



**TC04192**

**Appeal number: TC/2013/04160**

*Income Tax – application for postponement of tax – Section 55 TMA 1970 –  
onus of proof – non-compliance with Directions – strike out application  
refused – Postponement application partially successful*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**NARGIS SULTANA HAQ**

**Appellant**

**- and -**

**NATIONAL CRIME AGENCY**

**Respondents**

**TRIBUNAL: JUDGE ANNE SCOTT, LLB, NP  
MRS JO NEILL, ACA**

**Sitting in public at The Royal Courts of Justice, London on 21 November 2014**

**Having heard Mrs Nicola Parslow and Mrs Susan Jones for the Respondents**

## DECISION

1. The substantive matter in issue is the application for postponement of tax on assessments issued by Serious Organised Crime Agency (SOCA), now National Crime Agency (and hereinafter both are referred to as NCA) on 3 October 2012 on Mrs Haq for the years 1996-1997 to 2004-2005 inclusive. Those assessments have since been revised downward and the revised amounts are:-

Year	Originally Assessed	Revised Amount
1996/97	£ 53,437.00	£ 50,115.40
1997/98	£ 2,986.54	£ 167.00
1998/99	£ 25,093.80	£ 20,641.40
1999/00	£ 47,607.60	£ 42,728.40
2000/01	£ 96,293.25	£ 90,382.05
2001/02	£ 36,270.35	£ 31,210.35
2002/03	£ 46,791.60	£ 41,716.40
2003/04	£ 68,519.04	£ 63,254.64
2204/05	£ 13,765.30	£ 13,355.30
<b>Totals</b>	<b>£390,764.48</b>	<b>£353,570.94</b>

2. The postponement application was submitted to NCA by N J Pattni & Co (“Pattni”) on 29 October 2012. By letter dated 17 May 2013, NCA refused the postponement application and on 14 June 2013 the postponement application, signed by Mrs Haq’s son, was referred to the Tribunal. That application was set down for hearing on Friday 7 February 2014.
3. At that hearing Mr Pattni attended and he stated that he did not represent Mrs Haq and was not instructed. He left a sheaf of papers with the Tribunal. Those papers were primarily historic material relating to Mrs Haq’s mental health in 2006 and 2013. The Tribunal also had the substantial Bundle extending to some 469 pages.
4. That hearing was adjourned and detailed Directions were issued on 19 February 2014. A copy thereof is annexed at Appendix 1. Those Directions made it explicit that if there was not compliance with Directions and cooperation with the Tribunal then at the next hearing of the matter the Tribunal might decide the matter in the absence of Mrs Haq, or anyone representing her and that the proceedings would be struck out.

5. There was by no means full compliance with those Directions. A medical report was produced but it was not compliant with the detailed Directions. On 26 June 2014, NCA applied to the Tribunal to have the appeal struck out.

6. On 3 July 2014, Pattni formally opposed that application and this hearing was set down. Effectively that letter amounted to opposition and an application to stay the proceedings indefinitely.

7. On 5 and 6 November 2014, Pattni intimated to the Tribunal that they did not represent Mrs Haq, who was not in a fit state to provide them with any instructions, and no one would be appearing for or represent Mrs Haq. Effectively that duplicated letter amounted to an application to stay the proceedings indefinitely. They also suggested that an “Amicus” be appointed or that Mrs Haq be treated as unrepresented.

8. In summary therefore the Tribunal has three substantive applications which are the postponement and strike out applications and a deemed application to stay the proceedings. The two alternative applications are that an “Amicus” be appointed (see paragraph 31 below) or alternatively that the proceedings continue on the basis that Mrs Haq is unrepresented.

#### **Reasons for the Directions issued on 19 February 2014.**

9. The diverse medical reports produced to the Tribunal by Mr Pattni on 7 February 2014, albeit no longer apparently directly relevant since they were out of date, caused us particular concern and that that was the primary reason that we required current and expert evidence.

10. Of course, we accept, as does NCA, that Mrs Haq has mental health problems. The first serious deterioration is noted to have been from and after 24 April 2006 when she appeared in court. Previously on 14 September 2005 she had pled guilty to claiming state benefits of approximately £93,000 over an eight year period in relation to a property of which she was the beneficial owner via a company registered in the British Virgin Islands.

