IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
[2023] EWHC 3368 (Admin)

No. AC-2023-LON-002973

Royal Courts of Justice

Thursday, 21 December 2023

Before:

MR JUSTICE KERR

B E T W E E N :

THE KING
(on the application of
EASYWAY UMBRELLA LIMITED) — Claimant

- and -

HIS MAJESTY'S COMMISIONERS
FOR REVENUE AND CUSTOMS — Defendant

MR RICHARD CLAYTON KC (instructed by Jurit LLP) appeared on behalf of the Claimant.

MR JOSHUA CAREY and MR SAM WAY (instructed by HMRC) appeared on behalf of the Respondent.

J U D G M E N T
(via Microsoft Teams)

MR JUSTICE KERR:

Introduction

1 This application for permission to bring a judicial review claim has a rather unorthodox procedural history. I need not set all of it out. The challenge is what the claimant graphically calls a decision by the defendant: "to name and shame Easyway in accordance with section 86 of the Finance Act 2022." The defendant, HMRC, published on its website a notice citing the claimant under that provision on 27 July 2023. I shall call it, more prosaically, the section 86 notice. The present challenge was brought on 9 October 2023, accompanied by an application for urgent consideration.

2 That was addressed in a preliminary procedural order of Cheema-Grubb J the next day. The matter was argued before me orally yesterday at court. There were procedural applications for permission to rely on response documents in the nature of pleadings, two such on the claimant's side and one on the defendant's. It was agreed at the hearing that all three would be allowed. It was also agreed that I would decide the issue of permission and the issue of interim relief sought by the claimant to remove the section 86 notice pending a full substantive hearing.

Facts

3 The story starts with the claimant's business model. It is described in detail in the statement of Mr George Zambartas, director and sole shareholder of the claimant. For present purposes I set out the summary at paragraph 4 of the claimant's statement of facts and grounds:

> "Easyway is an umbrella provider. An umbrella provider is the name commonly given to companies which engage employees and provide them to clients. This is attractive to clients who do not regard themselves as the employer. The umbrella company will receive funds from the client, usually via a recruitment agency and pay the worker, after deducting its fees. A practice has grown up of umbrella companies paying a minimal salary to its employees and topping up the salary with loans which HRMC regard as being earnings attracting PAYE and, therefore, regards tax avoidance. By contrast, Easyway has deliberately chosen to differentiate itself from this practice by paying more than minimal salaries and operating a bonus scheme which results in fully taxable payments. Easyway's business began in January 2022 as a result of an increased demand in the market for umbrella providers

> following the changes to the IR35 legislation (that placed the obligation for determining employment status onto private sector employers in certain circumstances). … ."

4 The defendant clearly got wind of the claimant's business method and decided that it could attract a section 86 notice. Such a notice may be published where an authorised officer of the defendant "suspects that a proposal or arrangements are a relevant proposal or relevant arrangements" (section 86(1) of the Finance Act 2022). The notice may name a promoter or person connected with the proposal or arrangements. A relevant proposal for such arrangements, and the arrangements themselves are defined in section 234. I will not set out the definition in full here. "Relevant arrangements" are such if they enable or might be expected to enable any person to obtain a tax advantage.

5 By section 234(3) a tax advantage includes:

> "(a) relief or increased relief from tax,
> (b) repayment or increased repayment of tax,
> (c) avoidance or reduction of a charge to tax or an assessment to tax,
> (d) avoidance of a possible assessment to tax,
> (e) deferral of a payment of tax or advancement of a repayment of tax, and
> (f) avoidance of an obligation to deduct or account for tax."

6 The defendant has not filed evidence but I was told at the hearing, on instructions, that the defendant became suspicious because the PAYE records of the claimant's employees included employees only paid the minimum wage, yet in professional occupations such as nursing or other occupations that would normally command more than the minimum wage.

7 An information pack provided to employees by the claimant explained the payment system, including the "discretionary bonus pot". It included a statement that: "[n]o income tax or National Insurance is payable on the bonus pot until it is paid out". An employee could receive "advances on this bonus pot in the form of loans up to . . . 85% of the on target future bonus payment", with the interest rate varying in accordance with HMRC guidance.

