Neutral Citation: [2025] UKFTT 91 (TC)

Case Number: TC09417

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal reference: TC/2015/06427

PROCEDURE — application for reinstatement of appeal struck out for non-compliance with Directions – Martland applied – application granted and directions made

Heard on papers
Judgment date: 31 January 2025

Before

TRIBUNAL JUDGE GREG SINFIELD

Between

BRADLEY STRAUSS

Appellants

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

DECISION

INTRODUCTION

1. This decision concerns an application by the Appellant, Mr Bradley Strauss, for his appeal, which had been struck out, to be reinstated. For reasons set out below, I have decided to grant the application.

2. This appeal has a long and complicated history. Mr Strauss made four separate appeals to the Tax Chamber of the First-tier Tribunal ('FTT') in 2015 and 2016. In summary, they concern the following matters:

(1) income tax discovery assessments and closure notices relating to the periods 1997-98 to 2013-14 which were issued in 2015;

(2) VAT assessments relating to VAT periods 05/95 to 07/08, also issued in 2015;

(3) a compulsory registration for VAT with effect from a date in 2015; and

(4) various income tax and VAT penalties imposed in 2016.

3. In 2016, all four appeals were consolidated under appeal reference TC/2015/06427. Unfortunately, and for a variety of reasons, very little progress has been made in bringing the appeal to a hearing. I have set out the history of this matter in detail in the first appendix to this decision ('Appendix 1'). While I have taken into account everything that has happened in the course of the proceedings as part of an overall assessment of all the circumstances of the case, it is not necessary to describe all the events in detail in order to explain my decision.

4. In summary, the appeal was struck out because Mr Strauss failed to co-operate with the FTT over a period of time to allow it to determine the appeal and, finally, did not comply with an unless order. Although not responsible for every delay, Mr Strauss's conduct of the proceedings has been the main reason why there has not yet been a substantive hearing of the appeal.

5. Appendix 1 contains the lengthy written submissions of the parties in relation to the application for reinstatement and, similarly, it is not necessary for me to deal with every point made in the submissions to explain my conclusion that the appeal should be reinstated. It is important to emphasise at the outset that I have decided to reinstate this appeal by the finest of margins and Mr Strauss must be under no illusion that he is now in the last chance saloon.

BACKGROUND TO THE STRIKE OUT AND REINSTATEMENT APPLICATION

6. On 11 July 2023, the First-tier Tribunal ('FTT') listed this appeal for a case management by video on 15 September. The hearing was intended to deal with two applications by Mr Strauss and agree directions to bring the appeal to a substantive hearing. The two applications were an application dated 6 June 2022 for the striking out and withdrawal of HMRC's 'view of the matter' letter and an application of 2 February 2023 to have HMRC barred from taking further part in the proceedings.

7. On 19 July, Mr Strauss emailed the FTT to say that he had taken a contract in Piura in Peru and was expected to be in Peru on the date of the case management hearing. He asked for the time of the video hearing to be changed to 2:00pm because of the time difference between the UK and Peru. This was subsequently agreed.

8. Between the beginning of August and the case management hearing, Mr Strauss made a number of applications which are set out in Appendix 1 but which do not need to be further described here.

9. The case management hearing took place by video on 15 September and was attended by both Mr Strauss and HMRC. At the conclusion of the hearing, I told both parties that I would

issue draft directions for the parties to comment on. Following the case management hearing, I drafted some directions which were headed "draft/DIRECTIONS" and contained a space for the FTT, having received comments from the parties, to insert a date in Direction 1 from which time would start to run. In fact, the FTT inserted a date and issued the directions on 19 September with a date for compliance as if they were final.

10. Direction 1 was that the parties would send or deliver to the other party and the FTT a new list of documents. On 26 September, HMRC complied with Direction 1. Mr Strauss did not provide any new list of documents or comments on the draft directions.

11. On 28 September, HMRC served five witness statements on the FTT and Mr Strauss. On the same day, the FTT wrote to HMRC, copying in Mr Strauss, saying that the intention was that the Directions were issued in draft to give both parties the chance to comment. If the parties had any comments then they should be provided within seven days of the date of the letter and, in the absence of any comments, the Directions would be deemed to have been issued on 19 September and all time limits would run from that date.

12. On 6 October, the FTT wrote to Mr Strauss saying that he did not appear to have complied with the Directions dated 19 September, which had become final as stated in the FTT's letter of 28 September, and asking whether he wished to continue with his appeal. The following day, Mr Strauss responded. He provided a list of documents and apologised for not having complied with Direction 1 earlier. He said this was due to having spent three weeks in bed and unable to access his emails because of his covid symptoms which were exacerbated during periods of stress.

13. On 7 October, Mr Strauss applied to amend the Directions dated 19 September. Unfortunately, the email was only referred to me on 15 November. I extended time limits in relation to some Directions in order to put the appeal back on track to proceed to a hearing in accordance with the remaining Directions. The FTT issued my new Directions on 15 November.

14. On 20 November, Mr Strauss served his witness statements on HMRC and the FTT.

15. On 4 December, HMRC provided their listing information and provided an estimate for the duration of the hearing of 10 days. On the same day, Mr Strauss provided his listing information and said he could make no comment on HMRC's estimated hearing length. There were other emails between Mr Strauss and HMRC on 4 December but these concerned his complaint about HMRC's conduct and had nothing to do with the appeal.

16. On 5 January 2024, I issued directions which included the following:

> 2. Within 14 days of the date of this letter, the Respondents shall provide to the Tribunal and the Appellant a draft timetable setting out what matters will be dealt with on each of the 10 days (broken into separate periods as necessary) that they say is required for the hearing of this appeal.
>
> 3. As, on enquiry by the Tribunal, it appears that the Government of the Republic of Peru has not given permission for a person to give evidence in tribunal proceedings by video from its territory, the Appellant shall, within 14 days of the date of this letter, provide to the Tribunal and the Respondents the dates in the period 1 April 2024 to 30 November 2024 when he will be available to attend a hearing of up to 10 days in the United Kingdom.

17. Unfortunately, the directions were not issued until 23 January. On 25 January, HMRC responded with a timetable for the hearing in compliance with Direction 2 above.

18. On 2 February, Mr Strauss emailed the FTT. In response to Direction 3, Mr Strauss stated:

> "I am somewhat disappointed as to the approach to such matters by the government of Peru. I would point out that I am not expecting within 2024 or 2025 to be returning to the UK for a period of 10 working days and therefore, in reference to the request for dates in the period 1/4/24 to 30/11/24, I would respond by advising that there are no dates within that period."

19. On 22 February, the FTT emailed Mr Strauss in response to his email:

> "In light of your statement that you will not be returning to the UK for a period of 10 working days within 2024 or 2025 and given that it is not possible for you to give evidence by video from Peru, the only alternative way in which the appeal can proceed to a resolution within a reasonable period of time is on the papers submitted by the parties. There are certain disadvantages to this way of proceeding, namely that you will not have any opportunity to cross-examine any HMRC witness (and HMRC will not be able to cross-examine you). It is also sometimes more difficult to make submissions in writing and the Tribunal Judge will not have any chance to ask you questions to clarify any points. As the burden of proof is on you, the inability to give evidence and ask questions of HMRC about their evidence may place you at a disadvantage. However, the Tribunal will try to ensure that, as far as practicable, you are able to participate fully in the proceedings and your case is given proper consideration."

20. The letter directed both parties to provide any submissions on how the appeal should proceed to each other and to the FTT. HMRC responded to the FTT's letter of 22 February by email on 4 March. HMRC asked the FTT to decide the appeal on the papers and provided their suggested Directions. Mr Strauss responded by email on 6 March. In the email, Mr Strauss said he had no further comment on the timetable for the hearing suggested by HMRC. In relation to how the appeal might proceed, Mr Strauss stated that the FTT could deal with his appeal on the papers but only if the FTT accepted his evidence and allowed his appeal. Mr Strauss stated that "if a Judge, on review of the evidence, comes to a conclusion that they cannot, for whatever reason, accept my evidence as completely true and, in doing so, does not accept that granting the appeals is the appropriate approach, then I consider the only way to proceed, in that eventuality, is for a full hearing to occur …".

21. I considered that Mr Strauss's conditional acceptance in his email of 6 March was, in effect, a refusal to have his appeal dealt with on the papers. If the FTT, having reviewed all the evidence, found against him on all or part of his case then Mr Strauss sought the right to declare the determination on the papers a nullity and have a full hearing, ie a second determination of his appeal. I made the following Unless Order which was issued to the parties on 2 April:

> "It is directed that unless Mr Strauss confirms within 14 days that:
>
> 1. he will attend the Tribunal in London for a 10 day hearing on dates that he may specify between 3 June 2024 and 19 December 2025; or
>
> 2. he consents without any reservation to the appeal being dealt with on the papers; or
>
> 3. provides an alternative practical way to bring the proceedings to a conclusion
>
> then these proceedings WILL be STRUCK OUT without further reference to the parties."

22. On 15 April, Mr Strauss emailed the FTT as follows:

> "I, the appellant confirm receipt of the Tribunal's letter of 2/4/24.
>
> Firstly, apologies to Tribunal, I was hoping to send this email 2 weeks ago, but unfortunately, I was struck down with flu again and have only just got back to my feet.
>
> In reference to that letter, I would advise as follows;
>
> In putting forward my last proposal, all I was trying to do was to cause a quicker resolution to this issue, in accordance with one of the major tenets of Tribunal, that of dealing with matters in a quicker timeframe. I now appreciate that Judge Sinfield has not viewed it as such and acknowledge his viewpoint, his right to come to such a viewpoint, no matter how much I disagree the main contention of it. However, Judge Sinfield should appreciate that the contention behind my proposals was never to delay any matters, as he seems to assume.
>
> In reference to Judge Sinfield's determinations, I would also point out as follows;
>
> Long Covid
>
> I would firstly comment that it is clear, from my recurring symptoms, that I am suffering from a form of Long Covid (Post-COVID syndrome). I am in the process of getting hold of medical confirmation of this and will provide it to Tribunal accordingly, when received.
>
> Therefore, I would add that clearly, Judge Sinfield's determinations are written in ignorance of this fact. The current medical advice regarding sufferers of Long Covid is that they should not travel for more than 4 hours, at a time and then they need a number of days to recover. Even travelling for that time fatigues the sufferer and can cause them to become somewhat incapacitated.
>
> There is also the issue of potentially infecting others.
>
> [Mr Strauss provided a link to a website providing advice for travellers with Covid]
>
> What this means is that I am precluded from travelling from Piura to the UK, in one airline trip as such a trip is in excess of 12 hours and therefore not medically advisable for me. It would be completely counter productive for a date to be set for a hearing, for me to fly to the UK, be extremely ill for potentially months and for that date to become irrelevant because of this and I would point out that is certainly against the tenets of Tribunal, as well as being an unfair burden upon me.
>
> On that basis, I am clearly being put in a massively unfair position by Judge Sinfield's determination and I appreciate that Judge Sinfield may have been unaware of my situation, in making his determination but, in light of the facts, that determination is unfair. On that basis I hereby make an application to have his determination set aside on the basis that it is unfair upon me.
>
> Application 1
>
> That Judge Sinfield's determinations in his letter of 2/4/24 be set aside.
>
> I am happy to have application 1 decided on the papers.
>
> I would further point out that this was, in essence, the reason why I was unwilling to travel to the UK within 2024 and 2025, as requested, it would take so long as to become oppressive upon me and would cause me substantial

financial loss, potentially making me very ill and that would certainly be putting me in an unfair position.

However, I also appreciate the need to get this matter resolved. I have therefore looked into other forms of resolution, as detailed within point 3 of Judge Sinfield's determination.

[Mr Strauss then set out ways in which the FTT might deal with his appeal, all of which, he stated, leave the FTT "no option other than to grant the appeals".]

In addition to this and on the failure of the above applications (which I do not expect to occur, but to show my commitment to resolving this matter), I have also discussed the issue with my employers. I have already had a substantial amount of time off this year with illness, so my employers will not allow me any further time this year (2024). However, they recognize, as do I that this matter needs resolution.

I am in the process of agreeing with them a period, within 2025, that for a period of 2 weeks, that I will take 3 weeks unpaid holiday. My intention is to travel from Piura to either;

Quito

Panama City

Mexico City

USA

and to stay, for 2 weeks in a hotel within that country, if required (which I would comment I am not expecting to require once my application is heard) so as to allow this procedure to conclude via Zoom.

The issue with Piura is that in order to fly anywhere at a relatively low cost and low time one has to travel to Lima or Quito, both of which are 400+ miles away, notwithstanding Lima is travelling South and away from the North, (so the flight times to go anywhere else get longer) and although both flights (to Quito and/or Lima) would be under 4 hours, I would have to then catch a connector to anywhere else and would need time in between to recuperate.

To be utterly frank, one of the reason why I said I would not be travelling to the UK in 2024 and 2025 is the burden of travelling and had this (Tribunal) issue not existed, I would have expected to finalise the works in Piura, which are due to finish June 2026, before travelling anywhere else, as the burden of that travel is onerous upon me, in terms of the affect upon my health. It was my intention, at the conclusion of that contract, to travel to Thailand, mainly by cruise boat I would add, which would be a holiday trip, to take up another project and to allow 3 months for that travel.

However, I too want this matter resolved earlier rather than later, it is like the 'Sword of Damocles' hanging over me and it is taking a substantial health toll upon me. To this end and in order to resolve matters and as Peru will not allow evidence, can Tribunal please confirm with the following authorities, that they will allow evidence to be given from that country;

Ecuador

Panama

Mexico

USA

Once I have this information , I can then progress along a route to get this matter resolved, but I would stress that it would be of assistance to me, if this matter is not resolved by the above applications, (or before June 2026), that any dates are fixed for after June 2026, in order to accommodate the fact that I will have a burden of travel upon me, as detailed above.

I would further point out that I also need confirmation of where this zoom meeting is to be conducted from, (for my part) so that I can agree dates with (1) my employer and (2) my witnesses and will proceed to obtain their confirmation of attendance once Tribunal has confirmed this as the way forward and the relevant country that will allow it.

My view is that this email complies with Judge Sinfield's directions entirely, can Tribunal please confirm that this complies with Judge Sinfield's determinations as stated within Tribunal's letter of 2/4/24."

23. On 17 May 2024, the FTT replied to Mr Strauss, on my instructions, as follows:

"The Tribunal's letter of 2 April stated that, unless you confirmed one of three specified ways to bring the appeal to a conclusion within 14 days, the proceedings would be struck out without further reference to the parties.

The first of the three ways was that you would attend a hearing in London on dates of your choosing between 3 June 2024 and 19 December 2025. In your email, you have provided no such confirmation but have indicated that you are unable to travel to the United Kingdom because you have Long Covid and are precluded from travelling for more than four hours at a time. This is the first time that you have suggested that you might be suffering from Long Covid and you have not provided any medical evidence to support that or to show that you are not well enough to fly to the United Kingdom. The information on the website for which you provided a link is that "flying across continents is possible and safe if you take the necessary precautions." It is not credible that you can know now that you would be unable to travel to the United Kingdom without risk to your health at any point between now and December 2025 when you have not obtained medical advice.

The second of the three ways was that you would consent, without reservation, to the appeal being dealt with on the papers. You have not given your consent free of any reservation. On the contrary, you have proposed a resolution only on the basis that the "Tribunal are prepared to accept my statement of fact (witness statement) as being correct." You then also suggest that in an application that the Tribunal determines your witness statement "as valid and correct" so that the "Tribunal will have no option other than to grant the appeals accordingly". In making the application, you are simply re-stating what you said in your email of 6 March. As the Tribunal said in its letter of 2 April, that was a conditional acceptance which was in effect a refusal to agree to the appeal being dealt with on the papers because your agreement was dependent on the Tribunal allowing your appeal.

Thirdly, if you could or would not provide the confirmations in relation to the first and second points, you were asked to provide an alternative practical way to bring the proceedings to a conclusion. For reasons already given, the proposal that the appeals be dealt with on the papers only on the basis that your evidence is accepted and your appeal is allowed cannot be regarded as a practical way to bring the proceedings to a conclusion. Your final suggestion is that you would travel to one of four countries for the purpose of participating in a video hearing from that country. The only country in the list which permits persons to give evidence in tax proceedings from its territory is the USA. However, you are not offering to travel until an unspecified date in

> 2025 as you state that you cannot obtain leave from your employment in 2024. Further, you ask the Tribunal to delay listing the hearing by video until after June 2026. That is not a practical way forward as it provides no certainty that the hearing by video would take place at any particular time and could leave this appeal (which began in 2015) unresolved for a further two years.
>
> Finally, your email was sent on 22 April which was six days after time limit for replying had expired. In your email, you state that you were "struck down with flu again" but you have provided no details of when you were ill and evidence such as a doctor's sick note. Judge Sinfield does not accept that, even if you had a bad case of flu, you could not have sent a short email to the Tribunal explaining that you were ill and asking for more time to reply.
>
> It is clear that you have not complied with any of the Tribunal's directions in its letter of 2 April and, accordingly, your appeal is now struck out.
>
> You have the right to apply for the proceedings to be reinstated but such an application must be (a) in writing, (b) supported by reasons and include an explanation for the non-compliance and (c) received by the Tribunal within 28 days after the date of release of these Directions. Such applications are not granted automatically and may be the subject of a hearing."

24. The reference to Mr Strauss having responded late on 22 April was an error due to a misunderstanding as his email had, in fact, been sent on 15 April and was thus in time.

25. Mr Strauss applied for his appeal to be reinstated by email on 22 May 2024. The email is reproduced in full in Appendix 1. Unfortunately, this email was not forwarded to me until 1 July. I immediately instructed the FTT to ask HMRC for their submissions on Mr Strauss's application. HMRC provided their notice of objection by email on 17 July 2024. Again, the email is reproduced in full in Appendix 1. Mr Strauss made a further submission by email in reply which is also set out in Appendix 1.

DISCUSSION

26. In *Martland v HMRC* [2018] UKUT 178 (TCC) ('*Martland*'), the Upper Tribunal provided guidance on the correct approach to applications for permission to appeal out of time. However, it is clear from the judgment of the Supreme Court in *BPP Holdings Ltd v HMRC* [2017] UKSC 55 and the decision of the Upper Tribunal in *HMRC v BMW Shipping Agents Ltd* [2021] UKUT 91 (TCC) that the same approach should be applied to applications for proceedings to be reinstated where they have been struck out for failure to comply with a direction.

27. The Upper Tribunal's guidance in *Martland* is summarised at [44] of the decision:

> "When the FTT is considering applications for permission to appeal out of time, therefore, it must be remembered that the starting point is that permission should not be granted unless the FTT is satisfied on balance that it should be. In considering that question, we consider the FTT can usefully follow the three-stage process set out in [*Denton v TH White Ltd* [2014] EWCA Civ 906, [2014] 1 WLR 3926]:
>
> > (1) Establish the length of the delay. If it was very short (which would, in the absence of unusual circumstances, equate to the breach being "neither serious nor significant"), then the FTT 'is unlikely to need to spend much time on the second and third stages' – though this should not be taken to mean that applications can be granted for very short delays without even moving on to a consideration of those stages.
> >
> > (2) The reason (or reasons) why the default occurred should be established.

> (3) The FTT can then move onto its evaluation of 'all the circumstances of the case'. This will involve a balancing exercise which will essentially assess the merits of the reason(s) given for the delay and the prejudice which would be caused to both parties by granting or refusing permission."

28. In applying *Martland* in *Dominic Chappell v the Pensions Regulator* [2019] UKUT 209 (TCC) ('*Chappell*'), the Upper Tribunal held that the FTT should not take the merits of an appellant's case into account when considering an application for reinstatement following striking out for failure to comply with an unless order, unless the appellant has an unanswerable case (see [86] and [93]). The Upper Tribunal also held at [95] that, in assessing the seriousness of the breach of an unless order, the FTT should consider the underlying breach and the failure to carry out the obligation which was imposed by the original direction or rule and extended by the unless order when assessing the seriousness and significance of that breach.

