[2019] UKFTT 633 (TC)

TC07409

Failure to comply with an unless order – appeals struck out – application for reinstatement – application refused.

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal number: TC/2014/00749
TC/2014/00984

BETWEEN

OLAYINKA AYENI **Appellant**

-and-

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

TRIBUNAL: JUDGE DAVID BEDENHAM

Sitting in public at Taylor House, London on 5 September 2019

The Appellant appeared in person

Alex Barrett, litigator of HM Revenue and Customs' Solicitor's Office, for the Respondents

DECISION

INTRODUCTION

1. This is the Appellant's application for reinstatement of his appeals following those appeals having been struck out for failure to comply with an unless order.

BACKGROUND

2. On 17 August 2016, the Tribunal (Judge Jonathan Richards and Noel Barrett) released its decision on appeals brought by the Appellant. The introductory paragraphs of that decision explain:

> "1. Mr Ayeni carries on a business as a chartered certified accountant. He also owns properties (both in his own name and jointly with his wife) that have been let out to tenants. He is appealing against various adjustments that HMRC have made to his income tax and national insurance position in respect of both the accountancy business and the property letting business and also against some late payment penalties and surcharges.
>
> Procedural background
>
> 2. Mr Ayeni's Notice of Appeal to the Tribunal was submitted in February 2014 and was distinctly lacking in particulars. In that Notice of Appeal he stated that he was appealing against "various" decisions issued on "various dates". This resulted in a lengthy process of seeking to discern precisely what he was appealing against and precisely which of those appeals were in time. It might well have been open to HMRC to apply to the Tribunal for a direction that, unless Mr Ayeni provided adequate particulars, the entire appeal should be struck out. However, to their credit, HMRC did not do this and instead prepared (with little, if any, assistance from Mr Ayeni) a schedule of all decisions that they had made in relation to Mr Ayeni's tax affairs for the tax years in question and considered whether Mr Ayeni could be taken as appealing against all or any of those decisions.
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> 3. An interim Tribunal hearing took place on 5 October 2015 at which the Tribunal considered the extent to which Mr Ayeni could be taken as making valid, in time, appeals against the decisions that HMRC had identified. Where Mr Ayeni appeared either to have made his appeal to HMRC out of time, or to have notified that appeal to the Tribunal out of time, the Tribunal considered whether permission should be given to make, or notify, a late appeal. Mr Ayeni did not attend that hearing (and he informed us that this was because he was not aware of it).
>
> 4. Following that hearing, on 20 October 2015, the Tribunal released a decision that set out those aspects of Mr Ayeni's appeal that could proceed. In addition, on 25 January 2016, the Tribunal (having considered written representations from both parties) struck out that part of Mr Ayeni's appeal that related to the 2004-05 and 2005-06 tax years which had been determined at a hearing before the General Commissioners in 2009. Mr Ayeni confirmed to us that he had received both Tribunal decisions. He has not to date applied for permission to appeal against either decision (or requested the Tribunal to consider setting aside the decision of 20 October 2015 on the grounds that he did not attend the relevant hearing).
>
> 5. Mr Ayeni expressed dissatisfaction to us that certain aspects of his appeal (in particular those relating to a number of late payment penalties and penalties for failure to produce documents) would not be considered. If Mr Ayeni

considers that the Tribunal's decisions of 20 October 2015 or 25 January 2016 were wrong, he should seek permission to appeal against the relevant Tribunal decisions (and make an application for the Tribunal to consider that application late). At this hearing, we considered appeals in relation to the matters set out in the table below.

Tax Year	**Nature of decision**	**Date of decision**	**Amount**
2006-07	Closure notice	14 March 2010	£17,095.37 (reduced to £13,671.05 on 21 September 2010)
	Late payment surcharge	11 May 2010	£129.03
2007-08	Closure notice	16 March 2010	£12,623.56 (reduced to £8,905.28 on 30 October 2010)
	Late payment surcharge	18 June 2010	£224.43
2008-09	Closure notice	13 September 2011	£36,626.42 (reduced to £18,160.39 on 15 January 2016)
2009-10	Closure notice	18 September 2012	£9,574.88 (reduced to £8,812.16 on 30 October 2012)
2010-11	Late payment penalty	10 April 2012	£466

3. At paragraph 8 of the 17 August 2016 decision, the Tribunal summarised the matters in dispute in the appeals:

> "8. The following table summarises (at a very high level) the particular matters that were in dispute for the tax years in question:

Matter in dispute	**Mr Ayeni's position**	**HMRC's position**
Deductibility of certain property related expenses in 2006-07	The expenses were deductible as costs of putting a property into a condition where it could be let to tenants.	There was insufficient evidence to demonstrate the costs were deductible.
Deductibility of life assurance premiums in 2006-07 and 2007-08	The life assurance was a condition of obtaining loans used for business purposes and should be deductible in the same way as interest.	Mr Ayeni had not demonstrated obtaining the life assurance was a condition of obtaining the loan. The connection with the business was too remote.
Whether loan interest of £2,020 should be disallowed in 2007-08	This interest was no different from other interest.	There was insufficient evidence to demonstrate this was deductible as loan interest certificates had

		not been provided.
Deductibility of expenses totalling £2,073 and £14,857 in 2007-08	The expenses were deductible.	Insufficient evidence of deductibility.
Whether Mr Ayeni was subject to tax on £12,519brelating to rent received in 2008-09	Mr Ayeni had validly notified HMRC that only his wife was to be taxed on this income. In any event the £12,519 ignored associated expenses.	The election was of no effect and Mr Ayeni remained subject to tax on that income.
Whether Mr Ayeni wasentitled to a deduction for £17,064 of property related expenses in 2008-09	If Mr Ayeni was subject to tax on the income of £12,519, he should obtain relief for these expenses.	Insufficient evidence of deductibility.
Whether Mr Ayeni was entitled to Flat Conversion Allowances in 2007-08 and 2008-09	A valid claim for allowances was made by letter dated 20 December 2012.	No valid claim had been made. There was no evidence that the conditions for FCAs were satisfied.
Late payment penalties and surcharges	These should not have been issued until Mr Ayeni had agreed the underlying tax liabilities.	Mr Ayeni's agreement of the underlying tax liabilities was not necessary for a penalty or surcharge to be payable.

4. At paragraphs 34-38 of the 17 August 2016 decision, the Tribunal said:

> "Deductibility of property related expenses, and other expenses of £14,857, in 2007-08
>
> 34. In his tax return for 2007-08, Mr Ayeni claimed a deduction for some £2,073. Even at the hearing, it was not clear what the expenses in question were. However, contemporaneous documentation suggested that some £808 related to rates in respect of the flats above Mr Ayeni's office and £1,165 related to the costs of installing heating. At the hearing, Mr Ayeni was unable to offer any evidence as to precisely what the £1,165 expense involved and why it had been incurred. We were not sure whether this expense related to the flats above the office, Monson Road or even Mr Ayeni's private residence. However, there was no challenge to his evidence that he incurred £808 of deductible expenditure on rates for the flats above the office.
>
> 35. Mr Ayeni had also, in his 2007-08 tax return claimed a tax deduction for £14,857 of other expenses. (For reasons that no-one was able to explain to us, this figure was 82% of a larger figure of £18,086.) Mr Ayeni was not able to provide any evidence at all of what those expenses related to (or even a general description of the kind of expenses involved). However, he said that this information had previously been provided to HMRC and we have accepted that this is the case as there was a letter in the hearing bundle from HMRC to Mr Ayeni dated 8 October 2010 which thanked him for "the detailed schedule in respect of Repair Costs of £18,086". Mr Ayeni said that he had full

documentation at home which he was confident would establish that the full figure of £14,857 was deductible.

36. In view of the fact that Mr Ayeni had evidently previously provided HMRC details on the £14,857 figure, Mrs Cawardine indicated that she would be prepared to "split the difference" and consider accepting that half of this 5 amount was deductible. However, Mr Ayeni was not prepared to accept this offer and asked for an adjournment to permit him to provide HMRC with details on the £14,857 figure (with a view to establishing that it was all deductible) and fuller details on the other costs referred to at [34].

37. Mrs Cawardine did not object to the idea of an adjournment. However, we decided not to adjourn the hearing to permit further evidence to be given on these issues. We noted that the appeals had been made some time ago. The process of determining what decisions Mr Ayeni was appealing against and why has already taken up a significant amount of HMRC's time and resources and, as we have noted at [2] to [4] above, Mr Ayeni did not contribute to the process of resolving those issues. Both parties have received Tribunal directions requiring them to share documentary evidence with each other and Mr Ayeni, as a professional man, should have understood that he needed to marshal his evidence in advance of the hearing. In short, we concluded that both parties had been given an adequate opportunity to gather their evidence together and that it was not in the interests of other Tribunal users that we adjourn this appeal, which would result in it taking up still more time and Tribunal resources. We explained this decision to the parties during the hearing itself and suggested that Mr Ayeni might wish to reconsider his approach to Mrs Cawardine's offer in the light of it.

