[2018] UKFTT 164 (TC)

TC06417

Appeal number: TC/2016/01016

INCOME TAX – discovery assessments – whether appellant's conduct in one year negligent: yes – whether loss of tax in another year brought about carelessly: yes – other years' assessments reduced to nil.

FIRST-TIER TRIBUNAL
TAX CHAMBER

BARRY GRAVES **Appellant**

- and -

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

TRIBUNAL: JUDGE RICHARD THOMAS

Sitting in public at Leeds Magistrates Court on 9 March 2018

The Appellant appeared in person

Mr Alan Hall, Solicitor's Office and Legal Services, HM Revenue and Customs, for the Respondents

DECISION

1. This was the hearing of five appeals by Mr Barry Graves, the appellant, against assessments made on him under s 29 Taxes Management Act 1970 ("TMA") by the respondents ("HMRC") for the five years 2001-02 to 2005-06 inclusive.

Background

2. Mr Graves is in his 80s. He harbours an ineradicable sense of injustice about his treatment at the hands of the Inland Revenue and then HMRC, of the Department of Work and Pensions and its predecessors, Manchester City Council and the Courts and Tribunals with which he has been involved. He is convinced that, far from owing HMRC more than £30,000 (about which he is currently involved in proceedings in the County Court), he is owed huge amounts by way of refund of tax on account of expenses he has incurred and other things.

3. This overwhelming sense of injustice has led him to be unable to distinguish between HMRC and the DWP, between different parts of HMRC and between HMRC and the Revenue Adjudicator and between the County Court and this tribunal (and between the tribunal and HMRC). He assumes that every person he has contact with must know everything about his tax affairs and be able to give him the explanations, comfort and indeed tax refunds that he seeks.

4. His obsessions lead him to react to any request for information, particularly by way of the issue of a tax return, by scrawling hand written notes on the document and returning it. These notes never answer the questions and in some cases are scurrilous and occasionally nastily racist. He has insulted HMRC officers, particularly Mr Hall in the tribunal and in the corridors outside.

5. He has a habit of commenting and talking while Mr Hall is speaking and argues with and contradicts me.

6. Mr Hall has recognised that Mr Graves' behaviour is that of a vulnerable person and he has conducted HMRC's case accordingly, but he has in my view clearly and correctly drawn a distinction between his current vulnerability and his state of mind in the years with which the appeals are concerned.

7. My contact with Mr Graves began in 2016 when I was asked to conduct a case management hearing in Leeds (where Mr Graves lives) on 3 August. My decision is *Graves v HMRC* published with neutral citation [2016] UKFTT 564.

8. I quote in Appendix 1 extracts from that decision which give further background to these appeals.

9. In that hearing I decided that Mr Graves should be allowed to seek the permission of the Tribunal to notify his appeals against assessments for these five years late. I heard Mr Graves' application for permission in a hearing in Leeds on 9 June 2017. Extracts from that decision are in Appendix 2.

10. On 9 March 2018 I heard Mr Graves' appeals against the assessment for 2001-02 to 2005-06 inclusive.

11. At the end of the hearing I announced my decision (as set out in §§40 to 44).

12. Both parties agreed that in accordance with Rule 35(3) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 that it was unnecessary for this decision to include full or summary findings of facts and reasons for the decision, and so I issued a short written decision setting out the decision for each year and giving very brief reasons for that decision.

13. On 16 March 2018 Mr Graves wrote to the tribunal to seek, as I had informed him he could, a full findings and reasons decision, and this is it. I note that Mr Graves sent in a copy of my short decision on which he had written against my decisions for each of the years "1980 to 2018" and his letter mentions yet again his complaints about HMRC covering all these years.

Facts

14. Mr Hall had produced in evidence several bundles of papers which included correspondence with Mr Graves going back to 2010. From this evidence I make the following findings of fact.

15. On 1 September 2010 HMRC wrote to Mr Graves informing him they had received information from an offshore (ie Channel islands or Isle of Man) bank about an account he held and asking him for information about gross interest received in years to 1 July 2005.