29. In *BMW Shipping Agents*, the UT began its consideration of the application for reinstatement by assessing the seriousness and significance of the appellant company's breach of the FTT's case management directions. That breach consisted of failing to serve a list of documents by the required deadline and then failing to comply with the terms of the "unless" order giving a final chance for compliance. The breach of case management directions continued from 1 September 2017, when the list of documents was due, to 22 November 2017, when the appeal was struck out, a period of more than three months (see [45] of *BMW Shipping Agents*). The UT considered the breach to be serious and significant (see [45]). The UT then considered the reasons why the breach of directions took place. The final stage is to conduct a balancing exercise giving particular weight to the importance of litigation being conducted efficiently and at proportionate cost and of directions and time limits being respected. In *BMW Shipping Agents*, the UT held at [54] and [57] that it was appropriate to include that a consequence of the appeal not being reinstated would be that the appellant will lose the right to contest an appeal involving a large sum of money. It is necessary to consider whether, in all the circumstances, striking out the appeal is disproportionate to the seriousness of the breach.

30. It follows that I will apply the three stage process endorsed by the UT in *Martland* and applied in *BMW Shipping Agents* in considering whether to reinstate Mr Strauss's appeal.

31. The first stage is to consider whether Mr Strauss failed to comply with the Unless Order issued on 2 April 2024 and, if so, the seriousness and significance of that failure to comply. The Unless Order required Mr Strauss to do one of three things that he had repeatedly failed to do previously, namely:

> (1) to confirm that he would attend a 10 day hearing in London on dates of his choosing in the period 3 June to 19 December 2025; or
>
> (2) to confirm that he consented, without any reservation, to the appeal being dealt with on the papers; or
>
> (3) to provide an alternative practical way to bring the proceedings to a conclusion.

32. In his response of 15 April, Mr Strauss did not comply with any of the three parts of the Unless Order. He stated that he was precluded from travelling to the UK and thus did not confirm that he would attend a 10 day hearing in London at any point within the specified period. He also did not consent, without any reservation, to the appeal being dealt with on the papers because his consent was predicated on the FTT having no option but to allow his appeal. Finally, he did not put forward any practical way to bring the appeal to a conclusion. Mr Strauss's response in relation to the third option in the Unless Order was vague and non-specific. He first stated that he was in the process of agreeing a period of leave in 2025 with his employer so that he could travel to Ecuador, Panama, Mexico or the USA to give evidence by video from a hotel. Mr Strauss asked the FTT to confirm that the authorities would allow

him to give evidence by video from those countries. Mr Strauss then asked the FTT to delay listing the video hearing until after June 2026. Mr Strauss's response did not provide a practical way forward as there was no certainty that a hearing by video would take place at any particular time or that the appeal would be resolved before an unspecified date after June 2026. I considered (and remain of the view) that Mr Strauss had not complied with the Unless Order and decided to strike out the appeal.

33. In reaching that decision, I also took into account the history of the proceedings and Mr Strauss's conduct throughout. By Mr Strauss's conduct, I mean in particular his failure to provide any medical evidence to support his assertion that he had Covid (and then later Long Covid) which he relied on to excuse his late compliance with directions and inability to agree a date for a hearing in person in the UK. Mr Strauss first stated that he suffered from Covid on 26 September 2022 in support of his application to postpone a hearing listed for 28 September. He later stated that Covid symptoms confined him to bed for three weeks prior to 7 October 2023 as an explanation for his failure to comply with the Directions dated 19 September when chased by the FTT. In his email of 15 April 2024 in response to the Unless Order, Mr Strauss said that he was precluded from travelling from Peru to the UK because medical advice was that sufferers of Long Covid should not travel for more than 4 hours at a time. Nevertheless, Covid did not prevent Mr Strauss travelling to Peru to take up a contract in or around July 2023.

34. An example of how Mr Strauss behaves in conducting the proceedings is provided by his reply to HMRC's objection to his application for reinstatement. In it, Mr Strauss repeats, at greater length, many of the points made by him in his application. He asks the FTT to clarify or explain certain points "as one of us is wrong in this, so it would be useful to understand whether the respondents are correct in their comment." This way of proceeding is characteristic of the way that Mr Strauss has conducted this litigation by introducing or expanding points and thus delaying consideration of the substantive issues in the appeal. He also deflects progress of proceedings by making applications in relation to ancillary points. For example, in his response to the Unless Order, Mr Strauss made "Application 1 - That Judge Sinfield's determinations in his letter of 2/4/24 be set aside." Despite using the word "determinations" eight times, Mr Strauss nowhere explains what determinations he believed I had made or what "determination" he wanted me to make. That is unsurprising as the Unless Order did not contain any determination and was not concerned with reaching a determination. It simply offered Mr Strauss three options to progress the appeal. If he had chosen any one of them then he would have complied and the appeals could have moved forward.

35. I can only conclude, when looking at the lack of progress over the course of the proceedings, that the delay was, at least in part, a deliberate tactic of Mr Strauss. In his reply to reply to HMRC's objection of 17 July 2024 to his application for reinstatement, Mr Strauss said "there has been no attempt to impede the progress of this case … and we are literally at the point where a hearing can take place." That statement was inconsistent with the fact that Mr Strauss had said that the hearing could only take place in December 2025, some 10 years after the first of the consolidated appeals was filed and the very last two weeks of the period offered for a face to face hearing in London.

36. The second stage is to consider the reason for the failure to comply. Mr Strauss contends that, in his response of 15 April 2024, he did not fail to comply with the Unless Order or, if he did, that failure was remedied in his application for reinstatement on 22 May in which he proposed that the hearing take place between 8 and 19 December 2025 when he would be available to participate in a video hearing from the USA. Mr Strauss says he believed that he had complied with the Unless Order but that cannot be right because his email of 15 April in response did not actually propose a practical way to bring the appeal to a conclusion. At best, it indicated that Mr Strauss was talking to his employer and thinking about how he could attend

a hearing remotely. He asked questions of the FTT in relation to remote hearings but there was no clear proposal to adopt any course of action that would allow the FTT to list a hearing at that point and so further delay was inevitable as Mr Strauss must have known. It only became possible to progress to a listing when Mr Straus provided dates for a hearing in his application for reinstatement but that was after he deadline for responding had expired and could not excuse the original failure to comply.

37. The third stage is to consider all the circumstances of the case, balancing the merits of the reason(s) given for the delay and the prejudice which would be caused to both parties by granting or refusing permission. The UT observed at [45] of *Martland* that the balancing exercise in stage three of the process should take into account the particular importance of the need for litigation to be conducted efficiently and at proportionate cost, and for statutory time limits (or, as in this case, time limits set by Directions) to be respected.

38. As discussed above, Mr Strauss maintained that he had complied with the Unless Order and did not put forward any reasons for not complying. He did make the point in his application that he was representing himself and did not have extensive knowledge and understanding of how the FTT works. I acknowledge that Mr Strauss was unrepresented but, as HMRC observe, the Unless Order was perfectly clear and compliance with any one of the options did not require legal knowledge. In any event, it seems to me that Mr Strauss was being unduly modest when he stated that he did not understand how the FTT worked. In the course of the proceedings, Mr Strauss has made numerous applications which showed a thorough familiarity with the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 ('FTT Rules'). At different times, he has applied to strike out part of HMRC's case for failure to comply with relying on the time for service provisions in rule 12, to have HMRC barred from taking further part in the proceedings under rule 8, and to have directions of the FTT set aside under rule 38. It is, in my view, clear that it was not lack of knowledge of the FTT Rules that prevented Mr Strauss from complying with the Unless Order.

39. I accept that Mr Strauss will be prejudiced by not being able to pursue his appeal against the assessments and penalties. The amount at stake is some £3 million which is, on any view, substantial for an individual such as Mr Strauss. The fact that a substantial amount is involved will not carry much weight where the appellant has failed to comply with a rule or direction. It cannot be the case that proceedings must be reinstated simply because the striking out has adverse financial consequences for the appellant or that would render the vast majority of strike outs nugatory. However, I consider that the amount at stake is a factor to be taken into account when considering whether it striking out the appeal would be disproportionate in all the circumstances.

40. I also acknowledge that Mr Strauss has now agreed dates for a video hearing (albeit the latest possible dates in the period suggested for a face to face hearing). In view of the history of these proceedings, Mr Strauss must understand that a failure to attend and participate in that hearing, for whatever reason, will not prevent the FTT determining the appeal on such evidence as is available.

41. HMRC contend that they have incurred considerable costs already and anticipate that further costs would be incurred between now and December 2025 if the appeal were to be reinstated. They also point out that the more time that passes, the further back witnesses for both parties will have to recall, and the less reliable their memories and their testimony will be. While I accept these are relevant considerations, I consider that the impact of fading recollections of witness will be mitigated by the fact that their witness statements have been completed and served. The impact on HMRC of the further costs that will accrue is proportionately less than the impact on Mr Strauss of being denied the chance to appeal and

having to pay the tax and penalties at stake. On balance, I conclude that prejudice that would be caused to Mr Strauss if I were to refuse to reinstate the appeal outweighs the prejudice to HMRC as a result of reinstating the appeal.

DECISION

42. For the reasons set out above, I grant Mr Strauss's application and reinstate his appeal.

FURTHER DIRECTIONS

43. Having reinstated the appeal, I make the Directions in Appendix 2 to this Decision.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

44. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the FTT Rules. 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.

RELEASE DATE: 31ST JANAURY 2025

APPENDIX 1
HISTORY OF PROCEEDINGS AND SUBMISSIONS ON APPLICATION TO REINSTATE

Filing of Appeals

1. On 22 October 2015, Mr Strauss filed appeals against HMRC's decision to issue income tax discovery assessments and closure notices for the years of assessment ended 5 April 1998 to 5 April 2014 (TC/2015/06427). Attached to the notice of appeal was a copy of the Respondents' statutory review letter dated 24 September 2015. On the same day, he filed an appeal against HMRC's decision to issue a VAT assessment for periods 05/95 to 11 July 2008 (TC/2015/06658). Attached to the notice of appeal was a copy of the Respondents' statutory review letter dated 24 September 2015.

2. On 20 July 2016, Mr Strauss filed two appeals. The first (TC/2016/04098) was stated in the grounds of appeal to be "against the improper registration of me personally for VAT" but Mr Strauss attached copy correspondence relating to income tax penalty assessments for the years ended 5 April 1998 to 5 April 2014. The second appeal (TC/2016/04100) was against penalties for the income tax years ended 5 April 1998 to 5 April 2014 inclusive, reference. Attached to the notice of appeal was copy correspondence relating to income tax penalties but the notice of appeal stated that "…this is an ongoing appeal already in progress and is in reference to additional penalties in respect of that ongoing appeal which is yet to be heard".

3. In directions dated 16 August 2016, the FTT directed that all 4 appeals were to be consolidated under appeal reference TC/2015/06427, also, HMRC were directed to provide a combined Statement of Case ('SOC') addressing all appeals. The FTT referred to appeals referenced TC/2016/04098 and TC/2016/04100 as being appeals against 'various penalty determinations'.

4. On 30 August 2016, HMRC made an application to the FTT for the proceedings to be stayed, pending clarification by Mr Strauss of the matters under appeal.

5. On 05 September 2016, HMRC issued penalties with regard to the compulsory VAT registration.

6. On 08 October 2016, the FTT wrote to Mr Strauss asking him to confirm what he believed to be under appeal for the appeal originally referenced TC/2016/04098. The FTT asked Mr Strauss to provide representations on HMRC's letter dated 30 August 2016.

7. On 04 January 2017, the FTT wrote to the parties explaining certain matters required clarification, specifically which decisions Mr Strauss had appealed against and whether such appeals were made in time. The FTT asked the parties to provide dates to avoid for a half day hearing in London between 1-30 April 2017. Due to a combination of ill health and holiday plans of Mr Strauss, the case management hearing could not be arranged before September 2017. On 13 March 2017, the FTT set down a case management hearing to take place on 4 September 2017.

Preliminary Hearing – 4 September 2017

8. On 22 August 2017, David Nathan of Strauss Phillips & Co on behalf of Mr Strauss wrote to the FTT asking for the hearing to be postponed because Mr Strauss was ill. No medical certificate was provided.

9. On 30 August 2017, the FTT postponed the hearing due to take place on 4 September after it had considered whether a telephone hearing could be arranged. The FTT directed Mr Strauss to provide a written statement to the FTT and HMRC setting out precisely which decisions of HMRC he was seeking to appeal and why he considered the appeals were made in time.

10. Mr Strauss responded on 6 September 2017. He said he had appealed all income tax assessments (including closure notices), income tax penalty determinations and VAT assessments to the FTT, and these had been filed on time. He confirmed that it was his intention to appeal the mandatory VAT registration. No appeals had been made against the VAT penalties.

11. On 22 September 2017, the FTT directed HMRC to file a statement of case within 56 days. Following an application for an extension of time by HMRC, the deadline for submission of the statement of case was extended to 29 November 2017. HMRC filed their statement of case on 29 November 2017 at 17:14pm, which was 14 minutes late (see rule 12 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 ('FTT Rules')).

12. On 8 December 2017, Mr Strauss made an application asking the Tribunal to strike out HMRC's statement of case on the basis that HMRC had not complied with rule 12 of the FTT Rules resulting in the FTT being unable to deal with his appeal fairly and justly.

13. On 20 December 2017, HMRC wrote to the Tribunal objecting to the application.

14. On 22 December 2017, Mr Strauss provided further submissions in relation to his application to strike out HMRC's statement of case.

15. HMRC filed their list of documents on 11 January 2018. Mr Strauss filed his list of documents, running to seven un-particularised items, on the same day.

16. On 11 January 2018, Mr Strauss made a further application to the FTT asking the Tribunal to strike out HMRC's list of documents. He confirmed this application was made for the same reasons as his application to strike out HMRC's statement of case.

17. On 20 February 2018, the Tribunal listed the applications for hearing on 23 April 2018.

Case Management Hearing on 23 April 2018

18. On 23 April 2018, a case management hearing was held in order to hear the applications made by Mr Strauss. HMRC attended in person and Mr Strauss attended by telephone. The hearing ended prematurely when the telephone line ceased to operate. Later the same day, Mr Strauss emailed the FTT to explain that he had been on a telephone call with the FTT and HMRC when the line went dead and the asked for the call to be renewed.

19. On 24 April 2018, Mr Strauss sent an email to the FTT to ask for the matter to be transferred to the European Court of Human Rights. In that email, Mr Strauss said that he could not properly defend the position. He explained that:

(1) for the year 2002/03 to the year 2013/14 (February 2003 to October 2013), he was not in the UK and was not actually responsible for the income derived;

(2) for the years 2013/14 and 2014/15, he was not in the UK but records still existed through a UK company which was still in existence;

(3) the income derived was the responsibility of another party – a limited company based in Greece, which had made proper representations to the relevant tax authority, and the income was not applicable to him;

(4) that company had been put into liquidation in early 2017 and the evidence that he required in order to progress the appeals was no longer available to him;

(5) the documentation relating to the income did not belong to him and therefore under the Taxes Management Act 1970 and existing case law, he was not required to keep it as it was not under his control and ownership;

(6) the time taken by HMRC to deal with outstanding matters had been time-sensitive in this respect; and

(7) he had not been able to know HMRC's case against him until HMRC served their statement of case in November 2017.

20. On 24 April 2017, the FTT responded as follows to Mr Strauss's request to have the hearing reconvened:

> "It appeared to the Judge that, at about 12:30, as [Mr Strauss] was concluding his Reply, he either accidentally left the conference call or that there was a problem with the line. The Judge waited five minutes for [Mr Strauss] to dial back into the hearing using his participant details. As [Mr Strauss] did not dial back within this period, the Judge ended the hearing.
>
> The Judge has considered [Mr Strauss's] email of 13:03 seeking to have the oral hearing reconvened. However, the Judge notes that the hearing had proceeded for two hours, and that [Mr Strauss] had been making his submissions for all but five minutes of that time. [Mr Strauss] was apparently concluding his Reply when the conference call terminated. Although [Mr Strauss] states that his representations were still continuing, [Mr Strauss's] Reply should be his response to the submissions made by the Respondents in the five minutes during which Ms Roberts spoke.
>
> In the circumstances the Judge considers it unlikely that [Mr Strauss] could have a new submission which had not already been made. Nevertheless, in case there is such a point - that is to say a fresh response to the Respondents' submissions which had not already been made - the Judge directs that [Mr Strauss] has until 5 p.m. on Tuesday 1 May 2018 to put that new submission in writing and send that to the Tribunal, copied to the Respondents. Points already made during the hearing or in the written submissions made in advance of the hearing have been noted and should not be reiterated.
>
> The oral hearing will not be convened.
>
> The Judge will make her decision after receipt of [Mr Strauss's] fresh submission, or after 1 May 2018 if no fresh submission is received."

21. On 25 April 2018, Mr Strauss sent an email to the FTT in response to its email the previous day. In his email, Mr Strauss said that he was in the process of summing up when the telephone line was cut for a reason he did not know and that he had tried to contact the hearing again but had not been successful. Mr Strauss went on to refer to HMRC's delays and non-co-operation with the FTT, including in particular, a breach by HMRC of rule 8(3)(b) of the FTT Rules, which he said that he had raised at the hearing itself. Mr Strauss also referred to HMRC's delay in dealing with his hardship application – his appeals had been submitted on 23 October 2015 but hardship had not been granted until 11 June 2016. He concluded by saying that HMRC had put him in a position where he could not be dealt with justly and fairly by the FTT.

22. On 28 April 2018, Mr Strauss made further representations to the FTT. He referred to delays in the procedure itself and cited the "Law of Natural Justice". He said that he was entitled to be treated fairly and equitably and he invited the FTT to strike out HMRC's statement of case and to grant his appeals.

23. In a 42 page decision released on 22 May 2018, Judge Jane Bailey refused Mr Strauss's applications to have HMRC barred from proceedings. The Judge found that the appeal made by Mr Strauss against HMRC's decision to compulsorily register him for VAT filed under

reference TC/2016/04098 was not properly constituted, also, the consolidated appeal did not include an appeal against the penalty determinations issued by HMRC in September 2016.

24. In the decision, Judge Bailey commented that:

> "The greatest single contribution to the overall delay in these proceedings had been the failure of Mr Strauss to provide clarification of what he understood to be under appeal".

25. She also said that Mr Strauss should attend hearings in person unless there was a good reason not to do so and that, while ill-health might be a good reason, any application to attend by telephone for that reason should be supported by medical evidence and should be made in good time before the hearing and would not be granted automatically.

26. Judge Bailey also issued case management directions on 22 May 2018 which included the following:

(1) Direction 1, which stipulated that, by no later than 14 days from the date of the directions, Mr Strauss was required to send or deliver to the FTT certain documents – namely, a document stating his address and his grounds of appeal against HMRC's decision compulsorily to register him for VAT and a copy of that decision – or provide written confirmation that he no longer wished to pursue that appeal;

(2) Direction 2, which stipulated that, by no later than 14 days from the date of the directions, Mr Strauss was required to send to the FTT either (i) a copy of two notices of appeal against VAT penalty determinations which he claimed to have sent to the FTT previously, together with an acknowledgement of those notices by the FTT, or (ii) new appeals against those penalty determinations or (iii) written confirmation that he no longer wished to pursue those appeals;

(3) Direction 4, which stipulated that, by no later than 3 August 2018, Mr Strauss was required to send to the FTT and HMRC a list of documents on which he intended to rely at the substantive hearing and send to HMRC a copy of any document on that list which had not already been provided to them, and confirm to the FTT that he done so;

(4) Direction 6, which stipulated that, by no later than 31 August 2018, each party was required to deliver its witness statements to the other party and notify the FTT that it had done so; and

(5) Direction 7, which stipulated that, by no later than 7 September 2018, each party was required to send to the FTT and the other party certain information in relation to the substantive hearing such as the expected number of attendees, the names of all witnesses, the anticipated duration of the hearing and dates to avoid.

Application for permission to appeal to the Upper Tribunal

27. On 17 July 2018, Mr Strauss made an application for permission to appeal to the Upper Tribunal against the FTT's decision of 22 May 2018. The FTT refused permission in a decision dated 15 August 2018.

Compliance with Directions of 22 May 2018

28. On 31 August 2018, HMRC filed witness statements from various HMRC Officers.

29. On 6 September 2018, HMRC filed their listing information to enable the consolidated appeal to be listed for hearing.

