



**TC04128**

**Appeal number: TC/2012/01963**

*VAT – failure to obtemper Tribunal Directions - time limits - failure to appear - Unless direction - appeal struck out - costs reserved*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**PLATINUM CONNECT LTD**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE ANNE SCOTT**

**Sitting in public at 45 Bedford Square, London on Monday 27 October 2014**

**No Appearance by or for the Appellant**

**Chris Kerr, Counsel, instructed by the Solicitor for H M Revenue and Customs,  
for the Respondents**

## DECISION

### The Issue

- 5 1. This was a hearing in respect of an application by the Respondents (“HMRC”) in terms of Rule 8(3)(a) and/or (b) of The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (“the Rules”) for strike out of the proceedings in this appeal.

### Findings in Fact

#### 10 *Background Chronology*

2. The decision, which is the subject matter of this appeal, was made on 2 November 2011 and the Notice of Appeal was lodged with the Tribunal on 12 January 2012, which, of course, was out of time, but HMRC did not object thereto.
- 15 3. The appeal is what is familiarly known as a “Box Consolidation Case”. There were two bases for the refusal to allow recovery of VAT, namely there were no VAT invoices and there was not sufficient alternative evidence to vouch the recovery of VAT.
4. The case was allocated as a standard case.
- 20 5. HMRC lodged the Statement of Case on 20 April 2012. Lists of documents were lodged on 26 October and 14 December 2012.
6. In the course of 2013, both parties lodged Witness Statements.
7. On 1 November 2013, the Tribunal endorsed jointly agreed Directions (“the November Directions”) varying the previous Directions dated 25 7 October 2013 and in particular that directed that the appellant should serve further evidence by no later than 29 November 2013. They did so on 28 November 2013.
8. On 20 January 2014, the Tribunal endorsed a further joint application varying the previous Directions and the last time limit contained therein was 30 9 May 2014. On that date, the appellant sought a further extension of time to 23 May 2014 but indicated that it was not possible to comply with the Direction to use best endeavours to agree schedules of invoices.
9. The appellant did comply with the Direction to agree an Index to the Bundles by 4 August 2014.
- 35 10. The remaining time limits for compliance by the appellant included service of the hearing bundle by 1 September 2014 and the skeleton argument and list of authorities by 6 October 2014. As can be seen from the following paragraphs there has been no compliance in that regard.

#### *This Hearing*

- 40 11. This appeal was listed for a final hearing before this Tribunal commencing on 27 October 2014 for five days.
12. On 6 October 2014, the appellant's representative sought an extension of time to 20 October 2014 to serve skeleton argument and list of authorities. The only explanation given was that they wished to consider same in light of the

decision in *London Cellular Communications Limited* [2014] UKFTT 874 (TC) (“London”) issued by the Tribunal on 8 September 2014.

13. On 8 October 2014, HMRC objected pointing out that that case turned on its own specific facts and in addition stated that the appellant had not served the hearing bundle on HMRC to conform with Direction 9 of the November Directions. There had been no explanation offered for that failure.

14. On 10 October 2014, the appellant’s representative conceded that there had been non-compliance and that they agreed with the points made by HMRC. They stated that they had been unable to take instructions, as the appellant was “unexpectedly unavailable”. No detail was furnished.

15. By letter dated 15 October 2014, the appellant's representative formally withdrew from acting for the appellant.

16. On 16 October 2014, Judge Raghaven issued an UNLESS Direction to the effect that unless by no later than 20 October 2014 the appellant had complied with Directions 9 and 12 of the Tribunal's Directions, that is to say service of the hearing bundle on HMRC and the skeleton argument and list of authorities on both HMRC and the Tribunal, then the proceedings might be struck out without further notice.

17. That Direction was served on the registered office of the appellant and on HMRC. There was no compliance and indeed no contact from the appellant.

18. On 21 October 2014, the Tribunal wrote to both parties intimating that in those circumstances it seemed unlikely that the appeal would be able to be dealt with fairly and justly or that the five-day hearing would be able to proceed. Accordingly the substantive hearing was postponed.