8 On 13 April 2023 the defendant wrote to the claimant warning that it was considering publishing a section 86 notice. The letter stated:

> "Description of the proposal or arrangements:
>
> Individuals provide services to end clients as employees of Easyway Umbrella Limited. (EUL)
>
> Employees receive part of their EUL remuneration at a rate close to the National Minimum Wage or National Living Wage which is subject to Income Tax and National Insurance.
>
> Employees receive the balance of their remuneration without the deduction of Income Tax or National Insurance on the basis it does not count as income as it's a loan, credit, or something else.
>
> The authorised officer suspects the proposal or arrangements shown above are a relevant proposal or relevant arrangements. This is because the arrangements enable or might be expected to enable any person to obtain a tax advantage. An equivalent individual who did not enter the arrangements, working for the same end clients, would have the right to receive 100% of the gross contract value relating to the services they have provided net of income tax and National Insurance Contribution. By entering into the arrangements, users receive a portion of their remuneration without the deduction of Income Tax or National Insurance Contributions. The aggregate amounts received are significantly higher than the income they would have received as employees, had they not participated in the arrangements. It is therefore evident that the scheme puts the user in an economically similar position but with less tax to pay.
>
> Secondly, the obtaining of the tax advantage is the main benefit, or one of the main benefits that arises from the arrangements. There are no non tax related benefits of participating in these arrangements that are comparable with the tax advantage. In the absence of any evidence of any other commercial benefits of using the arrangements it is reasonable to suspect that the obtaining of a tax advantage is at least one of the main benefits that might be expected to arise from the arrangements."

9 The letter went on to explain that the claimant had 30 days to make representations and that this was its opportunity to make known its views on whether the defendant should publish a section 86 notice. However, Mr Zambartas did not receive the letter, as he says in his witness statement at paragraph 22. He says that: "neither I, nor anyone else involved in the claimant's business received the letter dated 13 April 2023".

10 The defendant accepts Mr Zambartas' assertion that he personally did not receive the letter but does not concede that it did not reach the claimant as a company. It was not addressed to Mr Zambartas personally, but to the claimant as a company and Mr Zambartas does not go into detail concerning post handling methods and procedures within the claimant.

11 The parties agree that section 86(5) of the Finance Act 2022 provides:

> "If an authorised officer intends to publish information under this section that identifies a person, an officer of Revenue and Customs must—
>
> (a) notify the person, and
>
> (b) give the person 30 days from that notification in which to make representations about whether or not the information should be published."

12 The parties further agree that the combined effect of section 86(5) of the Finance Act 2022, section 115 of the Taxes Management Act 1970 and section 7 of the Interpretation Act 1978, is that the letter of 13 April 2023 is deemed served on the claimant on the date, i.e. about 14 or 15 April 2023 when it would be delivered in the ordinary course of post, "unless the contrary is proved" (see section 7 of the Interpretation Act 1978).

13 The parties disagree about whether the contrary has been proved here. The claimant says Mr Zambartas' assertion is uncontradicted. The defendant says his statement does not suffice to prove non-receipt because he has not addressed methods and practices for mail handling in the claimant's business operations.

14 By 19 July 2023 the 30 day period had expired. The defendant wrote to the claimant that day saying that the claimant did not make any representations and the defendant had decided to publish the proposed section 86 notice. A link to what was to be published was provided. The claimant does not deny receipt of that letter, but Mr Zambartas says in his statement that he did not see it until 28 July 2023 on his return to the office after a holiday in Cyprus.

15 In fact, it was on 27 July 2023 rather than 28 July 2023 that Mr Zambartas emailed the defendant at 1635 saying that he had: "today" i.e. 27 July 2023, read the letter of 19 July 2023. He had also learned that the section 86 notice had already been published. He asked for it to be removed from the defendant's website, denying that he had received the letter of 13 April 2023 or had any opportunity to make representations.

16 The section 86 notice was, indeed, published that very day by the defendant on its website. The notice bears the date 27 July 2023. It states:

> "Individuals provide services to end clients as employees of Easyway Umbrella Limited (EUL). Employees receive part of their EUL remuneration at a rate close to the National Minimum Wage or National Living Wage which is subject to Income Tax and National Insurance. Employees receive the balance of their remuneration, disguised as a loan, credit or other payment, without the deduction of Income Tax or National Insurance.
>
> HMRC considers the untaxed payments as normal income, and tax and National Insurance contributions are payable. HMRC have previously published information on umbrella companies offering to increase your take home pay Spotlight 45. HMRC are aware that some umbrella companies operate more than one scheme, eg a standard compliant scheme and a non-compliant scheme. HMRC advise employees of EUL to familiarise themselves with the guidance and to satisfy themselves that the correct amount of tax is being deducted on their income."

