



## DECISION

1. Mr Herbert Blackburn (Mr Blackburn), a director of the Appellant company, represented by his counsel Mr Michael Copeland (Mr Copeland), appealed to the Tribunal to re-instate the appeal by letter dated 29 May 2012 and to set aside the earlier Tribunal direction of 10 May 2013 striking out the appeal. The Respondents (HMRC) said that the grounds for the appeal are set against a background of repeated non-compliance with the Tribunal's directions and the re-instatement should not be allowed.
2. Mr Copeland appeared for the Appellant and called Mr Blackburn as a witness, who gave evidence under oath. Ms Spence appeared for HMRC and produced a bundle of documents.

### The Facts

3. We are not concerned as to the details of the case itself as that is a matter for a tribunal when the case is heard. From the documentation made available to the Tribunal, we note that the Appellant was taxed under the Agricultural Flat Rate Scheme. The purpose of the scheme is to avoid the difficulties that VAT registration poses for farmers. In order to compensate farmers, for the input tax they could claim had they been registered for VAT, the scheme allows farmers to charge to VAT registered businesses a flat rate addition of 4% on sales related to designated activities. The farmer keeps this 4% while the farmer's customer is entitled to reclaim that sum as if it were input tax. On 22 March 2011, the Appellant provided HMRC with its turnover figure of £1,017,396 for the period October 2009 to October 2010. The Appellant informed HMRC that it had not calculated the input amount as above, and stated that the total amount of the flat-rate deduction was £1692. The Appellant ignored letters sent by HMRC on 11 April 2011 and 1 June 2011 seeking further information. As a result, HMRC cancelled the Agricultural Flat-Rate Scheme certificate on 6 July 2011.
4. Correspondence passed between the parties and the matter was reviewed by HMRC on 11 October 2011. The reviewing officer confirmed that the certificate had been correctly withdrawn. Mr Blackburn served his notice of appeal on 2 December 2011. He appears not to have sought any legal or accountancy advice until the hearing to-day.
5. On 13 July 2012 standard directions were issued by the Tribunal with regard to the preparation of the list of documents, witness statements, dates to be avoided, bundles etc. HMRC provided the necessary information to the tribunal on 15 August 2012. HMRC and the Appellant were notified by the Tribunal service that the appeal was listed for 12 & 13 February 2013. On 12 September 2012 HMRC applied for this appeal to be heard with Valley Feedlots Ltd (Valley) and A M Livestock (AM). The Tribunal had released a direction on 13 July 2012 that the appeals of Valley and AM should be heard together on the basis that the appeals raised similar facts and issues. Mr Alan McFarland was a director of both companies.

6. On 18 December 2012 the Tribunal extended the time for HMRC to exchange witness statements. On 11 January 2013 HMRC wrote to the Appellant indicating that it had still not heard from the Appellant. HMRC enclosed with the letter a bundle containing statements and exhibits for its witnesses, Melvin Amos and Margaret Mead. HMRC also indicated that if the Appellant no longer wished to continue the appeals it should notify the Tribunal Service and HMRC immediately. HMRC wrote again to the Appellant on 18 January 2013 stating that it had still not heard from the Appellant and as a result it would be seeking an order for costs if the Appellant continued to act unreasonably.

7. By a direction dated 24 April 2013 the Tribunal directed:

“This matter being listed as a Pre-trial review coming on for hearing AND having heard Ms S Spence for HMRC AND there being no appearance on behalf of the Appellant THIS TRIBUNAL DIRECTS as follows:

1. **within 14 days** from the date of issue the Appellant is to inform HMRC and the Tribunal in writing whether it intends to pursue its appeal, **failing which its appeal shall be struck out without further order** (Our emphasis).

2. ....

The directions then went on to identify the necessary time scales if the Appellant indicated that it wished to pursue its appeal.

8. The directions of 24 April 2013 were the last directions issued by the Tribunal in this appeal. No letter was produced to the Tribunal notifying the Appellant that the case had been struck out. There is a letter dated 29 May 2013 from Mr Blackburn, which he wrote to the Tribunal. The letter was produced to the Tribunal in HMRC’s bundle and the copy bears the date stamp of the Tribunal on 31 May 2013. The letter stated:

“In response to the direction from the Tribunal Judge, I write to inform HMRC that I have to-day (29/05/13) received this direction and as a consequence of this late delivery I have not had sufficient time to comply with the directions.

