



TC06146

Appeal number: TC/2017/3719

PROCEDURE – application by HMRC for disclosure of information and documentation – whether Appellant had waived privilege in communications with former solicitors – yes – scope of disclosure – application ALLOWED

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

‘D’ CASH & CARRY LIMITED

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE AMANDA BROWN

**Sitting in public at Taylor House, 88 Rosebery Avenue, London EC1R 4QU on
13 September 2017.**

Ms Natalie Connor, of Counsel, instructed by Rainer Hughes, for the Appellant.

**Mr Ben Hayhurst, of Counsel, instructed by the General Counsel and Solicitor to
HM Revenue and Customs, for the Respondents**

DECISION

- 5 1. This matter concerns an application by HM Revenue & Customs (“HMRC”) for determination as to whether legal advice privilege had been waived by ‘D’ Cash & Carry Limited (“the Appellant”) in connection with certain communications recording advice provided to them following the issue of HMRC’s substantive decision as to the refusal of the Appellant’s application under the Alcohol Wholesaler Registration Scheme (“AWRS”).
- 10 2. If the Tribunal determines that privilege has been waived HMRC seek a direction that Rebecca Hudson of Altion Law Limited be required to provide certain information and documentation as to the advice so given to the Appellant.
3. The Appellants applied for a postponement of the hearing listed.

Background

- 15 4. On 23 February 2017 HMRC wrote to both the Appellant and the solicitors then appointed by the Appellant (Altion Law Limited (“Altion”)) notifying it that its AWRS application had been refused. The Appellant was duly notified of its right to appeal the decision within 30 days within the decision letter.
- 20 5. On 28 April 2017 the Appellant, by then advised by Rainer Hughes (“RH”), lodged an appeal with the Tribunal seeking an application that the appeal be accepted out of time. The ground stated in support of the out of time application was:
- 25 “The Appellant’s previous representatives (Messrs, Altion Law Ltd) were not acting on behalf of the Appellant at this time. The Appellant was representing themselves and did not appreciate the deadline in which they had to issue these proceedings, or the implications of not complying with the same”.
- 30 6. The appeal and application for acceptance of an out of time appeal were notified to HMRC on 24 May 2017. HMRC were required to respond to the out of time application within 14 days. On 8 June 2017 HMRC lodged its Notice of Objection to the late appeal. The grounds of objection were detailed but in essence centred on a failure by the Appellant to substantiate the assertion that they were unrepresented at the time they received the appealable decision and were not aware of their obligation to lodge an appeal within 30 days. As amplified in the hearing on 13 September 2017 HMRC expressed concerns as to the integrity of both the Appellant and RH which impacted the relief which should be available for having failed to
- 35 appeal within the prescribed time limits.
7. On 14 July 2017 a hearing was listed to consider the out of time application. On 19 July 2017 directions were given as to the hearing. The direction provided for the service of an index for the core bundle of documents relevant to the out of time application on 2 August 2017.

8. On 31 July 2017 the Appellant applied to the Tribunal seeking to introduce and rely upon two witness statements: one from the Appellant director, Mr Dhami; and the second from the Appellant's accountant. The Tribunal has not seen the first witness statement of Mr Dhami, however, it is apparent that it supported the grounds for extension of time asserting that at the time the decision letter from HMRC was issued Altion were not acting on their behalf. HMRC did not object to the introduction of the evidence contained in the statements. However, HMRC noted: "With respect to Mr Dhami's witness statement we note he does not say when Altion Law ceased to act. Please can the date be provided along with contemporaneous documentary evidence to underpin the same? Alternatively, please can you provide written consent for us to contact Altion Law and obtain the date they ceased to act and to ask whether they advised Mr Dhami of the need to appeal within 30 days of the refusal letter dated 23 February 2017".

9. On 22 August 2017 (one day before it was due to serve its skeleton argument in support of its out of time application) the Appellant lodged an application to amend its notice of appeal vis a vis its out of time application and seeking to adduce a second witness statement from Mr Dhami.

