



TC03181

Appeal number: TC/2013/01593

INCOME TAX – PAYE audit – check of employer records – failure to comply with information notice – penalty - appeal against notice and penalty – was information required by notice reasonably required – yes – appeal dismissed – Schedule 36, Finance Act 2008

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

COMMUNITY

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY’S Respondents
REVENUE & CUSTOMS**

**TRIBUNAL: JUDGE NICHOLAS ALEKSANDER
SHAMEEM AKHTAR**

Sitting in public at Bedford Square, London on 5 November 2013

J Morrison of HW Fisher & Co, accountants for the Appellant

M Chapman, an officer of HM Revenue and Customs, for the Respondents

DECISION

1. The Appellant, Community, is a trade union. It is appealing against (a) an
5 information notice issued by HMRC dated 11 September 2012 requiring it to produce
information relating to the PAYE and NICs liabilities of officers and employees; and
(b) a penalty of £300 levied for failure to comply with the notice.

2. Community was represented by Mr Morrison, of HW Fisher & Co (“Fisher”),
Community’s accountants. HMRC was represented by Mr Chapman. We heard
10 evidence from D Patterson, the HMRC officer responsible for issuing the information
notice and levying the penalty. In addition two bundles of documents were produced
in evidence by HMRC.

Law

3. Under paragraph 1(1), Schedule 36, Finance Act 2008 (“Schedule 36”):

15 An officer of Revenue and Customs may by notice in writing require a
person (“the taxpayer”)-

- (a) to produce information, or
- (b) to produce a document

20 if the information or document is reasonably required by the officer for the
purpose of checking the taxpayer’s tax position.

4. “Tax position” is defined in paragraph 64 of Schedule 36 as follows:

(1) In this Schedule, except as otherwise provided, “tax position”, in
relation to a person, means the person's position as regards any tax,
including the person's position as regards—

- 25 (a) past, present and future liability to pay any tax,
- (b) penalties and other amounts that have been paid, or are or may
be payable, by or to the person in connection with any tax, and
- (c) claims, elections, applications and notices that have been or may
be made or given in connection with the person's liability to pay any
30 tax

and references to a person's position as regards a particular tax
(however expressed) are to be interpreted accordingly.

(2) References in this Schedule to a person's tax position include,
where appropriate, a reference to the person's position as regards any
35 deductions or repayments of tax, or of sums representing tax, that the
person is required to make—

- (a) under PAYE regulations,
- (b) under Chapter 3 of Part 3 of FA 2004 or regulations made under
that Chapter (construction industry scheme), or

(c) by or under any other provision of the Taxes Acts.

(2A) References in this Schedule to a person's tax position also include, where appropriate, a reference to the person's position as regards the withholding by the person of another person's PAYE income (as defined in section 683 of ITEPA 2003)

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[...]

(4) References in this Schedule to a person's tax position are to the person's tax position at any time or in relation to any period, unless otherwise stated.

10 5. In contrast to “third party” notice, notices to taxpayers require neither their agreement, nor the approval of the Tribunal.

6. Paragraph 18 of Schedule 36 provides that an information notice only requires a person to produce a document if it is in that person’s possession or power. Paragraph 19 provides that an information notice does not required the provision of information relating to (amongst other things) the conduct of a pending tax appeal.

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7. Paragraph 29 of Schedule 36 gives taxpayers a right to appeal against a taxpayer notice. However no appeal lies in respect of a notice to provide information or produce documents that form part of a taxpayer’s statutory records (paragraph 29(2)).

8. Paragraph 32 of Schedule 36 provides that any appeal must be made in writing before the end of 30 days (beginning with the date on which the information notice was given) and to the officer of HMRC who gave the notice. Where the appeal is notified to the Tribunal, the Tribunal may confirm, vary or set aside the notice.

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9. Paragraph 39 of Schedule 36 provides for a penalty of £300 where a person fails to comply with an information notice.