30. On 15 September 2018, the FTT wrote to Mr Strauss noting that he had failed to comply with several of the Directions released on 22 May 2018, namely Direction 1 (compulsory VAT registration decision), Direction 2 (lodging appeals against penalty assessments), Direction 4

(list of documents), Direction 6 (provision of witness statement) and Direction 7 (provision of listing information). The FTT directed Mr Strauss to respond within 14 days and stated:

> "if nothing is heard within 14 days, it is likely that a judge will issue an order which may lead to the striking out of the proceedings."

31. On 18 September 2018, HMRC applied to the FTT for the time for them to produce and serve the hearing bundle to be extended until after Mr Strauss had complied the outstanding directions.

32. On 26 September 2018, Mr Strauss made an application in which, amongst other things:

(1) he apologised for the delays which had occurred in the provision of information which had been required by the directions of 22 May 2018 and said that "this was mainly due to a severe illness suffered by the Appellant over the past 6 months, during which time the Appellant was in no state to deal with this matter";

(2) he provided certain information;

(3) he stated in relation to his outstanding witness statement that "[it] is expected to be finalised and issued with [sic] 28 days of this application";

(4) he asked for an extension of time in order to comply with those directions in respect of which he had not yet complied;

(5) he asked for "all determinations issued" by HMRC to be struck out on the basis that they had been issued out of time;

(6) he stated his belief that a proper appeal had now been submitted in relation to the compulsory registration for VAT;

(7) he notified the FTT that he was expecting to undergo a procedure in early March and would be unable to travel for 8 weeks after that date and that the 8-week period might need to be extended; and

(8) he provided his dates to avoid for the hearing but the dates when he was available all coincided with the dates which HMRC had previously notified the FTT that they were not available for and which had been already notified to Mr Strauss.

Unless Order 2018

33. On 10 October 2018, the FTT sent a letter to the parties which made the following comments and directions:

(1) Mr Strauss had made no attempt to comply with Directions 1 and 2 of the Directions of 22 May 2018 – compliance with which was required on or before 5 June 2018 – until September 2018;

(2) Mr Strauss had given ill-health as the reason for his non-compliance but had not explained the nature of, or evidenced, his ill-health and that his ill-health had not prevented him from filing his application for permission to appeal on 17 July 2018;

(3) Mr Strauss had not yet complied with Direction 1(a) or Direction 2, or taken steps to comply with Direction 1(b);

(4) HMRC were not out of time to comply with Direction 3 as the non-compliance by Mr Strauss with the above Directions meant that time had not yet started to run in relation to that Direction;

(5) Given Mr Strauss's failure to comply with Directions 1 and 2, "compliance with directions 4-9 is suspended for the time being" and the FTT had been wrong in its letter of 15 September 2018 to require compliance with Directions 4, 6 and 7; and

(6) unless Mr Strauss complied with Direction 1(a), and took steps to comply with Direction 1(b), by 24 October 2018, his appeal against the compulsory VAT registration would be struck out and, unless Mr Strauss complied with Direction 2 by 24 October 2018, the FTT would not accept that the various appeals lodged by him included an appeal against HMRC's decision of 6 September 2016, with the result that Mr Strauss would be able to pursue such appeal only by lodging a new notice of appeal with an application for permission to appeal out of time, which application would be unlikely to succeed.

34. On 10 October 2018, and in response to the unless order issued by the Tribunal earlier that day, Mr Strauss provided details of his grounds of appeal against HMRC's decision to compulsorily register him for VAT. He also made an application for permission to appeal the decision by HMRC dated 6 September 2016 (in fact the decision of 5 September 2016 imposing penalties in relation to VAT registration).

35. On 12 October 2018, Mr Strauss made further representations to the FTT which included the following:

(1) that he had assumed that, when he had applied for permission to appeal the decision of Judge Bailey of 22 May 2018, that application "would automatically set aside the directions awaiting the outcome of the appeal";

(2) as regards the comments made in relation to his ill-health, he explained in detail the nature of his ill-health and said that he "would in future be more informative as to illness issues" and that he had managed to submit his application for permission to appeal despite being bedridden and unwell only by "a major amount of willpower" because the application was so time-sensitive;

(3) that, in his view, HMRC had been insufficiently forthcoming in relation to the nature of their case against him and that the "Law of Natural Justice" and human rights law meant that he was entitled to know their case before outlining his own; and

(4) that he was appealing against the decision to refuse his application made on 17 July 2018.

36. The FTT wrote to the parties on 30 October 2018. In the letter, the FTT said that:

(1) it was prepared to accept that Mr Strauss had now provided a copy of the VAT registration against which he had appealed and that he had attempted to provide the grounds of appeal;

(2) although one of those grounds was unsatisfactorily expressed, it was prepared to overlook its doubts on that score as long as HMRC did not object and therefore to allow the appeal against the compulsory VAT registration to proceed;

(3) it noted that Mr Strauss now appeared to accept that he needed to lodge applications with the FTT to be allowed to appeal the VAT penalties out of time;

(4) it rejected Mr Strauss's application to appeal against the VAT penalty determinations out of time – it did so on the basis that the application was inadequate as it did not enclose copies of the determinations dated 5 September 2016 against which Mr Strauss was appealing, it did not explain his grounds of appeal and it did not explain why the appeal had been made late;

(5) it pointed out that, if Mr Strauss wished to lodge another application to appeal out of time against the VAT penalty determinations, he should rectify the omissions set out above and ensure that his application had a cross-reference to the appeal numbers for the existing proceedings;

(6) it directed that, unless either party objected within 14 days, the appeals which were currently outstanding (and which it set out) would be consolidated;

(7) it directed HMRC to comply with Direction 3 in the Directions of 22 May 2018 within 14 days and suggested that they might wish to amend their statement of case to deal with recent changes to the outstanding appeals;

(8) it directed, amongst other things, that:

(a) both parties should comply with Directions 4 and 5 of the Directions by no later than 4 weeks after HMRC had complied with Direction 3; and

(b) both parties should comply with Direction 6 of the Directions by no later than 8 weeks after HMRC had complied with Direction 3;

(9) it said that it did not accept that the evidence which had hitherto been provided by Mr Strauss in relation to his ill-health served to justify his earlier failure to comply with the Directions because no medical evidence had been produced despite the suggestion from the FTT that it should be produced and was inconsistent with Mr Strauss's ability to file his permission to appeal application during the period in question and stated

> "This may count against the Appellant if there are further failures of compliance and the Appellant is on notice that he should comply with all tribunal directions no later than the due date. Further lenience on this may not be granted"; and

(10) it said that it interpreted Mr Strauss's letter of 12 October 2018 as containing an application to appeal against the refusal of his application for summary judgment in his favour in respect of all his appeals and it refused permission to appeal on the basis that Mr Strauss had not provided any arguments to suggest that there was an arguable error of law in that decision.

37. On 12 November 2018, HMRC filed an amended statement of case. On the same day, Mr Strauss wrote to the Tribunal about his appeals against the VAT penalty assessments and the reasons for appealing late. In addition, Mr Strauss said that he noted the comments which had been made in the FTT's letter of 30 October 2018 and took them "on board".

38. On 4 December 2018, the FTT wrote to the parties acknowledging that Mr Strauss had now provided both his grounds of appeal against the VAT penalties issued on 5 September 2016 and his application to have the appeals admitted late. HMRC did not object to the application

39. On 10 December 2018, HMRC filed their list of documents.

40. On 11 December 2018, Mr Strauss wrote to the FTT to ask for additional time to obtain documents and for permission to amend the list of documents he had already provided. The reason he gave was that the information in question was held by an overseas company which had by then ceased to trade and was in liquidation.

41. On 17 December 2018, HMRC filed a re-amended statement of case which included their submissions on the appeals against the VAT penalties.

42. On 7 January 2019, HMRC filed an amended witness statement from one of their officers.

43. On 8 January 2019, HMRC filed its updated listing information.

44. On 10 January 2019, the FTT wrote to the parties saying that it had disallowed the application made by Mr Strauss on 11 December 2018 which it interpreted as an application for the appeal to be stayed indefinitely while he sought further evidence. In that regard, the FTT pointed out that Mr Strauss's application did not provide concrete information in relation to a number of matters and commented that "it is in the interests of justice not to further delay this much delayed appeal". However, it went on to state that, if Mr Strauss were to address the shortcomings in the information provided, then it would consider a renewed application for a stay. The FTT allowed HMRC's application to amend its Statement of Case dated 17 December 2018 on the basis the amendments were made to accommodate Mr Strauss's late appeal against the VAT registration penalties. The FTT directed that witness statements were due 14 days from the date of the letter and listing information was due 28 days after the date of the letter.

45. On 18 February 2019, HMRC made an application to the FTT seeking an extension of time for serving the bundles until either Mr Strauss had complied with all previous directions or until a new date set by the FTT.

46. On 20 February 2019, Mr Strauss applied to the FTT for an additional nine months to obtain documents and to amend the list of documents already provided. He asked for the application to be dealt with at a hearing. Mr Strauss also maintained that, on the same day, he sent a separate email to the FTT and HMRC with his witness statement attached. Neither the FTT nor HMRC had any record of ever having received the witness statement at that time. However, at the hearing of his reinstatement application on 13 February 2020, the FTT accepted that Mr Straus had sent that email and the FTT and HMRC had received the witness statement (see [57] below).

Unless Order 2019 and strike out of appeal

47. On 1 March 2019, the FTT refused Mr Strauss's application of 20 February. At the same time, the FTT issued an unless order requiring Mr Strauss to serve his witness statement by no later than 5pm on 15 March 2019 otherwise the proceedings may be struck out.

48. No witness statement having been received from Mr Strauss, the FTT struck out the proceedings on 10 May 2019 stating that:

> (1) Mr Strauss had failed to submit his witness statement despite the terms of the unless order made on 1 March 2019;
>
> (2) he had not written to the FTT to explain why he had failed to do so or provided any response whatsoever to the FTT in respect of the unless order; and
>
> (3) in any event, the FTT (Judge Mosedale) had concerns about Mr Strauss's intentions to progress this appeal,

and taking into account the fact that true justice required procedural justice and the importance to the process of the parties' obeying directions, the proceedings were thereby struck out.

First application for reinstatement

49. On 5 June 2019, Mr Strauss made an application to the FTT for his appeal to be re-instated. He submitted that he had filed his witness statement on 20 February 2019 at the same time as he had filed his application for additional time. He also said that he had never received the directions dated 1 March 2019 because:

(1) as he had previously informed the FTT and HMRC, he underwent a procedure in early March and therefore was too ill to attend to his emails for a little over eight weeks after that; and

(2) over this same period, his email programme failed.

50. On 3 July 2019, HMRC lodged an objection to the application and, on the same day, Mr Strauss made further submissions to the FTT in support of the appeal being reinstated.

51. On 27 August 2019, the FTT wrote to the parties advising the application for reinstatement had been listed for a full day's hearing on 13 February 2020.

52. On or around 6 February 2020, Mr Strauss made an oral application to be able to attend the reinstatement hearing by telephone. On the same day, the FTT wrote to Mr Strauss to say it would assist if he could provide written advice from his doctor to support his application.

53. On 7 February 2020, Mr Strauss emailed the FTT to ask if he could avoid providing medical evidence because it would be expensive to obtain the written advice, he was not in the best of health, flying all the way from Thailand for such a brief hearing made little sense and there was, in any event, a concern about the spread of the corona virus at that time.

54. On 10 February 2020, the FTT sent an email to Mr Strauss asking him to state when he had decided not to attend the hearing in person and what arrangements he had made for travel before deciding not to attend in person, with evidence, for example, of air tickets. The FTT explained that its questions were borne out of a concern that Mr Strauss's decision not to attend the hearing in person was not a recent one. The email went on to say that, without the written doctor's advice, the inference may be drawn that Mr Strauss was not too ill to travel and therefore his application might be dismissed. On the same day, Mr Strauss emailed the FTT to confirm that he had received the relevant medical advice in the previous week, just before he made the application to be allowed to attend the hearing by telephone and reiterating the difficulties with flying from Thailand to attend the hearing. Mr Strauss confirmed that he had not bought any air tickets before receiving that medical advice and that, as he had been able to participate by telephone in the last hearing in relation to the appeal, he was asking for it again and saw no reason why HMRC should object.

55. On 11 February 2020, the FTT granted Mr Strauss's application to attend the hearing by telephone. On the same day, Mr Strauss provided additional submissions in relation to his reinstatement application.

Reinstatement hearing on 13 February 2020

56. The application to have the appeal reinstated was heard by Judge Beare. Mr Strauss attended the hearing by telephone, HMRC attended in person.

57. In his decision released on 21 February 2020, Judge Beare concluded, on the balance of probabilities, that notwithstanding the fact that neither the FTT nor HMRC had received Mr Strauss's email of 20 February 2019 with his witness statement attached, Mr Straus had sent that email and so the FTT and HMRC had received the witness statement before the unless order of 1 March 2019 was made. Judge Beare reinstated the appeal but stated:

> "… in my view, [Mr Strauss] is somewhat fortunate to have prevailed in relation to this application. The reason why I have spent no little time in setting out what my conclusions in relation to the application would have been in the absence of the events which occurred on 20 February 2019 is that I want to make it clear to [Mr Strauss] that there is now no room for tolerance in relation to any further failures on his part to comply with the directions and instructions of the First-tier Tribunal."

58. Judge Beare also said that, given the length of time which has passed since the appeals were first made, it was imperative that the substantive issues in the appeals were addressed as soon as possible and without further delay.

59. Unfortunately, due to a clerical error, Judge Beare's decision was treated as a final substantive decision and the file was closed by the FTT and marked for destruction. On 29 October 2020, HMRC contacted the FTT and asked for the directions which Judge Beare had indicated would be issued. The FTT explained that the file had been closed. HMRC replied on 9 November but the FTT did not provide any response.

60. HMRC emailed the FTT again on 26 February 2021. On 10 March 2021, the FTT replied saying that it would retrieve the file and issue directions in due course.

Listing of substantive hearing in 2021 and ADR

61. On 1 April 2021, the FTT issued further case management directions to bring the appeal to a substantive hearing. As envisaged by the directions, on 12 May 2021 the FTT notified the parties that a hearing had been listed to take place from 2-13 May 2022.

62. The parties subsequently engaged in discussions via HMRC's Alternative Dispute Resolution ('ADR') process. Although no resolution was achieved, Mr Strauss agreed to provide further documentation to HMRC and did so by email on 18 March and 8 April 2022.

63. On 13 April 2022, HMRC applied to the FTT for the hearing to be postponed on the ground that they needed time to consider the documents provided by Mr Strauss. Mr Strauss consented to the application and, on 22 April 2022, the FTT confirmed that the hearing listed for 2-13 May had been postponed.

FTT's Directions of 22 April 2022

64. The FTT made directions on 22 April 2022 which included the following:

> (1) Direction 3: Not later than 17 June 2022, the parties shall make any applications to the Tribunal for permission to file additional or amended witness statements that they consider to be appropriate.
>
> (2) Direction 4: Not later than 17 June 2022, the parties shall provide to the Tribunal and each other their listing information for a listing period from 1 July 2022 to 31 October 2022.
>
> (3) Direction 5: HMRC shall provide to the Appellant and the Tribunal an electronic document bundle including all the documents on which the parties intend to rely and witness statements not later than 30 days before the re-scheduled hearing date.

65. In compliance with Direction 1, Mr Strauss provided further evidence by email on 13 May 2022.

66. On 27 May 2022, in compliance with Direction 2, HMRC wrote to Mr Strauss setting out their 'view of the matter'.

Mr Strauss's application of 6 June 2022

67. On 6 June 2022, Mr Strauss applied to the FTT for HMRC's 'view of the matter' document to be struck out on the ground that it questioned his evidence and was an abuse of procedure. Mr Strauss asked for the application to be dealt with at a full hearing and for all directions to be postponed until after the matter had been properly considered. HMRC objected to the application in a letter to the FTT on 7 June 2022. On 8 June, Mr Strauss sent a three page email in response to HMRC's email.

68. On 14 June 2022, the FTT asked the parties to provide listing information by 28 June for an applications video hearing. The following day, HMRC applied for the directions dated 22 April 2022 which had yet to be complied with to be stayed or set aside. On 17 June 2022, the FTT confirmed that the directions were stayed pending the outcome of the applications hearing.

Case management hearing – 28 September 2022

69. On 05 July 2022, the FTT told the parties that there would be a case management hearing by video on 28 September.

70. On 15 September 2022, HMRC filed their skeleton argument and, on the same day, Mr Strauss told the FTT in an email that his skeleton argument was "contained within the relevant application notification already submitted".

71. On 26 September 2022, Mr Strauss emailed the FTT applying for the hearing on 28 September to be postponed as he was suffering from Covid with "a high temperature, headaches, bad coughing episodes and other symptoms" and did not feel well enough to attend the hearing. HMRC responded later that day suggesting three different ways that the matter could be dealt with in the absence of Mr Strauss to avoid further delay.

72. On 27 September 2022, the FTT wrote to the parties cancelling the next day's hearing and directing the parties to provide their available dates for the next three months within 14 days.

Availability of the parties for hearing in 2022 and 2023

73. The parties were not able to find any dates when they were both available in the period October to December 2022.

74. On 1 November 2022, the FTT wrote to the parties asking them to provide details of their availability in the period from 1 January to 28 April 2023 within the next ten days. Again, no mutually convenient dates could be found.

75. No mutually convenient dates having been provided by the parties, on 17 November 2022, the FTT directed the parties, within 14 days, to:

> "… to agree and inform the Tribunal within the next 14 days of their earliest next 3 mutually convenient dates for the hearing to be re-listed. If the parties are unable to agree dates, they should send to the Tribunal (and copy to each other) within the next 14 days their updated availability, along with their detailed representations regarding the attempts made to agree dates, any alternative arrangements proposed and their position regarding the outstanding matters being determined on the papers without a hearing."

76. Mr Strauss wrote to HMRC on 21 November 2022, copying in the FTT, asking HMRC to supply details of all available dates for the period 01 May 2023 to 31 December 2023, so that "I can ensure that suitable dates are provided to [the FTT] in order to have the hearing required".

77. HMRC emailed Mr Strauss on 24 November 2022 asking him to provide any date(s) he had free in the period from 1 May 2023 to 30 June 2023. HMRC confirmed it would have a litigator ready to attend on any of the dates he was free.

78. Mr Strauss responded, asking HMRC to provide the information [the FTT] had requested. HMRC replied, confirming it had availability for all the period from 1 May 2023 to 30 June 2023. HMRC invited Mr Strauss to provide any date(s) he had free in the period from 1 May 2023 to 30 June 2023.

79. Mr Strauss emailed HMRC on 29 November 2022 advising that he did not think he had any available dates from 1 May 2023 to 30 June 2023. He asked HMRC to provide their

available dates from 1 July 2023 to 31 December 2023 "so that I can inform the Tribunal of the 3 dates they require".

80. HMRC wrote to the FTT on 30 November 2022. HMRC said that the parties had been unable to reach agreement regarding a listing date. HMRC invited the FTT to determine the application on the papers. The letter was copied to Mr Strauss.

81. On 2 December 2022, Mr Strauss wrote to the FTT, copying in HMRC. The email included the following:

> "In reference to the respondent's letter of 30/11/22, the appellant is somewhat confused and concerned with the respondent's letter as it seems that they are attempting to represent something which is untrue.
>
> The appellant is quite prepared to agree a date with the respondents and the appellant does not consider any impasse exists. The appellant wrote to the respondents on 21/11/22 (ie 10 days ago) asking the respondents to provide details of all available dates from 1/5/23 to 31/12/23, so as to put the appellant in a position to advise Tribunal of the 3 appropriate dates to select.
>
> Since that date, the respondents have prevaricated and refused to properly respond.
>
> …
>
> The appellant would also point out that, in respect of this hearing, the appellant is preparing further paperwork for submission and therefore, the appellant's full case has yet to be presented. Due to the poor manner by which HMRC themselves have provided the information that supports the assessments, in respect of these issues, the appellant is having to define what HMRC's position actually is before then defining what is wrong with that position. The [FTT] should note that, in respect of this matter alone, this comment is not a criticism of the representations made by Mrs Roberts, acting on behalf of HMRC, who was given the information to represent and has represented it as it was given (which is her function) but rather a criticism of the original Inspectors who were acting at the time the original assessments were issued and whose original representations were poorly constituted, with the original representation being utterly confusing and lacking any kind of proper representation and subsequent representations still not being represented in a proper fashion and only being supplied 5 years after the original assessments had been issued and 3 years after the original appeals had been made.
>
> Due to this, the appellant is in constant process of understanding those representations, in order to put themselves in a position to properly appreciate what those original assessments represented and to be able to counter those original representations and show them as incorrect. The appellant would add that this has proved to be a long winded and time consuming process, which is still ongoing and so the appellant is having to formulate the respondent's position in order to present evidence to [the FTT], which shows that position to be incorrect.
>
> The appellant therefore considers that, as it stands and until that additional paperwork is provided to [the FTT], the matter cannot currently be considered on the papers held by [the FTT].
>
> …
>
> Therefore, the appellant would advise [the FTT] that, in its current state, the application cannot be properly considered by reference to the papers already held by [FTT] as not all the evidence has been supplied and not all the

> pleadings have been made. The alternate to this, in respect of the VOTM is that the application is granted on the basis that the respondent's agree with the appellant's position stated as of 15/9/22."