11. She was admitted to hospital after that appearance and was discharged on 1 July 2006 having partially improved. Her own Consultant Psychiatrist, Dr Kenn had produced a report on 24 July 2006 stating that “the anticipatory stress caused by the fear of having to stand trial....would lead to a collapse in her mental state...”

12. The Crown Prosecution Service instructed a report dated 5 August 2006 by the Consultant Forensic Psychiatrist, Dr Kahtan. He stated that in his view Mrs Haq “significantly exaggerated her problems to avoid a trial” and that he had “little doubt that if she were made to give evidence, she would present as extremely unwell, physically and mentally.”

13. Mrs Haq’s solicitors then requested background information from a Consultant Forensic Psychiatrist, Dr Isherwood, to present to a hearing in Harrow Crown Court on 8 January 2007. He reported on 28 December 2006 to the effect that her presentation had deteriorated since he had last interviewed her in April 2006 and that she was not fit to plead. In writing that report he referred to and indicated that he had

had access to the report by two other consultant psychiatrists. His conclusion was that her illness was likely to be further exacerbated by stressors in the future.

14. Mrs Haq was granted an Absolute Discharge in those proceedings and no recovery proceedings were instigated.

5 15. We had noted from the Bundle that Pattni had written to NCA on 17 December 2012 enclosing a GP letter which stated that Mrs Haq's mental health had deteriorated at the time that the assessments which are the subject matter of this application were issued. They stated that her son was attempting to assist but they needed Mrs Haq's input.

10 16. NCA continued to correspond with Pattni who produced a medical report dated 31 January 2013. That stated that " I also agree with Dr Kenn that when faced with legal issues and potential court appearances her condition deteriorates significantly. I note that when the previous affairs were thought to be concluded, her symptoms improved."

15 17. NCA continued the correspondence with Pattni and suggested alternative solutions to resolve the matter and minimise emotional stress including use of family, friends, power of attorney or forensic accountant, but with no success.

18. As indicated in the Directions, there had been no reply to inquiries from the Tribunal.

20 19. Given that background and a history of delay and non-cooperation predicated on the basis of the ill health of Mrs Haq, we required relevant, specialist medical evidence.

### **The medical report produced in response to Directions**

25 20. The Direction for production of the medical report required it to be prepared by a suitably qualified Consultant Psychiatrist and to comply with the requirements of CPR Practice Direction 35, a copy of which was enclosed with the Direction. The medical report which was produced was not an independent expert report and it was not by a Consultant Psychiatrist. It came from the Specialist Registrar in the Community Mental Health Team who look after Mrs Haq.

30 21. In terms of cognition it states: "Mrs Haq appears to be very orientated in time, place and person". It does on to say that "She appears to have the capacity and insight into her mental illness, willing to engage with services ... and is able to identify that her current stresses are contributing towards her deteriorating mental health. The deterioration in her mental health is "often linked to issues involving court case" and  
35 that her prognosis remains poor in the presence of ongoing triggers. The recent decline in her mental health was triggered by the Directions issued by the Tribunal. It is the opinion of this medical practitioner that her mental ill health will continue for as long as any legal process continues.

### **Representation or not**

40 22. In the letter handed into Court at the first hearing with the sheaf of papers, Pattni state that notwithstanding the tenor of previous correspondence with NCA, Mrs

Haq had never instructed them but rather they had been instructed by her husband. He is now in prison.

23. Mrs Haq's son has been in correspondence and telephone contact with the Tribunal Clerks on a number of occasions. On 2 July 2014, he stated that he wished to clarify that Mr Pattni had not been formally instructed by his mother and had been asked by a family friend to handle the case in the current circumstances. He also requested that no correspondence be sent to his mother but rather to Mr Pattni and copied to him. He also stated that in no "shape or form" did he represent his mother.

