[2020] UKFTT 0101 (TC)

TC07596

Income tax – appeal notified late to Tribunal – permission granted for late notice – penalty for non-compliance with notice requiring information and documents under Schedule 36 Finance Act 2008 – redacted bank statements produced – other instances of failure - failure to comply? – yes - reasonable excuse? – yes – penalty cancelled

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal number: TC/2019/04054

BETWEEN

ROBIN BUTCHER **Appellant**

-and-

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

TRIBUNAL: JUDGE ZACHARY CITRON

Sitting in public at Taylor House, and by video link, on 7 January 2020

The Appellant in person

Ms L Long of HM Revenue and Customs for the Respondents

DECISION

INTRODUCTION

1. This was an appeal against a £300 penalty for failure to comply with an information notice issued under Schedule 36 Finance Act 2008. Notice of the appeal to the Tribunal was made late.

BACKGROUND TO THE APPEAL

2. Mr Butcher notified HMRC of his appeal against the penalty on 17 December 2018.

3. On 12 April 2019 HMRC wrote to Mr Butcher with the outcome of their statutory review of the decision to issue the penalty, upholding the decision.

4. The Tribunal received the appellant's notice of appeal on 30 May 2019. This included a request for permission to notify the appeal late.

EVIDENCE

5. A paginated hearing bundle prepared by HMRC was available to both parties at the hearing. I did not receive this paginated bundle until after the hearing, but I did have most of its contents (principally correspondence between the parties, as well as HMRC's record of telephone conversations) before me at the hearing in the form of a copy of the Tribunal's papers for the appeal. Mr Butcher also gave oral evidence at the hearing.

FINDINGS OF FACT

6. Mr Butcher worked as a technical services consultant for many years. At various dates in 2016-2018, HMRC opened enquiries into his tax returns for the years 2014-15, 2015-16 and 2016-17.

7. On 4 September 2018 HMRC sent Mr Butcher a Tribunal-approved information notice (the "IN") requiring certain documents and information by 16 October 2018. The information and documents required were listed in a schedule to the IN that ran to 5½ typed pages. The items were organised by reference to two companies with which Mr Butcher had had a role as a consultant: Equip MS Ltd and Aston Chester Ltd. There were 84 items in total in the schedule: 24 "information" items and 17 "documents" items under Equip MS Ltd; and 25 "information" items and 18 "documents" items under Aston Chester Ltd

8. On 25 September 2018 Mr Butcher telephoned HMRC because he was concerned that he would not be able to provide all the items in the IN by 16 October 2018, as he did not hold a number of them and so needed to request them of third parties. He was advised to provide those items he did have, and make efforts to obtain those which he did not; and to tell HMRC if certain items did not exist. He was given reassurance that if he did these things, he would not be penalised.

9. On 12 October 2018 Mr Butcher wrote to HMRC. After making a number of points about the obtaining of the IN, he enclosed responses to the required information and documents, in the form of 6 typed pages responding to items in the schedule to the IN one by one, as well as enclosing about 110 pages of documents. These included several pages of bank statements from First Direct and Santander; Mr Butcher had "redacted" (blacked out) sections on most of the bank statements.

10. Mr Butcher's motive for "redacting" the bank statements was that he wanted to conceal private information (for example, payments to utility companies) which, he believed, was of no interest to HMRC, whose enquiries were into his income as a contractor.

11. On 23 November 2018 HMRC (Mr Raynard, the inspector of taxes) wrote to Mr Butcher responding to his points about how the IN had been obtained and commenting on and responding to the information and documents Mr Butcher had sent (and giving Mr Butcher until 4 January 2019 to respond to the points now being made by HMRC). The letter stated that some of the items required by the IN remained outstanding; in particular, it noted that "redacted" bank statements had been sent and referred to an enclosed penalty notice (the subject of this appeal) for failure to comply with the IN.

12. Towards the end of the penalty notice letter of the same date (from Ms Rosier, a counter avoidance higher officer at HMRC) this was written:

> "**What to do if you disagree**
>
> If you disagree with our decision to charge this penalty, you can appeal. You need to write to us within 30 days of the date of this notice, telling us why you think our decision is wrong. We will then contact you to try to settle the matter. If we cannot come to an agreement, we will write to you and tell you why. We will then offer to have the matter reviewed by an HMRC officer who has not previously been involved with the case. We will then tell you about your right to go to an independent tribunal."