17 After that, the matter became litigious and pre-action protocol correspondence was exchanged. I need not go through it. After exchange of various pleading documents the defendant's acknowledgement of service and summary grounds of resistance were due to be filed. On 24 October 2023, the day before they were filed, the defendant wrote to the claimant expanding on the reasoning supporting the section 86 notice and reassuring the claimant that reading its judicial review papers did not alter the defendant's view that the claimant's *modus operandi* involved "relevant arrangements" or proposals grounding the required suspicion to support a section 86 notice. I will not set out here the three paragraphs to that effect in the letter.

18 The claimant's business did well in early 2023 but has recently suffered greatly, probably as a result of the section 86 notice. Certainly, that is the inference the claimant draws. Turnover is down; taxable profit is much reduced. The accounting evidence before the court shows that the viability of the business is seriously in question. The claimant attributes this to what it says is the defendant's unlawful publication of the section 86 notice and says it intends to claim damages in private law under the Human Rights Act 1998 against the defendant for breach of Article 1, First Protocol to the European Convention on Human Rights ("A1P1").

The first ground: unfairly failing to provide an opportunity to make representations

19 The claimant relies on denial of the right to make representations conferred by section 86(5) and also on breach of a common law duty of fairness by publishing the section 86 notice without first giving the claimant the opportunity to make representations. In relation to common law unfairness, the claimant relies on *Bank Mellat v HM Treasury (No 2)* [2014] AC 700 per Lord Neuberger at [178]-[179] and *R (Timson) v Secretary of State for Work and Pensions* [2023] PTSR 1616 per Phillips LJ at [61]-[64].

20 The letter of 19 July 2023 presented the claimant with a *fait accompli*, Mr Clayton KC for the claimant argued. It informed the claimant that the decision to publish had already been taken. The section 86 notice was patently seriously adverse to the claimant's business. It was a plain case of unfair treatment he submitted, both under the statute and at common law.

21 The defendant asserts that there is no proof of non-receipt of the letter of 13 April 2023 as required under section 7 of the Interpretation Act 1978. Mr Zambartas' evidence is inadequate to amount to such proof. The defendant further submitted, through Mr Carey, that there is no room for the common law duty of fairness to operate where the content of the duty is determined by statute, as it is in this case by section 86(5).

22 In any case, said the defendant, the claimant had made copious representations after publication of the notice in the pre-action protocol correspondence. That had been considered and the defendant had confirmed in its letter of 24 October 2023 that its suspicion was well-founded. Even if the opportunity to make representations under section 86(5) was denied to the claimant, that should not invalidate the notice, see *R v Soneji* [2005] UKHL 49 per Lord Steyn at [23]:

> "… the emphasis ought to be on the consequences of non−compliance, and posing the question whether Parliament can fairly be taken to have intended total invalidity."

23 In my judgment, there is a triable issue as to whether the claimant as a company can prove that it did not receive the letter of 13 April 2023. The evidence of Mr Zambartas is at present very thin and does not address the issue fully. But that could be remedied by further evidence. I think it is likely that he personally, at least, did not receive the letter, whether or not the claimant did. If he had, he would have made robust representations and, perhaps, sought pre-publication interim relief to restrain publication.

24 Whether the presumption in section 7 of the Interpretation Act 1978 is rebutted is an issue fit for trial. That in turn makes it arguable that the defendant did not fulfil its obligation to provide an opportunity to make representations as required by section 86(5) of the Finance Act 2022. As to the common law duty of fairness, I agree with the defendant that there is no room for the duty to operate over and above the content of the right to make representations under section 86(5). The territory of the fairness obligation is delineated by the statute.

25 For those reasons, but subject to what follows later in this brief judgment, I would grant permission to proceed with an application for judicial review on the first ground of challenge.

<u>The second ground: inadequate and unlawful reasons for publishing the section 86 notice</u>

26 The claimant submits that the defendant was under an obligation to give adequate reasons for its decision to publish the section 86 notice and failed to do so. The reasons must, the claimant submitted, measure up to the standards set by Lord Brown in *South Buckinghamshire District Council v Porter (No.2)* [2004] 1 WLR 1953, at [36].

