



TC07037

Appeal number: TC/2018/03099

PROCEDURE – application to strike out proceedings under rule 8(2)(a) of the Tribunal Procedure (First-tier Tribunal)(Tax Chamber) Rules 2009 – jurisdiction of the Tribunal – whether Tribunal has jurisdiction to oversee the conduct of HMRC- no - application granted – appeal struck out

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

OLIVER JOHN CHRISTOPHER SHANNON

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE ASHLEY GREENBANK

Sitting in public at Taylor House, Rosebery Avenue, London on 25 January 2019

The Appellant in person

Miss Priti Patel, officer of HM Revenue and Customs, for the Respondents

DECISION

Introduction

1. This appeal relates to a claim by the appellant, Mr Oliver Shannon, that the respondents, HM Revenue & Customs (“HMRC”) acted unfairly in the negotiation of the terms of a voluntary legal charge over a co-owned property in settlement of Mr Shannon’s tax liabilities and in withdrawing the offer of a voluntary legal charge
2. The purpose of the hearing was to consider an application made by HMRC for the appeal to be struck out under rule 8(2)(a) of the Tribunal Procedure (First-tier Tribunal)(Tax Chamber) Rules 2009 (“FTR”) on the grounds that the Tribunal did not have jurisdiction in relation to the proceedings.
3. Following the hearing, I gave an oral decision granting HMRC’s application and made an order to strike out the proceedings under FTR rule 8(2)(a) on the grounds that the Tribunal did not have jurisdiction in relation to the proceedings.
4. A decision notice (the “short decision”) was issued to the parties on 29 January 2019. With the agreement of the parties pursuant to FTR rule 35(3), the short decision did not include full or summary findings of facts and reasons for the decision.
5. Mr Shannon has applied to the Tribunal for full written findings and reasons pursuant to FTR rule 35(4) (a “full decision”). This is the full decision.

Background

6. I have set out below the background facts. There is no dispute between the parties in relation them.
7. Mr Shannon was issued with Partner Payment Notices (“PPNs”) for income tax arising from his participation in certain tax avoidance schemes for the tax years 2009-2010 to 2013-2014. The outstanding liability under the PPNs was £426,397.85. Mr Shannon does not dispute the amount of the liability.
8. Mr Shannon was not in a position to meet the liability. There was some discussion between HMRC and Mr Shannon regarding the possibility of Mr Shannon entering into a time to pay arrangement with the HMRC. It was concluded that this was not a viable option.
9. In a letter dated 27 February 2017, HMRC offered Mr Shannon the possibility of placing a voluntary legal charge on Mr Shannon’s home as security for the debt. The property was jointly-owned by Mr Shannon and his wife.
10. A draft charge agreement was forwarded to Mr Shannon. Mr Shannon agreed to its terms subject to two points:
 - (1) first, the draft included reference to a late payment penalty, which had been withdrawn by HMRC;

(2) second, the draft charge extended to his wife's 50% share in the property.

11. HMRC acknowledged that the penalty had been withdrawn and agreed to amend the draft charge agreement to remove the reference to it. However, HMRC refused to amend the draft charge agreement to remove his wife's share of the property. The reason given by HMRC (as taken from a letter from HMRC to Mr Shannon dated 19 March 2018) was that:

“The wording of the Voluntary Legal Charge (VLC) document is in a standard format approved by HM Treasury to allow HMRC to take security over a customer's tax debts in exceptional circumstances. When a property is jointly owned both parties must agree to the debt being secured against the whole property, otherwise a VLC would not be an option we could agree to proceed with under our current policy.”

12. Mr Shannon continued to object to the inclusion of his wife's 50% share in the property within the scope of the charge, although he did confirm to HMRC that his wife was prepared to sign the charge agreement to acknowledge the existence of the charge in favour of HMRC provided that the document included wording to protect her interest in the property or the proceeds of sale.

13. HMRC refused to amend the document and threatened to pursue other enforcement routes including taking action in the County Court to obtain a charging order.

14. Mr Shannon appealed to the Tribunal on 28 April 2018.

15. HMRC's offer to accept a voluntary legal charge over the property as security for Mr Shannon's liabilities was formally withdrawn in a letter dated 11 May 2018.

16. HMRC made an application to the Tribunal for the appeal to be struck out under FTR rule 8(2)(a) on 21 June 2018.

The parties' submissions

HMRC's submissions

17. Miss Patel made the following submissions on behalf of HMRC.

(1) The First-tier Tribunal was created by s3(1) of the Tribunal, Court and Enforcement Act 2007 (“TCEA”), “for the purpose of exercising the functions conferred on it under or by virtue of this Act or any other Act”.

(2) The voluntary legal charge was offered to Mr Shannon as a concession. It was not an offer that HMRC were obliged to make under any statutory provisions relating to PPNs (Schedule 32 to the Finance Act 2014 (“FA 2014”)).

(3) The Tribunal has no jurisdiction to hear this matter. The Tribunal can only hear matters within the scope of its jurisdiction as conferred by statute. It was confirmed by the Upper Tribunal in *HMRC v Hok Limited* [2012] UKUT 363 (“*Hok*”) that: the Tribunal is a statutory body and only has the jurisdiction

which has been conferred on it by statute; neither the statute creating it, nor the statutes that it is required to apply, gave the Tribunal jurisdiction to apply public law principles or common law principles of fairness; in particular, the Tribunal did not have a judicial review jurisdiction.