I will however have them delivered on or before 14/6/13”

The directions were released on the 10 May 2013, but it would appear from this letter that they were only received by the Appellant on 29 May 2013 and that he responded immediately.

9. On 10 June 2013 the Appeal was struck out by the Tribunal. A letter dated 10 June 2013 addressed to Hassard McClements Limited, agents on behalf of Valley, was produced to the Tribunal, which stated that as the requirements of the direction of the Tribunal released on 10 May 2013 had not been met, it followed that the direction had come into effect and the appeal was struck out. Mr Blackburn told us that he did not know of this practice and that he had not instructed Hassard McClements to act on

his behalf. We note that the letter to Hassard McClements Limited was sent some 16 days after the directions hearing. We are satisfied that Hassard McClements Limited was never instructed by the Appellant.

- 5 10. There is a note in the bundle dated 11 June 2013 (but the date is crossed out) in the following terms:

“ Referral to Judiciary, from Anita 11 June 2013

Appellant – Blackburn Bros Cattle Co

Query details

- 10 This case was struck-out on 10/06/13 however a letter from the Appellant was received dated 31/05/13 and appears to have been over-looked.

The Appellant has asked for time to comply – your instructions please.

(a hand written response)

- 15 *Set aside strike out, time limits in Direction released 10/5/13 extend to 28/6/13- letter to both parties informing them.*

*JB*

(a further handwritten response 9 days later)

*20/06 Is a direction required to effect the above or is a letter sufficient?*

*Ask HMRC:*

- 20 *1) have they received appellants list of documents*  
*2) whether they consent to the appeal being re-instated*

*Copy A’s letter dated 29.5.13 to HMRC*

*Also please check – why did our letter dated 10/6 go to Hassard McClements*

- 25 *This was on FTT as appellants rep JC 21/6*

11. The above note, although appearing in the bundle, was not produced and referred to at the hearing. Mr Copeland told the Tribunal that he had received instructions for the first time on the previous Friday prior to the hearing this Monday. He had not, as a consequence, had an opportunity to consider the case properly. Mr Blackburn gave evidence under oath. His evidence was very unsatisfactory as he appeared to be unclear as to what was expected of him. He appeared to believe that the direction he
- 30

had received did not prevent him dealing with the appeal. He said that he thought the flat-rate scheme would be re-instated and as a result he had not applied, nor had he been advised by HMRC to register normally. As a result, he had not claimed any VAT on his trading since the certificate had been withdrawn. He alleged that post  
5 often failed to reach his farm. His farm is located close to the main road and he appears to have received most of his post on a regular basis. If he had not been receiving post regularly we would have expected him to address the problem. Mr Copeland produced a compliment slip from the Fane Valley store, signed by Ben Sinnemon the proprietor, indicating that a bundle had been at his shop for some time.  
10 We were told that when Mr Blackburn was in the shop the parcel was handed to him. We were unclear what the parcel contained and whether it was relevant to the appeal.

12. There is no evidence of the service of the strike out directions of 24 April 2013 on Mr Blackburn, other than the letter from him dated 29 May 2013, has been produced to the Tribunal. The Tribunal were concerned that Mr Blackburn has made  
15 no effort to progress this appeal for two years, but appeared content to await action from HMRC.

13. Ms Spence opposed the reinstatement application due to the Appellant's non-compliance with the directions of 13 July 2012, 3 October 2012 and 10 May 2013. The Appellant had also not responded to HMRC's letters on 11 January 2013 and 18  
20 January 2013. The Appellant did not attend the previous application hearing of 24 April 2013.

### **The decision**

14. We decided at the hearing that the Appellant had not complied with the strike out direction on the evidence then before us. The directions had been released on 24 April  
25 2013 and responded to by the Appellant on 29 May 2013 some 35 days later. We did not believe Mr Blackburn when he said that he had not received the direction until his reply on 29 May 2013. We observed that although he had issued his Notice of Appeal on 2 December 2011 he appeared to have taken no action whatsoever to progress the case for a period of 2 years. At the hearing we dismissed his application  
30 to re-instate the appeal. The decision was delivered verbally.