24. In the letter of objection to the application for strike out Mr Pattni stated that "we object, on behalf of Mrs N Haq ...". He also stated that her son had not mentioned that he represented her "in any shape or form" and on the contrary his only interest was in being copied in on the correspondence. We find that extraordinary given that Mr Haq had signed the originating Application (see paragraph 2 above) submitted by Pattni. It also begs the question whether this application for postponement of tax is even competent, if Mrs Haq's son had never represented her.

25. Mr Pattni subsequently wrote to the Tribunal on 6 November 2014 explaining that he did not represent Mrs Haq who was not able to provide him with instructions. It seems clear that Mr Pattni thought that Mrs Haq would be unrepresented. It is clear from the correspondence from Mr Pattni in November that he did not anticipate that there would be any attendance at the hearing, unlike the previous Hearing where he had attended and submitted information albeit not representing Mrs Haq.

26. In arranging for the listing of this hearing Mrs Haq's son had indicated that he would be attending (it was assumed to observe rather than represent) and requested that it be set down for 11.00am. This was done to suit his convenience. He did not attend.

27. For the record, it transpired that, notwithstanding the fact that Mrs Haq's son had been in contact with the Tribunal Clerks on numerous occasions whether by email or by telephone prior to this hearing, he contacted the Clerks some hours after the hearing had been concluded and reiterated that his mother could not arrange representation and again explained about her health. Further he stated that he had not attended because Mr Pattni, on the advice of an unknown barrister who he knew, had told him that only barristers appeared in the Royal Court of Justice. Since the hearing had been expressly arranged for Mr Haq's convenience we find it incredible that he did not contact the Tribunal to check if that information was correct if it was the case that he intended to attend. Why Mr Haq would contact the Tribunal after the scheduled time for the hearing is equally incomprehensible.

28. Looking to the totality of the information before us, we can only take the view that Mrs Haq is not currently represented, formally or informally and that it is extremely unlikely that that will change.

#### **40 The arguments for the Parties**

##### **Mrs Haq**

29. Essentially Pattni argue that Mrs Haq would not be able to participate fully in a hearing, she would not be able to instruct representation, she would not be able to

attend a hearing or ask someone to act for her and there was no one in the family who could assist her. She would not be able to participate in proceedings.

30. Pattni also suggested that the Tribunal might wish to appoint an “Amicus to address the Tribunal in order to make matters proceed as smoothly as possible”.

5 31. Pattni states that: the assessments are estimates and she had and has no income, and “The consideration is not whether the assessment was fair and reasonable but whether there were grounds for the taxpayer to believe the tax was not due or there were other justifications for temporarily standing over.”

## NCA

10 32. Alternative arguments were advanced. The first was that the appeal should be struck out as there had been failure to comply with Directions, failure to cooperate and there was no reasonable prospect of the application succeeding. In the alternative the matter should proceed to a substantive hearing of the postponement application.

15 33. The postponement application is under section 55 Taxes Management Act 1970 (TMA). In terms of section 55 (6) TMA the onus is on Mrs Haq to establish that there are reasonable grounds for believing that tax has been overcharged; neither she nor anyone on her behalf has done so.

## Preliminary issues

### Hearing in the absence of a party or stay the proceedings?

20 34. The first issue for the Tribunal was to consider whether or not they could, or should, proceed in the absence of Mrs Haq or any representation. For the reasons set out above we find that she is not and probably will not be represented at any stage in the foreseeable future.

25 35. This was the second hearing of this case and there had already been extensive delay before that. We considered all of the circumstances and not just the ability to participate fully in proceedings. We also have very much in mind that in terms of the Overriding Objective (the terms of which are set out in the Appendices annexed to the Directions at Appendix 1) the Tribunal has a duty to act fairly and justly to **both** parties and that also includes avoiding delay.

30 36. If the proceedings were to be stayed the practical effect is that that would amount to an effective postponement of the tax without hearing the parties. Pattni are well aware of that, since on 13 August 2013, the Tribunal wrote to them to that effect in respect of their first application for a stay.

35 37. It is blindingly obvious that Mrs Haq will never instruct representation and will never participate in the proceedings which were apparently instigated by her.

38. Accordingly, we decided that having due regard to Rules 2 and 33 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (“the Rules”) it was in the interests of justice to proceed with the hearing.