25 10. Paragraph 45 of Schedule 36, addresses reasonable excuses:

(1) Liability to a penalty under paragraph 39 or 40 does not arise if the person satisfies HMRC or (on an appeal notified to the tribunal) the tribunal that there is a reasonable excuse for the failure or the obstruction of an officer of Revenue and Customs.

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(2) For the purposes of this paragraph—

(a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside the person's control,

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(b) where the person relies on any other person to do anything, that is not a reasonable excuse unless the first person took reasonable care to avoid the failure or obstruction, and

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(c) where the person had a reasonable excuse for the failure or obstruction but the excuse has ceased, the person is to be treated as having continued to have the excuse if the failure is remedied, or the obstruction stops, without unreasonable delay after the excuse ceased.

11. Paragraph 47 of Schedule 36 provides for a right of appeal to this Tribunal against a decision that a penalty is payable, and against the amount of the penalty.

12. Paragraph 48 of Schedule 36 provides that any appeal must be made in writing before the end of 30 days (beginning with the date on which the notification of the penalty was given) and to HMRC. Where the appeal is notified to the Tribunal, the Tribunal may confirm or cancel a decision that a penalty is payable, and may confirm or substitute another amount in the case of an appeal against the amount.

Background Facts

13. The background facts are for the most part not in dispute, and we find them to be as follows.

14. Community is a trade union. It has approximately 30,000 members organised into 300 to 400 branches. The union has approximately 300 officials and 69 employees.

15. On 16 February 2012, Ms Patterson wrote to Community to say that she intended to visit Community on 14 and 15 March 2012 to review their PAYE and NIC records. In the letter, Ms Patterson states "If you have an advisor acting on your behalf, you may wish to show them this letter".

16. The visit took place and included in the bundle are Ms Patterson's notes of the meeting. The accuracy of these notes as a record of the visit was not challenged.

17. On 30 May 2012, Ms Patterson wrote to Community enclosing a copy of the notes of her meeting. The letter went through a number of issues arising out of the visit, and requested further information. Towards the end of the letter, Ms Patterson wrote:

I appreciate the extent of the work involved in providing the information I have requested so please do not hesitate to contact me if you feel there are any methods which may be more efficient whilst still being fair and reasonable. I would appreciate it if you could provide the information requested as soon as possible, and no later than 6 July 2012. If you will have any difficulty replying by this date, please call me to discuss at your earliest opportunity.

18. By an e-mail of 28 June 2012, Community requested an extension to the deadline, as it was taking longer than they had anticipated to collate the information requested. We note that there was no suggestion in Community's request either that they were not in possession of the information, or that the exercise of collating the information was unreasonably onerous. Ms Patterson extended the deadline for a reply by two weeks to 23 July 2012.

19. On 30 July 2012, Fisher wrote to Ms Patterson at the instruction of Community, challenging Ms Patterson's analysis as to the taxability of the various items identified in her letter of 30 May 2012. Although some information was provided in Fisher's letter, it was very little of the information requested by Ms Patterson.

20. Ms Patterson responded by a letter dated 2 August 2012. In her letter she reiterates her original information request, and asks for further information arising out of the points made in Fisher's letter of 30 July 2012. Ms Patterson states at the conclusions of her letter:

5 Please now provide the information requested both in this letter and
 that which was originally requested in my letter dated 30 May 2012
 and referred to at each point above as soon as possible and no later
 than 7 September 2012. For any outstanding information at that date I
10 will have no option but to request it formally given the delay already
 experienced. If you will have any difficulty in replying by that date, it
 is vital that you contact me at the earliest possible opportunity to
 discuss.

21. As no substantive response had been received by 7 September 2012, Ms
Patterson issued an information notice under paragraph 1 of Schedule 36 on 11
15 September 2012. The notice required that Community provide the information
 requested by 12 October 2012.