13. On 17 December 2018 Mr Butcher wrote to HMRC (Ms Rosier) stating that he wished to appeal the £300 penalty notice and making a number of points as to why. He referred to HMRC's "independent reviewer" having to decide. He enclosed 93 pages of un-"redacted" bank statements (First Direct and Santander) with this letter.

14. On 22 January 2019 HMRC sent two letters to Mr Butcher. One came from Ms Rosier, setting out "for clarification" a list of 7 bullet points of items required by the IN which were not "fully" complied with in Mr Butcher's response of 12 October 2018. In summary these were:

(1) Full (as opposed to redacted) bank statements

(2) Copies of any invoices generated by Mr Butcher for his services during his employment with the Equip MS Ltd and Aston Chester Ltd

(3) Copies of any time sheets submitted to either of these two companies or any end user, client or intermediary

(4) Details of the "end user/client", which HMRC said were "contradictory"

(5) Details of each "client/end user"

(6) Copies of employment contracts with Aston Chester Ltd

(7) Copies of correspondence between Mr Butcher and Aston Chester Ltd

15. Under the heading, "What you can do if you disagree", the letter offered Mr Butcher a choice between a review by an HMRC officer not previously involved in the matter, and appealing to "an independent tribunal".

16. The other letter of this date from HMRC came from Mr Raynard, asking for bank statements covering the period 1 June 2014 to 28 August 2014, and statements for certain other bank accounts; he asked for these by 21 February 2019.

17. On 29 January 2019 Mr Butcher wrote to Ms Rosier at HMRC providing 67 pages of documents in response to the items highlighted in her letter of 22 January, as well as additional bank statements as requested by Mr Raynard.

18. Mr Butler wrote to Mr Raynard on 15 February 2019 with further arguments against the penalty; and enclosing a further page of bank statements.

19. Ms Rosier of HMRC responded to Mr Butcher's 29 January letter, on 28 March 2019. She stated there were "still some items outstanding" and requested further information and documents.

20. At the end of HMRC's review conclusion letter of 12 April 2019 upholding the penalty was the following:

> "**What happens next**
>
> If you do not agree with my conclusion you can ask an independent tribunal to decide the matter. If you want to notify the appeal to the tribunal, you must write to the tribunal within 30 days of the date of this letter …"

21. Mr Butcher responded to Ms Rosier's letter of 28 March, on 29 April 2019. He provided certain additional information in the letter and enclosed nine pages of documents.

22. Mr Butcher wrote to HMRC on 6 May 2019 saying (amongst other things) that he wished to appeal the decision and go to an independent tribunal.

23. On 15 May HMRC wrote to Mr Butcher saying (amongst other things) that it was up to him to notify the tribunal in writing within 30 days of HMRC's review conclusion letter.

PRELIMINARY ISSUE – PERMISSION TO NOTIFY APPEAL TO TRIBUNAL LATE

Relevant law

24. In a case where HMRC have notified an appellant of the outcome of their statutory review, the appellant may notify the appeal to the Tribunal within 30 days of the date of the letter giving notice of the outcome of the review: s49G Taxes Management Act 1970. If that period had ended, the appellant may notify the appeal to the Tribunal only if the Tribunal gives permission: s49G(3) of that Act.

25. In *Martland v HMRC* [2018] UKUT 178 (TCC) at [26] the Upper Tribunal endorsed the words of Lord Drummond Young in *Advocate General for Scotland v General Commissioners for Aberdeen City* [2006] STC 1218 at [22]:

> "The central feature of [provisions which allow a person to make a late appeal] is that they are exceptional in nature; the normal case is covered by the time limit, and particular reasons must be shown for disregarding that limit. The limit must be regarded as the judgment of the legislature as to the appropriate time within which proceedings must be brought in the normal case, and particular reasons must be shown if a claimant or appellant is to raise proceedings, or institute an appeal, beyond the period chosen by Parliament."

13. The Upper Tribunal went on (at [44-45]) to give this guidance to this Tribunal (the FTT):

> "44. When the FTT is considering applications for permission to appeal out of time, therefore, it must be remembered that the starting point is that permission should not be granted unless the FTT is satisfied on balance that it should be. In considering that question, we consider the FTT can usefully follow the three-stage process set out in *Denton*:
>
> (1) Establish the length of the delay. If it was very short (which would, in the absence of unusual circumstances, equate to the breach being "neither serious nor significant"), then the FTT "is unlikely to need to spend much time on the second and third stages" – though

this should not be taken to mean that applications can be granted for very short delays without even moving on to a consideration of those stages.