10. The proposed amendment to the grounds for the out of time application were:

"The Appellant's previous representatives (Messrs. Altion Law Ltd) did not provide the Appellant with advice in relation to appealing the Respondent's decision. The Appellant was not made aware of the 30 day time limit to appeal the respondent's decision. The Appellant did not appreciate the deadline in which they had to issue these proceedings, or the implications for not complying with the same".

11. The grounds for this amendment were stated to be: "to clarify the Appellant's position in relation to the Application. The above amendment has resulted from clarification of the factual position provided by the Appellant following questions raised by the Respondent's objection to the Application dated 8 June 2017" (emphasis added).

12. Mr Dhami's evidence was: "Upon receipt of the refusal letter I contacted Altion Law by telephone. I was advised that they had already received a copy of the refusal letter and that I should not continue to contest the decision and prepare for closure of the Company. Altion Law did not provide me with any advice in relation to appealing this decision, or any timeframes for doing so I had expected Altion Law to have fully considered the refusal letter before advising in his matter".

13. HMRC contacted Altion with a view to seeking confirmation as to the position regarding advice to the Appellant. The solicitor who had formally had conduct was on leave until 29 August 2017. Upon her return she indicated she would need to consider whether and how to respond to HMRC's request for information.

14. On 29 August 2017 HMRC sought confirmation from RH as to whether the Appellant considered that it had waived privilege in the communications of legal advice between Mr Dhami and Altion concerning the requirement to appeal.

5 15. On 30 August 2017, upon the solicitor's return, RH wrote to HMRC indicating that she was unable to assist feeling bound by her duty of confidentiality to the Appellant and the privilege under which her advice had been provided.

10 16. Also on 30 August 2017 the Appellant responded to HMRC's enquiry of 29 August 2017 concerning waiver of privilege: "Please note that the Appellant is not waiving legal professional privilege regarding all matters/advice given by Altion Law; it is only in relation to the issue of whether Altion Law advised about the possibility of appeal and only in relation to one telephone conversation in which the Decision Letter was discussed as set out in Mr Dhami's witness statement".

15 17. Altion Law did not consider the 30 August 2017 communication to provide sufficient clarity on waiver to permit them to comply with HMRC's request for information and documentation concerning the advice given. This prompted HMRC to issue a full and particularised request for the Appellant to waive privilege in relation to the disclosure of information and documentation from Altion on 31 August 2017.

20 18. No response was received from the Appellant regarding the request for confirmation of waiver that would have permitted HMRC to obtain the information they requested from Altion so on 5 September 2017, HMRC made an application to the Tribunal for confirmation as to the position on waiver together with an application for provision of information and documentation by Altion. By their application they also sought for the out of time hearing listed for 13 September 2017 to be vacated.

25 19. On 5 September 2017 RH objected to HMRC's application. By their notice it was stated that "The Appellant DOES NOT waive legal privilege in this matter" (original emphasis). This was reiterated in an email of 6 September 2017. RH asserted that HMRC's conduct in seeking disclosure of the information and documentation from Altion and any summons for them to attend the out of time hearing to be unprofessional contending that it amounted to "an ambush" and "bullish tactics".

30 20. On 7 September 2017 HMRC's application and the Appellants objection were put before Judge Sinfield who ordered that the hearing listed for 13 September 2017 consider HMRC's application concerning waiver and disclosure rather than considering the substantive out of time application. The Appellant was directed to serve a skeleton argument by 5pm on 8 September 2017 and HMRC to serve theirs by noon on 12 September 2017.

35 21. The Appellant did not serve its skeleton as directed. By email dated 12 September 2017 RH claimed that they had been unaware of the directions issued on 7 September 2017 as a consequence of the solicitor with conduct having been on annual leave. RH sought an adjournment of the hearing listed for 13 September 2017.