(4) HMRC have informed Mr Shannon that they will seek a charging order in the County Court. Mr Shannon's submissions in respect of his wife's share in the property can be made before the County Court when HMRC apply for a charging order.

(5) HMRC's decision is not an appealable decision before the Tribunal and the appeal should be struck out.

Mr Shannon's submissions

18. In summary, Mr Shannon's submissions were as follows

(1) The appeal was based, not on the narrow statutory provisions applicable to PPNs, but on the wider issues concerning the management of his case by HMRC.

(2) In particular, the appeal related to the persistent unfair treatment he had received from HMRC including:

(a) a delay of more than two years in responding to his offer of a charge over his home as security for his tax liabilities;

(b) HMRC's refusal to accept a charge over 50% of the property owned by Mr Shannon and his wife; and

(c) HMRC's attempts to coerce his wife into effectively accepting joint responsibility for his tax liabilities by forcing her to accept a charge over her share of the property.

(3) The Tribunal was intended to be a forum to resolve disputes between taxpayers and HMRC. If his claim was struck out, he would have no effective remedy.

Decision

19. On the matter before the Tribunal, namely whether or not the appeal should be struck out under FTR rule 8(2)(a) on the grounds that the Tribunal does not have jurisdiction in relation to the proceedings, I agreed with Miss Patel.

20. My reasons are set out below.

21. I was referred by Miss Patel to the decision of the Upper Tribunal in *Hok*. *Hok* is one of a series of decisions which set out the limits of the jurisdiction of the Tribunal to hear matters of public law or to apply common law principles of fairness. The principles that I take from them are, in summary, as follows.

(1) The Tribunal is a creature of statute. It was created by section 3 TCEA "for the purposes of exercising the functions conferred on it under or by virtue

of this Act or any other Act". Its jurisdiction is therefore entirely statutory (*Hok*: [36]).

(2) The Tribunal has no judicial review jurisdiction. It has no inherent jurisdiction equivalent to that of the High Court and no statutory jurisdiction equivalent to that of the Upper Tribunal which has a limited jurisdiction to deal with certain judicial review claims (*Hok*: [41]–[43]).

(3) This does not mean that the Tribunal never has any jurisdiction to consider public law questions or to apply common law principles of fairness. It may have jurisdiction to decide questions of public law or to apply such principles in the course of exercising the jurisdiction which it does have.

(4) In each case therefore when assessing whether a particular public law point or common law issue is one that the Tribunal can consider, it is necessary to consider the specific jurisdiction that the Tribunal is exercising and whether the particular point that is sought to be raised is one that falls to the Tribunal to consider in either exercising that jurisdiction or deciding whether it has jurisdiction.

(5) As the Tribunal's jurisdiction is entirely statutory, this is ultimately a question of statutory construction.

22. The legislation dealing with PPNs permits the taxpayer to make representations to HMRC regarding the certain matters relating to the issue of a PPN (paragraph 5 Schedule 32 FA 2014). These include whether the conditions for the issue of the PPN were fulfilled and whether the amount of the liability specified in the PPN was correct. There is no right of appeal to the Tribunal in relation to the issue of a PPN. In any event, Mr Shannon does not dispute that the conditions were met or the amount of the liability.

23. My attention has not been drawn to any particular statutory provision which requires or enables the Tribunal to consider the reasonableness of HMRC's actions in refusing to enter into a legal charge in a form acceptable to Mr Shannon or, more generally, to oversee the conduct of HMRC in the exercise of its statutory functions. I am not aware of one. On that basis, I have to conclude that, given that the Tribunal's jurisdiction is entirely statutory, the Tribunal has no jurisdiction to review HMRC's conduct in refusing to enter into a voluntary legal charge in a form acceptable to Mr Shannon. The only remedy available to Mr Shannon in relation to such matters is to make an application to the High Court for judicial review. The Tribunal has no jurisdiction in relation to such matters and I must strike out this appeal.

24. It is difficult not to feel some sympathy for Mr Shannon, but there is no right of appeal to the Tribunal for matters of which he complains. That is a consequence of the limits of the jurisdiction of the Tribunal and not one that I am in any position to address. I agree with him that HMRC's reasons for refusing to make the amendment to the draft voluntary legal charge which Mr Shannon requests represent no justification at all. Furthermore, unless there are further reasons or facts of which I am not aware, it is difficult to see how, on any application to the County Court, HMRC will succeed in obtaining a charge on the property which extends to the proceeds of sale of Mrs Shannon's share. If so, given that Mr Shannon is willing to

enter into a charge over his share of the property now without the need for any further action, any further application would be a waste of time and public money. However, once again, that is not a matter that can be addressed by this Tribunal.

Decision

25. This appeal is struck out under FTR rule 8(2)(a).

Rights to appeal

26. 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.

**ASHLEY GREENBANK
TRIBUNAL JUDGE**

RELEASE DATE: 13 MARCH 2019