38. By the time the hearing finished, Mr Ayeni and Mrs Cawardine had not reached an agreement on the deductibility of these expenses. We therefore make a decision on this issue in case no agreement has been reached subsequent to the hearing. In other tax years we have accepted that Mr Ayeni is entitled to a tax deduction in computing the profits of his property business for expenditure on rates. We will therefore allow a deduction for £808 of rates (the full amount claimed since this amount relates to the flats which were owned by Mr Ayeni alone and not jointly with his wife). Since Mr Ayeni was not able to explain precisely what the remaining expenses were, or the purpose for incurring them, he did not satisfy his burden of proving that they were deductible."

5. At paragraphs 73-74 of the 17 August 2016 decision, the Tribunal concluded as follows:

"73. ..

(1) Mr Ayeni is entitled to a deduction against profits of his property business for 2006-07 of £2,545 in relation to certain property expenses (see [25] above).

(2) Mr Ayeni is entitled to deduction against profits of his accountancy business for a proportion of life assurance premiums of £4,603 in the tax year 2006-07 and £3,218 in the tax year 2007-08. The proportion that is deductible should be calculated as set out at [31] above.

(3) No adjustment need be made to Mr Ayeni's taxable profits for 2007-08 in respect of his argument that his entitlement to a deduction for loan interest had been understated by £2,020 (see [33] above).

(4) To the extent that Mr Ayeni and Mrs Cawardine did not reach an agreement on the deductibility of the £14,857 of expenses (so that we need to decide that issue), Mr Ayeni is entitled to a deduction against profits of his property business only for rates of £808 incurred in 2007-08 (see [38]) above.

> (5) Mr Ayeni received additional taxable income of £6,259 (not £12,519) in his property business in 2008-09 (see [48] above). Mr Ayeni can set expenses of £5,290 against that income (see [52] above).
>
> (6) Mr Ayeni had no entitlement to flat conversion allowances in 2007-08 or 2008-09 (see [66] above).
>
> (7) The late payment penalties and late payment surcharges referred to in the table at [5] were due. However, they must be recalculated to reflect the adjustments to Mr Ayeni's tax liabilities as a result of this decision.
>
> 74. Mr Ayeni's liability to income tax and national insurance contributions must be recalculated to give effect to the conclusions we have reached as summarised above (and also to give effect to the reductions that HMRC had made prior to the hearing as set out in the table at [5]). However, except insofar as necessary to give effect to those adjustments, the appeal is dismissed."

6. On 12 October 2016, the Appellant applied for permission to appeal. As part of that application, the Appellant argued that the deductibility of property related expenses of £14,857 referred to at paragraphs 34 to 38 of the Tribunal's 17 August 2016 decision were not in fact in dispute between the parties because that issue had already been agreed prior to the hearing.

7. On 20 December 2016, Judge Richards:

(1) declined to set aside the 20 October 2015 decision;

(2) refused permission to appeal against the 20 October 2015 decision;

(3) under rule 38 of the Tribunal Rules, set aside that part of the 17 August 2016 decision as related to the deductibility of £14,857 of expenses in 2007-08 (but made clear that the remainder of the 17 August 2016 decision was unaffected) and made consequential directions towards a further hearing at which the issue of the deductibility of £14,857 of expenses in 2007-08 would be determined; and

(4) refused permission to appeal against the decision released on 17 August 2016.

8. The Appellant did not apply to the Upper Tribunal for permission to appeal.

9. HMRC complied with the consequential directions made by Judge Richards (which required HMRC to provide to the Appellant a statement outlining why the £14,857 of expenses were not deductible and any documents relied on by HMRC). The directions made by Judge Richards required the Appellant to file his position statement and any evidence by 3 March 2017. On 3 March 2017, the Appellant requested an extension of time. On 13 March 2017, Judge Richards extended time until 17 March 2017. On 17 March 2017, the Appellant filed a position statement. This position statement suggested that a face to face meeting might assist the parties in resolving the outstanding issues.

