[2018] UKFTT 506 (TC)

TC06708

Appeal number: TC/2017/00246, TC/2017/01290, TC/2017/01291, TC/2017/01310, TC/2017/01311, TC/2017/01313, TC/2017/01314, TC/2017/01315, TC/2017/01317, TC/2017/01318, TC/2017/03705, TC/2017/03709

PROECURE – application for extension of time to lodge witness statements – use of judicial discretion – Martland followed – application refused

FIRST-TIER TRIBUNAL
TAX CHAMBER

(1) BIFFIN LIMITED, (2) ROBERT McFARLANE (3) ERIC TAYLOR — **Appellant**

- and -

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

TRIBUNAL: JUDGE ANNE SCOTT

Sitting in public at George House, Edinburgh on Friday 31 August 2018

Tim Edward, Dentons UKMEA LLP, for the Appellant

Philip Simpson, Counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

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DECISION AND DIRECTIONS

The issue

1. On the evening of 20 August 2018 the first, second and third appellants ("the appellants") applied to the Tribunal under Rule 5(3)(a) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 ("the Rules") for a Direction seeking to extend the period for lodging witness statements by a period of three months from 31 August 2018 ("the Application").

2. In the alternative, the appellants requested an extension of time for lodging witness statements until 30 days after the Tribunal determines the Application for an extension of time.

3. On 23 August 2018, the respondents lodged with the appellants and the Tribunal a Note of Objection vigorously opposing the Application.

4. Although both the Application and the Note of Objection were marked for the attention of Judge Poon, it is not she who is listed to hear the substantive appeal. The Tribunal administration sent the documents to me on 29 August 2018 and I immediately issued further Directions enquiring whether the parties wished the matter to be decided on the basis of the papers. The parties elected for an oral hearing.

The history

5. The appellants first instructed their current agents ("the Agents") in connection with these appeals on 21 September 2016 and a Ms Hutchison was the supervising partner with a Mr McDougall being primarily responsible for the daily management of the files. Trainee support was provided where required.

6. These appeals were made in early 2017 after a number of years of correspondence between the appellants, their advisers, and the respondents.

7. The Tribunal issued Directions on 4 September 2017 following a Case Management Hearing on 26 June 2017. In those Directions, the Tribunal directed that witness statements should be exchanged by 15 December 2017.

8. On 13 November 2017, Judge Poon heard applications to admit late appeals. The hearing in relation to postponement of tax for the in-time linked appeals was then adjourned to 5 March 2018.

9. The Tribunal issued revised Directions on 21 December 2017 in terms of which witness statements were to be exchanged by 30 March 2018.

10. The hearing listed for 5 March 2018 was postponed to 13 April 2018 as the parties had entered negotiation in relation to postponement of tax.

11. On 29 January 2018, the Tribunal directed that the appeals should be listed for three weeks commencing on 7 January 2019 and that was formally notified on 12 March 2018.

12. By 29 January 2018, Ms Hutchison had left the Agents having been on sick leave for an indeterminate period in the last quarter of 2017.

13. Amendments to the timetable set down by the Directions dated 21 December 2017 were discussed by the parties in light of the dates listed for the hearing.

14. The respondents drafted initial replacement Directions and proposed 30 June 2018 as the date for exchanging witness statements. On 5 March 2018, the Agents inserted a proposed amendment to the draft specifying 31 August 2018 as the date for exchanging witness statements. The respondents agreed that date.

15. At the hearing on 13 April 2018 the parties made a joint application for amended Directions. Judge Poon adopted their suggested dates in that application but in some instances allowed extra time for compliance. The date for lodging witness statements remained 31 August 2018. Those Directions extending to three pages were issued on 22 May 2018 and are annexed at Appendix 1.

16. On 17 May 2018, the respondents emailed the appellants' accountant, Mr Preshaw of PwC with the documentation recovered via a third party notice. That email included an inventory of those documents which amounted to a single folder. Further information was provided to the Agents on 11 June 2018.

