



**TC03436**

**Appeal number: TC/2013/06244**

***PENALTIES - sch 36 FA 2008 - non-compliance with information notice -  
whether reasonable excuse for breach - appeal dismissed***

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**MR STEVEN SINGH**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE PETER KEMPSTER  
MR HARVEY ADAMS**

**Sitting in public at Nottingham on 19 March 2014**

**The Appellant in person**

**Mr Martin Foster (HMRC Appeals Unit) for the Respondents**

## DECISION

### Background

5 1. At a hearing in London in February 2013 ("the 2013 Hearing") the Tribunal determined the appeal of the Appellant ("Mr Singh") against an information notice issued by the Respondents ("HMRC"). The Tribunal issued a decision notice giving full findings and reasons on 7 March 2013 ([2013] UKFTT 171 (TC)) ("the 2013 Decision"). The outcome was that the Tribunal varied the terms of the information  
10 notice.

2. The relevant parts of the 2013 Decision are as follows:

#### **"The background to the Notice and the issue in the case**

15 9. The background to the Notice was not in dispute. HMRC had opened an enquiry into Mr Singh's 2005-06 tax return, and in the course of that enquiry identified sums totalling £13,415 which had been paid into Mrs Kaur's Nottingham Building Society and RBS bank accounts. Mrs Kaur is Mr Singh's wife. The Notice related to the payments made into those accounts.

...

20 15. In addition to the correspondence, the Bundle also contained the following documents:

...

25 (2) Bank statements with the same account holder as the individuals listed on the summary of cash receipts ("the Bank Statements"). Each Bank Statement was redacted, leaving *en clair* only the name of the bank, the name of the account holder and a sum of money which matched the "cash 5 withdrawn" figure for that payee on the summary of cash receipts."

The Tribunal recorded Mr Singh's oral evidence to include:

30 "23. The reason for the extensive redaction of the Bank Statements was that the payees did not want their details to be provided to HMRC. Mr Singh had had to ask the leaders of his Sikh temple to assist him in persuading the payees to provide the Bank Statements. Following that intervention, the payees did provide the Bank Statements but on  
35 condition that their addresses were not disclosed to HMRC; this was in order to protect their privacy.

40 24. The Tribunal asked Mr Singh whether all the payees were Sikh and he said no, some were not, but once the Sikhs had agreed to provide their Bank Statements, the others agreed to follow suite, on the same basis."

The Tribunal recorded Mr Singh's lawyer's submissions to include:

5 “39. Turning to the question of addresses, he accepted this was “more difficult”. He said that HMRC wanted Mr Singh to disclose the addresses of 22 people who “are not keen to have addresses disclosed, and when the condition under which they agreed to provide the bank statements was that [Mr Singh] didn’t disclose that information.” Further, he submitted that Mr Singh had already met his burden of proof by providing the Bank Statements, and it was not reasonable of HMRC to require the addresses in addition. He said that the Notice was too wide in scope and in the nature of a fishing expedition, and the addresses of the payees “wouldn’t assist any further.””

The Tribunal recorded its conclusions to include:

15 “45. We thus find that it is reasonable for HMRC to seek further evidence of the link which Mr Singh says exists between these payees and the money in Mrs Kaur’s accounts. HMRC’s request for the full postal addresses of each of the payees is confirmed, albeit slightly varied to avoid ambiguity and provide further clarity. The varied Notice is set out at the end of this decision.”

The Tribunal then decided to vary the information notice as follows ("the Tribunal Notice"):

20 **“The Notice**

47. Under Sch 36, para 32, the Tribunal varies the Notice issued on 25 April 2012.

48. We rephrase item 1 of the Notice so that it reads as follows:

25 **“Please provide a schedule showing the full current postal addresses of all the individuals you say provided loans and/or gifts of money to you in the period from 6/4/05 to 5/4/06. For the avoidance of doubt, you must also provide to HMRC a further copy of each and every third party bank statement already submitted by you to HMRC, with the full unredacted postal addresses shown clearly on every such statement and without any redaction of the information already provided.”**

35 49. We delete item 2 of the Notice, so that Mr Singh does not have to provide information about his relationship with each of the individual payees.