10. On 6 April 2017, HMRC wrote to the Tribunal stating that HMRC had invited the Appellant to meet to discuss how to resolve the outstanding issues. To facilitate this meeting, HMRC requested that the appeals be stayed for 60 days. The Tribunal stayed the appeals as requested.

11. On 17 May 2017, HMRC applied for an extension of the stay of the appeals (60 days from 17 May 2017). The Tribunal stayed the appeals as requested.

12. On 15 June 2017, the Appellant and HMRC met and discussed, *inter alia*, the re-calculation of the Appellant's liabilities (to put into effect the 17 August 2016 decision) and the issue of the deductibility of £14,857 of expenses in 2007-08.

13. On 16 June 2017, HMRC (with the agreement of the Appellant) applied for the appeals to be stayed for 90 days (from 16 June 2017). The Tribunal stayed the appeals as requested.

14. On 23 June 2017, HMRC wrote to the Appellant as follows:

> "As agreed at our recent meeting, I have prepared and enclose schedules of revised profits and liabilities for the three years to 5 April 2009…in the absence of any further comments by 7 July 2017, these figures will be used as the basis for amendment to the SA liabilities…"

15. On 3 August 2017, HMRC wrote to the Tribunal (copying in the Appellant) as follows:

> "I can advise the Tribunal that the appellant was sent computations of revised liabilities and the Notes of Meeting held on 15 June 2017.
>
> In the absence of any reply from the appellant by the deadline given in the HMRC covering letter, the HMRC Decision Maker has amended the Self Assessment account in accordance with the revised liabilities and there has been no response from the appellant since those amendments were made.
>
> As the Decision Maker had indicated in the same covering letter that no reply would be taken as agreement to the revised computations, HMRC considered the matter has been amicably resolved and considers the matter under appeal is now agreed…"

16. On 9 August 2017, the Tribunal forwarded HMRC's 3 August 2017 letter to the Appellant (albeit he had also been copied into that letter) and asked "please may we have your comments as soon as possible and if you are in agreement that the matters have been resolved". No response was received from the Appellant.

17. On 5 October 2017, HMRC wrote to the Appellant as follows:

> "I understand that you were sent computations of revised liabilities and the Notes of Meeting held on 15 June 2017. I further understand that in the absence of anything from you, the Decision Maker amended your self-assessment record to reflect the revised liabilities.
>
> Given that the matters under appeal are now agreed and the matter resolved, please contact the Tribunal without further delay to confirm agreement has been reached and as such you are withdrawing from litigation.
>
> If I do not hear from you within 30 days of the date of this letter, I will apply to the Tribunal for a Case Management hearing to request the Strike Out of your appeal…"

The Appellant told me that he does not recall receiving that letter.

18. On 10 November 2017, the Tribunal released the following direction:

> "UNLESS Mr Ayeni confirms to the Tribunal in writing within 14 days of release of these directions that he wishes to continue to pursue his appeal, the appeal MAY be STRUCK OUT without further reference to the parties.
>
> Reasons:
>
> HMRC have indicated to the Tribunal that they and Mr Ayeni have settled this dispute. However, Mr Ayeni has not replied to letters from the Tribunal asking him to confirm that he agrees with what HMRC have said. The status of this appeal cannot remain in doubt any longer."

19. On 13 December 2017, nothing having been heard from the Appellant following the 10 November 2017 direction, the Tribunal struck out the Appellant's appeals.

20. On 10 January 2018, the Appellant applied to reinstate the appeals. In support of this application the Appellant submitted that he had "been subjected to a massive professional pressure which was very demanding and emotionally draining" such that he was "unable to deal with matters coherently".

21. The Appellant's application came before me on 8 May 2019. At that hearing, the Appellant stated that throughout 2017 he was involved in a serious dispute with his professional body, the ACCA, that took up most of his time and caused him such stress and anxiety that he was unable to engage with HMRC or the Tribunal in relation to these appeals (which lack of engagement eventually led to the unless order and striking out of the appeals). The Appellant had with him a number of documents that he said supported his case in this regard. The Appellant handed up 3 such documents but said he had others that he wanted the Tribunal to have regard to. The Appellant said he needed time to collate these further documents and therefore asked that the hearing be adjourned. Given that this is the Appellant's application and the Appellant should have provided to the Tribunal all documents that he wished to rely upon before (or certainly at) the hearing, I was initially minded to refuse the Appellant's request for further time to get his documentation in order. However, I ultimately decided to adjourn the hearing and to make the following directions:

1. By 20 May 2019, HMRC is to file with the Tribunal and serve on the Appellant a document that sets out:
    a. What HMRC understands to be the substantive issues that remain to be resolved in these appeals if the application for reinstatement is successful (bearing in mind the previous Tribunal decisions dated 20 October 2015 and 17 August 2016 and the subsequent directions dated 20 December 2016); and
    b. The amount of tax that is in dispute in these appeals.
2. By 20 May 2019, the Appellant is to file with the Tribunal and serve on HMRC:
    a. a document that sets out
        i. What the Appellant understands to be the substantive issues that remain to be resolved in these appeals if the application for reinstatement is successful (bearing in mind the previous Tribunal decisions dated 20 October 2015 and 17 August 2016 and the subsequent directions dated 20 December 2016); and
        ii. The amount of tax that is in dispute in these appeals.
    b. A chronology (cross referenced to supporting primary documentation) of the events that occurred in 2017 which the Appellant says prevented him from being able to engage with HMRC and the FTT.
    c. Documentation supporting the chronology of events.
3. Each of the parties may respond to the documents filed by the other party (pursuant to paragraphs 1 and 2 above). Any such response is to be filed with the Tribunal and served on the other party by no later than 10 June 2019.

22. On 16 May 2017, HMRC wrote to the Tribunal in compliance with my direction of 8 May 2019. HMRC's position was that there were no outstanding issues to be considered in these appeals. The revised calculations (to put into effect the 17 August 2016 decision) and the

deductibility of the £14,857 of property related expenses had been resolved at the 15 June 2017 meeting.

23. On 16 May 2017, the Appellant filed a document titled "substantive issues remaining outstanding". In that document the Appellant made various complaints about the decisions reached by Judge Richards and the HMRC investigations that led to the decisions which were appealed and heard by Judge Richards and Mr Barrett.

24. The Appellant also filed a chronology of events relating to the ACCA investigation (along with supporting documents).

25. At the hearing on 5 September 2019, the Appellant confirmed that the issue of the deductibility of the £14,857 of property related expenses had been resolved at the 15 June 2017 meeting. Nonetheless, he submitted that if the appeals are reinstated, there are a number of outstanding issues that will need to be determined by the Tribunal including:

(1) Flat conversion allowance claims for 2007/08 and 2009/09; and

(2) The deductibility of property related expenses in 2006/07.

26. The Appellant said that there may also be other outstanding issues that need to be determined. The Appellant acknowledged that all of the issues that he considered to be outstanding had already been adjudicated on by Judge Richards and Mr Barrett by way of the 17 August 2016 decision. However, the Appellant was of the view that the 17 August 2016 decision contained errors because the Tribunal had not understood the relevance of some of the documents that were before it. When it was pointed out that the proper avenue of recourse would have been to appeal that decision, the Appellant said that he had had tried to appeal but permission had been refused so he considered that his only option was to now ask the Tribunal to reconsider these issues.

27. In relation to why he had failed to comply with the unless order: the Appellant said that with hindsight he accepted that he should have engaged with the Tribunal and simply confirmed that he did wish to continue with his appeals. However, at the time, he thought that the Tribunal required a detailed response from him and, because of the huge pressure he had been placed under as a result his dispute with the ACCA, he was simply not in a position to engage with the Tribunal.

THE APPROACH TO BE ADOPTED WHEN CONSIDERING REINSTATEMENT FOLLOWING STRIKING OUT FOR FAILURE TO COMPLY WITH AN UNLESS ORDER

28. In deciding whether to reinstate an appeal, effect must be given to the overriding objective of dealing with cases fairly and justly.

29. In *Martland v HMRC* [2018] UKUT 178 (TCC), the Upper Tribunal held at paragraph 44 that when considering applications for permission to appeal out of time, the Tribunal can usefully follow the three-stage process set out in *Denton and Ors v TH White Limited and Ors* [2014] EWCA Civ 90.

30. In *Dominic Chappell v the Pensions Regulator* [2019] UKUT 0209 (TCC), the Upper Tribunal held that in considering an application for reinstatement following striking out for failure to comply with an unless order, a tribunal should apply the three-stage approach set out in *Martland v HMRC* [2018] UKUT 178 (TCC) save that it should "generally take no account of the strength of the applicant's case [unless that case is "unanswerable]" (see paragraphs 86 and 93) and should, in assessing the seriousness of the breach of an unless order, consider previous breaches of directions/rules that led to the making of the unless order (see paragraphs 95-99).