16. On 2 January 2011 HMRC wrote again setting out the income that HMRC believed should be assessed on Mr Graves. HMRC's information was that in the period concerned Mr Graves held money in various bank and building society accounts, including with financial institutions in the Channel Islands. Information had been provided to HMRC, from various sources, concerning investments which were untaxed, as well as those which were taxed. These included

(1) An account with a balance of £187,641.53 as of June 2003 with the Co-operative Bank in the Channel Islands. This account was opened in 1998. Interest of £6,558.67 was credited to Mr Graves account on 4 April 2003.

(2) UK accounts from which Mr Graves received gross paid interest in 2005-06 and the amount of that interest were as follows:

(a) £1,076.00 National Savings & Investments

(b) £ 633.45 Lloyds TSB

(c) £ 2,651.93 Scarborough Building Society.

(3) He held other investments in ISAs and PEPs.

17. The letter also set out HMRC's figures as they had them for pension and employment income. The letter warned him that, in the absence of further information

requested from him, estimated assessments would be raised. That letter was received by Mr Graves, as he chose to send it back to HMRC, annotated as is his custom.

18. On 4 July 2011 HMRC issued an assessment under s 29 TMA for the tax year 2005-06. The entries were (those with * are estimated figures):

Pay from all employments less allowable expenses	£7,133
Foreign income (bank interest)	£7,000*
Interest from UK banks and building societies	£4,360
UK pensions	£12,640
Total income	£31,133
Less personal allowance	£4,895
Taxable income	£26,238
Income tax less tax deducted	£4,045.33

19. HMRC treated a letter from Mr Graves of 22 February 2012 as an appeal and offered a review. A review was carried out and amended figures giving relief for PAYE tax and a measure of relief for expense of employment were put forward by HMRC. No response was received despite a follow up letter.

20. On 26 March 2013 HMRC raised assessments for 2001-02 to 2004-05 inclusive. The entries were as follows:

2001-02	
Foreign income (bank interest)	£6,250*
Interest from UK banks and building societies	£2,000*
UK pensions	£7,168
Total income	£9,428
Less personal allowances	£5,990
Taxable income	£9,428
Income tax less tax deducted & MCA	£1,161.10
2002-03	
Foreign income (bank interest)	£6,558
Interest from UK banks and building societies	£2,250*
UK pensions	£7,699
Total income	£16,507
Less personal allowance	£6,100
Taxable income	£10,407
Income tax less tax deducted & MCA	£,1342.90

2003-04	
Foreign income (bank interest)	£6,500*
Interest from UK banks and building societies	£2,500*
UK pensions	£8,018
Total income	£17,118
Less personal allowance	£6,610
Taxable income	£10,508
Income tax less tax deducted & MCA	£1,349.10

2004-05	
Pay from all employments	£2,923
Foreign income (bank interest)	£6,800*
Interest from UK banks and building societies	£2,750*
UK pensions	£12,265
Total income	£24,738
Less personal allowance	£4,895
Taxable income	£19,993
Income tax less tax deduced	£2,438.83

21. A letter from Mr Graves on 20 April 2013 was treated as an appeal. Reviews were offered by HMRC on 19 March 2014 and on 29 July 2014 (the latter following the Adjudicator's report into a complaint by Mr Graves). No response was received to the offers.

22. None of the letters from HMRC to Mr Graves about the assessments HMRC planned to, and did, raise mentioned that they were made more than four years after the year of assessment concerned and so were outside the normal time limit in s 34 TMA. They did not say anything about whether Mr Graves conduct was regarded as careless, negligent or deliberate, or that he had a right to contest whether his conduct fell within any of those descriptions irrespective of whether he agreed the figures.

23. Following my decision to grant Mr Graves permission to make a late appeal, Mr Hall wrote, on 20 June 2017, to Mr Graves setting out the information he required to carry out a review of the assessments to see if they could be amended. Despite there being no meaningful response by Mr Graves to Mr Hall's letter, Mr Hall passed the papers to Mr Moody (who was in attendance at this hearing) to sort out HMRC's "view of the matter".

24. On 22 September 2017 Mr Moody wrote to Mr Graves. In this letter he explained to Mr Graves in relation to his State Retirement Pension that information from DWP showed that Mr Graves had, as he had argued, not accepted some payments of his

pension and had returned them and that he had not made a valid claim until 23 June 2013.

25. He added that although s 41 Finance Act ("FA") 1989 and s 578 Income Tax (Earnings and Pensions) Act 2003 charged state benefits on an accruals basis, it would be unfair to tax Mr Graves on that which he did not received. The effect of this was to make his tax liability for 2001-01 and 2002-03 nil, and the assessments would be withdrawn.