22. The information requested under the notice was the following:

“1. Honoraria

20 Amounts and recipients of honoraria payments for the tax year
 2006-07 to date

 All correspondence, paperwork or details of advice given to
 Individuals which corrected the previously incorrect advice
 regarding tax relief on honoraria payments

2. Pool cars

25 T55 COM

 Calculation of the car and fuel benefits for 2011-12 or all of the
 following information

 Date of registration

 List price of the car plus any additional accessories

30 Engine size

 Fuel type

 CO2 emissions figure

 E010 ZPM (previously ET08 GYP) and EK08 ANN

 Calculation of the car and fuel benefits for 2011-12

35 Comment as to what lead to the error and whether reasonable
 care was exercised

 Confirmation of what the intention is going forward

3. Chauffeur benefit

 Schedule of the chauffeurs used from April 2006 to date

For the chauffeurs engaged on a self employed basis during that period, the amounts expended in their provision including fees, expenses and Chauffeurs Guild costs

4. Chauffeur employment status

5 Contracts, correspondence and all paperwork detailing the terms and conditions under which any self employed chauffeurs were engaged during the period April 2006 to date.

Contact details of the person you believe is best placed to provide more detail of such engagements

10 Your comment as to the ESI result for each such engagement (should the Union have used it as requested)

5. General employment status

15 Confirmation or otherwise as to whether you consider those individuals identified in your letter dated 30 July 2012 to be "incorrectly classified" as per my letter dated 30 May 2012.

6. Car fuel benefit LT59 MZW

Explanation as to how the error (detailed in your letter dated 30 July 2012) arose

20 Copy of the credit card statement which shows the expenditure of £174.90

Confirmation or otherwise of whether the amount has been reimbursed to the Union

7. Entertaining

The costs incurred in the following areas for the tax year 2011-12

25 Rugby (buffet, drinks, accommodation, tickets, coach)

Burns supper

Cricket membership

Regional and head office Christmas meals and drinks

Abbot Grange dinner

30 Fabian event

Leaving meals

Team build events

Offsite staff events

Presidential visits

35 Comment as to whether you believe reasonable care is taken in identifying staff entertaining

8. Home to work travel — elected officials

List of all elected officials for the tax year 2011-12

Expense amounts for travel and associated costs for the elected officials in attending committee meetings for the tax year 2011-12

9. Unreceipted expenses — elected officials

5 Schedule of all unreceipted expenses claims for elected official in the tax year 2011-12 which were not included in point 8 above

Details of the controls in place for adhering to the HMRC dispensation issued 17 January 2011.

10. Allowance 2011-12

10 Total "allowance" amount paid out in the tax year 2011-12

Total within this amount which can be supported by receipts

11. MJ Leahy expenses

Self authorised claims 2011-12

15 Details of any amounts included above which can be supported by receipts

Private expenditure

A description of the analysis work carried out to establish the amounts expended on MJ Leahy's private items and cash withdrawals

12. Accommodation benefit — C Nicholson

20 Schedule of the overtime payments made to C Nicholson for the tax year 2011-12

Copy payslips for any such overtime payments

Copy of the "Licence to Occupy" agreement for Swinton House

25 Copies of any correspondence from HMRC which confirms an exemption applies

13. Pecuniary liabilities

Schedule of any reimbursed expenses for which a pecuniary liability has been returned on forms P11D for the tax year 2011-12

14. Previous HMRC advice

30 Evidence of any previous HMRC advice which you feel has an impact upon any of the issues above."

23. In her evidence before the Tribunal, Ms Patterson explained that she wanted the information for two reasons. The first was so she could verify whether Community had correctly operated PAYE and NICs in respect of the remuneration (including
35 benefits) paid to their officers and employees. The second was to consider (to the extent that PAYE and NICs had not been properly operated) the degree of culpability of Community in their compliance failures. This was required because Ms Patterson was also responsible for determining penalties for any such failures, and this information was relevant to the determination of penalties. In relation to the
40 information requested on honoraria, Ms Patterson requested information going back

to 2006/7 as she was concerned about the impact of time limits on assessments, and needed to consider whether protective assessments would need to be raised.