HMRC objected to the adjournment application and served their skeleton argument as directed. Judge Richards considered the adjournment application and rejected it inviting the Appellant to renew it before the Tribunal at the hearing.

Adjournment application

5 22. The matter was called on for hearing and Ms Conner renewed the Appellant's
adjournment application. It was claimed, as per the email to the Tribunal, that the
solicitor with conduct of the matter (Natalie Wallis) had been on annual leave on 7
September 2017, as the email from the Tribunal enclosing Judge Sinfield's directions
10 had been sent only to her (and not to a central correspondence email address
previously provided to the Tribunal which would have ensured visibility of the
communication in her absence) RH had been unaware of the directions and thereby
unable to comply with the requirement to prepare a skeleton argument.

15 23. HMRC produced to the Tribunal email correspondence between themselves and
Anita Punpher and Belinda Peacock both of RH dated 11 September 2017 illustrating
that RH were aware of the Tribunal's direction certainly as at 09:36 on 11 September
2017. There was also email traffic between Belinda Peacock and HMRC concerning
the issue of waiver and HMRC's application through 7 and 8 September 2017. These
documents cast considerable doubt on the integrity of Natalie Wallis's assertion that
20 the tribunal's email of 7 September 2017 was not "considered until [her] return" on 12
September 2017.

24. Ms Conner also confirmed that it was not the intention of the Appellant to make
any positive case on the issue of waiver. She advised that she had been instructed to
maintain that there had been no waiver expressly resiling from the email of 30 August
2017.

25 25. On the basis that there was no positive case to be advanced by and on behalf of
the Appellant and that HMRC were fully prepared to proceed on the basis of their
skeleton the Tribunal determined that an adjournment would serve no useful purpose.

HMRC's application

30 26. HMRC apply pursuant to rules 2 (overriding objective), 5 (case management
powers), 6 (procedure for applying for and giving directions) and 16 (summons of
witnesses and orders to answer questions or provide documents) Tribunal Procedure
(First-tier Tribunal) (Tax Chamber) Rules 2009 ("Rules") for a direction that Rebecca
Hudson of Altion be required to provide certain specified information and
documentation concerning advice given to the Appellant concerning the requirement
35 to appeal the refusal of their AWRS application within the prescribed 30 days.

27. As the advice provided by Ms Hudson is confidential advice given to a client by
a solicitor subject to legal advice privilege she may only be ordered to answer the
questions posed and produce the documents if the Appellant waives or has already
waived privilege in the communication of that advice. This Tribunal must determine
40 whether privilege has been waived as the Appellant has confirmed that it is not
willing to voluntarily waive it.

Legislation

28. Of the rules referred to by HMRC the most pertinent and the detail of which is relevant to the issue to be determined is rule 16.

29. So far as relevant rule 16 provides:

- 5 (1) On the application of a party or on its own initiative, the Tribunal may:
- (a) ...
 - (b) order any person to answer any questions or produce any documents in that person's possession or control which relate to any issue in the proceedings
- 10 (2) ...
- (3) No person may be compelled to give any evidence or produce any document that the person could not be compelled to give or produce on a trial of an action in a court of law in the part of the United Kingdom where the proceedings are due to be determined.
- 15 ...

HMRC's submissions

30. By their skeleton HMRC contended that the Appellant had expressly waived privilege as regards any communication with Altion concerning receipt of the appealable decision and requirement to appeal. They referred to the judgment in *Paragon Finance v Freshfields* [1999] 1 WLR 1183 in which it was stated that "a client expressly waives his legal privilege when he elects to disclose communications which the privilege would entitle him not to disclose". HMRC had considered that the amendment to the Notice of Appeal, Mr Dhami's second witness statement and the email of 30 August 2017 amounted to express waiver. However, in light of the later correspondence from the Appellant's representatives denying any waiver HMRC did not consider that they could pursue a contention of express waiver.