17. At some undisclosed date, but possibly in mid-June 2018, Mr McDougall tendered his resignation and left the Agents with effect from 13 July 2018. In the weeks leading up to his departure three senior litigators were brought in to replace him and they were supported by "numerous trainees". A junior lawyer has also been recruited on a fixed term contract to assist with the volume of work. On 10 July 2018, those replacement lawyers met senior and junior counsel and agreed on the substantive preparations that were required to be undertaken ahead of the Tribunal hearing.

18. The appellants have complied with Directions 6-8.

The legal framework

19. The Tribunal does indeed have a discretion in terms of Rule 5(3)(a) of the Rules to extend the time for compliance with the Directions. However, that has to be considered in the context of Rule 2 of the Tribunal Rules which reads as follows:-

> **"2.—Overriding objective and parties' obligations to co-operate with the Tribunal**
>
> (1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.
>
> (2) Dealing with a case fairly and justly includes—

(a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;

(b) avoiding unnecessary formality and seeking flexibility in the proceedings;

5 (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;

(d) using any special expertise of the Tribunal effectively; and

(e) avoiding delay, so far as compatible with proper consideration of the issues.

(3) The Tribunal must seek to give effect to the overriding objective when it—

(a) exercises any power under these Rules; or

10 (b) interprets any rule or practice direction.

(4) Parties must—

(a) help the Tribunal to further the overriding objective; and

(b) co-operate with the Tribunal generally."

20. I agree with, and am bound by, Judges Berner and Poole in *Martland v HMRC*[1] at
15 paragraph 24 where they state:-

"The statutory discretion conferred on the FTT in such cases is 'at large', in that there is no indication in the statute as to how the FTT should go about exercising it or what factors it should or should not take into account".

21. Although that case was concerned with the exercise of a discretion to extend the
20 time to make a late appeal, it considered

"… the well-known and wider stream of authority on relief from sanctions and extensions of time in connection with the procedural rules of the courts and tribunals."

It is for that reason that I take the view that the principles enunciated in *Martland* should be followed when considering this application.

25 22. What then are those principles? I quote from paragraphs 43 to 45 which read as follows:-

43. The clear message emerging from the cases – particularised in *Denton* and similar cases and implicitly endorsed in *BPP* – is that in exercising judicial discretions generally, particular importance is to be given to the need for "litigation to be conducted efficiently and at
30 proportionate cost", and "to enforce compliance with rules, practice directions and orders". We see no reason why the principles embodied in this message should not apply to applications to admit late appeals just as much as to applications for relief from sanctions, though of course this does not detract from the general injunction which continues to appear in CPR rule 3.9 to "consider all the circumstances of the case".

[1] 2018 UKUT 178 (TCC)

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:*

5 (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.

10 (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.

15 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. By approaching matters in this way, it can readily be seen that, to the extent they are relevant in the circumstances of the particular case, all the factors raised in *Aberdeen* and *Data Select* will be covered, without the need to refer back explicitly to those cases and attempt to 20 structure the FTT's deliberations artificially by reference to those factors. The FTT's role is to exercise judicial discretion taking account of all relevant factors, not to follow a checklist.

Overview of the arguments

23. In summary, in their Application, the appellants argue that:

(a) HMRC had failed to make prompt disclosure in regard to the third party 25 notices in that, since 1 May 2018 a number of separate requests had been made to HMRC to provide the appellants with confirmation as to whether 14 threatened third party information notices had yielded any results. It was only on 16 August 2018 that they were advised that no further third party information notices had been served. It was alleged that the information that had been 30 retrieved from the original third party notices had only been delivered to them on 11 June 2018 and had not been produced under cover of an inventory or in chronological order and the appellants had only recently finished their review of that further information.

(b) The changes in personnel at the Agents were a cause of the delay.

35 24. At the hearing Mr Edward did not pursue the first argument but argued that the appellants should not be prejudiced by "the failings of their solicitors".

25. The respondents' arguments are:

(a) The respondents deny that there was undue delay on their part.