19. It was further intimated that the hearing slot would be utilised to hear representations from the parties in regard to the appellant's non-compliance with the Directions dated 16 October 2014 in regard to strike out, or if not, what further case management directions should be issued. The account was specifically requested to notify the Tribunal and HMRC of any new representative and it was pointed out that the appellant did not require a new representative in order to attend the hearing and make representations.

20. No communication was received from the appellant and there was no attendance by or on behalf of the appellant at the hearing.

21. No mail has been returned to either the Tribunal or HMRC.

## **Reasons for Decision**

### *Absence of appellant*

22. The first issue at this hearing was to decide whether or not it was appropriate to proceed in the absence of the appellant. I had due regard to Rules 33 and 2 of the Rules. It was clear from the file that service of all relevant documents had been made on the Registered Office of the appellant and that the details for that had been checked with Companies House. Further I was informed by HMRC that they too had written to the appellant on 22 October 2014 reiterating the terms of the Directions dated 16 October 2014 and that they intended to apply for strike out. There had been no response. In all those circumstances, I decided that it was in the interests of justice to proceed to hear the application.

### *Strike Out*

23. In this instance, if the application for strike out were not to be granted, then effectively the time limits repeatedly imposed by the Tribunal would be extended. I am bound to consider the overriding objective (to be found in Rule 2  
5 of the Rules) and all of the circumstances.

24. Mr Kerr referred the Tribunal to the well known principles enunciated by Morgan J in *Data Select v HMRC* [2012]UKUT 187 (TCC) ("*Data Select*") and which were specifically endorsed by Judge Bishopp at paragraph 19 in *HMRC v Leeds City Council* [2014] UKUT 350 (TCC) ("*Leeds*").

10 25. The relevant factors then to consider are: -

- (1) What is the purpose of the time limit?
- (2) How long was the delay?
- (3) Is there a good explanation for the delay?
- (4) What will be the consequences for the parties of an extension of  
15 time?
- (5) What will be consequences for the parties of the refusal to extend time?

### *Time limit*

26. The purpose of the time limits imposed by the Tribunal in the November  
20 Directions is very simple. It is to ensure appropriate case management, to avoid delay, and to ensure that both parties have fair notice and are able to prepare appropriately and timeously for the hearing.

### *How long was the delay*

27. I agree entirely with Mr Kerr that this extremely last-minute application for  
25 an extension of time, which would have meant that the skeleton argument and list of authorities, to say nothing of the bundles, for a five day hearing would only be received one working week before the hearing is decidedly extreme.

### *Is there a good explanation for the delay?*

28. It is clear from Directions 4 and 5 of the November Directions that the  
30 reason that the parties were directed to use their best endeavours to agree schedules (and of course the appellant did not do so) was "to avoid the need for the bundles at the hearing to contain copies of approximately 2,300 invoices in dispute" (per Direction 4). The failure to serve bundles by 4 September 2014, combined with the request on 10 October 2014 to defer that to 20 October 2014  
35 is, in my view, entirely unreasonable. The suggestion that the need for that was in the light of the decision in *London* simply is not tenable as that decision was only released after the due date for service. The request for an extension of time for the bundles only arose after HMRC pointed out that the bundles had not been served.

40 29. As I indicate in the previous paragraph, no relevant explanation has been offered for the failure to serve the bundles timeously.

30. There has been no explanation whatsoever in regard to the inability of the appellant's representative to take instructions or as to why the appellant is unexpectedly unavailable.

31. I am wholly unpersuaded that a skeleton argument and list of authorities could not and should not have been served timeously. No argument has been offered as to the relevance, if any, of the decision in *London* in relation to this case. HMRC have made the point, which has not been challenged, that it turned  
5 on its own particular facts. HMRC also argued that it introduced no new principle. In any event, the appellant's representative had almost a month after that decision was issued to frame any argument that might be relevant. They did not. They could have produced a skeleton argument and list of authorities and as appropriate and/or necessary sought leave to amend same. They did not. They  
10 simply applied for an extension of time on the last day possible.

*What will be the consequences for the parties of an extension of time?*

32. It is entirely a matter of speculation as to what might be the actual consequence for the appellant since no argument has been advanced for the failure to give instructions, the failure to attend the hearing and the failure to  
15 produce the bundles. In the latter regard I note, in passing, that in terms of Direction 10 of the November Directions the cost of the bundles falls to be divided between the parties.