50. Under Sch 36, para 32(4) we specify that Mr Singh must 5 comply with the Notice as varied by the Tribunal, ie as set out in the bold text above, so as to provide this information to HMRC no later than one calendar month from the date of issue of this decision.

40 **No right of appeal**

51. Under Sch 36, para 32(5) this decision is final and there is no right of appeal.”

3. Mr Singh failed to comply with the Tribunal Notice and HMRC on 2 May 2013 assessed the £300 penalty under para 39 sch 36. In June 2013 HMRC assessed daily penalties (para 40 sch 36) at £50 per day for the period 3 May to 3 June (32 days), and

subsequently assessed further daily penalties at £60 per day for the period 4 June to 3 July (30 days). The total penalties stand at £3,700. HMRC confirmed that they did not intend to charge any further penalties.

### **Late Appeal**

- 5 4. Mr Singh appealed to the Tribunal against the penalties. The appeal was made late. Mr Singh explained to the Tribunal that there had been some confusion about whether he was seeking to appeal against the 2013 Decision (which was not possible) or the penalties. Mr Foster for HMRC confirmed that HMRC did not oppose the late appeal application. The Tribunal decided to permit the appeal against the penalties to  
10 be brought out of time.

### **Appellant's Case**

5. Mr Singh submitted as follows.

6. The bank statements were already redacted when they were provided to him. It was not possible for him to go back to the relevant individuals and obtain unredacted  
15 copies as he was sure that the individuals would refuse. He felt he had been misled by HMRC as his understanding was that HMRC wanted to see statements showing the transactions rather than names and addresses, which were subsequently demanded. He had since agreed to pay all the tax assessed by HMRC, which he felt should discharge any obligation to provide further information.

- 20 7. The individuals had provided information to him to give to HMRC on the basis that he would not reveal the addresses of the individuals. He would not break that promise, as a matter of honour. Further, some of the individuals had threatened him with legal action for "breach of confidence" if he did pass on their addresses. Some of the individuals had moved and he did not know their present addresses, but he  
25 accepted that he did know the addresses of some of the individuals.

### **Consideration and Conclusions**

8. We cannot go behind the Tribunal Notice as made by the Tribunal in 2013; para 32(5) sch 36 is explicit that the Tribunal Notice is final. The Tribunal Notice required production of two items: (1) the unredacted bank statements, and (2) the schedule of  
30 addresses. We must determine whether Mr Singh had a reasonable excuse (within the meaning of para 45 sch 36) for not providing either of the two items ordered by the Tribunal Notice.

9. In relation to the bank statements, we accept Mr Singh's explanation that he never had the unredacted statements and cannot now get them. It is unfortunate that  
35 was not explained clearly at the 2013 Hearing, but we accept it as a reasonable excuse for non-production of the unredacted bank statements.

10. However, in relation to the schedule of addresses the refusal to provide it on grounds of confidentiality is not a reasonable excuse. The confidentiality point was

made clear to the Tribunal at the 2013 Hearing (see paras 23, 39 & 45 of the 2013 decision) but the Tribunal Notice still required the list of addresses to be produced. As already stated, we cannot go behind the Tribunal Notice. We understand why Mr Singh declines to give the list but that does not constitute a reasonable excuse (within the meaning of para 45 sch 36) for non-compliance with the Tribunal Notice.

11. Accordingly we find Mr Singh is in breach of the Tribunal Notice. We are satisfied the penalties have been correctly computed by HMRC.

### **Decision**

12. The appeal is DISMISSED and the penalties upheld as assessed.

13. 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.

**PETER KEMPSTER  
TRIBUNAL JUDGE**

**RELEASE DATE: 25 March 2014**