NCN: [2021] UKFTT 313 (TC)

TC08254

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal number: TC/2019/04825

BETWEEN

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

-and-

ROOT2 TAX LIMITED **Respondent**

TRIBUNAL: JUDGE GREG SINFIELD

The hearing took place on 19 January 20210. I heard Ms Aparna Nathan QC and Ms Anna Greenley, counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Applicants and Mr Hartley Foster, solicitor of Field Fisher LLP, for the Respondent.

With the consent of the parties, the form of the hearing was V (video) using the Tribunal video hearing service. It was attended remotely by counsel and representatives of the Applicants and Respondent.

I was provided with two skeleton arguments with draft directions (31 pages each), a PDF hearing bundle (981 pages) and a supplementary bundle of authorities and other materials (226 pages). In addition and at my request, both parties made further written submissions on 27 January 2021 which were provided to me on 2 February 2021

Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.

DECISION

INTRODUCTION

1. In *Root2 Tax Ltd and Root3 Tax Ltd v HMRC* [2017] UKFTT 696 (TC) (the '2017 Decision'), the First-tier Tribunal ('FTT') held that certain arrangements, known as the 'Alchemy scheme', in respect of which the Respondent ('Root2') was a promoter, were notifiable for the purposes of section 306(1) of the Finance Act 2004 ('FA 2004'). As a consequence, Root2 was required by an order under section 314A FA 2004 (the 'DOTAS Order') issued on 11 September 2017 to notify the arrangements to the Applicants ('HMRC'). Under section 308(3) FA 2004, the notification had to be made within the prescribed period after the date on which Root2 first became aware of any transactions forming part of the notifiable arrangements.

2. There is no dispute that Root2 made certain disclosures in relation to the Alchemy scheme on three occasions, namely on 27 September 2017, 13 October 2017 and, finally, on 5 April 2019. HMRC contend that none of the notifications satisfied the requirements of section 308(3) FA 2004. On 22 May 2019, HMRC made an application (the 'Penalty Application') to the FTT for a penalty under section 98C of the Taxes Management Act 1970 ('TMA') to be imposed on Root2. Root2 opposes that application on three grounds, namely:

> (1) the Penalty Application is time barred, having been made more than two years after the expiry of the relevant time limit in section 103(4) TMA (the 'Limitation Issue');
>
> (2) if the Penalty Application is in time, Root2 had a reasonable excuse for not notifying the Alchemy scheme (prior to the 2017 Decision); and
>
> (3) if Root 2 did not have a reasonable excuse, it provided sufficient notification of the Alchemy scheme to HMRC on 21 September 2017.

3. This decision does not determine the Penalty Application but concerns two subsequent applications by the parties. The first is an application by HMRC, dated 25 September 2020, for an unless order under rule 8 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 ('FTT Rules') requiring Root2 to provide its list of documents within 21 days or be barred from taking any further part in the proceedings. The second is an application by Root2, dated 30 September, for a direction that the Limitation Issue be determined as a preliminary issue.

4. The applications were the subject of a video hearing before me on 19 January 2021. At the end of the hearing, having read the relevant papers and heard counsel for both parties, I decided that Root2's application for a hearing of a preliminary issue should be granted. Strictly, that meant that HMRC's application for an unless order fell away but, in view of the previous history of delay and non-compliance in the proceedings, I decided to make the directions in relation to the preliminary hearing subject to an unless order that applied to both parties. My reasons for so deciding were given at the conclusion of the hearing and are summarised below.

POTENTIAL PRELIMINARY ISSUE

5. It is, in my view, regrettable that Root2 did not set out, succinctly and precisely, the preliminary issue to be decided either in the application dated 30 September 2020 or in its skeleton argument for the hearing. The application stated that Part B provided a summary of the issue that Root2 submitted should be addressed by the FTT as a preliminary issue. Part B is headed "Failure by HMRC to meet the time limit" and sets out in summary form the various issues that Root2 contends arise for determination in respect of the Limitation Issue without defining it as a proposition for determination. The lack of precision allowed HMRC to contend that the Limitation Issue was largely a question of fact which required consideration of

significant amounts of evidence. Root2 asserted that it was principally a point of law and any relevant facts had either already been determined in the 2017 Decision or could be agreed.