39. Therefore the deemed application for a stay in these proceedings is refused.

## “Amicus”

40. As far as appointment of an Amicus is concerned, we take the view that that was a slightly bizarre suggestion given that, as noted in the Directions, as long ago as 13 August 2013, the Tribunal asked for documentation from the Office of the Public Guardian but there was no response notwithstanding reminders dated 20 September 5 2013 and 29 October 2013. Furthermore NCA and its predecessor had suggested on numerous occasions that someone could act for Mrs Haq under a power of attorney or even informally. Nothing has been forthcoming.

41. Rule 11 and in particular 11(5) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 makes provision as to who precisely may represent or 10 assist a party at a hearing. That is a matter for an appellant or someone assisting an appellant to arrange but certainly not the Tribunal. The provisions of Rule 11 are set out at Appendix 2.

42. That application is refused.

## 15 Discussion

43. We had before us the substantial Bundle produced for the first hearing together with a much slimmer bundle which contained copies of some of the items in the first bundle and two new authorities, namely *Pittack v HMRC*<sup>1</sup> to which reference had been made in NCA’s Submissions and *Khan v Director of the Assets Recovery 20 Agency*<sup>2</sup>.

44. We heard evidence from Mrs Jones who had been the investigating officer. We found her to be clear and credible. She explained that notwithstanding the issue in regard to benefits, Mrs Haq came to the attention of NCA in approximately 2011, following a raid on the marital home in connection with a criminal investigation 25 involving Mr Haq. In the course of that raid very substantial sums of money were found in Mrs Haq’s wardrobes and with her personal possessions. No explanation was forthcoming and accordingly an investigation was mounted, albeit not covering those monies.

45. In the course of that investigation the following key facts were identified:-

30 (a) The marital home had been purchased for approximately £135,000 on 11 November 1996 and had not been subject to a mortgage. That property was purchased by an offshore company and that company then transferred the ownership to another company. Both companies were registered in the British Virgin Islands and were administered by a Jersey based company. 35 Mrs Haq was the owner of both companies. On 17 April 2013 the property was transferred out of company ownership into the ownership of Mrs Haq’s son.

(b) A review of her financial documentation identified her control over nine 40 bank accounts in four variations of her own name, namely Mrs N Rafiq, Mrs N Sultana, Nargis Choudhary and Mrs N Haq. In the period between

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<sup>1</sup> [2014] UKFTT 670

<sup>2</sup> [2006] STC 154

April 1997 to 1 April 2005 a total of £917,746, in deposits, passed through those bank accounts.

5 (c) A detailed analysis of the bank accounts was completed and in addition to the £917,746 it was noted that there were another two unknown bank accounts from which a further £22,217 had been transferred into these accounts.

(d) HMRC's records for the tax years 1996-1997 to 2004-2005 revealed no recorded employment or any self-assessment record.

46. Pattni confirm that Mrs Haq had no income.

10 47. The analysis and the underlying bank statements extending to some 324 pages were produced to us and to Pattni. The latter has had the bank statements since 9 November 2012.

15 48. On 12 December 2012 Pattni wrote to NCA and simply stated that nothing could be done due to Mrs Haq's illness. The position has not changed. NCA have repeatedly suggested that others such as a forensic accountant, or someone acting under a Power of Attorney could assist; it need not involve Mrs Haq. It is a civil matter and figures could be reconstructed from the bank statements without involving Mrs Haq. We agree with that argument. Indeed we record that at paragraph (o) in the Directions.

20 49. In summary, therefore the tax has effectively been informally postponed since 2012 since absolutely nothing has happened in the interim. Having considered the medical reports in detail it seems totally clear that while Mrs Haq has cognitive function and capacity in regard to certain matters such as, for example, the nature, extent and triggers for her illness and the need for medication etc, nevertheless it is  
25 extremely unlikely indeed that she will demonstrate capacity or cognitive function in regard to anything relating to a dispute with NCA, litigation of any sort or the Tribunal process. It is well documented that her condition improves when such matters are concluded or resolved.

30 50. She clearly had capacity in 2013 to instruct the transfer of the marital home to her son or to instruct someone else to arrange it. The described lack of capacity seems to be particularly acute in relation to matters such as these proceedings.