82. On 23 January 2023, the FTT wrote to HMRC asking for their response to Mr Strauss's email of 2 December 2022 within 14 days. HMRC responded by email on 26 January 2023. HMRC explained that they did not accept any of the assertions made by Mr Strauss and had nothing to add to their letter of 30 November 2022. HMRC asked the FTT to reissue directions 3, 4 and 5 of its directions released on 22 April 2022.

Mr Strauss's application of 2 February 2023

83. On 2 February 2023, Mr Strauss made an application asking the FTT to either bar HMRC from proceedings or to strike out HMRC's case and grant his appeals on the ground that HMRC had failed to comply with the FTT's Directions.

84. On 7 March 2023, the FTT wrote to HMRC asking for their response to Mr Strauss's application.

85. On 20 March 2023, HMRC wrote to the FTT, copying in Mr Strauss, opposing the latest application. HMRC proposed that the FTT:

(1) dismiss the application made by Mr Strauss on 2 February 2023;

(2) determine the application made by Mr Strauss on 6 June 2022 on the papers; and

(3) re-issue updated directions 3, 4 and 5 of the Directions of 22 May 2022 to bring matters to a substantive hearing.

86. On 12 May 2023, Mr Strauss emailed HMRC, copying in the FTT, asking about his VAT registration. He also referred to an amount of £3,000 charged him by the ICAEW. He set out his concerns about the conduct of HMRC in these proceedings and invited HMRC to agree his appeals.

87. On 16 May 2023, HMRC emailed Mr Strauss acknowledging receipt of his email of 12 May 2023 and saying that a response would follow.

Availability of the parties

88. On 22 May 2023, the Tribunal informed the parties that the matter would be listed for an application and case management hearing. The FTT directed the parties to agree and provide three mutually convenient dates during the next 4 month for a one-day video hearing. If agreement could not be reached, the FTT directed the parties to provide their individual available dates in 2023 and, if not available, to provide reasons for their objection (if any) to the outstanding matters being determined on the papers without a hearing. The FTT asked for a response within 14 days.

89. On 22 May 2023, Mr Strauss emailed HMRC, copying in the FTT, asking HMRC to provide details of their availability to 31 December 2023, so in his words "I can confirm an appropriate date with the [FTT]." Mr Strauss asked HMRC to provide a timetable for a response to his email of 12 May 2023.

90. On 23 May 2023, HMRC emailed Mr Strauss advising they had availability for the whole of the 4 month period. HMRC invited Mr Strauss to provide details of his earliest three convenient dates.

91. On 2 June 2023, Mr Strauss emailed the FTT, copying in HMRC, confirming the agreed earliest dates of both parties were 12 September, 14 September and 15 September 2023. Mr Strauss said that both parties had agreed that they are available for all three dates.

VAT registration clarification

92. On 27 June 2023, Mr Strauss emailed HMRC, copying in the FTT, asking for a response to earlier correspondence regarding his VAT registration. He suggested that HMRC had misled the FTT by suggesting a response would follow when he had yet to receive a response. This email was sent from a different email address to that ordinarily used by Mr Strauss, viz. bradley@strauss-phillips.com

93. On 28 June 2023, HMRC emailed Mr Strauss, copying in the FTT, apologising for the delay regarding his VAT registration. HMRC told Mr Strauss that he would have a response by 7 July 2023.

94. On 29 June 2023, and following various email exchanges between the parties, Mr Strauss emailed HMRC, copying in the FTT, saying:

> "I will be putting this email in front of the relevant Judge and asking them to debar you on the basis that you have no proper understanding of the law and cannot properly represent to either myself, [the FTT] or anyone else."

95. On 5 July 2023, HMRC emailed Mr Strauss clarifying the position regarding his VAT registration. HMRC acknowledged correspondence had been sent in error and apologised.

Listing of case management hearing

96. On 11 July 2023, the FTT listed Mr Strauss's application of 2 February 2023 to be heard at a case management hearing by video on 15 September 2023.

97. On 12 July 2023, HMRC emailed the FTT, copying in Mr Strauss, advising that Mr Strauss had made two applications, namely the application dated 6 June 2022 for the striking out and withdrawal of HMRC's 'view of the matter' and the application of 2 February 2023 to have HMRC barred from taking further part in the proceedings. HMRC asked the FTT to confirm whether the Tribunal would deal with one or both applications.

98. On 19 July 2023, Mr Strauss emailed the Tribunal, copying in HMRC, asking for the time of the video hearing to be changed to 2pm. He explained he had taken a contract in Piura in Peru and was expected to be in Peru on that date. A 10:00 am UK time start would be 4:00 am local time. Moving the hearing to 2:00 pm UK time, which would be 8:00 am local time, would allow him time to rise and get ready for hearing. This email was sent from bradley@strauss-phillips.com rather than Mr Strauss's usual email address.

99. In another email to the FTT and copied to HMRC later the same day, Mr Strauss confirmed that the sending email address of his earlier email was not his email address. He stated that the only email address that should be used for all correspondence with him was flexbandbs@gmail.com.

100. On 31 July 2023, the FTT wrote to HMRC inviting HMRC to make representations on taking evidence from abroad.

101. On 1 August 2023, the FTT wrote to the parties confirming the upcoming case management hearing would consider all outstanding applications and case management issues.

102. On 2 August 2023, HMRC wrote to the FTT, copying in Mr Strauss, saying that they believed that the applications made by Mr Strauss on 6 June 2022 and 2 February 2023 could be decided on the basis of submissions only and there was no need for Mr Strauss to give oral evidence from abroad.

103. On 4 August 2023, Mr Strauss sent a lengthy email to the FTT, copying in HMRC, referring to the matter of oral evidence and his earlier applications regarding what he described

as HMRC's continual abuse of procedure and debarring from Tribunal. In relation to oral evidence, Mr Strauss said:

> "The respondents, in making the comments that they are making and attempting to arrange exclusion, of the appellant from giving oral evidence, are the respondents prepared to act likewise. The appellant considers that the respondents should be required to respond in this respect, so the respondents can either reply to this representation or the appellant can make another application for a reply to be issued. Considering the timescale involved, the appellant gives the respondents 7 days to respond, in the absence of a response an application will be made accordingly, which unfortunately, may also delay matters further, but it should be noted that any such delay would be entirely due to the respondents' inability to properly respond to a proper enquiry.
>
> If that is the case, that the respondents are willing to be debarred from giving any oral evidence, what is to be achieved by the hearing, if neither party can give oral evidence?
>
> If the respondents are unwilling to accept that they too are to be debarred from giving any oral evidence, then it would seem utterly inequitable for the respondents to be commenting, to Tribunal, that they consider that the appellant is not required to give any oral evidence, as they have no inkling as to what oral evidence the appellant intends to give and whether it is important to the case and, if the respondent intends to give oral evidence, the appellant currently has no inkling of what oral evidence the respondents intend to give and therefore, if the respondents are allowed to give oral evidence and intend to do so and the appellant is not allowed, that would seem incongruous, unfair and improper.
>
> In the appellant's opinion, in asking the Tribunal to consider to debar the appellant from giving oral evidence at their own application hearing and where the respondents are fully capable of giving oral evidence and where the appellant would be unable to challenge that oral evidence, by giving their own oral evidence, that would seem to be an entirely inappropriate situation for Tribunal to allow to occur and would be a breach of the appellant's rights in this respect. On that basis, any such hearing must be postponed to a later date, to allow equity and fairness to prevail.
>
> The appellant would also remind the respondents that Tribunal has the opportunity to ask for permission for oral evidence to be given and, if such permission is given, oral evidence can be presented by both parties and, in addition to this, a Judge can make a decision as to whether to allow such evidence, without permission being given."

104. Mr Straus then referred to the "CPR" without showing any understanding of what they provide and clearly not appreciating that they do not apply to the FTT. He continued:

> "On that basis, it would seem that the respondents are intending to either (1) accept that they cannot do what they are attempting to do, which is to improperly prosecute fraudulent intent via Tribunal, which cannot make such decision or that they are intending to provide their evidence, as oral evidence, in hearing, rather than in writing which, if that were to occur, would be another example of the improper approach to this matter by the respondents.
>
> …
>
> The appellant would add that the respondents' approach is utterly improper anyway. The respondents are fully aware that the appellant is representing themselves. The appellant in such representation may, because it is required, give oral evidence in making proper representations. By debarring the

> appellant from giving oral evidence, that effectively means the appellant cannot effectively represent themselves either, as it may be considered that any representation, by the appellant, would constitute oral evidence. What that would mean is that the appellant would be unrepresented at Tribunal, which again is entirely unfair and improper and Tribunal cannot allow that inequitable situation to occur for applications that are clearly the appellant's applications.
>
> On the basis of all the above, the appellant would comment that, yet again, the respondents are in abuse of procedure and this is indeed important in respect of the appellant's applications that this hearing is being held to consider."

105. HMRC had never suggested in their email of 2 August that they wished to give evidence at the hearing. On the contrary, it was clear that they were suggesting that neither party needed to give any evidence because the FTT could deal with Mr Strauss's applications on the basis of the parties' submissions. My assessment of Mr Strauss from my later dealings with him in the hearing on 15 September 2023 and subsequent correspondence is that he is an intelligent man but he has very little understanding of the tax appeals process in the FTT. For example, the email above showed that he did not understand the difference between oral evidence and oral submissions. However, I consider that he had sufficient understanding (or should have done by this time, given his experience of the FTT) to understand the impact of his multiple applications and lengthy submissions on the proceedings, namely preventing the appeals coming to a substantive hearing. Mr Strauss said that there were only two avenues open in relation to this matter:

> "Avenue 1
>
> That the respondents move this matter, away from [the FTT], to a proper court, for such allegations to be given proper and lawful consideration.
>
> Avenue 2
>
> That the respondents make it clear, to [the FTT], that they no longer challenge the appellant's evidence, in any way or form and that will continue until this Tribunal procedure is concluded. The result of such confirmation is that the evidence, given by the appellant, becomes unrefutable [sic] and, clearly that evidence shows that (1) the appellant is not responsible for the income and gains that the respondents have assessed and (2) that the appellant was clearly and undeniably abroad and outside the scope of UK tax, for the periods that the respondents have assessed for.
>
> Under those situations, the [FTT] will have no option other than to grant the appeals."

106. On 8 August 2023, the FTT wrote to the parties confirming the applications and case management hearing would proceed at 2:00 pm on 15 September 2023. The parties were told that any issues regarding oral witness evidence to be given from abroad would be considered at the start of the hearing. The FTT then set out the matters to be considered as follows:

> "The Appellant is reminded that this hearing is not the hearing of the substantive appeal. This hearing is to consider the outstanding applications and any case management issues, to enable the [FTT] to give directions on appropriate matters. At the hearing the [FTT] will consider the applications as well as whether to give directions about:
>
> 1. The identification of the issues for determination in the appeal;
>
> 2. The agreement where possible by the parties of a statement of the undisputed facts.

3. Requests for the issue of witness summonses;

4. The documentary evidence to be adduced;

5. The preparation by the parties of a single agreed and paginated bundle of documents;

6. The date for lodging skeleton arguments and the lists of authorities;

7. The number of days required for the hearing; and

8. Any other issues, such as requirements for shorthand writers, exhibits, interpreters, special facilities, etc."

Applications prior to the case management hearing

107. On 17 August 2023, Mr Strauss emailed the FTT, copying in HMRC. The email was four and a half pages of single spaced small font size type containing lengthy comments on some of the 8 points made in the FTT's letter of 8 August. In 12 paragraphs, Mr Strauss said that point 2 was unachievable. Over some three pages, Mr Strauss repeatedly said that the FTT had no jurisdiction and then purported to issue directions to HMRC and the FTT as follows:

"The appellant would therefore ask for the following;

- That the respondents make clear to Tribunal that they fully understand the contents of this email and, if they disagree with any of this email, that they advise both tribunal and the appellant of what they disagree with and why and such takes place prior to the hearing, so that the hearing can focus on the major issue at hand.
- The Judge Sukul, or another Tribunal Judge considers the contents of this email and confirms whether there is any part they disagree with and why.

The appellant appreciates that the second part of the above requests may well be something that is unusual for these types of procedures but the appellant also points out that it is obvious that the respondents cannot and will not comply with CPR or the tenets of Tribunal and, in essence, their approach is to ignore anything that doesn't suit their position and to refuse to agree anything no matter that they are duty bound to do so.

This has the unfortunate effect of pushing this matter to more and more applications and more and more Tribunal time, which should not occur and the appellant, in writing in this fashion, hopes to achieve a result where all parties understand the legal basis that they are required to act by, as the appellant is of the opinion, that the respondents do not have sufficient legal knowledge to properly understand the position.

By a Judge reviewing this email prior to hearing and commenting on it, that can bring clarity to the hearing itself and ensure such hearing is better suited for the purpose. The appellant invites such comment.

The appellant also makes clear that, in the appellant's opinion, this matter cannot currently conclude within Tribunal and the respondents need to decide whether they are going to allow the appellant's evidence to be unchallenged or whether they are not and, if they are not and seemingly their only method of challenge to that evidence is to make veiled accusations of fraud, which Tribunal cannot consider, in the appellant's opinion, that leads to the Tribunal procedure becoming unlawful and incapable of concluding. In that eventuality, the appellant would make clear that the appropriate approach should be to allow the appeals at that juncture considering the respondents don't intend to take the relevant actions to allow for this matter to conclude."

108. On 22 August 2023, I instructed the FTT to write to Mr Strauss, copying in HMRC, as follows:

> "Your email was passed to Judge Sinfield who has read it and asked me to point out that:
>
> 1. The CPR do not directly apply to the First-tier Tribunal (see *BPP Holdings v HMRC* [2016] EWCA Civ 121, particularly [32]-[33]) but they may be relevant by analogy. The applicable rules are the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009.
>
> 2. While it is correct that the [FTT] does not have jurisdiction in relation to criminal offences, it does have jurisdiction in appeals against civil evasion penalties which may involve dishonest conduct. In such cases, HMRC bears the burden of proof although the standard of proof is the balance of probabilities rather than the criminal standard of beyond reasonable doubt.
>
> Judge Sinfield hopes that this clarifies the position. Any further points can be discussed at the case management hearing on 15 September which will deal with the points already outlined by Judge Sukul."

109. Mr Strauss responded by email on 23 August 2023. The email was sent from bradley@strauss-phillips.com rather than Mr Strauss's usual email address. He stated that he agreed with my "comments regarding the prevailing regulations [but he] would also point out that it is his understanding that Tribunal rules are designed to be a mirror of CPR, in that the same rules apply to both." That, of course, simply contradicted what I had said and was entirely wrong. Mr Strauss then went onto say that he accepted my comments in relation to consideration of dishonesty and fraudulent intent when analysing civil evasion penalties but:

> "this matter is not just civil evasion penalties, it is an appeal against assessments issued under a number of Statutes, so not constituting civil action, and the appellant would respectfully point out that the majority of this appeal is not in reference to the civil evasion penalties, but refers to matters that are not civil evasion penalties."

110. Mr Strauss suggested the matter would have to be split into two elements, in that the hearing for assessments would not be allowed to discuss dishonesty, whilst the hearing for civil evasion penalties would. He said that such an approach would be unfeasible and maintained that the issue of dishonesty could not be assessed or discussed by the FTT. I did not accept that, given the lengthy history of this matter and the fact that it had been through a process of ADR, Mr Straus did not understand that there were no allegations of dishonesty in relation to the assessments and VAT registration issues. As I consider that he is an intelligent person, I can only conclude that this was an attempt to obscure the real issues and delay the proceedings by introducing irrelevant matters.

111. On 28 August 2023, Mr Strauss emailed the FTT again, copying in HMRC. He made extensive submissions based on the decision of the Court of Appeal in *Bank St Petersburg v Arkhangelsky* [2020] EWCA Civ 408. Correctly, Mr Strauss stated that "[t]his case therefore seems to have no relevance to our Tribunal matter" but he then seemed to rely on it to support an analysis of his own which was not a matter considered by the Court of Appeal. He then submitted that the appeal in the FTT was "a Statutory matter, where the issues raised are raised via Statute and therefore cannot constitute a civil matter." Mr Strauss contended that, until he had been convicted by a criminal court, the FTT could not consider the issue of dishonesty or fraudulent intent and HMRC's case must be dismissed. The email included the following threat to delay the proceedings:

> "The appellant is adamant that their position is correct and so the appellant puts all parties on notice as follows;

> If, in any way, a decision is reached, within this case management hearing, that the respondents are allowed to impugn the character of the appellant, within this Tribunal procedure, the appellant will act as follows;
>
> - Issue an immediate appeal against such a decision to the appropriate authority level.
> - Continue to appeal until such time as such decision is properly overturned to the highest court possible, if required.
> - Will deem this Tribunal Procedure as unlawful and will be required to withdraw until such appeals are fully held and concluded, thereby extending the timeline of these appeals by a substantial level (for example the case mentioned above started in 2015 and only concluded in 2022, so adding 7 more years to this matter). In the opinion of the appellant, any such required action would be entirely against the tenets of Tribunal to deal with matters in a timely fashion and so a decision to allow the appellant to be improperly impugned would seem to be against the tenets of Tribunal."

112. On 29 August 2023, the FTT sent two letters to Mr Strauss. The first was in response to his letter of 23 August and stated that it would be unwise to assume that the Civil Procedure Rules simply applied to appeals in the FTT and, that the FTT Rules differ from the Civil Procedure Rules in many important respects. The FTT enclosed a copy of the FTT Rules. The letter also stated that the FTT would consider the issues raised about dishonesty and fraudulent intent at the hearing on 15 September. In the second letter, the FTT explained that I would consider Mr Strauss's submissions in his email of 28 August, and any made by HMRC, at the hearing on 15 September.

113. HMRC provided their outline arguments for the case management hearing on 6 September 2023 and the hearing bundle a few days later.

114. On 10 and 11 September 2023, Mr Strauss provided further submissions.

115. On 14 September 2023, Mr Strauss provided yet more submissions and an application for the FTT to issue the following six unless orders:

> "Order 1
>
> That unless the respondents revisit all of their representations relating to this Tribunal and reissue such, after removal of all misrepresentations and apologize to Tribunal for the original incorrect submissions and do so prior to any final hearing date being determined and allowing sufficient time for the appellant to consider those representations as to whether they still contain misrepresentation, that the respondents are debarred from continuing to represent.
>
> Order 2
>
> That unless the respondents agree to withdraw their unlawful VOTM document, within 14 days, that the respondents are debarred from continuing to represent.
>
> Order 3
>
> That unless the respondents confirm, within 14 days, that they will not raise any issue or discuss, via Tribunal any matter relating to either (1) dishonesty, (2) fraudulent intent or (3) any other criminal act, regardless of whether those issues are raised directly or indirectly or even implied, that the respondents are debarred from continuing to represent.

Order 4

That unless the respondents revisit all of their representations relating to this Tribunal and reissue such, after removal of all misrepresentations and apologize to Tribunal for the original incorrect submissions and do so prior to any final hearing date is determined and allowing sufficient time for the appellant to consider those representations as to whether they still contain misrepresentation, that the respondents case is struck out.

Order 5

That unless the respondents agree to withdraw their unlawful VOTM document, within 14 days, that the respondents case is struck out.

Order 6

That unless the respondents confirm, within 14 days, that they will not raise any issue or discuss, via Tribunal any matter relating to either (1) dishonesty, (2) fraudulent intent or (3) any other criminal act, regardless of whether those issues are raised directly or indirectly or even implied, that the respondents are debarred from continuing to represent."