27 The claimant says the defendant did not, in either of the letters of 13 April and 19 July 2023, provide any "specific factual reasons" – to quote from the statement of facts and grounds –

for its conclusion that, as stated in the published section 86 notice: "HMRC considers the untaxed payments as normal income, and tax and national insurance" are payable.

28 The defendant submits that there is no obligation to give reasons but that in any case the explanations given in the letters of 13 April and 19 July 2023 fully acquaint a reader of them with the reasoning of the defendant. The defendant also relies on the further explanation given in the pre-action protocol correspondence and on 24 October in the letter written after the issue of proceedings. The claimant says it is well known that the court will treat with scepticism and caution such self-serving *ex post facto* evidence of reasoning.

29 I can deal with this point briefly because, in my judgment, there is no arguable merit in it. I can accept that the initial letter notifying the recipient of the proposal to publish - i.e. here, the 13 April 2023 letter - would have to give enough information and reasoning to enable the recipient to make cogent representations. That was done here. There are several paragraphs of explanation, which I have quoted above.

30 That was enough in this case. There is no statutory duty to give further reasons. Any subsequent absence of reasoning would have to be a failure to deal with whatever representations were made – here, none – and could, at the most, support an allegation of irrationality infecting the decision to publish. That is not the position here.

31 There was no obligation to give further reasoning in the 19 July letter, because no representations had been made. The explanatory material in the 13 April letter therefore stood and was adequate to explain the position to the claimant. The published notice of 27 July, addressed to the public at large and not the claimant, adequately explains why HMRC considers the untaxed payments to be taxable in the sentence:

> "Employees receive the balance of their remuneration, disguised as a loan, credit or other payment, without the deduction of Income Tax or National Insurance."

32 I have no hesitation in refusing permission to proceed on the second ground of challenge. It is unnecessary therefore to consider the further explanation given in a litigious context in the defendant's post-issue letter of 24 October 2023.

The third ground: irrational decision to publish the section 86 notice

33 The claimant submits that the defendant failed to carry out the *Tameside* duty of enquiry before deciding that the payments at issue were taxable. It therefore had no factual basis for suspecting that they were taxable and no factual basis for stating in the section 86 notice that: "[e]mployees receive the balance of their remuneration, disguised as a loan, credit or other payment, without the deduction of Income Tax or National Insurance." The claimant says the defendant made no factual enquiries into the claimant's arrangements.

34 I can deal with this contention equally briefly because, in my judgment, there is again no arguable merit in it. As the defendant points out, the section 86 bar is low. The trigger for a notice is suspicion not proof, i.e. a state of conjecture or surmise where proof is lacking: *Shaaban bin Hussien v Chung Fook Kam* [1970] AC 942 per Lord Devlin at 948B.

35 In my judgment it is incontestable that the defendant had good reason to suspect that the claimant's proposal was a relevant arrangement, where pay records of professional staff were showing PAYE liability only in respect of an amount at or close to the minimum wage and where the definition of a tax advantage in section 234(3) of the Finance Act 2022 includes deferral of payment of tax as well as avoidance of a possible assessment to tax.

36 I accept Mr Carey's submission that the reasoning in the letter of 13 April was sound. In it, the defendant pointed out that employees of the claimant received their remuneration at a rate at or close to the national minimum wage; that the balance of their remuneration is received without deduction of income tax and national insurance contributions; and that this is on the basis that it "does not count as income as it is a loan, credit or something else."

That is sufficient to pass the test of rationality for entertaining the suspicion that the proposal was a relevant arrangement.

37 At paragraph 30 of his witness statement, Mr Zambartas takes issue with that reasoning. He says it is wrong on three counts:

> "First, as I have explained, many employees choose renumeration significantly above the level provided by the statutory minimum wage. Second, the loans are not in any way disguised. They are genuine loans. The third serious problem with the Defendant's characterisation of our business, which is one of omission, is that the Defendant fails to refer to the bonus pool at all and this leads to the corresponding point that the bonus payments will be fully taxable when they are made."

38 It would ultimately be for a court or tribunal to determine whether those arguments are sound or inadequate to defeat any assessment to tax. Certainly, they do not meet the point that relevant arrangements to confer a tax advantage include deferral as well as avoidance of tax. Without any difficulty, I refuse permission on the third ground of challenge.