26. Mr Moody also allowed expenses against employment income for 2005-06.

27. The figures for each of the years of assessment that HMRC were now agreeing to were:

2001-02 nil

2002-03 nil

2003-04 £1,349.10 (no change)

2004-05 £2,438.83 (no change)

2005-06 £1,861.04 (reduction of £2,184.39)

28. No further meaningful response was received from Mr Graves about these years.

29. Mr Graves was given no notice to file a return for the tax years 2001-02, 2002-03 and 2003-04. He was given such a notice for 2004-05 and 2005-06 but has filed no return which meets the criteria in s 8 TMA.

Law

30. The law on assessments made by HMRC in this situation is in s 29 TMA, which provides so far as relevant to this case:

> "(1) If an officer of Revenue and Customs … discover[s], as regards any person (the taxpayer) and a year of assessment—
>
> (a) that any income which ought to have been assessed to income tax … have not been assessed, or
>
> …
>
> the officer … may … make an assessment in the amount … which ought in his or their opinion to be charged in order to make good to the Crown the loss of tax.
>
> …"

31. The normal time limit for making such a "discovery" assessment is in s 34 TMA, which provides so far as relevant to this case:

> "(1) Subject to the following provisions of this Act … an assessment to income tax … may be made at any time not more than 4 years after the end of the year of assessment to which it relates

> (2) An objection to the making of any assessment on the ground that the time limit for making it has expired shall only be made on an appeal against the assessment."

32. The only relevant "following" provision is s 36 TMA, which provides so far as relevant to this case:

> "(1) An assessment on a person in a case involving a loss of income tax … brought about carelessly by the person may be made at any time not more than 6 years after the end of the year of assessment to which it relates (subject to subsection (1A) and any other provision of the Taxes Acts allowing a longer period).
>
> (1A) An assessment on a person in a case involving a loss of income tax or capital gains tax--
>
> (a) brought about deliberately by the person,
>
> (b) attributable to a failure by the person to comply with an obligation under section 7,…
>
> …
>
> may be made at any time not more than 20 years after the end of the year of assessment to which it relates
>
> …"

33. Section 36(1A) was inserted into s 36 by Schedule 39 FA 2008 with effect for assessments made on or after 1 April 2010, as provided by Art 2 of the Finance Act 2008, Schedule 39 (Appointed Day, Transitional Provision and Savings) Order 2009 (SI 2009/403). But this was subject to art 7 as follows:

> "Section 36(1A)(b) … of TMA 1970 (fraudulent and negligent conduct) shall not apply where the year of assessment is 2008-09 or earlier, except where the assessment on the person ("P") is for the purposes of making good to the Crown a loss of tax attributable to P's negligent conduct …."

The parties submissions

34. Mr Graves made no meaningful or relevant submissions about the assessments.

35. Mr Hall said that:

(1) in relation to 2001-02 and 2002-03 as there is now agreed to be no loss of tax the assessments cannot stand, and he invited the Tribunal to reduce them to nil.

(2) in relation to 2003-04 he accepted that art 7 SI 2009/403 applied and that he had to show that there was negligent conduct on Mr Graves' part.

(3) in relation to 2004-05 he accepted that for the assessment to be valid it had to have been made within 6 years of 5 April 2005 or he would have to show that the appellant's conduct was deliberate. This was on the basis that s 36(1A)(b) TMA did not apply as Mr Graves had been issued with a notice to file, and so s 7 TMA (failure to notify) was not in point. He said that he could not contend that

Mr Graves' conduct was deliberate and so he asked the Tribunal to cancel the assessment.

(4) In relation to 2005-06 he said that as the assessment had been made after 4 but within 6 years from 2005-06 he had to show the loss of tax was brought about carelessly.

36. In his view Mr Graves' conduct in the year 2002-03 was negligent and in 2005-06 was careless. He pointed out that whatever might be said in 2018 about Mr Graves' state of mind, there was evidence that had been produced by HMRC of a number of matters showing Mr Graves' knowledge and control of his financial affairs at the time. This evidence included the large number and variety of bank accounts and movements between them; Mr Graves's own acceptance that at that period he had a financial adviser who he instructed; that he had said in the hearing and at earlier hearings that he had deliberately opened the account in the Channel Islands and that he used the money to assist his children in house purchases all pointed to someone who knew what he was doing, but did not take any steps to discover what his tax liabilities were. A prudent person in his situation would have taken steps to find out whether he had any liability in respect of untaxed interest in the amounts the appellant had.