Case management hearing – 15 September 2023

116. The hearing was held by video and both Mr Strauss and HMRC attended. At the conclusion of the hearing, I told both parties that I would issue draft Directions for the parties to comment on. I drafted the Directions which were headed "draft/DIRECTIONS" and contained a space for the FTT, having had any comments from the parties, to insert a date in Direction 1 from which time would start to run. In fact, the FTT inserted a date and issued the directions on 19 September with a date for compliance as if they were final.

117. Direction 1 was that the parties would send or deliver to the other party and the FTT a new list of documents. On 26 September, HMRC complied with Direction 1. Mr Strauss did not provide any new list of documents or comments on the draft directions.

118. On 28 September 2023, HMRC served five witness statements on which they intended to rely at the hearing on the FTT and Mr Strauss. On the same day, the FTT wrote to HMRC, copying in Mr Strauss, saying that the intention was that the Directions were issued in draft to give both parties the chance to comment. If the parties have any comments then they should be provided within seven days of the date of the letter and, in the absence of any comments, the Directions would be deemed to have been issued on 19 September and all time limits would run from that date.

119. On 6 October 2023, the FTT wrote to Mr Strauss saying that he did not appear to have complied with the Directions dated 19 September, which had become final as stated in the FTT's letter of 28 September, and asking whether he wished to continue with his appeal. The following day, Mr Strauss responded and apologised for not having complied with Direction 1 which was due, he said, to having spent three weeks in bed and unable to access his emails because of his covid symptoms which are exacerbated during periods of stress. He provided a list of documents.

120. On 7 October 2023, Mr Strauss applied to amend the Directions dated 19 September. Unfortunately, the email was only referred to me on 15 November. I extended time limits in relation to some Directions in order to put the appeal back on track to proceed to a hearing in accordance with the remaining Directions. The FTT issued my new Directions on 15 November.

121. On 20 November 2023, Mr Strauss served his witness statements on HMRC and the FTT.

122. On 4 December, HMRC provided their listing information and provided an estimate for the duration of the hearing of 10 days. On the same day, Mr Strauss provided his listing information and said he could make no comment on HMRC's estimated hearing length. There were other emails between Mr Strauss and HMRC on 4 December but these concerned his complaint about HMRC's conduct and had nothing to do with the appeal.

123. On 5 January 2024, I issued the following directions:

> 1. The parties are not to copy or send any emails or other correspondence relating to any complaints by the Appellant about the Respondents' conduct to the Tribunal as the Tribunal is not part of HMRC or their complaints procedure and has no jurisdiction in relation to matters of the Respondents' conduct.
>
> 2. Within 14 days of the date of this letter, the Respondents shall provide to the Tribunal and the Appellant a draft timetable setting out what matters will be dealt with on each of the 10 days (broken into separate periods as necessary) that they say is required for the hearing of this appeal.
>
> 3. As, on enquiry by the Tribunal, it appears that the Government of the Republic of Peru has not given permission for a person to give evidence in tribunal proceedings by video from its territory, the Appellant shall, within 14 days of the date of this letter, provide to the Tribunal and the Respondents the dates in the period 1 April 2024 to 30 November 2024 when he will be available to attend a hearing of up to 10 days in the United Kingdom.

124. Unfortunately, the directions were not issued until 23 January 2024. On 25 January, HMRC responded with a timetable for the hearing in compliance with Direction 2 above.

125. On 2 February, Mr Strauss emailed the FTT. In response to Direction 3 in the FTT's letter of 23 January, Mr Strauss stated:

> "I am somewhat disappointed as to the approach to such matters by the government of Peru. I would point out that I am not expecting within 2024 or 2025 to be returning to the UK for a period of 10 working days and therefore, in reference to the request for dates in the period 1/4/24 to 30/11/24, I would respond by advising that there are no dates within that period."

126. On 22 February, the FTT emailed Mr Strauss, copying in HMRC, in response to his email of 2 February. The email included the following:

> "In light of your statement that you will not be returning to the UK for a period of 10 working days within 2024 or 2025 and given that it is not possible for you to give evidence by video from Peru, the only alternative way in which the appeal can proceed to a resolution within a reasonable period of time is on the papers submitted by the parties. There are certain disadvantages to this way of proceeding, namely that you will not have any opportunity to cross-examine any HMRC witness (and HMRC will not be able to cross-examine you). It is also sometimes more difficult to make submissions in writing and the Tribunal Judge will not have any chance to ask you questions to clarify any points. As the burden of proof is on you, the inability to give evidence and ask questions of HMRC about their evidence may place you at a disadvantage. However, the Tribunal will try to ensure that, as far as practicable, you are able to participate fully in the proceedings and your case is given proper consideration."

127. The letter directed both parties to provide any submissions on how the appeal should proceed to each other and to the FTT. HMRC responded to the FTT's letter of 22 February by

email on 4 March. HMRC asked the FTT to decide the appeal on the papers and provided their suggested Directions. Mr Strauss responded by email on 6 March. In the email, Mr Strauss said he had no further comment on the timetable for the hearing suggested by HMRC. In relation to how the appeal might proceed, Mr Strauss stated that the FTT could deal with his appeal on the papers but only if the FTT accepted his evidence and allowed his appeal. Mr Strauss stated that "if a Judge, on review of the evidence, comes to a conclusion that they cannot, for whatever reason, accept my evidence as completely true and, in doing so, does not accept that granting the appeals is the appropriate approach, then I consider the only way to proceed, in that eventuality, is for a full hearing to occur …".

Unless Order 2024 and strike out

128. I considered that Mr Strauss's conditional acceptance in his email of 6 March was, in effect, a refusal to have his appeal dealt with on the papers. If the FTT, having reviewed all the evidence, found against him on all or part of his case then Mr Strauss sought the right to declare the proceedings a nullity and have a full hearing, ie a second determination of his appeal. I made the following Unless Order which was issued to the parties on 2 April 2024:

> "It is directed that unless Mr Strauss confirms within 14 days that:
>
> 1. he will attend the Tribunal in London for a 10 day hearing on dates that he may specify between 3 June 2024 and 19 December 2025; or
>
> 2. he consents without any reservation to the appeal being dealt with on the papers; or
>
> 3. provides an alternative practical way to bring the proceedings to a conclusion
>
> then these proceedings WILL be STRUCK OUT without further reference to the parties."

129. On 15 April 2024, Mr Strauss emailed the FTT as follows:

> "I, the appellant confirm receipt of the Tribunal's letter of 2/4/24.
>
> Firstly, apologies to Tribunal, I was hoping to send this email 2 weeks ago, but unfortunately, I was struck down with flu again and have only just got back to my feet.
>
> In reference to that letter, I would advise as follows;
>
> In putting forward my last proposal, all I was trying to do was to cause a quicker resolution to this issue, in accordance with one of the major tenets of Tribunal, that of dealing with matters in a quicker timeframe. I now appreciate that Judge Sinfield has not viewed it as such and acknowledge his viewpoint, his right to come to such a viewpoint, no matter how much I disagree the main contention of it. However, Judge Sinfield should appreciate that the contention behind my proposals was never to delay any matters, as he seems to assume.
>
> In reference to Judge Sinfield's determinations, I would also point out as follows;
>
> Long Covid
>
> I would firstly comment that it is clear, from my recurring symptoms, that I am suffering from a form of Long Covid (Post-COVID syndrome). I am in the process of getting hold of medical confirmation of this and will provide it to Tribunal accordingly, when received.
>
> Therefore, I would add that clearly, Judge Sinfield's determinations are written in ignorance of this fact. The current medical advice regarding sufferers of Long Covid is that they should not travel for more than 4 hours,

at a time and then they need a number of days to recover. Even travelling for that time fatigues the sufferer and can cause them to become somewhat incapacitated.

There is also the issue of potentially infecting others.

[Mr Strauss provided a link to a website providing advice for travellers with Covid]

What this means is that I am precluded from travelling from Piura to the UK, in one airline trip as such a trip is in excess of 12 hours and therefore not medically advisable for me. It would be completely counter productive for a date to be set for a hearing, for me to fly to the UK, be extremely ill for potentially months and for that date to become irrelevant because of this and I would point out that is certainly against the tenets of Tribunal, as well as being an unfair burden upon me.

On that basis, I am clearly being put in a massively unfair position by Judge Sinfield's determination and I appreciate that Judge Sinfield may have been unaware of my situation, in making his determination but, in light of the facts, that determination is unfair. On that basis I hereby make an application to have his determination set aside on the basis that it is unfair upon me.

Application 1

That Judge Sinfield's determinations in his letter of 2/4/24 be set aside.

I am happy to have application 1 decided on the papers.

I would further point out that this was, in essence, the reason why I was unwilling to travel to the UK within 2024 and 2025, as requested, it would take so long as to become oppressive upon me and would cause me substantial financial loss, potentially making me very ill and that would certainly be putting me in an unfair position.

However, I also appreciate the need to get this matter resolved. I have therefore looked into other forms of resolution, as detailed within point 3 of Judge Sinfield's determination.

[Mr Strauss then sets out ways in which the FTT might deal with his appeal, all of which, he stated, leave the FTT "no option other than to grant the appeals".]

In addition to this and on the failure of the above applications (which I do not expect to occur, but to show my commitment to resolving this matter), I have also discussed the issue with my employers. I have already had a substantial amount of time off this year with illness, so my employers will not allow me any further time this year (2024). However, they recognize, as do I that this matter needs resolution.

I am in the process of agreeing with them a period, within 2025, that for a period of 2 weeks, that I will take 3 weeks unpaid holiday. My intention is to travel from Piura to either;

Quito

Panama City

Mexico City

USA

and to stay, for 2 weeks in a hotel within that country, if required (which I would comment I am not expecting to require once my application is heard) so as to allow this procedure to conclude via Zoom.

The issue with Piura is that in order to fly anywhere at a relatively low cost and low time one has to travel to Lima or Quito, both of which are 400+ miles away, notwithstanding Lima is travelling South and away from the North, (so the flight times to go anywhere else get longer) and although both flights (to Quito and/or Lima) would be under 4 hours, I would have to then catch a connector to anywhere else and would need time in between to recuperate.

To be utterly frank, one of the reason why I said I would not be travelling to the UK in 2024 and 2025 is the burden of travelling and had this (Tribunal) issue not existed, I would have expected to finalise the works in Piura, which are due to finish June 2026, before travelling anywhere else, as the burden of that travel is onerous upon me, in terms of the affect upon my health. It was my intention, at the conclusion of that contract, to travel to Thailand, mainly by cruise boat I would add, which would be a holiday trip, to take up another project and to allow 3 months for that travel.

However, I too want this matter resolved earlier rather than later, it is like the 'Sword of Damocles' hanging over me and it is taking a substantial health toll upon me. To this end and in order to resolve matters and as Peru will not allow evidence, can Tribunal please confirm with the following authorities, that they will allow evidence to be given from that country;

Ecuador

Panama

Mexico

USA

Once I have this information , I can then progress along a route to get this matter resolved, but I would stress that it would be of assistance to me, if this matter is not resolved by the above applications, (or before June 2026), that any dates are fixed for after June 2026, in order to accommodate the fact that I will have a burden of travel upon me, as detailed above.

I would further point out that I also need confirmation of where this zoom meeting is to be conducted from, (for my part) so that I can agree dates with (1) my employer and (2) my witnesses and will proceed to obtain their confirmation of attendance once Tribunal has confirmed this as the way forward an d the relevant country that will allow it.

My view is that this email complies with Judge Sinfield's directions entirely, can Tribunal please confirm that this complies with Judge Sinfield's determinations as stated within Tribunal's letter of 2/4/24."

130. On 17 May 2024, the FTT replied to Mr Strauss, on my instructions, as follows:

"The Tribunal's letter of 2 April stated that, unless you confirmed one of three specified ways to bring the appeal to a conclusion within 14 days, the proceedings would be struck out without further reference to the parties.

The first of the three ways was that you would attend a hearing in London on dates of your choosing between 3 June 2024 and 19 December 2025. In your email, you have provided no such confirmation but have indicated that you are unable to travel to the United Kingdom because you have Long Covid and are precluded from travelling for more than four hours at a time. This is the first time that you have suggested that you might be suffering from Long

> Covid and you have not provided any medical evidence to support that or to show that you are not well enough to fly to the United Kingdom. The information on the website for which you provided a link is that "flying across continents is possible and safe if you take the necessary precautions." It is not credible that you can know now that you would be unable to travel to the United Kingdom without risk to your health at any point between now and December 2025 when you have not obtained medical advice.
>
> The second of the three ways was that you would consent, without reservation, to the appeal being dealt with on the papers. You have not given your consent free of any reservation. On the contrary, you have proposed a resolution only on the basis that the "Tribunal are prepared to accept my statement of fact (witness statement) as being correct." You then also suggest that in an application that the Tribunal determines your witness statement "as valid and correct" so that the "Tribunal will have no option other than to grant the appeals accordingly". In making the application, you are simply re-stating what you said in your email of 6 March. As the Tribunal said in its letter of 2 April, that was a conditional acceptance which was in effect a refusal to agree to the appeal being dealt with on the papers because your agreement was dependent on the Tribunal allowing your appeal.
>
> Thirdly, if you could or would not provide the confirmations in relation to the first and second points, you were asked to provide an alternative practical way to bring the proceedings to a conclusion. For reasons already given, the proposal that the appeals be dealt with on the papers only on the basis that your evidence is accepted and your appeal is allowed cannot be regarded as a practical way to bring the proceedings to a conclusion. Your final suggestion is that you would travel to one of four countries for the purpose of participating in a video hearing from that country. The only country in the list which permits persons to give evidence in tax proceedings from its territory is the USA. However, you are not offering to travel until an unspecified date in 2025 as you state that you cannot obtain leave from your employment in 2024. Further, you ask the Tribunal to delay listing the hearing by video until after June 2026. That is not a practical way forward as it provides no certainty that the hearing by video would take place at any particular time and could leave this appeal (which began in 2015) unresolved for a further two years.
>
> Finally, your email was sent on 22 April which was six days after time limit for replying had expired. In your email, you state that you were "struck down with flu again" but you have provided no details of when you were ill and evidence such as a doctor's sick note. Judge Sinfield does not accept that, even if you had a bad case of flu, you could not have sent a short email to the Tribunal explaining that you were ill and asking for more time to reply.
>
> It is clear that you have not complied with any of the Tribunal's directions in its letter of 2 April and, accordingly, your appeal is now struck out.
>
> You have the right to apply for the proceedings to be reinstated but such an application must be (a) in writing, (b) supported by reasons and include an explanation for the non-compliance and (c) received by the Tribunal within 28 days after the date of release of these Directions. Such applications are not granted automatically and may be the subject of a hearing."

131. The reference to Mr Strauss having responded late on 22 April was an error due to a misunderstanding as the email had been sent on 15 April and was thus in time.

Second application for reinstatement

132. Mr Strauss applied for his appeal to be reinstated in his email of 22 May 2024 which, unfortunately, was not forwarded to me until 1 July. In the email, Mr Strauss stated as follows:

> I refer to Tribunal's letter of 17/5/24 and Judge Sinfield's comment. I am somewhat surprised and concerned regarding the response and I would apologise because it seems that my previous email has been completely misunderstood. I appreciate that may be because of the manner by which I responded, but I assumed that my email would have conveyed that (1) I was quite prepared to provide a detail of the dates, (2) I was clearly under the impression I had complied and (3) that I was able to provide the report.
>
> I would therefore like to clarify my previous response as follows;
>
> It is evident that I have been ill with covid on a number of occasions and, to progress this case, I even undertook a hearing, whilst being quite ill with Long covid, as I considered that delay due to my illness could be viewed as me trying to delay and so I made sure that, despite my illness I attended. I hope that conveys my commitment.
>
> I would also point out that it is the case that standard covid, that puts one to bed, with severe conditions, on a number of occasions, no longer exists and has not existed for some years now, because the strain is now virtually a flu at it's worst. Therefore for me to be continually coming down with covid can only mean one thing, that it is Long covid, it is clear that is my ailment and has been for some time.
>
> I have been diagnosed with it, but it was 2 years ago, I am still suffering, I know what it is and why, so I don't need it re-diagnosed regularly and I have expressed to Tribunal that it is covid and, I apologise because perhaps I could have explained that it was Long Covid (because that is what it really is) but I thought it easier to say it was covid, because that was easily understandable. That was a mistake by me, in assuming that the connection would be made, which I accept and, in my last email, I felt it right to fully explain my issues and fully intended to provide a report to show that.
>
> I would also advise that I am representing myself and do not have extensive knowledge and understanding as to how Tribunal works and sometimes I say things in a manner that I consider is appropriate but which a Judge may not. That is purely my inexperience at dealing with matters and I would ask that, where a Judge considers that I am not saying things in the right way, that they give me a bit of leeway on the basis that I am not a legal representative and sometimes cannot properly understand and appreciate how matters should be represented.
>
> I reiterate, that does not mean I am trying to delay, all it means is that my wording may not be the right wording, because of inexperience and I apologise for that, but there is little I can do about it. All I ask is that any Judge reviewing my paperwork, takes that into account.
>
> I have a medical report, but it is 2 years old. I was trying to get a more up to date report and also one which was signed (my original report wasn't).
>
> That is taking time and I accept that sometimes we can't always get what we want when we want it.
>
> There are 3 reasons why I have not yet provided the medical report.
>
> 1. I have tried to contact my doctor to get an updated and signed report. At present I have been unable to contact my Doctor (he was based in Thailand, but seems to no longer be in Thailand so I am trying to locate him). All I have

is my original medical report from 2022, which I will now be sending under separate cover, but it contains (1) information that I do not want anyone to see and has no relevance to this case and (2) I was hoping to get an updated report from my Doctor, which I would ask him to put in purely the matters relating to Long Covid.

2. I was also unaware of the timescale that this was required in. I appreciate that I had to get it, but (a) I can't get another report at present and have no idea when that will change, so what am I supposed to do and (b) I was waiting for that report and was hoping to get it fairly quickly, but it hasn't arrived.

3. I have been extremely unwell again, because of my (Long) covid.

I have therefore decided to use the old report, from 2 years ago, that was sent to me, by my Doctor, that report was for me alone and to assist me in dealing with another separate matter, but I have decided, considering the length of time it is taking for me to get another report, to use that one and I will send it under separate cover. I trust this now resolves that issue, please confirm.

Travel to the UK

Firstly, I would comment that I am not 'unable to travel to the UK' and have not made that claim. What I have stated is that such a trip would be extremely difficult for me to do in one go. That is entirely true. I am quite prepared to go to the UK to undertake this procedure but it will have to be done in stages and that will take me time. That will, in my opinion, put an unfair burden upon me, either I will have to travel in one trip, in which case, I will probably not be able to attend the hearing because I will be too tired and ill to do so, in which case that is completely counter productive, as the hearing would be adjourned or alternatively, I will have to travel in stages, in which case, that will put an unfair burden upon me. That was my point, not that I couldn't travel but that asking me to travel to the UK was an unfair burden and there were other ways to deal with the matter.

I also asked if this Tribunal could be delayed until after I had completed my contract in June 2026, considering that is only 6 months after the period in which Judge Sinfield wanted me to attend and this matter having been ongoing for over 10 years now, an additional six months, to achieve the proper outcome, in my opinion, does not constitute an unreasonable request. I apologise to Judge Sinfield if, in his eyes it did, it was never intended in that manner.

I also considered that I made an application that could solve the problem and issue. I now appreciate, due to Judge Sinfield's comments, that my wording within the application was incorrect and I thank him for pointing that out and appreciate that the application was wrongly made. That was purely down to inexperience on my part and I again apologise for my inexperience.

The application was made purely to speed up the process, not to slow it down. That was my reasoning for making it and, although Judge Sinfield has determined that the wording is clearly wrong, the intentions behind the wording are, in my opinion, valid and in compliance with one of the main tenets of Tribunal. Again I apologise for using the wrong wording.

My understanding of that application was that, if what I said in my last representation is true, that would actually resolve this whole case very quickly, the relevant Judge would issue the appeals and the case would finalise. That was my goal, it is still my goal, a speedy resolution and (obviously) a decision my direction.