31. At the hearing therefore, HMRC's primary contention was that the Appellant had impliedly waived privilege. They contended that the Appellant had introduced the advice received or, perhaps more properly, not received from Altion in both the amended grounds of appeal and the second witness statement of Mr Dhami in such a way that privilege in such communications as there were had been waived.

32. HMRC referred the Tribunal to the judgement of Elias J in the Employment Appeal Tribunal in *Brennan v Sunderland City Council* [2009] ICR 479. By reference to paragraphs 62 – 67 of *Brennan* HMRC contended that the approach to be adopted when determining whether there had been implied waiver was to identify firstly the nature of the disclosure made by the Appellant to determine whether the disclosure was of the substance of the advice received juxtaposed with the effect of the advice. Secondly, whether the existence of the advice had only been referenced or whether its terms were being relied upon. Finally, whether it would be fair to allow

the Appellant not to reveal the whole of the advice given by Altion because it would risk HMRC and the Tribunal only having a partial and potentially misleading understanding of the purported lack of advice.

5 33. On the extent of waiver HMRC contended that the Appellant's attempt to constrain waiver only to the telephone conversation between Mr Dhami and Altion cannot be permitted. Relying on the judgment in *Digicel (St Lucia) Ltd v Cable & Wireless Plc* [2009] EWHC 1437 (Ch) HMRC contended that the Appellant had waived privilege in the issue of what advice, if any, Altion, gave the Appellant concerning the requirement and procedure for appealing.

10 34. Reliant on the judgment of Mann J in *Fulham Leisure Holdings Ltd v Nicholson Graham & Jones* [2006] 2 All ER 599 HMRC contended that when determining the extent of waiver the Tribunal must:

15 (1) Identify the "transaction" in respect of which disclosure had been made i.e. in this case whether or not the Appellant was advised of the need to and procedure for appealing HMRC's AWRS decision; and having done so

(2) Require the Appellant to make such further disclose as is necessary to avoid unfairness or misunderstanding.

20 35. Finally HMRC likened the disclosure made by the Appellant to having brought or made an allegation of negligence against Altion. HMRC contended that the case law concerning waiver where a party alleges negligence against a former solicitor is clear: having made the allegation the party may not then claim privilege in the advice which is said is negligent. HMRC contended that the same approach should be applied to the Appellant to conclude that all advice given by Altion in connection with the need for and procedural requirements of an appeal should be disclosed because (as
25 per *Paragon* the Appellant had "bought that confidential relationship [between itself and Altion] into the public domain".

30 36. HMRC contend that having waived privilege in connection with the advice given by Altion in connection with the need for an appeal the Appellant should now be obliged to disclose all evidence of communications between Altion and the Appellant after receipt of the AWRS decision letter on 23 February 2017 They further contend that Ms Hudson, should be released from any privilege and required to provide oral or written evidence as to the advice provided.

Appellant's submissions

35 37. The Appellant chose to make no submissions on the case presented against it merely maintaining there had been no waiver.

Discussion

38. Initially the Tribunal had considered HMRC's application a curious one. It is the Appellant's application to be permitted to appeal out of time. The Tribunal has the power, pursuant to rules 5 and 2 of the Rules to grant the application if it considers

it fair and just to do so. Whilst it has been acknowledged by the Supreme Court in the recent judgment in *BPP Holdings v HMRC* [2017] UKSC 55 the Tribunal is not bound by the Civil Procedure Rules and in particular rule 3.9 concerning relief from sanction the Supreme Court has endorsed the approach taken by the Upper Tribunal in the matter of *Data Select Ltd v HMRC* [2010] UKUT 187 in situation considering breach of directions/rules. Morgan J in *Data Select* set out the approach to be adopted:

“As a general rule, when a court or tribunal is asked to extend a relevant time limit the court or tribunal asks itself the following questions: (1) what is the purpose of the time limit? (2) How long was the delay? (3) Is there a good explanation for the delay? (4) What will be the consequences for the parties of an extension of time? And (5) what will be the consequences for the parties of a refusal to extent time. The court or tribunal then makes its decision in the light of the answers to those questions.