24. On 10 October 2012, Community provided a schedule of payments made to branch secretaries for 2011/12 and a schedule of allowances. Fisher requested by e-mail a one week extension to the deadline, by Ms Patterson refused the extension.

25. On 15 October 2012, Ms Patterson wrote again to Community reminding them that the time specified in the information notice had now passed, and that not all of the information specified had been provided. Community were given a final warning and asked to provide the outstanding information by 29 October 2012, otherwise a penalty of £300 would be charged.

26. On 15 October 2012, Mr Morgan of Fisher telephoned Mr Appleby (Ms Patterson's line manager) to complain. The main complaints were:

- (1) that HMRC had requested figures and amounts for issues where the technical position had not been agreed;
- (2) that HMRC had requested computations of benefits, where HMRC could have computed the benefits itself;
- (3) the tone and stance adopted by Ms Patterson, and that she had not been prepared to listen to the merits of Community's position;
- (4) that an information notice had been issued before the technical issues had been dealt with;
- (5) Ms Patterson's refusal to grant an extension.

27. In his e-mail response, Ms Appleby stated that he had reviewed the file and given careful consideration to the points raised. However he considered that it was appropriate for HMRC to obtain and review the information requested before reaching any conclusion on the technical issues. He stated that once HMRC had reviewed the information, it may be that their position on the taxability of the payments/benefits may change, but they could not comment without the opportunity to first review in detail the information requested.

28. On 26 October 2012 Fisher wrote to Ms Patterson, going through the issues raised in her letter of 2 August 2012. The concluding paragraph of the letter is as follows:

As you will see from the above, there are a number of areas where our client disputes, in principle, that a tax liability arises. Although we are attempting to resolve these issues with you, we think it inappropriate that you continue to press for information which may not ultimately be relevant to any tax liabilities arising. If you think this is an unreasonable position, please let us know.

29. By an e-mail of 29 October 2012, Ms Patterson responds to Fisher's letter, and notes that some items included in the information notice have not been supplied, and

accordingly an initial penalty would be charged. A £300 penalty was assessed and notified to Community by a letter dated 30 October 2012.

5 30. On 8 November 2012 Fisher wrote to HMRC appealing on behalf of Community against the penalty notice, on the grounds that all information reasonably requested by HMRC had been supplied.

10 31. On 12 November 2012 Ms Patterson responded, notifying Community of their right of appeal and to seek a review. Ms Patterson also stated that she had critically reviewed the information request in the light of the submissions made by Fisher, and that the following items of information that had originally been sought were no longer required:

- (1) Correspondence, paperwork or details of advice given to individuals which corrected the previous incorrect advice regarding tax relief on honoraria;
- (2) Comment on what led to the error in dealing with the taxable benefit for various pool cars and whether reasonable care had been exercised.
- 15 (3) Confirmation as to Community's intention going forward in relation to various pool cars
- (4) Comment as to whether reasonable care had been taken in identifying staff entertaining
- 20 (5) Evidence of previous HMRC advice which Community consider has an impact on any of the issues raised in the information notice

25 32. In her covering letter Ms Patterson states that Community has a right not to incriminate itself, and can therefore withhold details of behaviours which led to potential errors (although behaviours and cooperation will be reflected in any future penalty considerations). Ms Patterson's reasons for reaching a conclusion that the items relating to honoraria and prior HMRC advice were no longer required was because they were not "reasonably required to establish the correct tax position".

30 33. A review was undertaken. Although Fisher's letter was expressed as an appeal against the penalty, it was implicit in the letter that Community was also appealing against the information notice, and the review officer therefore considered the terms of the information notice as well as the penalty. The conclusion of the review was to uphold the information notice subject to some amendments. In particular, items (4)(Chauffeur employment status) and (6)(Car fuel benefit) should be removed, and item (12) should be amended to exclude the copy of the licence to occupy a specific property. The reason for removing the request relating to Chauffeur employment status was because Fisher had conceded that the chauffeurs would have to be treated as employees. The reason for removing the request in relation to car fuel benefit for LT59 MZW was because Fisher had provided an explanation for the expenditure. The reason why the copy licence was no longer required was because a copy of that licence was already within HMRC's files. However, even after taking these amendments into account, as the other information requested had not been provided, 40 the penalty was upheld.