Giving dates

Again I apologise, maybe I didn't make my position properly clear on this point. I am quite prepared to provide dates and indeed have done so below. All I was waiting for was the relevant country to which I could travel to arrange a proper hearing. That has now been supplied, so I can now provide dates. I clearly didn't make that clear to the understanding of Judge Sinfield, so I trust that he now understands, my comments were not made to delay, but to find out which country I could access and that would dictate the dates I could choose. I have now advised of the dates, so I am now assuming that I am in compliance, albeit I appreciate later than he would have wanted, but I do consider there was a reasonable reason for that as I needed to understand where to go so in order to set the dates.

I would also point out that this hasn't delayed anything, there is now plenty of time between now and the dates I have suggested that mean that (1) I am now in compliance and (2) that there is no delay in that compliance or hearing.

Again I apologise, it was my own inexperience that meant that I didn't make it clear that I was waiting for Tribunal to confirm which country I could attend to undertake a Zoom hearing, so I would again ask that some accommodation of that inexperience is allowed.

I am happy to proceed in that manner and that would mean that my long covid wouldn't be any effect, as the travel wouldn't be as extensive. I now try to travel mainly by train (sleeper if possible) which means I can rest as I travel and I find train travel to be so much less wearing on me, so it is certainly the best type of travel that I can undertake and that is my preferred method of travel considering my condition.

I now appreciate that my previous application was wrongly made, as Judge Sinfield has pointed out. I am therefore withdrawing that application accordingly, so that there can be no doubt of my commitment to resolving this issue in a speedy manner.

As to my comment regarding the application in my email of 2/2/24, in my response to that email, I was responding to points made in a letter to me regarding the case, I wasn't making an application. The application as actually made, by me, in my mind, was made as a quick resolution and, although I appreciate that Judge Sinfield has determined that the wording was wrong and I have withdrawn it for that reason, I don't still don't consider that the meaning behind it (of speeding up the process and reaching a quicker resolution) was in any way a wrong consideration.

Confirmation of dates

I have again discussed the matter with my employers and they have determined that they will extend my contract until 31/7/26, but allow me to take off the whole of December 2025 (this is a slow month anyway for them, so I am actually doing them a favour in taking off that month). Now that the US has been confirmed as a suitable country, I am therefore confirming that I can travel to the US, undertake a Zoom hearing for the period 8/12/25 (Monday) to 19/12/25 (Friday) to allow 10 days of hearing, in order to progress this matter and in compliance with Judge Sinfield's determination. I will spend the week beforehand travelling and recovering in order to be in the best condition to undertake the hearing as I am sure no party wants a further delay.

I would add that this has really inconvenienced me, as it will now mean that I cannot spend my birthday in 2026 (on 14th July) with my family, because of the extension of the contract, showing my commitment to resolving this issue within Judge Sinfield's determined timescale.

I was waiting for the detail as to where I was required to travel in order to ensure compliance and I would point out to all parties that this email trail has not delayed anything from what Judge Sinfield has determined previously. Considering that I am now in 100% compliance with Judge Sinfield's determinations and that I was purely waiting for that information (which country it was OK to give evidence from) on the basis this is now 100% compliance with Judge Sinfield's determinations and has not delayed anything, I would therefore respectfully ask that the case be reinstated.

I would add that the reason why I waiting for confirmation of which country could be used was because I had no idea whether any of them would be suitable. A closer country would allow for a quicker travel and an earlier hearing, but as the most distant country has now been confirmed as being the only country allowable, I need more time and that means I need to negotiate with my employers the timescale, which I have now done and confirmed. I apologise for not making this clear in my last email, but I trust that all parties appreciate and understand my methodology and thought process and that I was working towards the dates rather than trying not to comply with them and this was a process that needed confirmation before I could do so.

Response time

I am concerned regarding the timetable of these matters as stated in Judge Sinfield's response. I refer to his 2nd paragraph of the 2nd page of the letter. It seems to me that someone is not properly informing Judge Sinfield of the facts and perhaps this paragraph has clouded his judgement, I too would be pretty annoyed if I expected someone to respond by 16/4/24 and they responded on 22/4/24. The only issue is that I actually responded on 15/4/24 (not 22/4/24) and I have a receipt to prove it, which is attached. So I complied entirely with Judge Sinfield's timescale of response of 14 days (in fact I was a day early), so my illness actually didn't stop my compliance as seems to be suggested, I actually complied with the timescale, despite the fact that I was ill and, as I complied I didn't consider I needed to tell Tribunal why I wasn't complying or ask for more time to comply, as has been suggested.

Furthermore, I do not consider that I needed to provide any evidence of reasons for non compliance with a response timescale nor any request for additional time when I have complied with it, my comments were purely as to why I complied within 13 days and not within 2, but I would respectfully point out that either timescale was compliance.

I now consider that I have complied with all of the determinations and timescales, so I would therefore ask Tribunal and Judge Sinfield to reinstate the appeal accordingly.

As to the balance of the letter, I would comment as follows;

Long covid

That was my mistake and I apologise to Tribunal for it. I (wrongly) considered that it should have been evident that I was and am suffering from Long Covid. My Doctor's report shows that to be the case. I will try not to make that mistake in future.

I would also suggest that this also is somewhat inexperience on my part. I was under the impression that when I advised the Tribunal of the truth and that truth was unchallenged that I had time to provide further evidence. I also had reasons as to why I didn't want to provide the original report, it was my mistake in assuming I would be able to obtain a newer report within a very short timescale. However, I was trying to comply in all aspects.

I did make it clear, in my last email, that I was intending of getting hold of evidence, I just haven't been able to, but I have every intention of doing so and will be sending my original report as evidence now.

Website

As to the website, it states that the recommendation should be to travel by air ambulance. I cannot do that and I am unable to travel extensively and not feel very ill afterwards. That I cannot help, but I trust this email shows my commitment to this case and its speedy resolution.

Credibility

As to Judge Sinfield's comments regarding credibility, I would comment that I know my own body, I know what I can do and what I cannot.

I know exactly what I am capable of and that is because I have done it, I have seen the consequences, I have undertaken the kind of trip that was being expected and been very ill afterwards for weeks. It's not something I would ever consider doing again.

My offer of 2026 was to take away all issues, I would have travelled to the UK to undertake a hearing, but as that is now not required, I won't need to do it.

I trust that Judge Sinfield now understands my reasoning for writing as I did and I would add that it seems that Judge Sinfield's views of my previous email was that it was written as delaying tactics and I trust that he now appreciates why I wrote in that fashion and that it certainly was the complete opposite, I wanted a quick resolution, rather than a delayed one.

I therefore also trust that Judge Sinfield will now appreciate that I am never writing emails to delay anything, all I am looking for is for a quick resolution and a way to take matters forward speedily, so as to comply with Tribunal Directions, that has always been my objective and I appreciate that he may consider otherwise, but I trust I have now shown that to be the case and explained myself fully and I apologise for not making such position clear enough previously, which has clearly resulted in him considering that my email was a delaying tactic and incompliant and I would again ask that he view my emails as always trying to take matters forward and that if, in the future, they come across as anything else, that is purely down to my inexperience in this procedure and my using of a manner of words that may not be conveying the true message, rather than an assumption that I am trying to delay anything.

Reinstating

The decision as to whether to reinstate is, in my opinion, taking into account the above, a decision that has to be made in the circumstances, I appreciate that is a decision for Judge Sinfield, but I trust my emails explains sufficiently as to why the previous email was written as it was written and that it was never written to delay or be non-compliant and I also trust that Judge Sinfield appreciates that his determinations are now complied with.

If Judge Sinfield requires any further information in order for him to conclude that reinstatement is the most just course, then I am happy to provide it and he can detail to me what he wants to know and I will comply accordingly.

I therefore make formal application to have the appeal reinstated.

HMRC's objection to reinstatement

133. In their notice of objection provided on 17 July 2024, HMRC submitted as follows:

1. Further to the Tribunal's request of 3 July 2024, these are the Respondents' submissions on:

(i) The Appellant's application for reinstatement of the appeal, and;

(ii) The Appellant's proposed hearing dates.

Chronology

2. In a letter of 2 April 2024 the Tribunal directed that the proceedings would be struck out without further reference to the parties unless, within 14 days, the Appellant met one of three conditions, which were to:

(1) Confirm he would attend the Tribunal in London for a 10 day hearing on dates specified by him, in the period between 3 June 2024 and 19 December 2025, or;

(2) Consent without reservation for the appeal to be dealt with on the papers, or;

(3) Provide an alternative practical way to bring the proceedings to a conclusion. ("The Directions").

3. The Appellant replied to this letter in an email dated 15 April 2024 ("The Response Email") which was within the 14 day deadline given by The Directions.

4. The Tribunal informed the Appellant that the appeal had been struck out in a letter dated 17 May 2024 ("The Strike Out Letter").

5. The Appellant made an application for the appeal to be reinstated in an email dated 22 May 2024 ("The Application Email").

Preliminary

6. The Respondents note that in The Response Email and The Application Email the Appellant covers a range of issues. In these submissions the Respondents focus on the particular matters set out in paragraph 1

7. The Respondents hope that this is within the spirit of the sentiments expressed by Judge Sinfield at the hearing on 15 September 2023. However, for the avoidance of doubt, where HMRC have not directly addressed assertions made by the Appellant this should not be taken as agreement with them.

Appellant's application for reinstatement of the appeal

Did the Appellant comply with The Directions?

8. The Appellant has not confirmed he will attend a hearing in London, and he has not consented without reservation for the appeal to be dealt with on the papers. Therefore he did not meet condition one or two of The Directions.

9. The Respondents submit that the Appellant also did not meet the third condition, as he did not provide "…an alternative practical way to bring the proceedings to a conclusion" by 16 April 2024.

10. In The Response Email the Appellant made an application, referred to in that email as Application 2, for the Tribunal to accept the contents of his witness statement as fact and allow his appeal. As noted in The Strike Out Letter, this would constitute a conditional acceptance of the proposal to hear the appeal on the papers, and therefore does not meet the third condition of The Directions.

11. In The Response Email, the Appellant asks about his ability to give evidence via video from four locations. He states that, once he has received an answer, he can enter into logistical discussions with his employer and his witnesses. As also noted in The Strike Out Letter, this does not meet the third condition of The Directions.

12. Therefore, although The Response Email was submitted in time, its contents did not comply with The Directions.

Application for reinstatement

13. From The Application Email the Respondents understand that the Appellant submits that the appeal should be reinstated because:

(a) As an unrepresented Appellant he does "…not have extensive knowledge and understanding as to how Tribunal works and sometimes I say things in a manner that I consider is appropriate but which a Judge may not.";

(b) "I was clearly under the impression that I had complied";

(c) "I was quite prepared to provide a detail of the dates";

(d) Following his The Application Email he has now fully complied with The Directions, and;

(e) None of his actions were intended to cause a delay to proceedings and, if the hearing is listed for December 2025, have not caused any delay.

[HMRC set out the approach to an application for reinstatement derived from *Martland v HMRC* [2018] UKUT 0178 (TCC) ('*Martland'*) and *Chappell v The Pensions Regulator* [2019] UKUT 209 (TCC) ('*Chappell'*)

20. The Respondents will now address the Appellant's grounds of appeal in turn.

Ground a – the Appellant is unrepresented

21. The Respondents submit that The Directions were perfectly clear. It is agreed that the Appellant has not met the first two conditions, which leaves the third condition to consider. This condition was that the Appellant "provides an alternative practical way to bring the proceedings to a conclusion."

22. The Respondents submit that this is not a direction which requires legal knowledge or experience to understand. It is written in clear and plain English. Likewise, the timeline for compliance was plain from the directions.

23. Therefore, the fact that the Appellant is unrepresented should have caused no impediment to complying with The Directions.

24. The Respondents submit that the Appellant should also have been well aware of the consequences of not complying with The Directions. As detailed below at paragraphs 47 to 53 this appeal has previously been struck out and, following an appeal by the Appellant, reinstated. Therefore the Appellant cannot claim that, as an unrepresented applicant, he was unaware of the need to comply with directions from the Tribunal, or of the consequences should he decide not to comply.

Ground b – the Appellant believed that The Response Email complied fully with The Directions

25. Rather than providing a practical way to bring the proceedings to a conclusion, in The Response Email the Appellant states:

(i) That he is in the process of agreeing to a period of leave in 2025 with his employers;

(ii) That during this unspecified period he will travel to one of four locations;

(iii) That in that location, he will stay in a hotel, where he could attend a hearing via video dial in.

26. In the same email, the Appellant asks the Tribunal about his ability to give evidence from four countries.

27. The Respondents submit that this information, and this question, is not a way to bring the proceedings to a conclusion. No specialist legal knowledge or experience is necessary to know that the limited information provided and the question asked do not constitute a practical way to bring the proceedings to a conclusion.

28. In The Application Email the Appellant explains that the questions to the Tribunal and third parties were to enable him to make some decisions. These, in turn, allowed him to make the proposal that he attend a hearing via video, while in a hotel room in the USA. This proposed alternate way to proceed was not provided until The Application Email.

29. The Appellant was, by his own admission, unable to make that proposal until he had received the Tribunal's response to his question. This means that, prior to receiving that answer, he was not in a position to make the proposal. Therefore he must have known that The Response Email, which posed the question, did not comply with The Directions. Again, no specialist legal knowledge or experience is needed to be aware that, if you need answers to questions in order to make a suggestion, the question(s) cannot constitute that suggestion.

30. The Respondents therefore submit that the Appellant cannot have been under the impression that he had complied with The Directions when he sent The Response Email.

Ground c – the Appellant was prepared to supply dates for a hearing

31. The third condition of The Directions does not direct that hearing dates must be provided, although they do not preclude the Appellant from supplying them as part of bringing proceedings to a conclusion. In the Application Email the Appellant states that he was "*… quite prepared to provide a detail of the dates*" in "*…my previous email*" (The Response Email). In fact, dates were not provided until The Application Email. The Respondents submit that it is what the Appellant did, rather than what he was prepared to do, which is relevant.

32. In The Application Email the Appellant states that he needed a confirmation of which country or countries he could give evidence from in order to provide dates on which he could attend a hearing. In his own words: "*A closer country would allow for a quicker travel and an earlier hearing, but as the most distant country has now been confirmed as the only country allowable, I need more time and that means I need to negotiate with my employers the timescale, which I have now done and confirmed.*"

33. From this statement, it would seem clear that, on 15 April, the Appellant was not prepared to provide dates, as he could only provide dates after receiving information from the Tribunal and the subsequent discussions with his employers.

Ground d – the Appellant has now complied with The Directions

34. In The Application Email, the Appellant has stated that, having now provided a proposed way to proceed along with a potential hearing date, he has now complied with The Directions. However, he did not make an application for an extension to comply with the directions, nor does he provide an explanation for the delay in complying.

35. In addition, for the reasons given below when addressing the Appellant's proposed hearing dates, the Respondents submit that the Appellant has still not provided a practical way to bring proceedings to a conclusion, and has therefore not complied with The Directions.

36. He states that his delay in providing his available dates for a hearing was due to needing to wait for the Tribunal's answer to his question.

37. From the Appellant's statement in The Application Email he contends that as the USA was the furthest potential destination it would result in the longest travelling time and the latest hearing window. Therefore, had he so wished, the Appellant could have spoken to his employers prior to sending The Response Email and provided dates for attendance from the USA in The Response Email. While he may have been able to later provide additional, earlier, dates depending on the Tribunal's answer, there should not have been a barrier to providing the 'furthest and latest' dates. In addition, the third condition of The Directions did not specify that dates needed to be provided, just a practical way to bring proceedings to a conclusion.

38. This also does not address the fact that, in addition to not providing potential hearing dates, the Appellant failed to provide a practical way to bring the proceedings to a conclusion in The Response Email.

39. The Respondents do not accept that the Appellant has now complied with the Directions and, even if he had, this does not excuse his initial failure to do so.

Ground e – the Appellant has not caused a delay to proceedings

40. The Appellant has contended that, following The Application Email, he has now complied with the directions, and that if the hearing is to be listed in December 2025, there will have been no material delay to proceedings caused by his initial failure to comply.

41. As detailed below, the Respondents do not believe that providing a single window of availability, at the end of a listing period, for a hearing in over 17 months' time, and without confirming that all witnesses for the Appellant are able to attend, is a practical way to bring the proceedings to a conclusion, or at least not one within a reasonable time frame.

42. That aside, the fact that the Appellant contends that he has now complied with the directions – which the Respondents do not accept - would not excuse his initial failure to comply. The Respondents submit that compliance with Tribunal directions is an important part of the Tribunal process, and the Appellant has offered no reason for his failure to comply.

<u>Applying the three stage process</u>

43. Rule 8(1) of The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 ('The Rules') states that proceedings will be struck out if the appellant fails to comply with a direction that stated that failure to comply would lead to the striking out of the proceedings. The severity of this sanction reflects the severity of the failure.

44. For the reasons set out above, the Respondents submit that the Appellant failed to comply with The Directions, and that this failure to comply is both serious and significant.

45. The Respondents do not agree that the Appellant has rectified this failure, and submit that his failure to comply is ongoing.

46. The Respondents submit that the Appellant has failed to give a reason for this serious and significant failure to comply.

47. For the reasons set out above, the Respondents submit that the Appellant's lack of representation was not a reason for his failure to comply, and that he could not have believed that he had complied with The Directions when he submitted The Response Email.

48. The Respondents note that this appeal has been struck out previously as a result of the Appellant's failure to comply with Tribunal directions.

49. In his decision dated 21 February 2020 ("The Decision") Judge Beare found (paragraph 18) the Appellant's "*…defaults to be both serious and significant, both in terms of number and in terms of the period over which they occurred*" and noted that, in addition to the failures which were being considered in The Decision "*the Applicant has repeatedly failed to comply with various procedural aspects of the appeal.*"

50. The Respondents submit that the Appellant's failure to comply with The Directions is the latest in a series of failures to comply.

51. The Respondents submit that these repeated failures to comply, demonstrated throughout the litigation process, are both important and relevant when considering the circumstances of the case.

52. The Appellant's failure to comply is serious and significant, no reason for his failure has been provided, and the circumstances of this case show that this is part of an ongoing pattern of behaviour.

53. When considering reinstatement, the need for litigation to be conducted efficiently and at proportionate cost, and the need to enforce compliance with The Rules and directions issued by the Tribunal are both important considerations.

54. The Decision ultimately granted reinstatement of the appeal due to specific circumstances surrounding the Appellant's submission of his witness statement. Judge Beare stated that, in the absence of those specific circumstances, he would have decided to "*dismiss the application for reinstatement.*" The Decision was issued on 1 February 2020. It is now July of 2024, and the Appellant has stated he cannot attend a hearing before December of 2025.

55. The Respondents have incurred considerable costs between February of 2020 and now, and anticipate that further costs will be incurred between now and a hearing should the appeal be reinstated.

56. The Respondents submit that a delay of five years between the issue of The Decision and a potential hearing date is not an efficient progression of matters. 57. In addition, as this latest failure to comply with directions shows, the Appellant continues not to follow the Tribunal rules or respect the directions issued by the Tribunal.

58. The Respondents therefore submit that the Appellant's application for reinstatement should not be granted.

The Appellant's proposed hearing dates

59. The Respondents' position remains as set out in their email of 4 March 2024.

60. The Respondents submit that the Appellant's suggestion that a hearing can only be listed in the period 8 - 19 December 2025 is not a practical way to bring the proceedings to a conclusion.

61. The Respondents' note that this appeal dates back to 2015, with decisions dating back to the tax year ended 5 April 1998 in respect to direct tax, and the 05/95 period in respect to VAT.

62. The Respondents submit that they, and the Appellant, are entitled to finality in this matter. In line with the overriding objective to deal with issues fairly and justly, and specifically in line with Rule 2 (2)(e) of The Rules it is important to avoid delay in so far as is possible and practical.

63. The Respondents respectfully submit that waiting 17 months for a hearing date constitutes a significant delay.

64. The Respondents understand that the Appellant has cited both health and jurisdictional reasons for his very limited availability. However, the Respondents submit that, as he has declined to have the appeal heard on the papers, it is the Appellant's responsibility to make himself available to attend a hearing. While it may be inconvenient for the Appellant to travel and attend a hearing, and while he may have conflicting work commitments, these are not an exceptional circumstance.