39. It is clear that when approaching the Appellant’s out of time application in due course the Tribunal will explicitly need to consider the explanation for the delay in appealing and whether that explanation is sufficient in the balance of possible prejudice as between the parties. At present the Tribunal has been presented by the Appellant itself with wholly conflicting explanations: first that it was not advised at all as to the time limit for appeal and did not read the rejection letter sufficiently to recognise the clear direction on the time limit in which to submit an appeal; and subsequently, that it was advised, now incorrectly in its view and that of its new solicitors, not to appeal and prepare to close the company.

40. However, HMRC have made their application for disclosure of the advice provided and it is that application which is to be considered.

41. Having reviewed *Brennan* it is evident that when it comes to assessing whether a party has or has not waived privilege there is no hard or fast test. Elias J states in *Brennan* “we do not think that the application of the waiver principle can be made to depend on a labelling exercise, particularly where the categories are so imprecise. The concepts shade into each other, and do not have the precision required to justify their employment as rigid tests for defining the scope of waiver” (para 65). However, he notes that privilege is an “extremely important protection and that waiver is not easily established” (para 66). Critical appears to be an assessment of “what has been disclosed and the circumstances in which disclosure occurred ... a degree of reliance is required before waiver arises, but there may be issues as to the extent of the reliance”. As Elias J put it: “Ultimately, there is a single composite question of whether, having regard to these considerations, fairness requires that the full advice be made available”.

42. By reference to the tests advocated in *Fulham* it is clear that the Tribunal should carefully consider the circumstances in which the Appellant has raised the question of the role of Altion in the Appellant’s failure to lodge an appeal within the statutory 30 days. It is clear that the underlying principle is whether requiring the Appellant to release Ms Hudson from the present restriction on her disabling her from disclosing to

HMRC and the Tribunal the circumstances in which advice was given or not is fair to all parties.

43. In addition to the case law referred to by HMRC the Tribunal identified two additional authorities which appear to arise in very similar circumstances to the present matter and which provide further guidance on the approach to be adopted.

44. The first is *National Centre for Young People with Epilepsy v Mrs S Boatang* UTEAT/0440/10/CEA. National Centre for Young People with Epilepsy (“NCYPE”) had employed Mrs Boatang. Mrs Boatang claimed unlawful race and age discrimination. Her claim was referred to mediation and was, apparently, settled at mediation and a compromise agreement was signed. The day following the mediation Mrs Boatang claimed that the compromise agreement signed was null and void on the basis that she had not been independently advised by the solicitor who had been present at the mediation (due to the nature of the claims compromised independent advice was required). Contrary to the agreement Mrs Boatang continued with her employment tribunal. NCYPE applied to strike out the action and invited the employment Tribunal to require Mrs Boatang’s solicitor to give evidence as to the advice provided. The application was refused by the Employment Tribunal.

45. Peter-Clark J heard the matter on Appeal before the Employment Appeal Tribunal. He recognises that the advice given by the solicitor during the mediation was privileged and thus could only be accessed for the purposes of the employment tribunal if Mrs Boatang had waived privilege.

46. By reference to the judgment in *Brennan* Peter-Clark J emphasises that the underlying principle in resolving the question on waiver was one of fairness, asking: “If one party relies on the confidential communications with his or her legal advisor, is it fair on the other party not to have access to the legal advice concerned?”

47. When considering whether to require the solicitor in that case to provide a witness statement Peter-Clark focused on the simple fact that Mrs Boatang’s resistance to the strike out was entirely dependent on the evidence of the solicitor. He considered the position of NCYPE in meeting the evidence presented by Mrs Boatang (and her children who had been present at the mediation and with the solicitor) who asserted dereliction of duties and the bare denial of that claim by the solicitor.