33. Obviously if an extension of time were to be granted then the appellant would have the right to proceed to a substantive hearing. However, given the  
20 lack of cooperation latterly with the representative, let alone the Tribunal and HMRC, it is a matter of doubt as to whether there is any intention of proceeding to such a hearing. This hearing has been listed for a very long time. The appellant could not have been unaware of the significance, date and time.

34. As far as HMRC are concerned, they face considerable cost and expenditure of time and energy in preparing for a further hearing. Such a  
25 hearing might be some considerable time away in the future.

35. They also face the possibility that there would be case management followed by further non-compliance, involving cost again for them, and then no hearing.

30 *What will be the consequences for the parties of the refusal to extend time?*

36. If the application for strike out is granted, effectively there is a refusal to extend time. The appellant would be denied the opportunity to argue the substantive case. In the absence of even the skeleton argument it is difficult to  
35 assess the potential for success. Of course the absence of that skeleton argument lies entirely at the appellant's door.

37. Conversely, HMRC would avoid further delay, would have certainty, and there would be a substantial saving to the public purse albeit they have incurred a significant expense thus far.

*Summary*

40 38. The appellant has been given every opportunity to participate fully in this appeal. Previous applications for extension of time have been granted. The letter from the Tribunal (see paragraphs 18 and 19 above) made it explicit that even in the absence of a representative the appellant could and should attend this hearing. There was no response. Clearly, for reasons that are unknown, the  
45 representative could not obtain instructions. Recently, there has been no response to either HMRC or to the Tribunal.

39. The overriding objective requires that dealing with a case fairly and justly means avoiding delay and ensuring that the parties can participate fully in the proceedings. In the preceding paragraph I have referred to the appellant but, of course, the impact of the appellant's failure to comply with directions has meant  
5 that HMRC most definitely has not been able to participate fully.

40. The overriding objective applies to both parties.

41. This is a standard case; it was not allocated to the complex category. There has been extensive case management for a standard case. Amongst other matters, the overriding objective requires that the case should be dealt with in  
10 ways which are proportionate to the importance of the case and the complexity of the issues.

42. Importantly, the overriding objective requires that the parties **must** cooperate with the Tribunal. Quite apart from the failure to comply with the November Directions, the appellant's failure to comply with the most recent  
15 Directions, and that in the face of the clear indication that the proceedings might be struck out in the event of non-compliance, clearly amounts to a failure to cooperate.

43. There is no suggestion of any "mistake" being the cause of the non compliance in this instance, indeed we have no real explanation but at best it  
20 might be a mistake. I agree entirely with Judge Bishopp in *Leeds* when he states in the final paragraph that: "Time limits are there to be complied with...but mistakes do occur and if they are not egregious - for example when there is a failure to comply without good reason with an 'unless' direction... they should not, in my view lead to ... litigation which takes up resources of the parties and  
25 the Tribunal." In this instance, we very clearly have a failure, without any reason being offered, to comply with an "unless" direction, let alone the other Directions.

44. Looking at the totality on the evidence before me and weighing all of that in the balance I find that

- 30 (a) the appellant has failed to comply with a direction which stated that failure by the appellant...could lead to striking out of proceedings, and  
(b) the appellant has failed to cooperate with the Tribunal to such an extent that the Tribunal cannot deal with the proceedings fairly and justly.

35 Accordingly, the provisions of the Rule 8(3)(a) and (b) are met and for all the reasons set out above, I find that the application for strike out should be granted.

#### *Costs*

45. HMRC verbally intimated that they wished to make an application for costs. I directed that since the appellant has had no notice of same, any such  
40 application should be made in writing with a formal submission. In the event that such an application is received, it will be intimated to the appellant by the Tribunal and the appellant will have 14 days from the date of issue thereof to lodge with the Tribunal and HMRC any submission or opposition thereanent.

46. In the event that no such response is received timeously from the appellant I  
45 will issue a decision on the matter.

47. Accordingly, the issue of costs is reserved at this juncture.

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

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**ANNE SCOTT  
TRIBUNAL JUDGE**

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**RELEASE DATE: 12 November 2014**