(2) The reason (or reasons) why the default occurred should be established.

(3) The FTT can then move onto its evaluation of "all the circumstances of the case". This will involve a balancing exercise which will essentially assess the merits of the reason(s) given for the delay and the prejudice which would be caused to both parties by granting or refusing permission.

45. That balancing exercise should take into account the particular importance of the need for litigation to be conducted efficiently and at proportionate cost, and for statutory time limits to be respected…The FTT's role is to exercise judicial discretion taking account of all relevant factors, not to follow a checklist."

Positions of the parties on the preliminary matter

26. Mr Butcher said had been involved in several tax investigations in recent years; and in those cases, he said, he made appeal to the Tribunal only dealing with HMRC and had "received back notification of the result of the appeal" He said he was surprised learn that he had to contact Tribunal direct in this case.

27. Mr Butcher accepted that he did not read carefully enough the two sentences (about notifying the appeal to the tribunal within 30 days) at the end of the letter from HMRC of 12 April 2019. It was a detailed letter running to four and a half pages. He instead wrote to HMRC (on 6 May – and so within 30 days) saying that he wished to appeal.

28. HMRC did not object to Mr Butcher's application for permission to appeal late, on the grounds that he had taken action within the 30 day time limit – he had just been confused over whether he had to inform HMRC or the Tribunal.

Decision on the preliminary matter

29. Mr Butcher should have notified his appeal to the Tribunal by 12 May 2019. Instead, he did so on 30 May 2019. He was therefore 18 days late.

30. The reason for the delay was that Mr Butcher mistakenly thought that he needed to notify HMRC, rather than the Tribunal, of his appeal to the Tribunal. That is what he did by means of his letter to HMRC of 6 May 2019. This was within 30 days of HMRC's statutory review conclusion letter. Once he was corrected by means of HMRC's letter to him of 15 May 2019, Mr Butcher notified the Tribunal in the required way within a reasonable amount of time (allowing for time for letters to be delivered).

31. A number of factors favour granting permission for a late appeal here: the delay of 18 days was relatively short; I have accepted as a fact that Mr Butcher genuinely thought that his letter of 6 May 2019 was the required notification of his appeal to the Tribunal; and HMRC, by not objecting, have indicated there is no material prejudice to them in giving permission here. Militating against granting permission is the importance ascribed by the courts to respecting deadlines in litigation; and the fact that, had Mr Butcher read HMRC's 12 April 2019 letter to the end with care, he would have realised that he needed to send his notification to the Tribunal. On balance, the shortness of the delay and the prejudice to Mr Butcher of not granting permission (as his case is far from hopeless) tip the balance in favour of granting permission.

32. I therefore give permission for Mr Butcher's to notify this appeal to the Tribunal late.

SUBSTANTIVE ISSUE – APPEAL AGAINST THE PENALTY

Relevant law

33. References in what follows to the Schedule are to Schedule 36 Finance Act 208, and references in what follows to paragraphs are to paragraphs of that Schedule.

34. An information notice under the Schedule only requires a person to produce a document if it is in the person's possession or power – paragraph 18.

35. A person who fails to comply with an information notice under the Schedule is liable to a penalty of £300 – paragraph 39.

36. But such liability does not arise if the person satisfies the Tribunal that there is a reasonable excuse for the failure – paragraph 45(1). Where a person relies on another person to do anything, that is not a reasonable excuse unless the first person took reasonable care to avoid the failure – paragraph 45(2)(b).

37. In *The Clean Car Co Ltd v C&E Comrs* [1991] VATTR 234 Judge Medd QC set out his understanding of "reasonable excuse":

> "One must ask oneself: was what the taxpayer did a reasonable thing for a responsible trader conscious of and intending to comply with his obligations regarding tax, but having the experience and other relevant attributes of the taxpayer and placed in the situation that the taxpayer found himself at the relevant time, a reasonable thing to do?...
> It seems to me that Parliament in passing this legislation must have intended that the question of whether a particular trader had a reasonable excuse should be judged by the standards of reasonableness which one would expect to be exhibited by a taxpayer who had a responsible attitude to his duties as a taxpayer, but who in other respects shared such attributes of the particular appellant as the tribunal considered relevant to the situation being considered. Thus though such a taxpayer would give a reasonable priority to complying with his duties in regard to tax and would conscientiously seek to ensure that his returns were accurate and made timeously, his age and experience, his health or the incidence of some particular difficulty or misfortune and, doubtless, many other facts, may all have a bearing on whether, in acting as he did, he acted reasonably and so had a reasonable excuse."