34. On 28 February 2013, Community appealed to the Tribunal.

Discussion

35. Community's grounds for appeal are that the information sought by HMRC is not reasonably required because, on analysis of the facts, it is clear that no tax or NIC liability would arise.

36. The questions before the Tribunal are:

- (1) whether the information sought in the information notice was reasonably required by Ms Patterson for the purpose of checking the Community's tax position;
- (2) if the information was so required, whether Community had failed to provide the information sought;
- (3) whether Community had a reasonable excuse for any failure to provide the information; and
- (4) if Community had unreasonably failed to provide such information, whether the amount of the penalty was correct.

37. The burden of proof lies on HMRC as regards elements 1, 2 and 4. The burden of proof as to whether Community has a reasonable excuse for any failure to provide information lies on Community.

38. We judge the "reasonableness" of the scope of the information notice as at the time that it was made. The fact that some of the information may no longer be reasonably required in the light of facts or circumstances that arise after the issue of the notice do not impact upon the validity of the notice.

39. Mr Morrison, on behalf of Community, submits that:

- (1) Some of the information sought by HMRC related to a large number of officials and members of Community, and it would be an unreasonably onerous exercise for Community to collate the relevant information.
- (2) Community disputed whether many of the matters in respect of which HMRC required information in fact gave rise to taxable income. In the circumstances, the question as to whether these matters were taxable should be resolved before any information is requested – otherwise Community would be put to considerable wasted effort in compiling information which was not relevant to any tax liability. HMRC acted unreasonably in refusing to engage with Fisher. in considering whether the matters raised in the information notice did in fact give rise to a tax liability.

40. We were referred by Mr Morrison to the decision of the First tier Tribunal in *Betts v HMRC* [2013] UKFTT 430 (TC) as authority for the proposition that HMRC cannot rely upon the information obtained through the use of an information notice to justify the issuance of that notice. Mr Morrison's submission is that in the case of Community, HMRC (in essence) needed the information sought under the notice to

justify issuing the notice in the first place. However we find that the *Betts* case is not relevant to the issues before us. *Betts* related to an information notice which was within paragraph 21 of Schedule 36. Paragraph 21 requires HMRC to satisfy various conditions before it can issue an information notice that relates to a tax return. In the *Betts* case, the condition was (inter alia) that an officer of HMRC had reason to suspect that an amount that ought to have been assessed to tax may not have been assessed. In the *Betts* case HMRC admitted at the hearing that none of the information that was in their possession gave reason to suspect that an amount of tax had not been assessed. Rather, the relevant information was being sought as it (when added to the information already held by HMRC) might give “reason to suspect”. The Tribunal held that the information sought was reasonably required to check the tax position of the taxpayer for the purposes of paragraph 1 of Schedule 36. However the Tribunal held that the information to be obtained by the notice could not be used to satisfy the conditions precedent to the issue of the notice imposed (in that case) under paragraph 21. For that reason the Tribunal upheld the taxpayer’s appeal.

41. The position of Community is very different. The information notice issued by Ms Patterson was not within paragraph 21 of Schedule 36, and none of the conditions imposed by that paragraph are in point. We have no hesitation in finding that the information sought by Ms Patterson in the information notice dated 11 September 2012 was reasonably required for checking Community’s tax position. For these purposes “tax position” is given a very broad meaning, and it encompasses not only information reasonably required to determine whether Community had accounted for the correct amount of tax under PAYE, but also information required to be able to form a view as to Community’s potential liability to penalties for any failure to pay tax on time and in the right amount. Although Ms Patterson voluntarily reduced the scope of her request on 12 November 2012, in our view she was entitled to require Community to produce the totality of the information that she had requested.