6. Section 308(3) FA 2004 provides that a person who is a promoter in relation to notifiable arrangements must provide HMRC with prescribed information within the prescribed period "after the date on which he first becomes aware of any transaction forming part of the notifiable arrangements". Regulation 5(5) of the Tax Avoidance Schemes (Information) Regulations 2012 provides that the prescribed period is five days. Sections 98C(1)(a) and (2)(a) FA 2004 provide that a person who fails to comply with section 308(1) and (3) FA 2004 shall be liable to a penalty of £600 per day initially, rising to v £5,000 a day (see section 98C(2B) TMA). In so far as material, section 103(4) TMA provides that "proceedings for … a penalty may be commenced before the tribunal … at any time within six years after the date on which the penalty was incurred or began to be incurred." HMRC set out section 103(4) TMA in the Penalty Application and state that they do so "… to demonstrate that this Application is made within the applicable time limit." The effect of the 2017 Decision was that Root2 became liable to a penalty if it had failed to provide prescribed information within five days of first becoming aware of any transaction forming part of the Alchemy scheme whenever that occurred.

7. In the Penalty Application, HMRC allege that Root2 failed to disclose prescribed information in relation to arrangements entered into by Ms Rosalynn Scott on 20 June 2013 as part of her implementation of the Alchemy scheme. HMRC contend that Root2 first became aware of "any transaction forming part of the notifiable arrangements" on or shortly before 20 June 2013. HMRC made the Penalty Application on 21 May 2019 which was, by one month, less than six years after Ms Scott entered into the arrangements.

8. In their response to the Penalty Application, Root2 asserts that it first became aware of a transaction forming part of notifiable arrangements, ie the Alchemy scheme, on 15 April 2011 when another user, Mr Hayward, first entered into arrangements to implement the Alchemy scheme. Root2 contends that, accordingly, the date on which its liability to a penalty under Sections 98C TMA began to be incurred was 25 April 2011. Root2's case appears to be that the time limit for all penalties under section 98C TMA runs from the first time that Root2 failed to comply with section 308(3) FA 2004 in relation to the Alchemy scheme. Root2 submits that, as that date was more than six years before the date of the Penalty Application, HMRC are out of time to make the application.

9. In their reply to Root2's response, HMRC state that their understanding is that Mr Hayward was not advised by Root2 but by another entity, namely Root3 Tax Limited. It seems to me, however, that the material point of law raised by the Preliminary Issue is not whether Root2 first became aware of a transaction forming part of notifiable arrangements when Mr Hayward first started to use the Alchemy scheme but whether, if Root2 became aware of any such transaction on or before 20 May 2013, the Penalty Application was made outside the statutory time limit. As I understood it, there was no serious dispute that Root2 was aware of transactions forming part of the Alchemy scheme entered into by its clients (other than Ms Scott) before that date. In any event, in its written submissions on 27 January 2021, Root2 confirmed that it was a co-promoter of the Alchemy scheme and was aware of transactions that formed part of the Alchemy scheme that were undertaken in 2011. As Root2 point out, that is consistent with HMRC's own case as set out in the witness statement, dated 16 August 2019, of their witness Mr Hole at paragraph 7:

> "Root2 Tax's clients first implemented Alchemy, and Root2 Tax became obliged to disclose Alchemy to HMRC under section 308(1) of FA 2004, in 2011."

10. In their reply to Root2's response, HMRC also contend that each time Root2 first became aware of a transaction forming part of a particular user's notifiable arrangements, ie each time a client entered into transactions that formed part of the Alchemy scheme, a new obligation under section 308(3) FA 2004 to disclose prescribed information within a new prescribed period was created.

11. That, it seems to me, is the potential preliminary issue, ie the Limitation Issue. Whether the Penalty Application was out of time turns on whether section 308(3) FA 2004 created a separate obligation to disclose each time Root2 became aware that one of its clients had entered into a set of transactions forming part of the Alchemy scheme and, if Root2 failed to provide prescribed information within five days, a liability to a penalty under section 98C TMA arose in respect of each failure and the time limit under section 103(4) TMA started to run again. This is, as HMRC acknowledge, an untested question of law. I consider that the question of law should be capable of being resolved without extensive, if any, evidence unless HMRC now resile from the statement made in paragraph 7 of Mr Hole's witness statement set out above.