Discussion

37. In relation to 2001-02, 2002-03 and 2004-05 I accept Mr Hall's analysis of the position, and that the assessments must be reduced to nil.

38. In relation to 2002-03 and 2004-05 I accept Mr Hall's submissions that on the evidence which I had seen and heard, not only in this hearing but in the previous ones, that Mr Graves' conduct was not that of a prudent person mindful of his tax obligations. It was not reasonable for him in his circumstances to keep quiet about his interest bearing accounts and the untaxed interest arising on them.

39. Mr Graves has not shown that the figures for these two years are excessive.

Decisions

40. For the tax year 2001-02 the assessment made on the appellant by HMRC is reduced to nil.

41. For the tax year 2002-03 the assessment made on the appellant by HMRC is reduced to nil.

42. For the tax year 2003-04 the assessment made on the appellant by HMRC stands good in the sum of income tax of £1,349.10.

43. For the tax year 2004-05 the assessment made on the appellant by HMRC is reduced to nil.

44. For the tax year 2005-06 the assessment made on the appellant by HMRC is reduced to income tax of £1,861.04.

45. I add just this. In my 2016 case management decision I complimented Mr Hall on the way he had handled the case that day. From then to this hearing Mr Hall has continued to do his best to help Mr Graves, to give every benefit of the doubt that could reasonably be given (as did Mr Moody) and to conduct the HMRC case mindful of Mr Graves' state of mind and idiosyncrasies. In return he has received no co-operation from Mr Graves but a lot of sometimes very nasty personal abuse. His behaviour was an outstanding example of a public servant doing his duty to the highest standard.

46. 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.

RICHARD THOMAS
TRIBUNAL JUDGE

RELEASE DATE: 29 MARCH 2018

APPENDIX 1

Extracts from *Graves v HMRC* [2016] UKFTT 564 (TC)

1. This was a case management hearing arranged for the purpose of determining what if any appeals had been made by Mr Graves that it was possible for the Tribunal to adjudicate on, and to give directions (if there were any). I decided that certain of Mr Graves's purported notifications of appeals should be treated as applications for permission to notify appeals late, and that there were no other purported notifications of appeals over which the Tribunal had jurisdiction. I made directions for hearing the permission applications.

Background

2. In a Notice of Appeal form received by the Tribunal in February 2016, Mr Graves purported to notify appeals to the Tribunal. In an entry in a box in that Notice of Appeal he showed 6 January 2016 as the date of the HMRC decision he was appealing against. He attached a copy of a letter of that date, heavily annotated by him. That letter contained details of the total amount of tax (together with interest, surcharges and penalties) that HMRC were pursuing in the County Court. And in that letter Mr Graves had been informed by a Mr Doherty, an officer of HMRC's Debt Management and Banking Office (iDMB") who had conduct of County Court proceedings against Mr Graves, that "if you wish to further dispute the Assessments the procedure now would be to make an appeal to the First Tier Tribunal. As you have advised that you have no computer access I have printed off for you're [sic] the form required to make an appeal to the Tribunal along with Guidance Notes on completing the form."

3. As well as the Notice of Appeal Form and the letter of 6 January 2016, Mr Graves also sent in copies of two tax returns, for the tax years 2006-07 and 2007-08. (These return forms had been given to him by Mr Doherty so that he could make a claim to "Special Relief"). All of these documents were copiously annotated by Mr Graves with accounts of his complaints and other dealings with HMRC (and before it Inland Revenue) as well as with DWP's Pension Service and the Revenue Adjudicator. What the Notice of Appeal form did not contain was any clear description of the matters against which Mr Graves wished to appeal or any reasons why appeals were notified late or any reasons for any delay.