65. The Respondents note that the Appellant has not, to date, provided any evidence to support his assertions that:

(a) He is currently in Peru;

(b) His current employer refuses to allow him to take any time away from work in the 17 months between now and December 2025, or;

(c) He is suffering from diagnosed, ongoing long covid and that it is the opinion of a qualified physician that he is currently unable to travel to the UK for health reasons, and will continue to be unable to travel to the UK until on or after June 2026.

66. The Respondents respectfully request that, unless and until evidence to support these assertions is provided, no further delays to proceedings on the basis of these assertions and their consequences are allowed.

67. Rule 30 of The Rules states:

"*Subject to rules 19 (proceedings without notice to a respondent) and 32(4) (exclusion from a hearing), each party to proceedings is entitled to attend a hearing.*"

68. The Respondents submit that the entitlement to attend the hearing granted by rule 30 does not grant any party the right to decide the hearing date, nor does it constitute a right to have the hearing only occur in the presence of all parties.

69. Rule 33 of The Rules, in fact, explicitly allows the Tribunal to proceed with a hearing in the absence of any party to the proceedings:

"*If a party fails to attend a hearing the Tribunal may proceed with the hearing if the Tribunal –*

(a) is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and

(b) considers that it is in the interests of justice to proceed with the hearing."

70. The Respondents submit that, again, there is nothing in rule 33 that grants a party the right to decide the hearing date.

71. From his correspondence, the Appellant has made it clear that he is capable of attending a hearing in the UK, but will not make himself available to do so until after June 2026 at the earliest. The Respondents submit that this position is at odds with the overriding objective of the Tribunal.

72. The Respondents submit that appellants regularly have to travel to attend hearings, they often have to arrange to be absent from work or otherwise rearrange existing commitments in order to attend, and appellants suffering from chronic health conditions attend Tribunal hearings.

73. The Respondents submit that the Appellant's unwillingness to do this, and his insistence that he will only attend a hearing in a single period or when his current contract has expired, is unreasonable, and is creating an unreasonable delay.

74. This delay is material, and has a prejudicial impact on the Respondents.

75. This appeal considers matters which occurred many years ago. Should the hearing be held in December 2025, some of the decisions will be over 30 years old. This is a considerable length of time. The length of time the appeal process has already taken has meant that some of the Respondents' witnesses, and others involved in the litigation process, have retired. Further delay will only exacerbate this problem.

76. In addition, the more time that passes, the further back witnesses for both parties will have to recall, and the less reliable their memories and their testimony will be.

[HMRC then refer *Pittack v HMRC* [2014] UKFTT 670 (TC) which describes how the FTT dealt with delays caused by ill health in a particular case and make submissions.]

81. If the Tribunal decides to reinstate this appeal, then the Respondents request that, when reinstating the appeal, the Tribunal issue directions which:

(a) confirm the draft directions issued on 19 September 2023;

(b) Update direction 4 to allow the Appellant to request a video (subject to the Appellant and his witnesses being able to meet the appropriate attendance requirements) or a face to face hearing;

(c) Update direction 4 (7) to a listing period commencing 2 months after and ending 6 months after the decision to reinstate;

(d) Specify that a hearing date will be fixed by the Tribunal in line with direction 5, taking into account the parties availability but not being subject to the parties' availability, and even if a party has not provided their dates for a hearing or dates to avoid.

82. The Respondents submit that this will allow for an earlier listing period, and a reduction in further delay to the proceedings.

Conclusion

83. The Respondents object to the Appellant's application on the basis that:

(i) The Appellant failed to comply with The Directions;

(ii) The Appellant's failure to comply was serious and significant;

(iii) The Respondents' do not agree that the Appellant's proposed hearing dates provide a practical way to bring the proceedings to a conclusion and therefore the Appellant has not rectified his failure to comply;

(iv) The Appellant's grounds of appeal do not constitute an explanation for his failure to comply;

(v) The Appellant has demonstrated a pattern of behaviour throughout the litigation process, and this is not his first failure to comply with directions, nor is this the first time his appeal has been struck out due to his non-compliance with directions;

(vi) It would not be in line with the overriding objective to reinstate the Appellant's appeal.

84. The Respondents therefore respectfully request that the Tribunal dismiss the Appellant's application to have his appeal reinstated.

85. Should the Tribunal decide to reinstate the Appellant's appeal, the Respondents submit that the Appellant's proposed hearing dates do not provide a practical way to bring the proceedings to a conclusion.

86. Should the appeal be reinstated, the Respondents respectfully request that new case management directions are issued, as detailed at paragraph 80, above, to allow proceedings to progress in a timely manner.

Mr Strauss's submissions in reply

134. Mr Strauss's replied to HMRC's submissions in an email of 18 July as follows:

Overall

The appellant is somewhat surprised by the respondents' comments. In my opinion, I have always tried to comply with directions and indeed, considered that I had complied. I accept that Judge Sinfield, having been given information regarding the case, which was incorrect, may have considered that I had not complied, in reference to that one response however, there is no doubt in my mind, at that time, that (1) I was compliant and made that abundantly clear within my representations, (2) I was trying to comply with all 4 of the requirements and needed information, from tribunal in order to do so and, as soon as that information was provided, I did comply and (3) I consider (and I appreciate this may not be a consideration by others) that this was simple mistake by me and although I do not criticize Judge Sinfield for the decision he has reached previously, based on the facts that were presented to him, at the time, I consider that (a) he was given incorrect facts, (b) I was clearly always intending to comply, am now compliant and any lack of compliance has not affected the progress of this case, so it would seem somewhat onerous for me to be denied any opportunity to challenge HMRC's position (I have never been given any opportunity to challenge them properly in an independent and unbiased manner) and for me to effectively be penalized £3m as a penalty (which clearly I am unable to pay anyway) where I have provided clear evidential basis as to why this £3m is improper and incorrect, much of which has not been challenged by the respondents or has been challenged and that challenge found to be faulty.

I trust that the majesty of law here, the fairness and equity of the Tribunals to the appellant, which I would remind the respondents is a prime objective of Tribunal, would allow for what I consider is a mistake to be rectified, in short measure and without any affect to the final outcome.

Therefore, in my opinion, it cannot be fair and equitable, to the appellant, for the appellant to be denied their appeal on the basis of a simple mistake that has now been rectified and did not change the timescale.

If one of the criteria that Tribunal wishes to consider is why I didn't ask for extra time to respond, it should be noted that I considered that I had complied and therefore additional time to comply would not seem appropriate, that would suggest that I hadn't complied, so effectively what the respondents are asking for is for me to advise regarding a position I did not believe existed and clearly, one of the main tenets of Tribunal is providing the truth, so if I did not believe a position existed, why would I then provide information regarding it as, in doing so, that would suggest I did believe it.

In reference to the response in specifics;

Point by point

Points 1-7 - No response required.

8. Agreed.

9. I disagree that there was no compliance, I was waiting for information, from tribunal to confirm the dates, which I could not confirm until I had that information. Perhaps the respondents would advise how I should respond in that fashion, without asking for that information (which I did). That to me is compliance as it took forward the discussion as to how compliance could take place to reach a conclusion and I do not understand how I could have reached that position without asking for that information. Therefore inherently, the deadline should have been extended as soon as I asked for that information, to allow that information to be provided and for me to confirm final dates. That is not incompliance, that is complying with the order in the only manner that I could.

I would add that we are here discussing a date, which was put onto an order. Such dates are clearly dependent upon the ability of the relevant party to comply, in this case, it was impossible to comply with that part of the order without the information that was requested therefore, in my opinion, that constituted compliance.

I now accept, from Judge Sinfield's response, that may have been an incorrect opinion to reach, that does not mean I didn't reach it, that just means I made a mistake in reaching it.

If what is being requested here is an application to have the date of compliance with the order amended to a later date, so as to ensure compliance, I hereby make that application accordingly.

APPLICATION

I hereby apply for the date of the order issued on 2/4/24 for compliance with the directions of Judge Sinfield, to be extended from 16/4/24 to 22/5/24. As this has not, in any way, affected the progress of the case, I would like that application to be heard accordingly and heard on the papers alone if possible, but I appreciate that is entirely a decision for Tribunal to make.

Furthermore, I would point out that I did provide a detail as to conclusion of the case in an alternate manner. Although I appreciate that Judge Sinfield has rejected that alternative, it is clear to me that he rejected such alternative on the basis of the wording used in that application and as far as I can appreciate (and I accept I may be wrong in this) the refusal to allow the application was not on the basis that 'it would constitute a conditional acceptance of the proposal to hear the appeal on the papers', but that it was phrased in a manner

which suggested that I was leading the Tribunal in a manner which Judge Sinfield considered was improper.

I never asked for a 'conditional' consideration of the application to have the appeal determined on a precise point and I do not understand why the appeal cannot be determined in such fashion.

I also do not understand why applications cannot be considered on the papers alone and the main appeal considered in hearing, that has happened previously and is fully allowed in the regulations, so perhaps the respondents would explain why this is inappropriate.

Perhaps Tribunal would clarify this point as one of us is wrong in this, so it would be useful to understand whether the respondents are correct in their comment.

10. I do not accept that any application that was made by me was conditional acceptance purely on the basis of hearing the appeal on the papers. That application made was clearly never an application to hear the appeal, it was an application of a different nature to consider one part of the evidence supplied and whether consideration of that part alone would be sufficient to allow the appeals to be granted. That application was purely made to expedite matters (in accordance with tribunal tenets) and, in my opinion, had the application been made in a better format, allied with the fact that had Judge Sinfield been aware that I had complied with the response deadline, I would suggest that Judge Sinfield would have approached it with a different outlook.

My comments above suggest that the respondents' understanding of the rejection of that application is different to mine and perhaps Tribunal could explain the position so that both parties are fully aware.

I also refer to my response above in point 9.

12. I disagree as explained above.

13. All agreed.

Points 14-20

In reference to these points, I would make the following comments;

In Dominic Chappell v The Pensions Regulator [2019] UKUT 209 (TCC) the Judge referred to a number of matters and cases, which are relevant here and which I have detailed below the most significant and (in my opinion) relevant.

In British Gas Trading Ltd v Oak Cash & Carry Ltd [2016] 1 WLR 4530 the court explained that this was justified because an "unless" order does not stand on its own. It observed at [38] that the court usually only makes an "unless" order against a party which is already in breach. It went on to say at [38] and [39]:

"38…. the "unless" order gives that party additional time for compliance with the original obligation and specifies an automatic sanction in default of compliance. It is not possible to look at an "unless" order in isolation. A party who fails to comply with an "unless" order is normally in breach of an original order or rule as well as the "unless" order.

There was no previous order that the appellant was in breach of. Therefore, under this case, the unless order strike out stands on its own and therefore the above case would clearly define that a strike out cannot occur in these circumstances.

Seriousness and significance of the breach

In Dominic Chappell v The Pensions Regulator [2019] UKUT 209 (TCC) the Judge referred to the seriousness and significance of the breach. The seriousness of the breach is a matter of contention, I consider that no serious breach occurred and that will remain my opinion on the matter and I appreciate this is subjective. However, on the point of significance, clearly the fact that I am now compliant, the fact that this compliance means that the case progress has not been hindered in any way and the fact that an application to reinstate does not, in any way hinder the respondents or make their position untenable in any manner, clearly defines that any such breach is clearly insignificant as it has no effect upon anyone to continue with this case in a proper and correct manner.

Furthermore, as soon as I became aware that a breach was considered, I rectified it and that rectification now allows the case to conclude in a proscribed and approved manner and timescale.

Clearly that can only be determined as an insignificant breach. As such, it clearly cannot be determined as a significant breach and therefore Dominic Chappell v The Pensions Regulator [2019] UKUT 209 (TCC) would seem to indicate that reinstatement is the completely correct manner of progression.

The reasons for breaches

In Dominic Chappell v The Pensions Regulator [2019] UKUT 209 (TCC) the reasons for breaches changed and that meant that proper consideration of the breaches could not be reached by Tribunal Judge Herrington, at the time the breach was being considered and this again was put forward as a reason why the appeal should not be reinstated. Clearly, in this case, there has been no change in the reasoning and a proper consideration of the reasoning should now be fully understood. On that basis, this element of why Judge Herrington refused the application does not apply in this case.

Conduct

Judge Herington reached the view that

In view of Mr Chappell's conduct to date, there could be no guarantee that the subsequent conduct of the proceedings would proceed smoothly in accordance with the further directions that will be necessary to bring the matter to a hearing.

In this case, we have a hearing date that can now be set. That clearly is a clear and consistent fact that subsequent proceedings would proceed smoothly.

Judge Herrington also concluded that a major factor in the decision not to reinstate was as follows;

Furthermore, as I have said, if I were to reinstate the proceedings now on the basis of the Reply as filed, then requests for further and better particulars would inevitably follow in order that TPR is in a position to prepare the necessary evidence. Mr Chappell's conduct to date suggests that there is a good chance that such requests would not be complied with satisfactorily were the Tribunal to endorse them. Further unless orders may then be necessary. Nothing that Mr Chappell said at the hearing gave me any confidence that his behaviour was likely to change. I could not take seriously his off-the-cuff comment at the hearing that he would immediately resign his job and devote himself entirely to pursuing the reference. It is therefore clear that it is highly likely that there would be significant prejudice to TPR in terms of costs and devotion of resources in preparing for a reference that, ultimately, may not be properly pursued. That is a very strong factor in favour of not reinstating the reference.

There are no further or better particulars to provide in this case, so it cannot be determined that there could be any conduct which suggests that any of such would not be complied with. The appellant has complied with all requests for further and better particulars and always (in his opinion) in a timely manner. The conduct of the appellant in reference to provision of such cannot therefore be determined as being incompliant, in any way or form and as Judge Herrington points out, the conduct and the inability of Judge Herrington to believe that Mr. Chappell would allow the normal progression of this case was a massively important factor in his decision to refuse the application.

The appellant has made no 'flippant' comment to Tribunal in respect of the requests for further information and there is certainly no prejudice to the respondents in respect of additional costs to bring this matter to a conclusion than would naturally and normally occur.

Clearly, those consideration do not exist in this case.

Judge Herrington concluded that further 'unless' orders may be necessary, none are required here.

Judge Herrington also noted that Chappell had shown a clear indication of a lack of respect for the Tribunal and his behaviour was clearly a defining point to the refusal to reinstate. I trust I have made it clear to Tribunal that I accept my actions were mistaken and have apologized to Tribunal and Judge Sinfield for such, if that is not a prime example of contrition and a clear respect for Tribunal as well as an understanding that the manner of action needed amendment, then I do not know how else to convey this.

Judge Herrington also noted;

Finally, I must give particular weight to the importance of efficient litigation and compliance with rules and orders. Mr Chappell has repeatedly failed to comply with directions culminating with the Unless Order which is also not been complied with. As I have also indicated, he has continued not to comply with the Tribunal's directions as regards the hearing of his reinstatement application. Unless a deadline is passed, he makes no attempt to respond to correspondence, either from TPR or the Tribunal. As I have repeatedly said, that conduct is unacceptable and demonstrates a fundamental failure to cooperate with TPR and the Tribunal, as required by the Rules. That conduct has undoubtedly impeded the efficient progress of this reference, as illustrated by the fact that very little progress has been made since the reference was filed over 17 months ago. I must therefore give strong weight to this factor in this case.

Clearly this is yet another important aspect to the considerations of Judge Herrington and clearly these considerations do not apply in this case. As far as I am aware, I am compliant with all orders and directions and there are no further requirements that Tribunal is required to obtain except the normal requirements for a case to be heard, which would normally be provided much closer to the case date. There has been no fundamental failure to co-operate with correspondence, in fact the opposite is true, there is a clear fundamental compliance. My conduct cannot be determined as 'unacceptable' and there has been no attempt to impede the progress of this case. Full progress has been made and we are literally at the point where a hearing can take place, subject to the normal timescales of provision of court files, which are undertaken by the respondents.

Therefore, instead of suggesting that Dominic Chappell v The Pensions Regulator [2019] UKUT 209 (TCC) would seem to dictate that reinstatement is inapplicable in the circumstances, in fact this very case and the difference

in nature between my actions and Mr. Chappell's would clearly show that reinstatement is entirely appropriate.

I would further point out that Judge Herrington's consideration here weighed heavily on his mind;

It is undoubtedly the case that there would be significant prejudice to Mr Chappell were I not to reinstate the application. TPR is seeking to impose liability on Mr Chappell for a very large sum of money. If the reference is not reinstated Mr Chappell will be deprived of the ability to challenge the issuing of contribution notices in the sum of about £9.5 million in circumstances where the Tribunal proceedings are the only opportunity for Mr Chappell to challenge TPR's findings through the judicial process. That is a strong factor in favour of reinstating the reference.

There is not much difference in terms of a 'very large sum of money' when one considers £ 9.5m and 3m. Clearly Judge Herrington defined that this was a strong factor in favour of reinstating the case. In my case, I have acted entirely different to Mr. Chappell, I have complied with all orders, albeit I accept that there was one point in the past when I was very ill and wasn't in a position to respond and, on my recovery I did comply and this latest issue which I now consider is complied with and we are at the point where a case can conclude at hearing, with nothing stopping it from now onwards on reaching that conclusion.

On that basis, rather than this case suggesting that reinstatement is inappropriate, I would strongly contend this case clearly defines that reinstatement is the only option available.

I thank Judge Herrington for his considered and valuable views on the matter.

21. The respondents submit that the directions were perfectly clear. Clearly that cannot be the case if the appellant didn't fully understand them. It cannot be a correct statement, where the appellant does not fully understand the directions and considers they have complied with them for those directions to be 'perfectly clear' to the appellant. The respondents have experience knowledge and understanding of the legal framework, so cannot comment on how the appellant viewed the directions. This comment is therefore somewhat irrelevant as far as the appellant is concerned, nobody is questioning the understanding of the respondent and the respondent is not in a position to consider the appellant's understanding or appreciation of the directions.

The appellant certainly considered that they had provided an alternative, that was clearly a misunderstanding and I am confused as to why the respondents would assume that something that I misunderstood was 'perfectly clear', that cannot be the case, otherwise I would not have misunderstood them.

Points 22-23. See above.

24. I was always under the impression I had complied, as clearly stated, it cannot therefore be determined, by a third party, that I was not under that consideration.

25. All of these machinations provide for compliance with the directions, the only missing factor was a date, which could not be determined until I had detail of the country from which I could represent, which was requested within the response and, as soon as that was provided, the date was provided and full and unequivocal compliance occurred. The only reason full compliance did not occur within the first response was that I could not yet determine a date and, although I accept that, in hindsight and with the knowledge I have today, gratefully received from Judge Sinfield, a request for additional time may well

have been appropriate, the failure to ask was merely inexperience, misunderstanding and a lack of Tribunal knowledge. It is clear that, had I asked for more time, that may well have been granted and I have made the application within this response for that additional time, had that additional time been granted and the required information provided, then there would have been full compliance.

Considering the fact that (1) I considered I had complied as best I could, (2) I provided an alterative compliance that I considered was valid, (3) I merely did not supply a date, as I could not supply one at that time, but confirmed all other matters, (4) as soon as I was given the information to progress, I provided a date (5) had I made the application for additional time and it had been granted I would be in full compliance and (6) this has not affected, in any way, the progression of the case in the appropriate timetable, clearly that all points to reinstatement being the appropriate consideration.

Points 26-27

Clearly the evidence shows that this is a practical way of bringing this matter to conclusion, as the Tribunal is now in a position to set a date for a final hearing.

28. I am at a loss to understand why the respondents have made this comment and refer the respondents to (1) the previous hearing where the issue of provision of evidence was clearly discussed and considered, by Judge Sinfield and (2) my response of 15/4/24 and in particular paragraphs 4-10 of page 4 and paragraphs 1-4 of page 5, which clearly explains the position and were all provided within the response to the directions, sent on 15/4/24 and reiterated in the reinstatement application.

29. There were 4 considerations within the determinations. I considered that I clearly had complied with the alternative method of resolution by providing the application. I was also considering that providing the date after having received the response would also be classified as compliance. Again the respondents are commenting on what the appellant considered and clearly, as is defined within this response and other documentation, the evidence shows their consideration as wrongly made.