29. That this is the correct test was confirmed by the Upper Tribunal in *Perrin v HMRC* [2018] UKUT 156. At [81] of that judgment, the Upper Tribunal also set out a recommended process for this Tribunal when considering whether a person has a reasonable excuse:

> "(1) First, establish what facts the taxpayer asserts give rise to a reasonable excuse (this may include the belief, acts or omissions of the taxpayer or any other person, the taxpayer's own experience or relevant attributes, the situation of the taxpayer at any relevant time and any other relevant external facts).
>
> (2) Second, decide which of those facts are proven.
>
> (3) Third, decide whether, viewed objectively, those proven facts do indeed amount to an objectively reasonable excuse for the default….In doing so, the Tribunal should take into account the experience and other relevant attributes of the taxpayer and the situation in which the taxpayer found himself at the relevant time or times. It might assist the Tribunal, in this context, to ask itself the question "was what the taxpayer did (or omitted to do or believed) objectively reasonable for this taxpayer in those circumstances?"

(4) Fourth, having decided when any reasonable excuse ceased, decide whether the taxpayer remedied the failure without reasonable delay after that time (unless, exceptionally, the failure was remedied before the reasonable excuse ceased). In doing so, the FTT should again decide the matter objectively, but taking into account the experience and other relevant attributes of the taxpayer and the situation in which the taxpayer found himself at the relevant time or times."

Arguments of the parties

38. Ms Long submitted that a single failure to comply with the IN gave rise to liability to a penalty under paragraph 39; and that the IN, in requiring "full, original" bank statements, was clear that "redacted" documents would not be acceptable. On this point, Mr Butcher said he believed, based on his interactions with HMRC relating to an accelerated payment notice enquiry for the 2014-15 tax year, in which he had provided "redacted" bank statements and these had been accepted, that, in providing the bank statements with "redactions", he was providing what the IN required. He argued that the IN did not clearly state that documents should not be "redacted" or altered.

39. Ms Long submitted that, apart from the "redacted" bank statements, there were a number of other instances of non-compliance, as set out in the list in Ms Rosier's letter of 22 January 2019. She asserted that, where Mr Butcher did not hold the relevant document as at 18 October 2018, he had failed to make reasonable efforts to obtain it from third parties; or that he had failed to inform HMRC that the document in question did not exist.

40. Mr Butcher emphasised the context here was HMRC enquiries which had begun in 2017 with a limited number of questions; then, in mid-2018, HMRC obtained the IN, a longer list of items, giving him just over a month to respond. He felt it was inconsistent of HMRC to impose a penalty for non-compliance in 2018 (in respect of the IN), when the list of items was much longer and the time given was only just over a month. Mr Butcher said that he has worked his way through the list in the IN, but could not reasonably produce everything by 16 October (and for this reason he had phoned HMRC on 25 September for advice and been given some reassurance). He had to request a number of the items from third parties; or seek them from online sources. He also had to do this work around his full time job. He accepted that, in retrospect, some of the items in the list in Ms Rosier's 22 January 2019 letter were information he himself could have provided; the reason he gave at the hearing for being late with any such items was that he was working through other items and had not got to these yet.

Discussion

41. In a penalty appeal such as this, the burden of proof is on HMRC to show, on the balance of probabilities, that the circumstances were such as to justify the raising of the penalty – which, in this case, means proving that Mr Butcher failed to comply with the IN by 16 October 2018. If HMRC are able to do that, the burden of proof then moves to the appellant, to show, on the same basis, that there was a reasonable excuse for the failure.

42. I find that HMRC have proven a failure to comply as regards Mr Butcher having delivered, as at 16 October 2018, "redacted" bank statements, as opposed to the "full, original" bank statements required by the IN. I find that the words "full, original" as used in the schedule to the IN conveyed a requirement to send documents without alterations or blackings out.