48. Peter-Clark J determined that Mrs Boatang had waived privilege because her case was reliant on the alleged failure on the part of the solicitor in order to resile from the compromise agreement and pursue her claim. The nature of the advice given (to sign the agreement) and reliance on its inadequacy gave rise to a conclusion that there had been waiver. Applying the fairness principle from *Brennan* it was determined that it would be “manifestly unfair” for the solicitor not to be given the opportunity (by being released from the bound of privilege) from putting his position in order that the Tribunal could then determine the efficacy of the compromise agreement and thereby the strike out application.

49. The second case is that of *D (A Child)* [2011] EWCA Civ 684. The family law case concerned injury to an infant. The mother had initially submitted a witness statement in which she claimed she did not know how the child had been injured. She subsequently made a second statement contradicting the original statement. In the
5 second statement the mother expressly referred to a conference with her solicitor and counsel during which she had been advised that the court needed to properly understand how the child had been injured and the consequences for the mother if the position was not resolved.

50. The Father sought disclosure of the advice given by the solicitor and counsel.
10 At first instance the application was allowed and disclosure ordered on the basis that the mother's statement had gone beyond merely mentioning the conference, the first instance judge stated "not only has the mother taken the other parties and the Court to the doors of the conference room, she has taken the reader of her statement into that room". The judge held that fairness inevitably lead to the need for full disclosure.
15 Only by having a full account of how the witness statement evolved would fairness be achieved.

51. On appeal counsel for the mother accepted that there had been waiver as it could not be said that there was only a "glancing reference" to the advice. Ward LJ described the acceptance as "absolutely right" as the mother had "revealed not merely
20 that she had been given advice but also the nature of that advice ... She has undoubtedly waived the privilege that would ordinarily leave the advice she was given and the manner in which her statement was extracted from her sacrosanct and inviolate".

52. Ward LJ then turned to what is described as the "fundamental question" as set
25 out in *Brennan* "whether, in light of what has been disclosed and the context in which the disclosure has occurred, it would be unfair to allow the party making disclosure not to reveal the whole of the relevant information". Arguments were put as to the unique nature of care proceedings. On behalf of the father it was contended that the unfairness to him was not being able to affectively cross examine the mother about
30 her veracity and the evolution of her change of heart without being able to see the factual premise on which the advice was given to her. Ward LJ concludes that there was no answer to the unfairness for the father which could allow privilege to be maintained.

53. Applying the approach taken by Peter-Clark J and Ward LJ to the facts as
35 presented it becomes patently clear that whether it is described as express or implied waiver Mr Dhami by his witness statement and the Appellant in its amended grounds supporting it's out of time appeal have not simply referenced the interaction with Altion they have described the nature of the discussion and the absence of advice. Their whole case for an out of time appeal is predicated on that lack of advice so as to
40 excuse their failure to act within the statutory time limits.

54. Given the contradictory evidence as between the initial grounds and first witness statement of Mr Dhami and the documents served on 22 August 2017 the integrity of the basis of the application must fall under scrutiny. For the application to

be fairly and justly considered the role played by Altion and establishing the true position for the delay needs to be established and that will be achieved only through information and documentation held by Altion. As was the case in both *Boatang* and *D* the question of fairness requires that HMRC be entitled to cross examine Mr Dhami as to the veracity of the case he presents on behalf of the Appellant for why the appeal was not made in time. To do so HMRC need access to evidence of the communications between Mr Dhami and Altion.

55. For the above reasons the Tribunal considers that disclosure should be ordered.

Terms of the disclosure

10 56. HMRC had prepared the form of the order they sought. Essentially it was a request for a witness summons for Ms Hudson which sought to test the veracity of the Mr Dhami's witness statement.

15 57. The Tribunal is not prepared, at this stage to require a witness summons for Ms Hudson. To date, as a consequence of the assertion that privilege had not been waived, Ms Hudson has not been in a position to provide any information and documentation. It may be the case that once such information and documentation has been provided neither side require the attendance of Ms Hudson at the hearing of the out of time application. Equally it may not. However, at this stage the Tribunal considers the correct course of action is to issue an order requiring Altion to provide information and documentation as particularised in the annex to this judgment.