35 51. We simply do not understand why no effort has been made to assist Mrs Haq in any respect other than to defer proceedings. This is her application, albeit not made by her but by her husband and son on her behalf. It is not clear why they have not progressed matters further other than perhaps ensure that there is delay in recovery of the tax charged.

40 52. Mrs Haq's husband was arrested in May 2011 for money laundering offences. He is currently serving a prison sentence. A "to whom it may concern" letter dated 1 November 2013 from the Community Mental Health team, caring for Mrs Haq, requested that Mr Haq be transferred to an open prison so that he would be able to get weekend leave to support Mrs Haq as he had been her primary carer. It is not known whether that request was granted.

53. Even if Mr Haq is not in an open prison and not able to have home leave it is not clear why he has not assisted in this matter. It was he who instigated the original

application to NCA (see paragraph 22 above). Further it is clear from the witness statement of Darryl Sears that one of the bank accounts (HSBC) which has been analysed for the purpose of these assessments, has been utilised by Mr Haq although in a period after with which we are concerned.

5 54. In order to consider whether or not a strike-out application should be granted, one of the criteria is whether or not there would be reasonable prospects of success if the proceedings were allowed to continue.

55. We agree with NCA's argument on the legal test to be applied when considering postponement of tax (see paragraph 33 above). Quite simply the argument advanced  
10 by Pattni (see paragraph 31 above) is wrong in law. This Tribunal's jurisdiction is limited to that conferred by section 55 (6) TMA. In summary, that is whether, objectively, there are reasonable grounds to believe that the appellant is overcharged to tax.

56. In this case Mrs Haq has presented absolutely no evidence of her correct tax  
15 liability for the years of assessment. Indeed it has been stated on her behalf that she had no income. There must be some reason for the very, very large amounts of money which passed through these accounts. Although there are some large deposits there are many small deposits.

57. The onus is on the Appellant and has not been discharged.

20 58. However, standing the Appellant's ill health and all the other circumstances of this case we felt it incumbent upon us to properly analyse the information before us. We stress that we did not do so as if we were determining an appeal on the actual assessments. Our limited task is to determine whether the Appellant has demonstrated reasonable grounds for believing that there is an overcharge. The  
25 Appellant has done absolutely nothing.

59. However, although NCA have correctly identified that they should amend the assessments to remove the element relating to housing benefit, they had patently not considered the position in regard to the marital home (now transferred to Mrs Haq's son ) in sufficient detail.

30 60. The assessment for 1996/97 included the sum of £137,123 relating to the purchase of the property. However, according to the Land Registry Certificate that purchase was by a company and not by Mrs Haq. That company, albeit owned by Mrs Haq, is a separate legal entity. That figure therefore should not be included in her personal tax assessments. We put that to NCA in the course of the hearing and they  
35 conceded the point. Given that the remainder of the income thought to be under declared in that year is minimal it was orally agreed that all tax should be postponed and effectively there should be no assessment for 1996/1997.

61. For the avoidance of doubt, we find, and record, that there are reasonable  
40 grounds for believing that there is an overcharge to tax in 1996/1997 and that the tax for that year should be postponed to NIL, ie there is no tax currently payable. To that extent this application is successful.

62. NCA has excluded all inter account transfers and it is very difficult to see how, in the absence of any other evidence, they, or we, could possibly conclude that Mrs

Haq has been overcharged. Absolutely nothing has been provided to NCA by the Appellant or those acting on her behalf to suggest that there has been any overcharge. Indeed the assertion that she had no income whatsoever does not assist the application.

5 63. As far as the remaining years are concerned we can find no reasonable basis for believing that there is an overcharge to tax. To that extent the application is refused.

64. We make it explicit that that is not a finding that the other assessments are correct. Our jurisdiction in this matter is limited purely to that allowed for by section 55(6) TMA.

10 65. We therefore determine the amount of tax to be postponed at NIL for the years 1997/1998 to 2004/2005. Accordingly, on the basis that the default position in section 55(2) TMA applies, a total of £303,455.54 tax assessed remains due and payable.