42. Ms Patterson gave as her reasons for subsequently reducing some of the scope of the request the right of Community not to incriminate itself. In our view Ms Patterson was generous in making this concession. This was not an issue raised by Community as an objection to providing the information. Although not argued before us, we are aware that the question of self-incrimination (or the right to silence) in the context of information notices has been the subject of a number of decisions of the High Court, this tribunal and its predecessors (for example *Sharkey v HMRC* [2006] STC 2026 and *R (oao Murat) v IRC* [2004] EWHC 3123 (Admin)). Although those decisions relate to provisions which were replaced by Schedule 36, the basis on which those decisions were made are equally applicable to notices under Schedule 36. The right to silence is a right that arises under Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms 1950 (“the Convention”) (as set out in Part I of Schedule 1 to the Human Rights Act 1998). It only arises where there is a criminal charge for the purposes of the Convention (“criminal” for Convention purposes includes some matters which would be considered as “civil” under English domestic law). The provisions relating to information notices have been held by the High Court not to be “criminal” for Convention purposes. Unless there is evidence that criminal prosecution or evasion penalties were under consideration by HMRC, the right to silence under the Convention is not engaged. Some of the

information requested by Ms Patterson was sought in order to establish whether Community had been careless or negligent in their operation of PAYE – but at no point has it been suggested that Community were engaged in tax evasion, and we find that neither criminal prosecution nor evasion penalties were ever under consideration by HMRC. For these reasons, Article 6 of the Convention is not engaged in the matters under appeal, and therefore Community would have no right to silence. The original information request did not therefore infringe any rights relating to self-incrimination or silence – as there was no such right in respect of this information notice. We note that the information notice did not extend to any information relating to the conduct of any tax appeal.

43. The fact that the taxability of the underlying payments and benefits had not been established or agreed does not prevent HMRC from requesting information. In his e-mail of 15 October 2012, Mr Appleby (Ms Patterson’s line manager) stated that Ms Patterson required sight of the requested information so that she could give careful consideration to the evidence and then having done so, can consider the merits of any technical position put forward. We find that this is an entirely reasonable position for HMRC to take. The requirement in paragraph 1 of Schedule 36 is that the information is reasonably required to check the tax position. It is unreasonable to expect HMRC to agree that certain kinds of payment or benefit are not taxable in the abstract, without any reference to the actual facts “on the ground”. Even if HMRC had agreed that certain types of payments were not taxable, they would be entitled to request information under paragraph 1 to verify (for example) whether the payments were actually of the type that they had agreed were not taxable. Indeed, in an e-mail of 29 October 2012 to Fisher, Ms Patterson states that she is only requesting information where she believes that Community have (on the basis of the information previously supplied) incorrectly treated the payments or benefits. In this context we note that before levying any penalty, both Ms Patterson and her line manager, Mr Appleby, considered Fisher’s representations on these issues, and Mr Appleby gave a reasoned response in his e-mail of 15 October 2012 why HMRC were continuing to pursue the information notice. We find that Ms Patterson had acted reasonably in requesting the information before considering Community’s representations as to the precise tax effects (if any) of the information sought.

44. Nor do we consider that HMRC acted unreasonably because of the breadth information requested under the notice. Depending upon the circumstances, it may be unreasonable for HMRC to issue an information notice, or a taxpayer may have a reasonable excuse for its failure to comply with an information notice, if it is unreasonably onerous and disproportionate to provide the information sought. By paragraph 18 of Schedule 36, an information notice cannot require a taxpayer to produce documents which are not in its possession or power (although we note that the failure to keep statutory records may breach other obligations imposed on taxpayers under the tax legislations).

45. We find that the information requested in the notice was not unreasonably onerous or disproportionate. Given the nature of the payments and benefits being made and provided by Community to its employees and officials, it was reasonable for HMRC to request information relating to those payments. Although some of the

information related to a substantial number of individuals, Ms Patterson stated in her letter of 30 May 2012 that she recognised the extent of her request, and was prepared to consider more efficient alternatives (in her evidence she mentioned sampling as a possible alternative), but her offer was never taken up.