4. The Tribunal therefore sought help from Mr Graves, though none was forthcoming. HMRC's Appeals and Reviews Unit, in the person of Mr Alan Hall, wrote to Mr Graves and to the Tribunal about the case and made valuable suggestions to the Tribunal as to how the case might proceed. He produced a schedule of all the matters for which proceedings were being taken in the County Court, covering the tax years 2001-02 to 2010-11 (after that year Mr Graves was removed from the self-assessment system). He showed that the total of the amounts on his schedule equalled the amounts shown in the letter of 6 January 2016, the alleged disputed decision of HMRC. He also gave the Tribunal a copy of a Report by the Revenue Adjudicator dated 23 June 2014 which also dealt with these years in more detail and gave information about Mr Graves's tax affairs for the years 1979-80 to 2000-01.

5. The Tribunal decided that the best way forward would be to have a case management hearing, the main purpose of which was to decide if there were any appeals notified that fell within the jurisdiction of the Tribunal, and if so to make directions accordingly.

6. This decision then deals with the outcome of the case management hearing. Mr Graves represented himself. HMRC was represented by Mr Hall. I wish to put on record what I said to Mr Hall at the hearing. I consider that his conduct of the case both before and during the hearing was exemplary. It is clear to me, as it must be to everyone who deals with him in relation to tax and similar matters, that Mr Graves can be a difficult person to deal with. He seems unable to distinguish, not only between various branches of HMRC, but also between the Tribunal and the County Court and between HMRC, the Tribunal and the Adjudicator. He assumes that every person he deals with will have a full comprehension of his case and possession of the, in his words, 350 letters he has written in recent years to HMRC. Mr Hall has done his best to try to show Mr Graves what he must do if he is to get any satisfaction at all from his claims.

The hearing

7. I decided to proceed by way of examination of the schedule Mr Hall had provided. This contained a detailed made up by tax year and type of debt of everything that was said by HMRC to be due in the County Court proceedings. By implication it was a list of all the decisions that Mr Graves was notifying his appeals against and I treated it as such. It contained dates on when the amounts became due and when the appeal deadline was. The schedule also contained notes made by Mr Hall for the benefit of Mr Graves and the Tribunal. In the first instance I asked Mr Hall to address me and I questioned him. I asked Mr Graves to remain quiet during this part of the proceedings, and to seek my permission if wanted to raise a point. I made it clear to Mr Graves that he would be able to say what he wanted after I had heard Mr Hall. Mr Graves was unable to resist arguing with Mr Hall or commenting to me (and occasionally arguing with me).

8. The years fall naturally into groups and so I consider those groups as a whole.

1978-79 to 2000-01

[Not reproduced]

2001-02 to 2005-06

(a) Assessments to tax

12. For these years there are assessments made on Mr Graves under s 29 Taxes Management Act 1970 ("discovery assessments") which were made more than six years after the end of each relevant tax year. It follows from that that in order to make valid assessments HMRC must have come to the view that tax had been lost by reason of Mr Graves's neglect or worse.

13. Mr Hall said that the assessments had been raised as a result of an investigation into Mr Graves's affairs arising from the receipt by HMRC of information that Mr

Graves had an account or accounts in the Channel Islands in which in 2003 there was approximately £200,000. The assessment for one year had shown an exact figure for interest based on this information, while the assessments for other years were estimated. Mr Graves gave us some information about these accounts (something he had clearly failed to do with HMRC) about the source of the money and its destination.

14. It is clear from HMRC letters that Mr Hall produced that HMRC had accepted that correspondence from Mr Graves in 2013 amounted to appeals against the assessments and that Mr Graves had been offered (more than once) the choice of having a review (under the provisions in sections 49A to 49I Taxes Management Act 1970 ("TMA)) or notifying his appeal to the Tribunal, either action to be performed within 30 days of the date of the HMRC letters.

15. There was no response to these letters and particularly the last one in May 2014. Certainly no notifications of appeals had been sent to the Tribunal, and no review had been carried out. (Even if one had in fact been carried out and had upheld the original decision to assess, a time limit of 30 days from the date of the review conclusion would have applied for any notification to the Tribunal).

16. I agree with Mr Hall that Mr Graves is, in 2016, getting on for two years late in notifying the appeals to the Tribunal. I accept that in his Notice of Appeal to the Tribunal, by referring to the "decision" letter of 6 January, Mr Graves is seeking to bring appeals against the assessments to the Tribunal. Indeed this is what Mr Doherty advised him to do in that 6 January letter.