### **Strike-out**

15 66. Since we have determined the amounts to be postponed or not, why have we not granted the application for strike-out? It is well settled that striking-out is to be used sparingly and only in plain and obvious cases *Lawrance v Lord Norreys*<sup>3</sup>. This principle was reiterated by the House of Lords in *Three Rivers District Council & Others v Governor & Company of the Bank of England (No. 3)*<sup>4</sup>. The reason for this  
20 is clear: striking-out deprives the party of its right to be heard. It is quite a threshold.

67. There is no dispute that the Directions did warn that non-compliance could lead to the application being struck out. The issue is one as to how and why the Tribunal should exercise its discretion. In exercising that discretion we have taken account of the overriding objective and of all the circumstances of this case.

25 68. Whilst we certainly do not condone the patent non-compliance with Directions in this case and nor do we condone the now evident lack of compliance with procedural requirements in regard to lodging the application in the first instance and the fact that Pattni and Mrs Haq's son, whilst apparently never formally instructed, have entered and left the proceedings. Rule 11(5) which might have covered the  
30 position in this matter has not been invoked. Nevertheless we take the view that it is slightly draconian to strike out the proceedings given Mrs Haq's ill health.

69. Further, it is appropriate to have carefully considered the merits of the postponement application: hence the grant of the application in regard to 1996-97. Whilst we could have allowed 1996/97 and struck out the remaining years, we took  
35 the view that it was in the interests of justice to be consistent in approach. Further, that approach probably shortens the probable timescale of these proceedings which is evidently to the benefit of Mrs Haq's mental health. We therefore prefer the alternative argument advanced by NCA and considered and determined the substantive merits of the postponement application.

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<sup>3</sup> 1890 15 App CAS 2010

<sup>4</sup> 2003 2 AC 1

70. 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**

**RELEASE DATE: 16 December 2014**

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**Appeal number: TC/2013/04160**

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**MRS NARGIS HAQ**

**Appellant**

**- and -**

**NATIONAL CRIME AGENCY**

**Respondents**

**TRIBUNAL: JUDGE ANNE SCOTT, LLB, NP  
MRS JO NEILL ACA**

## DIRECTIONS

### WHEREAS

- 5 (a) this hearing, which relates only to an opposed application for postponement of tax, was listed for Hearing in London and intimation thereof was sent both to the appellant and her representative, Mr Pattni,
- (b) Mr Pattni appeared but tabled a sheaf of papers, stated that he was not instructed and was not her representative and left the Hearing,
- 10 (c) we noted from the papers at B30 that he had been appointed as her representative in terms of dealing with National Crime Agency (NCA formerly SOCA),
- (d) although he has been corresponding with SOCA, NCA and the Tribunal for some years he does not appear to have been formally appointed as a representative in terms of The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009,
- 15 (e) the tabled papers included, amongst other papers, an historic psychiatric report (2006), a medical report dated 31 January 2013 (which was already in the bundle at C56) and a letter dated 1 November 2013, from a member of Twickenham Community Mental Health Team, relating to an application for the appellant's husband to move to an open prison,
- 20 (f) that letter confirmed that the appellant has mental health issues including severe depressive episodes, Anxiety Disorder and a history of self harm and suicide but did not clarify her then mental health status,
- 25 (g) the medical opinion from January 2013 confirmed the diagnosis as F 33.2 which is recurrent depressive disorder,
- (h) throughout the period to which these proceedings relate it appears to have been alleged that the appellant has been incapable of giving instructions yet, as indicated at (c) above she certainly instructed Mr Pattni in 2012,
- 30 (i) it would be expected that if her illness is episodic or recurrent then there should be, and have been, periods when she should be, and have been, capable of giving instructions, instructing others to act on her behalf and or granting a Power of Attorney,
- (j) we note that her son has signed the Notice of Appeal to the Tribunal on her behalf,
- 35 (k) we note that following receipt of assertions from Mr Pattni that the appellant was unable to participate in the process before the Tribunal because of her illness, on 13 August 2013 the Tribunal asked for production of appropriate medical evidence and/or documentation from the Office of the Public Guardian but there was no response, notwithstanding reminders dated 20
- 40 September 2013 and 29 October 2013. The case was then listed for hearing,
- (l) this appeal relates to an application for postponement of tax in the revised amount of £353,570.94 relating to the years 1996/97 - 2004/05 inclusive and the onus of proof lies with the appellant,
- 45 (m) it is therefore in her interests for evidence to be produced, if not by her then by others, such as family or appointed professionals, that evidence is required to enable the Tribunal to assess whether or not there are reasonable grounds to show that Mrs Haq has been overcharged to tax (Section 55(6) TMA), as she asserts...see Note 1 annexed below
- 50 (n) the respondents are anxious to proceed with the matter since no progress had been made for a number of years,

