of the goods that had been seized by HMRC. This is clearly relevant to ETL's case, and it was misleading for HMRC to have submitted at the hearing and in their notice of objection that the correspondence with Hi Line and its representatives was irrelevant. HMRC must have been aware at the time that ETL made its application for disclosure that there was (to put it at its mildest) an issue as to who owned the "excess alcohol", and that this was relevant to ETL's liability to duty and penalties. I find that HMRC's argument that its correspondence with Hi Line and its representatives were irrelevant to ETL's case was unsustainable, and that HMRC acted unreasonably in opposing ETL's application for disclosure.

36. It was the strength of HMRC's opposition to ETL's application that led to the Tribunal determining that the application should be determined by an "in person" hearing. Absent those strong (and unreasonable) objections, the application may well have been dealt with "on the papers", saving costs for all concerned.

37. In the light of my finding that HMRC acted unreasonably in opposing ETL's application for disclosure on grounds of confidentiality and irrelevance, I order HMRC to pay costs incurred by ETL in having to address HMRC's opposition to its application for disclosure.

**QUANTUM**

38. I find that this matter is appropriate for summary assessment. A summary assessment is not an occasion for a detailed review such as would be carried out on assessment by the Senior Courts Costs Office. Nonetheless, matters of reasonableness and proportionality are to be taken into account.

39. Included with ETL's application for costs was a schedule of the costs incurred. This sets out the time costs incurred by ETL's representative after 5 December 2023 (the date of the application for specific disclosure) as being 14.2 hours of Mr Thornton's time charged at £215/hr, broken down broadly as follows:

(a) Preparing for and attending court: 7.4 hours;

(b) Correspondence with HMRC and consider HMRC skeleton: 3 hours;

(c) Reading and responding to HMRC notice of objection: 3.8 hours.

40. The costs claimed in total were £3053.00.

41. In its subsequent submissions, ETL claim an additional £537.50 being 2.5 hrs of time costs incurred by Mr Thornton in relation to the application for costs.

42. The total claim for costs is therefore £3590.50.

43. HMRC submit that Mr Thornton's hourly rate is excessive, and that given his location (London SE3) and expertise, he falls within Grade C of the guideline hourly rates (£185). HMRC submit that 1hr 30 min of time relate to agreeing hearing dates and preparation of bundles, and these should not be chargeable as they are purely administrative.

44. Mr Thornton has over 15 years' experience, and although he was called to the bar in 2006, he did not take pupillage, and is therefore not a legal representative. Nonetheless, I find that by virtue of his qualifications and experience he falls within grade A of the guideline hourly rates. I find that it was reasonable for ETL to engage someone of Mr Thornton's experience and seniority given the nature of the issues under appeal and the amounts involved. However, as he is based in London SE3, his overheads will not be of the same order as those incurred by representatives based in the City or Central London. I therefore consider that his rates fall into London 3 (Outer London). The guideline rate for such lawyers (prior to 31 December 2023) is £282. The rate actually charged by Mr Thornton is £215, which is less than the guideline rate.

45. I agree with HMRC that it is not appropriate to charge at Mr Thornton's full hourly rate for work on agreeing dates for the hearing and preparation of the bundles, as this does not require the expertise of a grade A professional. I find that this work could have been undertaken by a fee earner in grade D at a guideline hourly rate of £129 (1.5 hrs at £129 = £193.50). However, I allow the time costs incurred in dealing with the application for costs as being incidental to the costs of pursuing the application for disclosure.

46. I find that £3461.50 of costs is reasonable in amount, reasonably incurred, and proportionate to the issues.

**CONCLUSION**

47. I summarily assess costs in the amount of £3461.50 and direct that HMRC make payment to ETL within 28 days.

**RIGHT TO APPLY FOR PERMISSION TO APPEAL**

48. 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.

**NICHOLAS ALEKSANDER**
**TRIBUNAL JUDGE**

**Release date: 17th JANUARY 2024**