43. I now turn to whether there was a reasonable excuse for this failure. Mr Butcher's excuse was his belief that sending bank statements "redacted" to exclude what he considered irrelevant information, would be treated as compliant by HMRC. The facts giving rise to this excuse are, firstly, that Mr Butcher had interactions with HMRC as regards an accelerated payment notice and his 2014-15 tax return, in the course of which HMRC accepted "redacted" bank statements as compliant with their information request, and, second, that Mr Butcher genuinely believed

that the information he had "redacted" (such as payments for utilities) was of no interest to HMRC in the enquiries related to the IN.

44. I accept those facts as proven, on the balance of probabilities: Mr Butcher was able to specify the circumstances in which HMRC had taken a different view on "redacted" bank statements (being an accelerated payment notice in respect of his 2014-15 tax return), which indicates likelihood that he had accurate recollection on this point. I also accept that his belief that HMRC were not interested in entries other than those relating to his income, was genuinely held.

45. I now consider if Mr Bucher's excuse was a reasonable one. I find that sending bank statements with information genuinely thought by Mr Butcher to be irrelevant, blacked out, on the back of recent, specific experience of HMRC accepting such an approach, was a reasonable course of action for Mr Butcher, judged by the standard of a conscientious taxpayer in Mr Butcher's circumstances (responding to an extensive information notice without professional advice) and with his experience (in particular, his prior experience of providing "redacted" documents to HMRC).

46. I therefore find that there was a reasonable excuse for Mr Butcher's failure to provide full (non-"redacted") bank statements by 16 October 2018.

47. I now turn to the six further instances of alleged non-compliance mentioned in HMRC's (Ms Rosier's) letter of 22 January 2019 (listed below in italics), and make the following observations on each of them:

> *(1) Copies of any invoices generated by Mr Butcher for his services during his employment with the Equip MS Ltd and Aston Chester Ltd*: Mr Butcher stated, both in his 12 October 2018 responses and in his 29 January 2019 letter, that any such invoices were generated online, that he held no copies, and could not now access the system to get copies; he said he approached Equip MS Ltd and Chester Ltd for copies, but was told they could not be obtained due to the systems having crashed. I accept Mr Butcher's evidence and so find that these documents were not in Mr Butcher's power or possession as at 16 October 2018. He was not therefore required to produce them by that date, by virtue of paragraph 18.
>
> *(2) Copies of any time sheets submitted to Equip MS Ltd or Aston Chester Ltd or any end user, client or intermediary*: Mr Butcher stated, both in his 12 October 2018 responses and in his 29 January 2019 letter, that he did not hold such time sheets, for the same reasons as stated in regard to invoices in item 1 above. He did, however, enclose 48 pages of time sheets from "Outsource", a third party, with his 29 January 2019 letter. I discuss the production of these documents further below.
>
> *(3) Details of the "end user/client", which were said (by HMRC) to be "contradictory"*: it was not clear from the documentary evidence, HMRC's statement of case, or Ms Long's submissions at the hearing, which item of the IN is said not to have been complied with, with regard to this item. I therefore find that that HMRC have not discharged the burden of proof on them to show failure by Mr Butcher to comply with the IN by 16 October 2018, in respect of this item.
>
> *(4) Details of each "client/end user"*: Ms Rosier's letter of 22 January 2019 did not specify which item of the IN was said not to be complied with here; nor did HMRC's statement of case, or Ms Long's submissions at the hearing, specify this. It does, however, appear to relate to item 18) under "Information" for Aston Chester Ltd in the IN. I note that Mr Butcher responded to this item in his 12 October 2018 responses. He

also provided additional information on this in his 29 January 2019 letter. I discuss the provision of this information further below.

(5) Copies of employment contracts with Aston Chester Ltd: Mr Butcher's response of 12 October 2018 stated with regard to this item: "Please find enclosed a copy of my employment contract with Aston-Chester Ltd". HMRC's letter of 23 November 2018 stated that this item was not provided. Mr Butcher's letter of 29 January 2019 said that this item was enclosed. I discuss the production of this document further below.

(6) Copies of correspondence between Mr Butcher and Aston Chester Ltd: Mr Butcher stated both in his 12 October 2018 responses and in his 29 January 2019 letter that there was no such correspondence. I accept this evidence and so find that these documents were not in his power or possession as at 16 October 2018. He was not therefore required to produce them by that date, by virtue of paragraph 18.