(b) The respondents point out that the Agents' website includes the following 40 quotation:

"Given the depth and breadth of Dentons Tax Litigation and Dispute Resolution practice, we are particularly well-suited to assist multi-national companies facing large dollar,

> global tax disputes that implicate numerous countries, tax regimes and dispute resolution procedures."

and so they should have adequate resources.

(c) Although the Directions were only issued on 22 May 2018, it was the appellants themselves who had proposed the deadline of 31 August 2018 and they had done so months previously. They assert that it is not credible that it was only on 10 July 2018 that the substantive preparations required in relation to the witness statements could be agreed.

Discussion

26. As I indicate above, I propose to apply the principles enunciated in *Martland*. The first issue therefore is that of delay.

Delay

27. In the Application, the appellants minimise the impact of a three month extension to the period for lodging witness statements. They concede that the remaining dates in the current procedural timetable would all have to be extended by a period of three months and that would result in the hearing listed to commence on 7 January 2019 having to be relisted.

28. They blandly assert that:

> "Whilst re-listing a hearing is obviously undesirable, the Appellants would submit that (i) re-listing would occur at a time when, in the usual order of events, the Tribunal would not have listed any hearing (which only normally occurs after witness and expert evidence has been served) …".

29. Whilst that may well be the situation that obtains in many appeals, it is certainly not appropriate for these appeals. It is for that reason that these appeals were listed for hearing as long ago as 29 January 2018 and well in advance of any witness statements being lodged. The parties were told then that that was an exceptional step to meet their particular issues as there had been difficulty in finding consecutive dates to suit all involved given the limited availability of senior and junior Counsel.

30. I explored that issue with Mr Edward and he confirmed that the Agents had ascertained that if the hearing were to be postponed then their Counsel only had availability between 16 September and 30 November 2019. The availability of the respondents' Counsel is unknown.

31. I have no hesitation in finding that to grant an extension of time of three months at this juncture would inevitably lead to a very much greater delay and certainly a minimum delay of at least eight months and possibly longer.

What is the reason for the delay?

32. For completeness, although not argued at the hearing, as I indicate above, it was alleged that the respondents were responsible for a delay in making disclosure and it is appropriate to confirm my views thereon.

5 33. Firstly, the suggestion that information was only provided on 11 June 2018 appears to be inaccurate and in that regard I refer to paragraph 16 above.

34. Secondly, I observe that this is an appeal where the agreed bundle of documents runs to almost 700 documents amounting to 7,500 pages contained in several lever-arch files. The material received from ICI and provided to the appellants is a single
10 folder of documents. It is far from clear to me why it should have taken the Agents, PwC and/or the appellants until recently to finish reviewing that single folder. Although some information was produced on 11 June 2018, the majority of information has been in the appellants' hands since 17 May 2018.

35. I do not accept that there has been undue delay on the part of the respondents.

15 *What then of the change in personnel at the Agents?*

36. I agree with the respondents that Ms Hutchison's departure is irrelevant. Apparently a Mr Blyth replaced her as supervising partner. In any event her departure ante-dated the Agents' own suggestion of a date of 31 August 2018 for lodgement of witness statements.

20 37. The Agents have known for a long time that this is a complex case with large sums of tax at stake. There are twelve appeals.

38. Mr Edward argued that although the Agents are a substantial global firm, see paragraph 25 above, that level of resource was not available in Scotland. When Mr McDougall intimated that he would leave, a senior associate in Glasgow was
25 supported by another in Aberdeen and by trainees and another lawyer has also been retained. It had taken time for them to become familiar with the appeals.

39. Whilst I accept that the loss of Mr McDougall will have meant a loss of institutional memory, nevertheless I have been given no explanation for a number of matters.

30 40. The role of the supervising partner has not been addressed. Indubitably the Agents have known since before 5 March 2018 that the witness statements had to be lodged by 31 August 2018. I would have expected the supervising partner to have been aware of that and for the appellants to have been consulted.

41. It should not be forgotten, that this in the context that the witness statements were
35 originally required to be lodged by 15 December 2017.