15. When considering the documentation in detail when writing up the decision the Judge was concerned that he and the member had not been referred to the note reproduced at paragraph 10 above. It is clear from that note that the Appellant's letter of 29 May 2013 had been overlooked. The Tribunal Service instructed that the strike  
35 out be set aside and the time limits be extended from 10 /5/13 to 28/6/13. The Tribunal Service was unclear as to whether directions were needed or a letter. A letter was sent to HMRC, who have, as a result, considered the application for reinstatement referred to in that letter but it has wholly resisted the same for the reasons given above.

40 16. Rule 8 of the Tribunal Procedure (First-tier tribunal) (Tax Chamber) Rules 2009 provides:

### **“Striking out a party’s case**

5           **8** (1) The proceedings, or the appropriate part of them, will automatically be struck out if the appellant has failed to comply with a direction that stated that the failure by the party to comply with the direction would lead to the striking out of the proceedings or that part of them.”

10           In light of the note from the Tribunal Service, it is unclear when the strike out notice was received by the Appellant. It appears that any correspondence in relation to the appeal at that time had been sent to Hassard McClements Limited, who were not instructed by the Appellant. If the Appellant’s letter has been ‘overlooked’ the only evidence of the receipt of the directions of 24 April 2013 is that of the Appellant since no evidence has been produced by HMRC of a letter sending the directions to the Appellant. It therefore appears that the Appellant replied to the strike out direction in time and his letter indicated that he wished to proceed with the case. He said that he would deliver the appropriate documents by 14 June 2013. We accept that he has not done so. As a result of his compliance with the Direction to inform the Tribunal within 14 days that he wished to proceed with the appeal, we have no alternative but to re-instate the same as the strike out requirement has been complied with.

15           17. It is imperative that this appeal should proceed expeditiously and we therefore make the following directions:

20           1.           Within 28 days from the date of the issue of these Directions the Appellant shall send or deliver to the Respondents and the Tribunal a list of the documents in its possession or control on, which the Appellant intends to rely in connection with the appeal and provide to the Respondents copies of any documents on that list, which have not already been provided to the Respondents. The Appellant shall confirm to the Tribunal that it has done so, failing which, the Appellant shall not be permitted to rely on any document as evidence. If the Appellant fails to comply with this direction within the time limit set out above, its appeal shall be struck out without further order.

25           2.           If the Appellant complies with the first direction then no later than 4.00 pm on 7 February 2014 the Appellant shall send or deliver to the Respondents a statement of all witnesses on whose evidence it intends to rely at the hearing, setting out what their evidence will be (“witness statements”) and shall at the same time notify the Tribunal that they have done so, failing which it shall not be permitted to call or rely on the evidence of a witness.

30           3.           Not later than 4.00 pm on 7 March 2014 the Respondents shall send or deliver to the Appellant any supplementary evidence they intend to rely on and they shall notify the Tribunal that they have done so.

35           4.           Not later than 4.00 pm on 21 March 2014 each party shall provide to the Tribunal and each other party a statement detailing:-

- the anticipated duration of the hearing
- dates to avoid for the period 18 April to 30 June 2014.

5. Not less than 21 days before the date fixed for the final appeal hearing, the Respondents shall serve a skeleton argument on the Appellant

6. Not less than 28 days before the date fixed for the final appeal hearing, the Appellant shall serve a skeleton argument on the Respondents.

7. Not less than 14 days before the date fixed for the final appeal hearing, the parties shall endeavour to agree a common bundle together with a common bundle of authorities (“hearing bundle”)

8. Not less than 7 days before the date fixed for the final appeal hearing, the Respondents shall serve one copy of the paginated hearing bundle on the Appellant and its representative

9. Not less than 3 working days before the date fixed for the final appeal hearing, the Respondents shall send or deliver to the Tribunal two paginated copies of the hearing bundle.

10. Either party may apply at any time for these directions to be amended suspended or set aside.

18. 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.

**DAVID S PORTER**  
**TRIBUNAL JUDGE**

**RELEASE DATE: 6 January 2014**