- 5 (o) it is well within the knowledge of the Tribunal that there are many instances where individuals have been catastrophically injured or died and their financial affairs have had to be clarified and/or organised by others on their behalf, so it should be possible for matters to be progressed, even if the appellant is unable to attend to matters herself,

NOW THEREFORE IT IS DIRECTED that

- 10 (1) The Hearing on 7 February 2014 is adjourned to be relisted for the first appropriate date after receipt of the medical report referred to in Direction 2 below.
- 15 (2) By noon on the 42nd day after the date of issue of these Directions, given the lack of current medical evidence, the appellant, or someone acting on her behalf, shall lodge with the Tribunal, with a copy to the respondent, a medical report prepared by a suitably qualified Consultant Psychiatrist giving a diagnosis and prognosis for the appellant's mental health conditions, and in particular a view as to (a) her capacity, as at the date of the report, to ask, or appoint, someone to act on her behalf, (b) her capacity to give instructions, (c) if capacity is adjudged as being lacking in either respect, the likely period of such incapacity, and (d) the appellant's ability to attend an oral hearing of her appeal, such report to comply with the requirements of CPR Practice Direction 35 (see Note 3 annexed hereto).
- 20 (3) If the medical report indicates that there is likely to be a period of incapacity exceeding 60 days from the date of the medical report, then since presumably the appellant is being supported in the community with her activities of daily living, those assisting her including her family, should make arrangements to produce the necessary evidence since as matters presently stand those assessments are a debt due by her. It is her application and it is for her, or others assisting her, to produce any possible evidence as to the reasonableness of the assessments.
- 25 (4) In the event that no such medical report is lodged timeously, then the application will be relisted for the first available date thereafter,
- 30 (5) Having due regard to Rule 2 of The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (the Rules), the parties must co-operate with the Tribunal and act in such a way as to enable both parties to participate fully. Therefore, the appellant is put on notice that
- 35 (a) at the next hearing of this matter, the Tribunal may proceed to decide the matter in her absence or the absence of anyone representing her, and
- 40 (b) in terms of Rule 8(3) of the Rules that it may be that the proceedings will be struck out.
- (6) Any party may apply at any time for these Directions to be amended, suspended or set aside in the event of any change in circumstances.

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**ANNE SCOTT  
TRIBUNAL JUDGE**

**RELEASE DATE: 19 February 2014**

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**NOTE:**

(1) For the avoidance of doubt it is made clear that, at this stage, it is not for the appellant or those assisting or acting for her to prove all of the facts or succeed in all the legal arguments which would have to be proved or established at the hearing of the substantial appeals. The limited task for the Tribunal is simply to establish whether the appellant or those assisting or acting for her have demonstrated reasonable grounds for believing that there has been an overcharge to tax. However, Section 55(6) does require the Tribunal to have a **firm** basis to make any such finding on the evidence before it. It is for the appellant or those assisting her to produce such evidence.

(2) **Excerpts from Rules**

(a) Rule 2:

*Overriding objective and parties' obligations to co-operate with the Tribunal*

(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.

(2) Dealing with a case fairly and justly includes—

- (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;
- (b) avoiding unnecessary formality and seeking flexibility in the proceedings;
- (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
- (d) using any special expertise of the Tribunal effectively; and
- (e) avoiding delay, so far as compatible with proper consideration of the issues.