42. Mr Edward was unable to advance any argument as to why preparation of the witness statements did not commence until after the consultation with Counsel on

10 July 2018 or why that consultation was at such a late date. There is no explanation as to why the Agents did not seek guidance from counsel months earlier.

43. Whilst I accept, as does Mr Simpson for the respondents, that support and guidance is appropriate from counsel and instructing solicitors, nevertheless the responsibility for complying with Directions and producing witness statements lies with the appellants.

44. Mr Taylor, one of the appellants, was a solicitor and therefore should be well aware of what is required in terms of witness statements and compliance with Directions from the Tribunal.

45. At all times the appellants have also been advised by PwC and, as can be seen from paragraph 16 above, they appear to have been actively involved in May 2018.

46. The departure of Mr McDougall in itself, and the loss of institutional memory occasioned, thereby cannot be the primary cause of the delay. It was for the appellants and the Agents to decide at that point, if not long before, whether the Agents had sufficient resource to continue to act in these appeals.

47. His departure certainly does not explain the apparent delay in the preceding months. It may be that because there was an attempt at settlement in spring 2018 matters were allowed to drift or indeed a conscious decision might have taken to postpone preparation for the hearing. That is mere conjecture and forms no part of my decision making. The issue is that it is for the appellants to establish why the delay encompassing the whole period occurred. They have not.

"All the circumstances of the case"

48. I put it to Mr Edward that, when resisting the listing of a preliminary hearing on the postponement of tax applications, the appellants' counsel, Mr Yates, had told Judge Poon that he anticipated that the substantive hearing would take place within a matter of months. That is not consistent with the apparent need for a further three months to prepare the witness statements. Mr Edward was unable to respond, and understandably so since he had stepped into the breach at the eleventh hour. Nevertheless, it is a relevant factor.

49. Mr Edward argued that it was only once the Line on Evidence was produced in July 2018 after the consultation with Counsel that urgent steps could be taken to progress the witness statements.

50. I note that in the Application, and reiterated by Mr Edwards today, it is argued that after the witness statements have been drafted a period of a month will be required to enable Counsel to review them and for appropriate revisions to be implemented. That does not sit well with a consultation in July with a deadline at the end of August.

51. Mr Simpson argued that, in order to preserve the hearing, the respondents would not object to an extension of time to 28 September 2018 allied with an extension of time of a further week for Direction 13 of the Directions.

52. Mr Edward suggested that even the appellants' alternative argument in the Application that a 30 day extension of time would suffice was unlikely to be achievable.

53. Mr Edward advanced the argument that in the event that the appellants' Application was refused, then there was the possibility of far greater prejudice being caused to HMRC and to the Tribunal if an application for postponement of the hearing was lodged with the Tribunal much closer to the time of the hearing.

54. I explored that with him. He envisaged the possibility that either Counsel or the Agents might find that they had to withdraw from acting in these appeals if the appeals could not be properly prepared in the timescale. Whilst that is a stateable position, it is by no means certain that any such late application for postponement, looked at in the context of this Application, as it would be, would be successful.

55. In reality, although this Application is couched in terms of an application for an extension of time to lodge witness statements, it is effectively an application for postponement of the hearing.

56. If the Agents seriously consider that the compilation of the witness statements will take three months, then they ought to have been aware of that long before 11 days before the date for lodging the statements. No explanation has been proffered for the lodgement of the Application at this late juncture.

57. As is made clear at paragraph 42 in *Transport for London v O'Cathail*[2] the overarching fairness factor must be taken into account in assessing the effect of the decision as to whether or not to postpone on <u>both</u> sides. Both parties are entitled to have the appeals dealt with fairly and justly. The appellants do not have a monopoly of the fairness factors.

58. The respondents have the right to access to justice and any postponement will significantly delay that.

59. The appellants argue that any prejudice to the respondents would be minimal and could be addressed by interest to the extent that any tax is found to be due.