17. However s 49H(3) TMA requires that before a valid notification to the Tribunal can be given after the "acceptance period" the Tribunal must give permission. The acceptance period is the period of 30 days beginning with the date of the document by which HMRC notify the appellant of the offer to review the matter in question. The Notice of Appeal is clearly many months after the end of the acceptance period.

18. I accept though that by his Notice of Appeal Mr Graves is requesting permission from the Tribunal to notify his appeals against the s 29 assessments for these five years to the Tribunal. This application should be heard and I have made directions accordingly.

19. I should add that when I informed Mr Hall that this is what I proposed to do and tried to explain it to Mr Graves, he seemed to think that I was finding against him and protested vigorously and intemperately, seeking to shout me down. After I had threatened to have Mr Graves removed from the hearing he calmed down and both Mr Hall and I tried to explain to him that he had succeeded in getting a hearing for permission to take his case forward.

20. Mr Hall explained that HMRC's entire focus in these years was on the Channel Islands accounts. If Mr Graves would supply proper information in the form of eg statements or letters from the bank and other information as to the destination of the funds when withdrawn from the accounts then it was quite possible that an agreement could be reached which would compromise or extinguish the tax liabilities for these

years. Mr Hall suggested that my directions for a permission hearing should require Mr Graves to produce any relevant information, as it might for example indicate to the judge dealing with the permission hearing whether or not Mr Graves's appeal, if admitted, stood any chance of succeeding (and might of course obviate the need for a hearing).

21. On reflection I consider that to make such a direction in relation to a permission application is premature. The relevance of the merits of an appeal to the question of whether permission to notify late should be granted has receded in importance in recent years.

22. From the papers, particularly the Adjudicator's report, it seems that Mr Graves had complained abut the tax treatment of his state pension and a pension from the Greater Manchester Pension Fund ("GMPF").

23. It appears that for reasons that are not fully clear Mr Graves did not receive his state pension for many years after he became initially entitled to claim it. And there is a suggestion in some correspondence I was shown that for at least some of the time he may not have been entitled to it. He has nevertheless been taxed on the full amount. This is said to be because of the effect of ss 578 and 579 Income Tax (Earnings and Pensions) Act 2003. I consider that there could be an argument for considering whether in these years Mr Graves was in fact not entitled to the state pension for any period, and so not liable to be charged to tax on it. This is I consider a matter which could be taken into account in any permission hearing (for example in considering what the prejudice to Mr Graves might be were permission not to be granted) or by any consideration by HMRC of a compromise or settlement.

24. As to the GMPF pension it appears that Mr Graves was initially overpaid both a tax free lump sum and taxable pension, and that deductions have been made to recover the overpayments. Again it is possible there is an argument that he should not have been taxed on amounts without taking the reductions into account if that is what actually happened. I say no more but again I consider it is a matter which could be taken into account in any permission hearing or by any consideration by HMRC of a compromise or settlement.

(b) Surcharges

[Not included]

2006-07 and 2007-08

[Not included]

2008-09 to 2010-11

[Not included]

Summary of conclusions

49. I have held that the Notice of Appeal given by Mr Graves should be treated as including an application for permission to notify appeals against assessments made under s 29 TMA for the five tax years 2001-02, 2002-03, 2003-04, 2004-05 and 2005-06.

50. I have held that there are no other appeals made under an enactment that have been notified by Mr Graves. The Tribunal need not concern itself with any matters shown in the schedule and the 6 January letter other than those mentioned in §49.

Final observations

51. It is apparent to me, as it must be apparent to anyone who has had dealings with Mr Graves in connection with his tax affairs, that he feels extremely strongly about what he considers to have been injustices committed by HMRC and the Inland Revenue before it (and by many other bodies). The strength of his feelings is such that for the most part he cannot answer a simple question about a specific aspect of his tax affairs without beginning to relate the whole story from about 1980 with a year by year account of each separate injustice and complaint. He clearly tends to alienate those who are in a position like Mr Hall to help him by his use of intemperate, and it has to be said, unpleasant and occasionally racist epithets. He did have the grace to apologise to the Tribunal for calling Mr Hall a liar in the corridor outside the hearing room – whether he apologised to Mr Hall I do not know, but he should have.

52. There is a suggestion in the papers that a charity involved in helping those of limited means, as Mr Graves claims to be, has tried to assist him. He would be well advised to seek the help of a charity such as TaxAid or TaxHelp.