5 46. At no point in the correspondence between Community (and their advisors) and
Ms Patterson was it ever suggested by Community that it would be unreasonably
onerous to produce the information requested. We note that no one from Community
gave evidence to the Tribunal. The only evidence before us that Community would
find it unreasonably onerous to provide the information requested are assertions
10 contained in correspondence from Fisher to HMRC, and we were provided with no
other evidence to support these assertions. The only evidence before us that
Community did not have the information requested in relation to expenses, and
therefore was not obliged to comply with the information notice in that respect, was a
reference in a letter from HMRC to Fisher about a meeting on 18 April 2013, and a
15 reference in that letter to a statement at the meeting by Fisher that Community may
not be in possession of complete information for expenses – even for the year 2012-
13, and to a statement by a partner of Fisher who “was not sure” that the information
could be provided. We are not satisfied that it was unreasonably onerous for
Community to provide the information sought in the information notice, or that
20 Community did not have the information relating to expenses. We so find. We also
find that Community did not have a reasonable excuse for their failure to provide the
information.

47. As regards the results of the HMRC review, and in particular the decision of the
review officer to remove items from the information notice, we note that the reason
25 for removing the request relating to Chauffeur employment status was because Fisher
had conceded that the chauffeurs would have to be treated as employees, and the
reason for removing the request in relation to car fuel benefit for LT59 MZW was
because Fisher had provided an explanation for the expenditure. In essence, the
review officer determined that Community either had complied with these aspects of
30 the information request, or that in the light of concessions made by Community
subsequent to the issue of the notice, the information was no longer required. Neither
of these decisions affects the reasonableness of the inclusion of these items within the
scope of the information notice at the time it was issued.

48. The reason why the copy property licence was no longer required was because a
35 copy of that licence was already within HMRC’s files. It would not normally be
reasonable for an HMRC officer to use an information notice to obtain information
already in his or her possession, or which he or she was aware was in the possession
of HMRC elsewhere within the organisation. However in judging this issue, we need
to bear in mind the size of HMRC, and the fact that information in the hands of one
40 HMRC officer may not (for good reasons) necessarily come to the attention of
another officer. The only references we can find in the documents before us to
HMRC having a copy of the property licence are (a) a statement in Fisher’s letter of
30 July 2012 that the accommodation benefit was the subject of previous
correspondence and that “we believe you have already seen the ‘licence to occupy””
45 and (b) statements in Fisher’s letter of 26 October 2012 to the occupation of the

property having been in place for a long time (at least 15 years) and having been the subject of a previous PAYE review (although it is not stated by whom the review was undertaken, and when it took place). Ms Patterson's replies to these letters make it clear that she did not have a copy of the property licence, and was unaware that a copy may have been in the possession elsewhere in HMRC. In her letter of 2 August 2012, Ms Patterson says that she was unaware of any previous correspondence, and that there may be confusion between the licence relating to a property at "Earls Barton", and her request for the licence to "Swinton House". In her letter of 12 November 2012 she repeats the request for a copy of the licence relating to Swinton House. We find that the property licence was reasonably required by HMRC, and that at the time the information notice was made, it was proper for Ms Patterson to request it.

49. For these reasons, we find that the information specified in the information notice was reasonably required by HMRC for checking Community's tax position.

50. It is not in dispute that although Community provided some of the information specified in the information notice by the due date, they had not provided all the information specified. Even if (contrary to our finding) Community were not in possession of the information relating to expenses, they failed to comply with the information notice in respect of all of the other information requested (even after taking account of the concessions made by Ms Patterson and the review officer). We therefore find that Community had not complied with the information notice.

51. We find that Community did not have a reasonable excuse for its failure to provide all the information specified in the information notice.

52. The amount of the penalty is fixed by statute, and we find that it has been correctly determined.

53. We therefore dismiss the appeal.

54. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

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**NICHOLAS ALEKSANDER
TRIBUNAL JUDGE**

RELEASE DATE: 2 January 2014

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