60. By contrast, Mr Simpson argued that there were a number of features in the appeals, which relate to an allegedly artificial tax structure put in place to minimise liabilities from property activities, which cause concern about the appellant's ability to pay the tax let alone any interest. No evidence has been produced to support the assertion that the appellants would be in a position to pay interest or indeed the tax.

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[2] 2013 EWCA Civ 21

61. I accept that if the hearing is to be postponed then that may well affect both the availability and cost of the respondents' experts.

62. The case of *Terluk v Berezovsky*[3] correctly identifies that a late adjournment involves a significant loss of time and money. Counsel for the respondents have
5 blocked three weeks from their diaries, as have I.

63. The respondents' contention at paragraph 17 of the Note of Objection has not been challenged and that is to the effect that the appellants have sought to delay the hearing of the present appeals on numerous occasions. Beyond admitting that there were failings on the part of the Agents, for which it is alleged the appellants should
10 not suffer, no credible explanation for the delay has been given.

64. Mr Edward stated that the issues surrounding the delay with the witness statements arise from the complexity of the appeals and the resource available. He also stated that the appeals go back to 1999. If the resource is, and has not been, available and there are failings by the agents then the remedy does not lie in
15 disrupting the administration of justice.

65. As Judge Bishopp said in a different context in *Ryan v HMRC*[4] "If Mr Ryan believes he has been let down by his solicitor, his remedy is to take the matter up with the solicitors".

66. In summary, although I accept that the appellants will suffer prejudice if the Application is not granted, the respondents and the public purse will suffer
20 considerable prejudice if the Application is granted. This is a very long running saga and it has taken much negotiation to achieve the existing Directions.

Decision

67. Every application for an exercise of judicial discretion depends on its own facts and circumstances. At all stages in the consideration of this matter I have had Rule 2
25 of the Rules very much in mind. It is imperative that any decision should be fair and just. I weighed every factor and authority that was brought to my attention in the balance.

68. Taxpayers are expected to act with reasonable prudence and diligence in dealing with their affairs. As I indicate above, it is ultimately the appellants who are
30 responsible for complying with Directions of the Tribunal. The appellants must have been well aware of the fact that their witness statements were not progressing appropriately.

69. On the balance of probability I find that the appellants have not discharged the onus of proof in establishing a good reason for extending the time limit in the
35 circumstances of this case.

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[3] 2010 EWCA Civ 1345

[4] 2012 UKUT 9 (TCC)

70. I decline to exercise my discretion and the Application to vary the Directions to extend the time for lodging witness statements by three months is refused.

Directions

71. I do, however, vary the Directions issued on 22 May 2018 and that to the following effect:-

1. In Direction 12 the words "31 August 2018" are deleted and there is substituted therefore the words "28 September 2018".

2. In Direction 13 the words "28 September 2018" are deleted and there is substituted therefore the words "5 October 2018".

72. 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.

ANNE SCOTT
TRIBUNAL JUDGE

RELEASE DATE: 10 SEPTEMBER 2018

APPENDIX 1

Appeal numbers:
(1) TC/2017/01290
TC/2017/01291
TC/2017/01310
TC/2017/01315
TC/2017/01317
TC/2017/00246
(2) TC/2017/01311
TC/2017/01313
TC/2017/03705
(3) TC/2017/01314
TC/2017/01318
TC/2017/03709

FIRST-TIER TRIBUNAL
TAX CHAMBER

(1) BIFFIN LIMITED	**First Appellant**
(2) ROBERT McFARLANE	**Second Appellant**
(3) ERIC TAYLOR	**Third Appellant**

- and -

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

TRIBUNAL: JUDGE HEIDI POON

Sitting in public at the Tribunal Centre, George House, 126 George Street, Edinburgh, on 13 April 2018

Having heard Mr Roddy MacDougall, of Dentons UKMEA LLP, for the Appellants, and Mr Eric Brown, of the Office of the Advocate General, for the Respondents

- and -

On the release of the Decision dated 22 May 2018 to grant extension of time for notifying the appeal under TC/2017/00246 to the Tribunal

IT IS DIRECTED that –

Admission of appeal notified out of time

1. The subject matters of the appeal under the single reference of TC/2017/00246 are to be joined with other appeals by Biffin Ltd as the First Appellant in these proceedings. The appeal covers different matters, which should be separately designated for case management purposes as Appeal **1.6D** and **1.6P**, whereby:

(1) Appeal **1.6D** is in relation to the **Discovery** assessment for the year ended 31 December 2010;

(2) Appeal **1.6P** is in relation to the **Penalty** determinations for the four years from 2010 to 2013.