(3) The Tribunal must seek to give effect to the overriding objective when it—

- (a) exercises any power under these Rules; or
  - (b) interprets any rule or practice direction.
- (4) Parties must—
- (a) help the Tribunal to further the overriding objective; and
  - (b) co-operate with the Tribunal generally.

(b) Rule 8(3):

The Tribunal may strike out the whole or a part of the proceedings if—

- (a) the appellant has failed to comply with a direction which stated that failure by the appellant to comply with the direction could lead to the striking out of the proceedings or part of them;
- (b) the appellant has failed to co-operate with the Tribunal to such an extent that the Tribunal cannot deal with the proceedings fairly and justly; or
- (c) the Tribunal considers there is no reasonable prospect of the appellant'

(3) **Paragraphs 2 & 3 of the Civil Procedure Rules Practice Direction 35 (Experts and Assessors)**

Expert Evidence – General Requirements

2.1 Expert evidence should be the independent product of the expert uninfluenced by the pressures of litigation.

2.2 Experts should assist the court by providing objective, unbiased opinions on matters within their expertise, and should not assume the role of an advocate.

5 2.3 Experts should consider all material facts, including those which might detract from their opinions.

2.4 Experts should make it clear –

(a) when a question or issue falls outside their expertise; and

10 (b) when they are not able to reach a definite opinion, for example because they have insufficient information.

2.5 If, after producing a report, an expert's view changes on any material matter, such change of view should be communicated to all the parties without delay, and when appropriate to the court.

#### *Form and Content of an Expert's Report*

15 3.1 An expert's report should be addressed to the court and not to the party from whom the expert has received instructions.

3.2 An expert's report must:

(1) give details of the expert's qualifications;

20 (2) give details of any literature or other material which has been relied on in making the report;

(3) contain a statement setting out the substance of all facts and instructions which are material to the opinions expressed in the report or upon which those opinions are based;

25 (4) make clear which of the facts stated in the report are within the expert's own knowledge;

(5) say who carried out any examination, measurement, test or experiment which the expert has used for the report, give the qualifications of that person, and say whether or not the test or experiment has been carried out under the expert's supervision;

30 (6) where there is a range of opinion on the matters dealt with in the report – (a) summarise the range of opinions; and

(b) give reasons for the expert's own opinion;

(7) contain a summary of the conclusions reached;

35 (8) if the expert is not able to give an opinion without qualification, state the qualification; and

(9) contain a statement that the expert –

(a) understands their duty to the court, and has complied with that duty; and

40 (b) is aware of the requirements of Part 35, this practice direction and the Protocol for Instruction of Experts to give Evidence in Civil Claims.

3.3 An expert's report must be verified by a statement of truth in the following form –

45 “I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.”

(Part 22 deals with statements of truth. Rule 32.14 sets out the consequences of verifying a document containing a false statement without an honest belief in its truth.)

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**Rule 11**5 **Representatives<sup>5</sup>**

11.— (1) A party may appoint a representative (whether a legal representative or not) to represent that party in the proceedings.

10 (2) If a party appoints a representative, that party (or the representative if the representative is a legal representative) must send or deliver to the Tribunal and to each other party to the proceedings written notice of the representative's name and address.

15 (3) Anything permitted or required to be done by a party under these Rules, a practice direction or a direction may be done by the representative of that party, except signing a witness statement.

(4) A person who receives due notice of the appointment of a representative—

20 (a) must provide to the representative any document which is required to be provided to the represented party, and need not provide that document to the represented party; and

(b) may assume that the representative is and remains authorised as such until they receive written notification that this is not so from the representative or the represented party.

25 (5) At a hearing a party may be accompanied by another person who, with the permission of the Tribunal, may act as a representative or otherwise assist in presenting the party's case at the hearing.

(6) Paragraphs (2) to (4) do not apply to a person (other than an appointed representative) who accompanies a party in accordance with paragraph (5).

30 (7) In this rule "legal representative" means [a person who, for the purposes of the Legal Services Act 2007<sup>6</sup>, is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation within the meaning of that Act], an advocate or solicitor in Scotland, or a barrister or solicitor in Northern Ireland.

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<sup>5</sup> Rule 11(7) was amended by S.I. 2010/43

<sup>6</sup> 2007 c.29