The fourth ground: violation of article 1, first protocol to the European Convention on Human Rights by publishing the section 86 notice

39 The claimant submits in the statement of facts and grounds that the defendant has "breached A1P1 by interfering with Easyway's right to protection of property." It has done so, said the claimant, unlawfully, unfairly and disproportionately. Mr Clayton referred to the broad description of protected A1P1 rights in the judgment of Lord Thomas LCJ *Bank Mellat v HM Treasury (No. 5)* [2017] QB 67, at [39].

40 Here, the claimant submitted, the illegality and unfairness lay in the failure to allow representations to be made as well as in the other grounds examined above (which I have rejected). As for proportionality, that depended on an exacting analysis of the factual cases advanced in defence of the measure: per Lord Sumption in *Bank Mellat (No. 2)* at [20].

41 For the defendant, Mr Carey noted the dismissal of an A1P1 based claim by Ritchie J in *Vision HR Solutions Ltd v HMRC* [2023] EWHC 1659 (Admin) at [33]-[36]. Ritchie J appears content for his judgment to be cited although it was a permission application. It has a neutral citation number. He rejected the suggestion that the claimant had been deprived of any possession. There is no existing property right, he held, in future income from fees charged to users of a scheme, such as that of Vision HR Solutions Ltd, to acquire the services of the latter's employees.

42 Further, the defendant submitted that Lord Thomas' list of potential types of A1P1 protected possessions in *Bank Mellat (No. 5)* was merely a list of those contended for in the bank's submission, not those endorsed by the court. The same judgment at [41]-[42] makes clear the court was not endorsing the list and declined to make a finding on what kinds of loss qualified as deprivation of "possessions" within A1P1.

43 In my judgment, Ritchie J was, with respect, correct to characterise a company's business activities and future business opportunities as not encompassed within the notion of a possession within A1P1. Even if the contrary were arguable, which I strongly doubt, I do not think the claimant has any chance of establishing a violation of the article because the claimant would have to attack the section 86 regime itself; the measure would have to be disproportionate, not just the use of the statutory power in this particular case.

44 As Lord Reed said in *AXA General Insurance Ltd & Ors. v The Lord Advocate* [2012] 1 AC 868 at [108], to establish a violation:

> "It must be shown that the interference complies with the principle of lawfulness and pursues a legitimate aim by means that are reasonably proportionate to the aim sought to be achieved. This final question focuses upon the question whether a fair balance has been struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights" [and] "a margin of appreciation must be left to the national authorities."

45 Here, the legislature has struck a balance between protecting the interests of employees who may be assessed as liable to pay unexpected tax and the interests of employers whose business may be affected by a section 86 notice putting people on notice of a potential scheme for avoiding or deferring payment of tax. The employer's interests are protected to the extent of having a right to make representations. Having regard to the margin of appreciation of the national authorities, there is no arguable scope for an attack, through these proceedings, on the section 86 regime and its operation in this case.

46 The claim founded on A1P1 to the European Convention is bound to fail and I refuse permission on that ground.

Section 31(3C) and (3D) of the Senior Courts Act 1981

47 The defendant contends that leave to apply for judicial review should be refused because it is highly likely that the outcome for the applicant would not have been substantially different if the conduct complained of had not occurred. All the grounds for suspecting that the claimant's proposal is a relevant arrangement remain and nothing the claimant has said since has dispelled the defendant's justified suspicion, the defendant argues.

48 The claimant refers me to the usual authorities - in particular the Court of Appeal's analysis in *R (Hillingdon Council) v Secretary of State for Transport* [2020] PTSR 1446 - and contends that it is likely the outcome would have been different: the bar is a high one and the court must be careful to uphold the rule of law and not use the provision to legitimise unlawful administrative acts.

49 I have considered these points carefully in the light of my conclusion stated earlier in this judgment that the first ground depriving the claimant of its right under section 86(5) to make

representations is arguable. The question is whether I must nevertheless refuse leave to proceed on that ground, applying the test in section 31(3C) and (3D) of the 1981 Act.

50 First, it seems to me that the "conduct complained of" in that connection is the decision to publish the section 86 notice and to do so without having notified the claimant of its right to make representations. For the purposes of considering the present issue, I will assume that the "conduct complained of" occurred. Certainly, the section 86 notice was published. If the claimant were to succeed in proving that, as a company, it did not receive the 13 April letter, it would succeed in showing a breach by the defendant of its section 86(5) right to be notified and have the opportunity to make representations.