2. By **15 June 2018**, the Respondents shall serve on the Appellant the statements of case in relation to Appeal 1.6D and 1.6P.

Listing information

3. By Order dated 29 January 2018, the Tribunal has listed a hearing for a duration of three weeks commencing 7 January 2019.

4. By **7 September 2018**, the Tribunal shall set down a case management hearing between 5 and 16 November 2018 (but not 10, 11 or 13 November).

Respondents' statement of case

5. No later than **15 June 2018**, the Respondents shall file and serve on the Appellants amended statements of case for any of the appeals as they deem necessary.

Appellants' statement of case

6. No later than **16 July 2018**, the Appellants shall file and serve on the Respondents a consolidated statement of case in respect of all the conjoined appeals.

Lists of documents

7. Within **14 days** of the time limit for compliance with Direction 6, the Appellants shall send or deliver to the other party and the Tribunal an "**agreed list"** of documents, (see Direction 21 below). As proposed by the parties, an "agreed list" is taken to mean that those documents which the Respondents intend to serve will also be included.

Statements of agreed facts

8. By **31 July 2018** the Appellants shall provide the Respondents with a proposed statement of agreed facts for **each** appeal, to be clearly set out as pertaining to Appeal 1.1, 1.2, and so on.

9. **Within 14 days** of the deadline for compliance with direction 8, the Respondents shall confirm whether the proposed statement of agreed facts is agreed, and in the event that it is not agreed shall indicate which parts are not agreed.

10. In the event that agreement is reached as to the form, wording and content of a statement of agreed facts, the parties shall file such document with the Tribunal within 7 days of any such agreement, as proposed by the parties. Each statement of agreed facts shall be clearly headed as **for Appeal 1.1. to 1.6D and 1.6P** and so on.

11. Notwithstanding the parties' indication that this is to be an "open-ended process" with "each appeal having its own time scale", the lodgement of the multiple statements of agreed Facts with the Tribunal shall be **minimised to three batches only, one batch for each of the Appellants,** in order to reduce the administrative effort at the Tribunal's end in collating the lodgements.

Witness statements

12. By **31 August 2018,** each party shall send or deliver to the other party statements from all witnesses (**but not expert witnesses**) on whose evidence they intend to rely at the hearing, setting out what that evidence will be ("witness statements") and shall notify the Tribunal that they have done so.

Expert evidence

13. No later than **28 September 2018**, the parties shall exchange lists of names of all expert witnesses on whose evidence they intend to rely at the hearing, together with written reports containing the evidence of each expert witness which the they intend to call to give oral evidence at the hearing of the appeal, with exhibits thereto.

14. No later than **29 October 2018**, the parties may serve further expert report in reply.

15. **On or before 7 days after** the deadline for compliance with direction 14, there shall be a meeting of the appointed expert witnesses.

16. By **9 November 2018** the expert witnesses shall file a joint statement indicating those matters which are agreed or not agreed.

17. Any expert report shall comply with the following requirements:

(a) it must be addressed to the Tribunal, and not to the party who commissioned the report;

(b) it must contain details of the expert's qualifications;

(c) it must give details of any literature or other material which has been relied on in making the report;

(d) it must contain a statement setting out the substance of all facts and instructions which are material it must to the opinions expressed in the report or upon which those opinions are based;

(e) it must make clear which of the facts stated in the report are within the expert's own knowledge;

(f) it must contain a summary of the conclusions reached;

(g) if the expert is not able to give an opinion without qualification, it must state the qualification; and

(h) it must be verified by a statement of truth in the following form –

> "I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer."