53. But I repeat something that Mr Hall told him and that I also told him at the hearing. What HMRC is really only concerned to know about Mr Graves's affairs is the details of his accounts in the Channel Islands, in particular the amounts of interest credited to each account in each tax year from 2000-01 to 2007-08 and an account of what happened to the money in those accounts. Mr Graves gave some account of these matters but it appears from what Mr Hall said that his chronology may not have been reliable. Mr Graves mentioned accounts with the Scarborough Building Society into which Channel Island money was moved, and the purchase for his children of property using that money and of investments in a pension plan.

54. If he can provide documentary evidence of these matters with dates and amounts or in their absence a written account to the best of his memory (and he prided himself on his memory – it certainly seems to be very good for someone who is, as Mr Graves is, 81 years old) and send them to Mr Hall then it may well be that an acceptable compromise can be reached without Mr Graves having to attend more hearings of this Tribunal or of the County Court.

APPENDIX 2

Extracts from *Graves v HMRC* 9 June 2017 (unpublished)

1. The Tribunal decided that

(1) Mr Barry Graves ("the appellant") did not need permission from the Tribunal to notify his appeals for the years of assessment 2001-02 to 2005-06 to it

(2) In the alternative if that was wrong, the Tribunal granted permission to the appellant to notify those appeals to it

(3) Directions should be made as set out in the appendix to this decision.

Facts

2 On 17 May 2012 HMRC wrote to the appellant accepting his appeal against an discovery assessment for 2005-06. HMRC stated its "view of matter" in detail.

3. It added that if the appellant disagreed with the view he could either "ask to have my decision reviewed" or notify the appeal to the Tribunal, in either case within 30 days of the letter.

4. In their notes for the hearing HMRC characterised this letter as the "offer of a review".

5. On 19 March 2014 HMRC wrote to the appellant in relation to his appeals against discovery assessments for 2001-02 to 2004-05 inclusive. HMRC stated its "view of matter" by reference to a statement of a previous view.

6. They added that if the appellant disagreed with the view he could either "ask to have my decision reviewed" or notify the appeal to the Tribunal, in either case within 30 days of the letter.

7. In their notes for the hearing HMRC characterised this letter as the "offer of a review".

8. The appellant did not seek a review. He notified his appeals to the Tribunal in January 2016.

9. In a case management decision ("CMD") cited as *Graves v HMRC* [2016] UKFTT 564, I stated that the appellant required the permission of the Tribunal to notify his appeals to it.

Reasons for my decision

10. In my view I was wrong in the CMD to say that because the appellant had not accepted HMRC's offer of a review he was out of time by virtue of s 49H Taxes Management Act 1970 ("TMA") to notify his appeals to the Tribunal and required the permission of the Tribunal to do so.

11. This is because there was no offer of a review, only a statement that the appellant could ask for, ie request one. That there is a crucial difference between the two things can be seen from a decision of Judge Brooks in this Tribunal *NT-ADA Ltd v HMRC* [2016] UKFTT 642.

12. If a review is not offered then an appellant who does not request one is under no time limit for notifying an appeal – s 49D TMA.

13. The appellant was therefore in time to notify when he did and does not require permission.

14. If this is wrong (and *NT-ADA* is under appeal to the Upper Tribunal) then I would grant permission to notify. This is primarily because it seems to me that the discovery assessments all fall within the rules in s 29(4) and 36 TMA as they were made more than four years and in some cases more than 6 years after the relevant year of assessment. There is however in the papers I had no indication of the appellant having been informed of what careless or deliberate conduct was said to justify the assessments.

15. In any appeal proceedings HMRC would have the burden of proof on this point. It would be a denial of justice to the appellant to deny him a right to contest a hearing at which HMRC would have the burden of proof.

16. Mr Hall also brought to my attention a letter which the appellant had given HMRC. This was from DWP and cast new light on the appellant's consistent and persistent complaint that he was being taxed on a state pension that he did not receive. It would be denying justice not to allow this letter to be taken into account in an appeal.

17. These factors outweigh the obvious seriousness of the delay.

18. Having heard me Mr Hall said that HMRC were prepared to review the appellant's affairs and that I should allow that to happen. That is in my view an excellent idea.