48. As regards item 2 in the list above, I find that the "Outsource" time sheets were not in Mr Butcher's possession as at 16 October 2018. I accept Mr Butcher's evidence that he approached Equip MS Ltd and Aston Chester Ltd to obtain copies but was told they could not provide them. HMRC's note of a telephone conversation with Mr Butcher on 30 November 2018 indicates that at that point, Mr Butcher had not contacted "Outsource", a third party, to obtain the time sheets that way. HMRC encouraged him to do so. I infer from the evidence that Mr Butcher subsequently did so, which is why he was able to provide them to HMRC on 29 January 2019. I find, however, on the balance of probabilities, that Mr Butcher had no contractual or other legal right as at 16 October 2018 to obtain these documents from "Outsource", since it, unlike Equip MS Ltd and Aston Chester Ltd, was not a company Mr Butcher had worked for in the past. The fact that "Outsource" provided them to Mr Butcher some time before 29 January 2019 does not prove that they were in Mr Butcher's power as at 16 October 2018; and I find, given his relationship to "Outsource" and on the balance of probabilities, that they were not. Hence, Mr Butcher had neither possession nor power over these documents as at 16 October 2018; and so he was not required to produce them by that date, by virtue of paragraph 18.

49. As regards item 5 in the list above, there is a conflict in the evidence as to whether Mr Butcher enclosed this document with his 12 October 2018 response or not: his response indicates that he did, but HMRC's later letters indicate that they did not receive it. I find, on the balance of probabilities, that Mr Butcher held a copy of this document as at 12 October 2018 and intended, but inadvertently failed, to enclose it with his response of that date. Hence there was a failure to comply with the IN by 16 October 2018 in respect of this item.

50. As to whether there was a reasonable excuse for this failure to comply by 16 October 2018, judged by the standards of a conscientious taxpayer in Mr Butcher's circumstances and with his experience: I find that an inadvertent failure to enclose an item, in the context of a requirement to deliver 84 items in the span of about 5 weeks (taking into account time for letter to be received and delivered), was not unreasonable, given Mr Butcher was acting without professional advice or assistance. I therefore find that there was a reasonable excuse for this failure to comply by 16 October 2018.

51. As regards item 4 in the list above, this is an item of information rather than a document. As explained above, the item in the IN which appears may not have been complied with, is item 18) under "Information" for Aston Chester Ltd, which reads: "Did you provide your services via Aston Chester Ltd to a separate end user or client? If you did, for each client/end user, please provide details of this client end user, including [name, address etc]". Mr Butcher's response to this on 12 October 2018 was: "No change as still working for Etrali Trading Solutions when Aston-Chester bought Equip-MS". In his letter of 29 January 2019, Mr Butcher

gave information on both Etrali UK Ltd and Santander/Produban in the name/address/etc format required by item 18) as cited above.

52. The question is whether Mr Butcher failed to comply with item 18), despite purporting to do so in his response on 12 October 2018. Item 18) had two questions; the second only needed to be answered, if the answer to the first was "yes". I find that Mr Butcher, in his response of 12 October 2018, took the view that the answer to the first question was "no", and this is why he did not answer the second question. I find that this was because Mr Butcher mistakenly interpreted the word "separate", in the first question, as meaning separate from the end user he was working with at the time that Aston Chester Ltd bought Equip-MS Ltd (being Etrali). This explains the way Mr Butcher worded his 12 October 2018 response. I find that this was a mistaken interpretation of item 18), and so that there was a failure to comply with the IN by 18 October 2018 in respect of this item.

53. As to whether there was a reasonable excuse for this failure to comply by 16 October 2018, judged by the standards of a conscientious taxpayer in Mr Butcher's circumstances and with his experience: I find that Mr Butcher's misinterpretation of the questions in item 18) was not unreasonable given that he had 82 items to respond to in about 5 weeks, was operating without professional assistance, and that his interpretation of the first question, if not in the end correct, was explainable and arguable.

54. It follows from the above that there was a reasonable excuse for each instance of Mr Butcher's failure to comply with the IN by 16 October 2018. HMRC's decision that a paragraph 39 penalty is payable is accordingly CANCELLED.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

55. 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.

ZACHARY CITRON
TRIBUNAL JUDGE

RELEASE DATE: 19 FEBRUARY 2020