LEGAL PRINCIPLES AND APPROACH

12. The FTT is able to direct that an issue in proceedings can be dealt with as a preliminary issue by rule 5(3)(e) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 ('FTT Rules'). The relevant parts of rule 5 are as follows:

> "(1) Subject to the provisions of the 2007 Act and any other enactment, the Tribunal may regulate its own procedure.
>
> (2) The Tribunal may give a direction in relation to the conduct or disposal of proceedings at any time, including a direction amending, suspending or setting aside an earlier direction.
>
> (3) In particular, and without restricting the general powers in paragraphs (1) and (2), the Tribunal may by direction
>
> …
>
> (e) deal with an issue in the proceedings as a preliminary issue …"

13. There is no material dispute between the parties about the relevant legal principles and the approach to be taken in deciding whether a matter should be determined as a preliminary issue. The parties disagree, however, as to the application of those principles to this case. The leading case is the decision of the Upper Tribunal ('UT') in *Wrottesley v HMRC* [2015] UKUT 637 (TCC) ('*Wrottesley'*) which discusses the proper approach to the question of whether to order a hearing of a preliminary issue.

14. In *Wrottesley*, the UTset out, at [28], eight key principles to be considered by a tribunal when dealing with an application for a preliminary hearing as follows:

> "(1) The matter should be approached on the basis that the power to deal with matters separately at a preliminary hearing should be exercised with caution and used sparingly.
>
> (2) The power should only be exercised where there is a 'succinct, knockout point' which will dispose of the case or an aspect of the case. In this context an aspect of the case would normally mean a separate issue rather than a point which is a step in the analysis in arriving at a conclusion on a single issue. In addition, if there is a risk that determination of the preliminary issue may prove to be irrelevant then the point is unlikely to be a 'knockout' one.
>
> (3) An aspect of the requirement that the point must be a succinct one is that it must be capable of being decided after a relatively short hearing (as compared to the rest of the case) and without significant delay. This is

unlikely if (a) the issue cannot be entirely divorced from the evidence and submissions relevant to the rest of the case, or (b) if a substantial body of evidence will require to be considered. This point explains why preliminary questions will usually be points of law. The tribunal should be particularly cautious on matters of mixed fact and law.

(4) Regard should be had to whether there is any risk that determination of the preliminary issue could hinder the tribunal in arriving at a just result at a subsequent hearing of the remainder of the case. This is clearly more likely if the issues overlap in some way – see (3)(a) above.

(5) Account should be taken of any potential for overall delay, making allowance for the possibility of a separate appeal on the preliminary issue.

(6) The possibility that determination of the preliminary issue may result in there being no need for a further hearing should be considered.

(7) Consideration should be given to whether determination of the preliminary issue would significantly cut down the cost and time required for pre-trial preparation or for the trial itself, or whether it could in fact increase costs overall.

(8) The tribunal should at all times have in mind the overall objective of the tribunal rules, namely to enable the tribunal to deal with cases fairly and justly."

15. I turn now to consider the principles in *Wrottesley* in relation to the potential preliminary issue in this case.

DISCUSSION

16. In the first *Wrottesley* principle, the UT is, in my view, doing no more than urging the FTT to be cautious when exercising the power under rule 5(3)(e) of the FTT Rules to deal with an issue in the proceedings as a preliminary issue. The application of caution will inevitably lead to such power being used sparingly. That does not mean, however, that it should never be used or only used in exceptional cases. If that were so then rule 5(3)(e) would not have been included in the FTT Rules or would have been differently expressed. I apply a cautious approach when considering the other *Wrottesley* principles and whether to order a preliminary issue hearing in this case.

17. I can deal with the second and sixth *Wrottesley* principles together and briefly. It was common ground that the Limitation Issue is a succinct, knockout point and, if the FTT were to conclude that the Penalty Application was issued out of time, there would be no need for any further hearing. Even if the FTT decides the Limitation Issue in favour of HMRC, the issues to be considered at the substantive hearing will have been reduced. Of course, the fact that the first and sixth *Wrottesley* principles are satisfied is not determinative and I accept that the other principles must be considered and given appropriate weight.