DISCUSSION AND DECISION

31. The first stage of the *Denton/Martland* process requires me to identify the breach and assess its seriousness. The breach in question is the failure to comply with the unless order dated 10 November 2017 pursuant to which the Appellant should, by 25 November 2017, have confirmed whether or not he wished to proceed with his appeals.

32. As at 13 December 2017 (when the appeals were struck out) the Appellant had not contacted the Tribunal despite, by that point, his response being overdue by some 18 days. Indeed, the Appellant did not make any contact until 10 January 2018 (at which point he applied for his appeals to be reinstated).

33. I consider a breach of 18 days to be significant and serious in the context of these appeals. On 9 August 2017, the Tribunal had forwarded HMRC's 3 August 2017 letter to the Appellant and asked "please may we have your comments as soon as possible and if you are in agreement that the matters have been resolved". The Appellant therefore knew from the 9 August 2017 that the Tribunal wanted him to provide an update as to his positon/intentions. Despite this he failed to reply to the 9 August 2017 correspondence and then failed to comply with the unless order.

34. The second stage of the *Denton/Martland* process requires me to consider the reasons why the default occurred.

35. The Appellant submitted that he was "unable" to engage with the Tribunal because he was embroiled in a dispute with the ACCA. The chronology of events (and supporting documents) provided by the Appellant do indeed show that from 3 November 2016 through to December 2017, the Appellant was in regular correspondence with the ACCA relating to a decision to revoke his ACCA membership which had very serious professional consequences for the Appellant. However, whilst this interaction with the ACCA no doubt caused the Appellant anxiety and upset, I have seen nothing in the chronology of events or supporting documents to support that the dispute with the ACCA was so all consuming as to mean that the Appellant was "unable" to comply with the unless order. In particular, I note that:

(1) The requirement placed on the Appellant by the unless order was not an arduous one - he simply needed to email the Tribunal and confirm that he wished the appeals to proceed;

(2) The Appellant did not file any evidence (from a medical practitioner or otherwise) that satisfied me that he was "unable" to engage with the Tribunal in November/December 2017; and

(3) Throughout 2017 (including November/December 2017), the Appellant was able to engage with the ACCA and sent a number of emails to the ACCA (including to respond to requests made by the ACCA for further information). This demonstrates that during the relevant period (November/December 2017), the Appellant was capable of engaging with others and responding to requests made of him.

36. Given the above I do not accept that the dispute with the ACCA was the "reason" for the default, certainly not a "good reason".

37. The third stage of the *Denton/Martland* process requires me to consider all the circumstances of the case so as to ensure that the application is dealt with fairly and justly. In addition to the seriousness of the breach and the absence of a good reason for it, I also consider that the need for finality of litigation points towards refusing the application to reinstate.

38. I have considered whether there are any factors that militate towards allowing the application. I do not think there are any such factors. The only factor that the Appellant pointed

to was that, if the appeals were not reinstated, he would be deprived of his opportunity to argue his case. However, the Appellant has not satisfied me that there are any outstanding issues that can properly be argued before and determined by the Tribunal. Following the decision of 17 August 2016, the only outstanding issues were computation of the revised calculations (to put into effect the 17 August 2016 decision) and the deductibility of the £14,857 of property related expenses. These issues were resolved at the 15 June 2017 meeting meaning there are no matters left to be determined by the Tribunal.

39. I should make clear that even if the Appellant had satisfied me that there were outstanding issues that could properly be determined by the Tribunal (i.e. if there had not been resolution of the outstanding issues at the 15 June 2017 meeting), I would still have refused to reinstate these appeals. In the vast majority of appeals where reinstatement applications are made, there will be outstanding issues between the parties (which the Tribunal will need to determine if the reinstatement application is successful). Therefore, that there are outstanding issues between the parties cannot in and of itself mean that it is in the interests of justice to reinstate an appeal. Rather, an applicant must demonstrate to the Tribunal that reinstatement is in the interests of justice taking into account all of the circumstances of the case. As set out above, on the facts of the present case, the Appellant has not persuaded me that fairness and justice requires reinstatement.

40. Accordingly, the Appellant's application for his appeals to be reinstated is refused.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

41. 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.

DAVID BEDENHAM
TRIBUNAL JUDGE

RELEASE DATE: 16 OCTOBER 2019