20 58. At the hearing Ms Connor requested that all information and documentation to be provided by Ms Hudson be provided to the Appellant in advance of HMRC. This was on the basis that any waiver determined by the Tribunal must be limited and the documents held by Altion may contain other information which remains privileged.

25 59. HMRC objected to prior disclosure to the Appellant.

30 60. In view of the risk that documents containing evidence of communication between Altion and the Appellant may contain material not pertinent to the question of whether and if so what advice was given to the Appellant in connection with the need to appeal and the time limit for doing so the Tribunal has determined that to the extent that Altion consider redaction appropriate the suggested redactions will be provided for review and determination by the Tribunal. This protects the Appellant and should assuage the concerns of HMRC.

Decision

35 61. For the reasons stated the Tribunal determines that the Appellant has waived privilege in any communication as to the need to appeal and the procedure and time limits for such an appeal.

62. As a consequence, it is only fair that HMRC, and the Tribunal, are provided with certain specified information in relation to and documentation evidencing

communications between the Appellant and Altion concerning the need for an appeal and the procedure and time limits for such an appeal.

63. The terms of the order for information and disclosure are attached in the annex to this judgment.

5 64. 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
10 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.

15 **Amanda Brown**
TRIBUNAL JUDGE

RELEASE DATE: 3 October 2017

ANNEX

On the Application of HM Revenue & Customs (“HMRC”) and pursuant to the provisions of Rule 16 Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 the Tribunal hereby makes the following order that Rebecca Hudson, or such
5 other relevant partner or employee of Altion Law Ltd (“Altion”) provide the following information and documentation.

To the extent that such information or documentation was subject to legal professional privilege the Tribunal has determined that the Appellant has waived privilege such that there is no restriction and that Altion should provide/disclose it.

10 *Information*

I1 The date on which Altion ceased to act for ‘D’ Cash and Carry Limited (“the Appellant”)

I2 Confirmation as to whether there was a phone call or any other communication between any employee or partner of Altion and Mr Arun Singh Dhami (“Mr Dhami”) on 23 February 2017.
15

I3 Whether there were any further communications of any type (telephone call, meeting, email or letter) from or to Mr Dhami or any other employee, director or shareholder of the Appellant or any person otherwise representing the Appellant between 23 February 2017 and the date on which Altion ceased to act for the Appellant.
20

I4 If there were any further communications the number and nature of such communications, who initiated them, their date and, where relevant duration.

I5 Whether, the Appellant sought from Altion any advice concerning the need for an appeal and the procedure and time limit for appealing HMRC’s decision dated 23 February 2017 refusing the Appellant’s application under Alcohol Wholesalers Registration Scheme (“the Decision”).
25

I6 Whether Altion provided the Appellant with any advice concerning the need for the Appellant to appeal the Decision.

I7 Whether Altion provided the Appellant with any advice concerning the procedure for appealing the Decision
30

I8 Whether Altion provided the Appellant with any advice concerning the time limit for appeal.

I9 Where any communication mentioned in requests I5 – I8 were not contemporaneously evidenced the terms of the advice given so far as it relates only to need for an appeal and the procedure and time limit for such an appeal.
35

Documentation

- 5 D1 Copies of any contemporaneous written evidence of communications between the Appellant and Altion to include (but not limited to) telephone attendance notes, file notes emails, letters and bill narratives concerning the need to bring an appeal and procedure and time limit for appeal of the Decision.

In respect of any document required to be disclosed pursuant to D1, to the extent that the document also contains advice which does not address the need, procedure and time limit for appealing the Decision, Altion is to provide to the Tribunal an original copy of the document and a document showing any proposed redaction.

- 10 The Tribunal will determine the scope of redaction where appropriate, in consultation with Altion.

The information and documentation to be provided to the Tribunal within 28 days of the date of this Order.