Documents bundles

18. **Not later than 7 December 2018**, the Appellants shall send or deliver to the Respondents two copies of indexed, paginated and bound bundles of documents ("the documents bundles") for each Appellant to include:

(a) the notices of appeal provided under Tribunal Procedure Rule 20;
(b) the statements of case provided under Tribunal Procedure Rule 25;
(c) all documents on the "documents lists" provided;
(d) the witness statements provided as directed above;
(e) the statements of agreed facts for each of the appeals;
(f) relevant directions issued by the Tribunal in the appeals; and
(g) correspondence with the Tribunal to be referred to in the hearing.

19. Both parties shall ensure that the copy of the witness' statements in the bundles shall, where there is a reference to an exhibit in the text, have added in its margin a cross-reference to the exhibit by its place in the documents bundle.

20. The Appellants shall organise the documents bundles in such a way that the documents from the "documents lists" are included in chronological order with only one copy of each document being included within the joint bundles. For the other parts of the bundles, the Appellants shall, insofar as possible, organise the bundles in a manner that follows the order of the appeals as **1.1 to 1.6D and 1.6P** for Biffin**; 2.1 to 2.3** for McFarlane, and **3.1** to **3.3** for Taylor. It will be greatly appreciated by the Tribunal if **the bundling can adhere to the order of the conjoined appeals consistently throughout**.

21. To avoid duplication, documents lodged for the First Appellant need not be re- lodged for the Second and Third Appellants, and double-sided printing is to be preferred to reduce the sheer volume of paper being lodged.

Outline of case

22. **Not later than 7 December 2018**, the Appellants shall send or deliver to the Respondents an outline of the case for each Appellant that they will put to the Tribunal ("a skeleton argument"), including the details of any legislation and case law authorities to which they intend to refer at the hearing.

23. **Not later than 14 December 2018,** the Respondents shall send or deliver to the Appellants an outline of the case for each Appellant that they will put to the Tribunal ("a skeleton argument"), including the details of any legislation and case law authorities to which they intend to refer at the hearing.

24. The parties are at liberty to lodge either three skeleton arguments to cover each of the three appellants, or two skeleton arguments (one for Biffin, and one joining McFarlane and Taylor).

25. At the same time both parties will file with the Tribunal an electronic copy of their 2 or 3 skeleton arguments, together with an electronic copy of all the witness statements. (The option of one skeleton argument for all three appellants is excluded.)

Authorities bundle

26. Not later than 17 December 2018**, the Appellants shall send or deliver to the Respondents and the Tribunal one copy of a bundle of authorities (comprising the authorities mentioned in both parties' skeleton arguments) on** double-sided **printing.**

Delivery of bundles at hearing

27. The Appellants shall bring **two** copies of the **documents** bundles to the hearing centre on the morning of the hearing no later than 9:00am, unless the Tribunal notifies the Appellants to deliver them at an earlier date. (An extra ie "second" copy of the authorities bundle is **not** required.)

Witness attendance at hearing

28. At the hearing, any party seeking to rely on a witness statement may call that witness to answer supplemental questions (but the statement shall be taken as read) and must call that witness to be available for cross-examination by the other party (unless notified in advance by the other party that the evidence of the witness is not in dispute).

Right to request new directions

29. It has been emphasised that the Tribunal has agreed to the listing of this appeal before the evidence was closed, contrary to normal procedure, in order to oblige the parties' mutual availability in January 2019. These revised Directions incorporating the proposed timetable from the parties indicate that there is little room for slippage in the timetable if the January 2019 hearing slot is to be retained.

30. While either party may apply at any time for these Directions to be amended, suspended or set aside, or for further directions, the parties must make every effort for timely compliance, or accept that the Tribunal is likely to vacate the January 2019 hearing dates to avoid wastage of Tribunal time and resources.

DR HEIDI POON
TRIBUNAL JUDGE

RELEASE DATE: 22 MAY 2018