30. Clearly the respondents cannot make that statement in light of the evidence.

Points 31-33

The respondents are misrepresenting the position here. There is a difference between (1) *not being able to provide detail* to (2) *not being prepared to provide detail that the appellant could provide*. The respondent is seemingly claiming the latter (2), the appellant is clearly claiming the former (1). It is confusing to the appellant as to how the respondents can claim the latter when they have no knowledge or appreciation as to what the appellant thought at that time and where the appellant has acted in accordance with point (1) and has claimed that they were acting in accordance with point (1). Clearly the provision of the dates, in a quick timescale, after the information in order to define dates was provided, thereby allowing for a conclusion within the determined timescale, shows a clear appreciation that position (1) applied. It is therefore again confusing as to why the respondents, without any evidence to support their contention is suggesting that their interpretation applies.

I would add that this section also seems to contradict the previous point (28) of the respondents' responses.

In addition to this point 32 clearly shows that (1) above applied and the respondents are seemingly confused as to the difference.

Point 33 is also disproven by the provision of dates, which clearly shows that the appellant was fully prepared to provide dates. I would also point out that if I was unprepared to provide dates, then that unpreparedness would not have changed and had the issue been that 'unpreparedness to provide' rather than an 'inability to provide', I would have refused to provide dates even after the information in order to put me in a position to provide dates had been provided by Tribunal. Therefore, the respondents' points are confused and incorrect.

34. I have now made the application within this response. I appreciate that application should have been made at the time, that was a mistake by me, I have acknowledged it as a mistake and I apologise for to Tribunal for not making the application for more time earlier, but as it has now been made, I presume this point, by the respondents, is now irrelevant.

I have provided copious explanation as to why it was not provided earlier.

35. I do not understand how it can be determined, by anyone, that providing dates for a hearing and a manner by which that hearing can take place is, in any way 'not providing a practical way to bring proceedings to a conclusion'. Perhaps the respondents should provide more detail here, just making a statement that is clearly unfounded cannot be an acceptable response.

36. Correct.

37. The respondents point out that I could have provided details of dates assuming America. I would respectfully point out that I had no idea whether even America was an applicable country and indeed I provided 4 countries and 3 were rejected. It is therefore confusing as to why I could have assumed that America would be any different to any other country and indeed, was expecting that either (1) all countries would be applicable or (2) none. It would be rather presumptuous to assume that America would be the only one allowable, I didn't know and that was why I asked the question. So what the respondent is saying is that I should have anticipated an answer to a question I had no idea what the answer would be and where I expected a different answer, it's completely nonsensical.

I would comment here that I consider that the appellant is getting utterly confused as to the situation and is making assumptions which are clearly incorrect to make and then inferring, from those incorrect assumptions, a plan of action that clearly could not possibly be undertaken and ultimately inferring from that flawed plan that because I never undertook that flawed plan somehow that suggests that I never intended to undertake anything.

Clearly that is an entirely incorrect approach.

I would add that I made it clear that I needed to appreciate the country so as to work out the timescale so as to agree that timescale with my employers, this is clearly a 'chicken and egg' situation in that there is a process to follow and one cannot assume any part of the process. For example, if all 4 countries were unacceptable and I had given dates, as suggested by the respondents, then I would have to have withdrawn those dates and the respondents would then be commenting that I am incompliant, so whatever I did, the respondents would have found issue with it.

I considered I dealt with the matter is the most apposite manner, considering the circumstances, I would suggest that the respondents have misunderstood entirely the whole situation.

38. This is untrue, I provided a clear method of resolution, just not a set of dates.

39. I am at a loss to understand how the respondents have come to their first consideration and would ask them to explain how, considering that we now have a date and methodology to reach conclusion. As to their second consideration here, I have provided detail as to the reasons why, so there is an excuse, just one that the respondents find it impossible to accept, although I would add that the respondents seem to approach all of my representations in an identical manner.

40. This is correct.

41. I would point out that firstly, this was deemed an acceptable timescale by Judge Sinfield, so are the respondents now criticizing his decisions?

If so can they please explain why?

Secondly, I was not asked to confirm that all my witnesses could attend, but I checked anyway and can confirm that I have made the appropriate enquiries and (3) it is down to me to get my witnesses to attend and is not the responsibility of either (a) the respondents or (b) Tribunal, so it is irrelevant as to the progression of this case to conclusion as to whether I can get all my witnesses to attend or not.

I would add that Judge Sinfield did not ask that question or put such into his directions, so I am confused as to why the respondents seem to suggest that I have not complied with a direction that I was not asked to comply with.

42. Again this is untrue, I have provided copious reasons for what occurred.

43. Noted

Points 44-45. The appellant considers otherwise. The Tribunal can now proceed to conclusion, given the dates. The respondents are clearly wrong in their considerations.

46. I consider I have explained myself fully previously as to my actions. I admit that there were some minor mistakes, this being due to a misunderstanding by me, there is no doubt of that, but I trust I have explained above why that should not be a reasoning for a refusal to reinstate.

47. Again, I am at a loss to understand how the respondents can know and understand my understanding of the matter better than me. They are making statement after statement saying that my understanding is not as I have represented but they have provided no proper evidence to support their contentions and clearly they have none.

48. There was a hearing to discuss the case and it was clearly defined, within that hearing, by Judge Beare that I had been unwell and that it was correct and proper to reinstate the case. I can provide a full reasoning as to why (1) the documentation issued by Judge Beare was not complied with, (2) that subsequent documentation was not complied with (both being due to a long standing and very difficult illness) and (3) that the case was clearly reinstated because of that illness. This occurred 6 years ago and it seems rather ‘clutching at straws’ for the respondents to bring up a matter that occurred 6 years ago and where the final conclusion was that there was a perfectly good reason as to why the case should have been reinstated. I see no reason to re-judge that decision and it has no bearing upon this matter. The conditions were entirely different and there were no responses to Tribunal, due to my illness and the fact that I was not in a fit position to answer them for many months, having been bedbound.

I am therefore confused and surprised at the respondents referring to it.

49. I agree that I had not complied and it was fully accepted that the reason for my non compliance (it was non compliance in entirety) was due to my illness and the application to reinstate was approved. This case is entirely different, I have responded on all occasions and have not claimed illness as the reason for any perceived non-compliance.

That matter therefore has no relevance to this issue.

50. Untrue. There was a specific reason for that non compliance which has no relevance here. Over a period of 8 years, I have complied with all directions except that one period of illness and this latest issue, which I consider I have complied with but appreciate others may not consider. That is clearly in the main full compliance.

51. Again untrue, there has been no history of non compliance except that one incident which was explained and dealt with, the case having been reinstated (as it properly should have in the circumstances). Over an 8 year period that is certainly not a history of non compliance as suggested.

52. There is no current failure and it is certainly not serious or significant as explained previously. This matter can now proceed to its conclusion, in a timescale decided by Judge Sinfield, that cannot be a serious or significant failure.

53. Agreed. I would remind Tribunal that I do find it rather confusing that the respondents continue to discuss about breaches in Tribunal rules when they were meant to issue a statement of case in 2016, which was eventually issued in November 2018 (2 years later) where they made application for extension, after the provision date had passed and, in hearing, represented to the Judge considering the application, that I had agreed the extension when I had not, this influencing the Tribunal Judge to grant the extension and then they make issue with a date that wasn't provided for just over a month. It seems the respondents are quite happy to ignore Tribunal rules and determinations and take 2 years to issue a document that should have been issued in 2 months but want them rigorously applied when it comes to the appellant.

54. This is of absolutely no relevance and again seems to be a criticism, by the respondents, of Judge Sinfield's decisions. If the respondents consider that Judge Sinfield's decision of an appropriate timescale is inappropriate, then they have every opportunity to apply for that decision to be amended. I note no such application has been made, so it seems that the respondents are trying to maintain something but not acting in accordance with it. If the respondents consider the timescale as inappropriate, they can apply to have it amended.

55. Those costs are no more than had the case concluded in the normal manner. It cannot be the case that costs which would have to have been spent anyway, had the case concluded be a matter of consideration when clearly such a decision would massively prejudice me (as explained above).

56. It seems that the respondents are forgetting the 'elephant in the room' here. Covid clearly played a role in the delay, this was not down to me in any way. In fact I consider that the respondents have far more responsible for any delays than myself, but this is an argument we can have over and over and will never reach agreement, mainly because the respondents never agree to anything and that I consider is one of the major reasons why this case has been delayed so much.

57. This is untrue again. Over a period of 8 years, there has been a period of illness and one issue regarding a date. That is not incompliance.

58. The appellant disagrees entirely and has proven above from the very case quoted by the respondents as to why the only course of action that would arise out of that case is for reinstatement.

59. Noted

60. Perhaps rather than just making a statement, the respondents explain why they are unable to comply with those dates. The appellant would further point out that it wasn't within the realm of the respondents to respond with appropriate dates, that was the requirement of the appellant and that requirement has now been met. The appellant would point out that the respondents are a large organization with a number of members of staff. It would seem inconceivable to the appellant that the respondents would not have sufficient staffing to allocate to a hearing that was 17 months away and perhaps the respondents would explain why.

61. Agreed and the appellant would remind Tribunal it took the respondents 6 years to issue assessments and, when those assessments were appealed, it took the respondents a further 2 years to issue their statement of case, which should have been issued 2 months after appeals had been made. That is by far the longest and most significant delay in this matter. In light of those delays, to accuse anyone else of delay in this case would seem nonsensical.

62. Agreed. It would seem utterly inappropriate to delay any further than Judge Sinfield's determination as to dates and the appellant has agreed to that timescale.

63. Again, the appellant is confused. This seems to again be a criticism, by the respondents, of Judge Sinfield's decision. Furthermore, the respondents have every right to apply, for that decision to be changed, perhaps instead of the respondents criticizing Judge Sinfield's decision, they should make that application instead, to show their intent.

The appellant would also point out that this is not an issue that should be considered when considering reinstatement, Judge Sinfield proposed the dates, so long as those dates are complied with then, as far as the appellant is concerned, this is not an issue that should be considered in respect of this specific matter.

64. The appellant would respectfully point out that he has made himself available, so the respondents' point is irrelevant.

65. The appellant would respectfully advise that he has not been asked and such considerations are irrelevant, if a date has been suggested, by Judge Sinfield and complied with and a suitable machination chosen, then such considerations are irrelevant.

66. The appellant would point out that there are no further delays. A date has been put forward that has the approval of Judge Sinfield and the parties are now reliant upon Judge Sinfield to approve the date. The appellant confirms he is fully in a position to comply with that date.

67. Noted.

68. Noted and nobody has chosen a date yet. Of course the respondents have the right to put forward an earlier date if they so wish however, they need to provide a reason as to why a date chosen by the appellant and (effectively) Judge Sinfield cannot be complied with.

69. Noted and agreed. However, considering that no actual date has been issued, perhaps the respondents should explain what relevance this point has.

70. The appellant has not ‘chosen’ a date. The appellant was given a timescale and asked to confirm their availability. The appellant has done so. That is the defining factor here, the actual date of the hearing that is finally decided is not relevant to this issue.

71. The appellant does not understand this point at all, what is the respondent maintaining here? A date has been put forward, by the appellant but is yet to be set, what is the relevance of discussing a date in 2026?

The appellant was making a point, but that point is now irrelevant and certainly irrelevant to this issue.

72. The appellant would respectfully point out that each matter has to be considered on its own merits. Where a hearing is taking place near to where the appellant lives and works, then of course the appellant has an onus upon them to attend a hearing in a different manner. Where the appellant would be put to substantial cost, time and indeed, health risk, Tribunal has to make an appropriate consideration. Tribunal has made that appropriate consideration and it is confusing as to why the respondents are continually criticizing Judge Sinfield’s reasonable and responsible handling of the date issue.

The appellant would also point out that any date chosen will suit one party better than the other, that is a natural occurrence, the fact that the respondents consider that a date doesn’t suit them is not a reason for that date to be dismissed.

73. The appellant would point out that, if the date chosen, by the appellant, had not been within Judge Sinfield’s determinations, then that would be a valid point to make. As the dates chosen are within those dates chosen by Judge Sinfield, the appellant would point out that perhaps the respondents should acknowledge their criticism of Judge Sinfield and be taking the matter up with Tribunal and Judge Sinfield himself rather than using a clearly spurious excuse to refuse a proper application for reinstatement. The appellant would point out that he has no criticism of Judge Sinfield in respect of the dates chosen, so would suggest that, where a Judge and an appellant are both in agreement as to dates and their reasonable nature, why are the respondents not in such agreement?

74. Perhaps instead of making a statement, that is entirely unexplained, the respondents should be explaining themselves better. It cannot be the case that an organization as large as HMRC, with the resources it has, are incapable of complying with the dates mentioned and perhaps the respondents should explain why they consider otherwise.

75. This is irrelevant, the only reason why decisions are being made in respect of matters 30 years ago are because HMRC made a decision to revisit issues that occurred 30 years ago. It is confusing, to the appellant that the respondents have the final decision on how they approach such matters, make a decision to approach such matters in a certain manner and then complain that it all happened so long ago. It’s like the man who shoots himself in the foot and then complains why he can’t walk properly.

76. Agreed, so it was entirely inappropriate to delay the issuance of (1) assessments for 6 years and (2) the statement of case for 2 years. It will come as no surprise that both delays were entirely at the complete control of the respondents. I refer to the analogy above again.

77. Case noted but there has been no claim of mental illness as a reason for non attendance. Perhaps the respondents would explain the relevance of quoting a case that doesn’t apply.

78. Nobody has made any comment regarding any inability to attend a hearing, in this case. A set of dates has been advised in accordance with Judge Sinfield's determinations. If the respondent considered those determinations as wrongly stated (as the representations of the respondents suggest) then the respondents had every right to ask for those determinations to be set aside. In light of the fact that those determinations have not been challenged, in any way, by the respondents, perhaps the respondents would explain why they have any issue with them, if they cannot find it within their remit to challenge them in the proper manner.

79. I do not understand the inclusion of this case at all, perhaps the respondents would explain further as to its relevance.

80. The appellant would remind Tribunal that this appeal is 8 years old this year and the review itself is 14 years old. Notwithstanding the fact that the respondents have taken matters back to 1996, a period of 28 years. To say that a further period of 17 months is unacceptable in light of that timescale and the fact that one of the main witnesses for the appellant, Mr. Dunne, is now dead and cannot attend, but would have done so, had this case concluded 5 years ago and with 8 years between the beginning of this review by HMRC (in 2010) and the final issuance of a statement of case (in 2018) that 17 months is unacceptable as a timeframe is somewhat confusing.

81. In respect of (a), (b) and (c) the appellant has no issue in restatement and clarification.

In respect of point (d) the appellant would point out that he fully agrees with Judge Sinfield as to reasonable date and therefore fully expects that the dates that both he and Judge Sinfield considered were reasonable are stated as the hearing dates, although the appellant does also accept that any final decision on that is at the prerogative of the relevant Judge. The appellant fully accepts that the respondents have the right to apply for a different set of dates should they be dissatisfied with the dates applied and that the respondents accept and acknowledge that, should a different set of dates be chosen, which do not suit the appellant, the appellant has the right to apply for a different set of dates to be chosen.

The appellant would remind the respondents that the overriding objective is to reach the truth and every effort should be made to reach that conclusion. If that means that a hearing date is set for December 2025, in order to properly meet that objective then that is an appropriate and correct set of dates to choose.

82. The appellant objects to such as being prejudicial to the appellant's ability to attend.

Conclusion

83. The respondents' reasonings for objecting to the reinstatement do not hold water, some are based on incorrect assumptions and do not apply, some are irrelevant and some are just untrue. There is nothing that supports the respondents' position that reinstatement should not occur and, in fact, the very case quoted by the respondents suggests that reinstatement is appropriate.

On that basis none of the conclusions are validly made.

84. The appellant continues to apply for reinstatement.

85. The appellant disagrees and notes that the respondents have provided no detail as to why they cannot comply.

86. Agreed.

APPENDIX 2
DIRECTIONS

FORMER DIRECTIONS

1. Save in so far as they have already been complied with, all previous Directions by the Tribunal in relation to this appeal are set aside and no longer have effect.

HEARING

2. The appeal shall be heard remotely by video from Monday 8 December 2025 to Friday 19 December 2025.

3. The Appellant shall attend the hearing by video from any of the following countries:

   (1) Costa Rica

   (2) Guyana

   (3) Paraguay

   (4) United States of America

4. In view of the time difference between the locations in Direction 2 and the United Kingdom, the hearing will start at 12 noon Greenwich Mean Time and end at 17:30 Greenwich Mean Time with such breaks as the Tribunal shall decide.

5. Not later than 28 days after the date of release of these Directions the parties shall provide to the Tribunal and each other a statement providing the following information to enable the Tribunal to list the appeal for hearing by video:

   (1) names and roles of all persons (including witnesses) who will attend the hearing for that party;

   (2) whether any witnesses will attend the entire hearing or only attend to give their evidence; and

   (3) a draft trial timetable for approval by the Tribunal.

HEARING BUNDLE

6. Not later than 42 days before the start of the hearing, the Respondents shall prepare an electronic hearing bundle ('the PDF Bundle') which complies with the Tribunal's guidance at Tax Chamber PDF bundles guidance (June 2021) and provide it to the Respondents and the Tribunal by email or electronic transfer.

7. The PDF Bundle shall include:

   (1) any notices, assessments or amendments under appeal;

   (2) any returns relating to the matters under appeal;

   (3) the notices of appeal provided under Tribunal Procedure Rule 20

   (4) the statement of case provided under Tribunal Procedure Rule 25;

   (5) any documents on the lists of documents which are to be referred to in the hearing;

   (6) the witness statements provided as directed above or previously; and

   (7) any directions issued by or correspondence with the Tribunal in the appeal which the parties intend to refer to in the hearing.

8. The Respondents shall ensure that the copy in the documents bundle of the witnesses' statements shall, where there is a reference to an exhibit in the text, include a hyperlink to that

exhibit in the documents bundle (or, in the case of a paper copy of the bundle, a marginal note giving the page number of the exhibit in the document bundle).

9. Not later than 7 days after the date for provision of the PDF Bundle under Direction 6, the Appellant may notify the Respondents and the Tribunal that a paper copy of the PDF bundle of documents is required for the hearing and, if so, must provide an address for service in the United Kingdom.

10. Where the Appellant requires a paper bundle of documents under direction 9 above, the Respondents shall provide a printed and bound paper copy of the bundle of documents to the Appellant (whilst still providing an electronic bundle to the Tribunal) not later than 14 days before the hearing and tell the Tribunal that they have done so.

11. If a paper copy of the PDF bundle is provided for the Appellant, the Respondents shall liaise with the Tribunal to see if the panel listed to hear the appeal would be assisted by the provision of paper bundles in addition to the PDF Bundle and when the Tribunal requires those paper bundles to be provided.

12. The Respondents shall ensure that the page numbering in any paper copy of the bundle matches the page numbering in the PDF Bundle.

SKELETON ARGUMENTS

13. Not later than 14 days before the hearing each party shall send or deliver to the other party and the Tribunal an electronic copy of their skeleton argument including the details of any legislation and case law authorities which they intend to refer to at the hearing.

AUTHORITIES BUNDLE

14. Not later than 7 days before the hearing the Respondents shall send or deliver to the Appellant and the Tribunal by email or electronic transfer an electronic authorities bundle prepared in accordance with the Tribunal's guidance above in relation to the PDF Bundle which includes all authorities mentioned in the parties' skeleton arguments and any other authorities to be referred to and relied on at the hearing.

CORE BUNDLE

15. Not later than 7 days before the hearing the Respondents shall produce and serve on the Appellant and the Tribunal an electronic bundle ('the Core Bundle') consisting of the witness statements (without exhibits) and any pre-reading material identified in the skeleton arguments and the skeleton arguments themselves in accordance with the Tribunal's guidance above in relation to the PDF Bundle.

WITNESS ATTENDANCE AT HEARING

16. At the hearing, any party seeking to rely on a witness statement may call that witness to answer supplemental questions (but the statement shall be taken as read) and must call that witness to be available for cross-examination by the other party (unless notified in advance by the other party that the evidence of the witness is not in dispute).

APPLICATIONS TO AMEND ETC DIRECTIONS

17. Any party may apply to the Tribunal at any time for these Directions to be amended, stayed or set aside.

FAILURE TO COMPLY

18. Failure to comply with these Directions may result in the proceedings being STRUCK OUT (in the case of non-compliance by the Appellant) or the Respondents being BARRED from taking further part in the proceedings (in the case of non-compliance by the Respondents) as the case may be.