51 The question, then, is whether if the letter of 13 April had been received, it appears to me highly likely that the outcome for the claimant would not have been substantially different, i.e. that the defendant would still have published the section 86 notice having considered and rejected any representations made by the claimant asking the defendant not to do so. Having considered that question, that outcome does appear to me to be highly likely for the following brief reasons.

52 First, any representations that would have been made would have been along the same lines as the case now advanced in this court. It would have been said, as it is now said, that the deferred remuneration payable to the relevant employees will be fully taxable, but in the tax year in which the deferred remuneration is paid, not the current tax year. The claimant would no doubt have argued, as Mr Clayton did, that the relevant remuneration payable to the employees from the bonus pot would be fully taxable once paid, if it was paid.

53 The claimant argued that position before me, relying on the decision in *RFC 2012 PLC (in Liquidation), (formerly The Rangers Football Club plc) v Advocate General for Scotland* [2017] 1 WLR 2767 (see [41], [47] and [48]). Lord Hodge in his judgment there stated what he called his third exception to the rule that "… the charge to tax on employment income

extends to money that the employee is entitled to have paid as his or her remuneration whether it is paid to the employee or a third party… ." The third exception to that rule is where there is "… an arrangement by which the employer's payment does not give the intended recipient an immediate vested beneficial interest but only a contingent interest."

54 The difficulty for the claimant is that the kind of analysis undertaken in the *Rangers Football Club* case does not bear on the statutory basis for issuing a section 86 notice. Such a notice may be published where the authorised officer "suspects that a proposal or arrangement are a relevant proposal or relevant arrangements" (section 86(1)). As already explained, a relevant proposal for such arrangements and the arrangements themselves are defined in section 234 and include not just avoidance of a possible assessment to tax, but deferral of a payment of tax.

55 Nothing in Mr Zambartas' description of the claimant's business model contradicts the obvious point that it is intended to enable the relevant employees at least to defer the payment of tax on the part of their remuneration which is postponed until they receive any money from the bonus pot. It therefore seems to me highly likely that nothing Mr Zambartas could have said, if he had received the 13 April letter, could have persuaded the defendant to stay its hand and agree not to publish the notice.

56 I therefore conclude that I am obliged by section 31(3D) to refuse leave to make the application for judicial review on the only arguable ground, namely the first ground, and I do so. Permission to apply for judicial review is therefore refused.

Interim relief

57 There is also an application for interim relief to require the removal of the entry relating to the claimant from the defendant's website pending a full substantive hearing of the judicial

review claim. Permission having been refused, the question of interim relief does not arise and I will address the point only in brief outline.

58 If I had to apply the *Cyanamid* principles, modified as appropriate in public law cases so as to include taking account of the public interest as well as the interests of the parties, I would not have granted interim relief. I assume for the purpose of considering the issue of interim relief that the first ground of challenge would have proceeded to a full hearing, contrary to my decision applying section 31(3D) of the 1981 Act.

59 I would then have to balance the harm to the claimant that would be caused if interim relief were not granted, and the claim later succeeded, against the harm that would be caused to the defendant and any third party and the public interest if interim relief were granted, and the claim subsequently failed.

60 Had I granted permission I would accept that the effect on the claimant's business is seriously adverse, to judge from the evidence from the claimant's accountant. Turnover has dropped to the point where the viability of the business is seriously in question and it may not survive.

61 But I would have hesitated long before granting interim relief because the bar of suspicion is low, the suspicion is not obviously shown to be ill-founded and the legislation makes the defendant and not the court the arbiter of whether a notice should be published, without any right of appeal to the court before it is published.

62 Interim relief would not readily be granted in a case of this kind because of the legislative purpose to protect the public, as explained by Ritchie J in his decision in the *Vision HR Solutions Limited* case.

63 Furthermore, on the facts, the claimant as a company, as distinct from Mr Zambartas personally, did nothing after receipt of the 19 July letter until as late as 27 July to ask the defendant to refrain from publishing the notice. While Mr Zambartas was on holiday he is not himself the claimant. The letters of 13 April and 19 July were addressed to the claimant as a company. I cannot even find evidence of the claimant asking for a belated copy of the 13 April letter.

64 On balance, if the issue of interim relief had arisen, I would have refused it. As it does not arise I simply dismiss the application for permission. Although this is a permission decision, I am content for it to be cited as this is only the second case arising from the new provision in section 86 of the Finance Act 2022.

CERTIFICATE

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