18. I can also deal with the third and fourth *Wrottesley* principles together because they both concern the extent to which determination of the preliminary issue requires consideration of evidence of fact and the effect of such findings on the ability of the FTT to reach a just result at any subsequent hearing. In summary, if the hearing is likely to take a significant amount of time (when compared with the proceedings as a whole), require consideration of a substantial body of evidence and findings of fact which may also be relevant to other issues in the case, then the issue may not be suitable for determination at a preliminary hearing. Root2 contends that no witness evidence would be required. HMRC, on the other hand, submit that the Limitation Issue cannot be determined without consideration of certain evidence including cross-examination of witnesses. That seems to me to be in part because, as I have stated in [5] above,

the Limitation Issue was not precisely defined by Root2. This allows HMRC to say that evidence would be required to determine whether and when Root2 became aware of Mr Hayward's arrangements. They also contend that there must be evidence of when Root2 informed HMRC of Mr Hayward's arrangements. As I have explained above, it seems to me that the details of Mr Hayward's arrangements and Root2's knowledge of them, and whether Root2 informed HMRC about them are a red herring. HMRC's own case is that Root2 became aware of transactions that formed part of the Alchemy scheme that were undertaken in 2011 (see [9] above). The Limitation Issue is a narrower issue which turns on the interpretation of the provisions of the FA 2004 and the TMA. If that were not the case then HMRC would have a point and evidence as to previous arrangements and Root2's knowledge of them will be required and Root2's estimate of one for the preliminary issue hearing would be unrealistic. On my view of the Limitation Issue, there is no danger of the preliminary hearing taking more than one day or perhaps a day and a half and a decision in relation to the issue would not constrain the ability of the FTT to determine the remaining issues at any subsequent hearing.

19. The fifth *Wrottesley* principle requires me to consider whether directing that the Limitation Issue should be dealt with as a preliminary issue is likely to delay the disposal of the appeal overall. There are two aspects to this question. The first is whether the preliminary issue hearing can be listed without significant delay. The second is whether any appeals against the decision following the preliminary hearing are likely to delay final resolution of the appeal. I note that the substantive appeal has not yet been listed for hearing by the FTT. It is inconceivable that the appeal will be heard before late 2021 and probably, given present difficulties, not before the spring or early summer 2022. A preliminary issue hearing should be able to be heard and determined well before the end of 2021. HMRC submitted that the recollection of witnesses and the evidence could become stale in the event that the losing party appealed to the UT and, conceivably, further which could mean that final resolution of the Limitation Issue could take a significant time with a knock-on effect on the time to dispose of the whole appeal. It is, of course, important to minimise delay in fully disposing of the appeal, however, it seems to me that a preliminary issue hearing in this case would not be likely to delay that by more than a couple of months. There is, of course, the possibility of an appeal of the preliminary issue decision to the UT and beyond which could mean that final resolution of the Limitation Issue could take a significant time. It seems to me that possibility also exists if there is a full hearing without a preliminary issue hearing so the length of proceedings overall is unlikely to be extended by much, if at all. HMRC submitted that the recollection of witnesses and the evidence could become stale if the losing party appealed. The risk of evidence going stale is undoubtedly a serious consideration but, in this case, that risk is mitigated by the fact that HMRC's witness, Mr Hole, has already made several witness statements. The risk of staleness also falls on Root2, possibly more than on HMRC, and Root2 does not object on this ground. I consider that, on balance the risk of delay and its possible impact on the recollection of witnesses are not such as to outweigh the potential benefit of dealing with the Limitation Issue at a preliminary hearing.

20. The seventh *Wrottesley* principle concerns the effect of a preliminary hearing on the costs of the substantive hearing and overall. While I accept that the costs of preparing for and conducting a single hearing may be less than might be incurred in relation to two hearings, I do not accept that the additional costs are likely to be significant. Further, if the Limitation Issue is decided in favour of Root2, a preliminary hearing would result in both parties making significant savings in time and costs.

21. The eighth *Wrottesley* principle requires me to consider whether directing a preliminary hearing to determine the Limitation Issue is consistent with the overriding objective of the FTT Rules, set out in rule 2(1), which is to enable the FTT to deal with cases fairly and justly. The

points made by HMRC in relation to this *Wrottesley* principle are that a preliminary hearing of the Limitation Issue would not be consistent with the overriding objective because such a hearing would:

(1) require the FTT to consider matters of both fact and law;

(2) involve the hearing of live evidence;

(3) almost inevitably cause delay; and

(4) such delay would prejudice HMRC by increasing the risk of the evidence going stale.

22. I have dealt with those matters already when considering the *Wrottesley* principles to which they relate. In doing so, I kept in mind the overriding objective. The overriding objective of the FTT Rules includes dealing with the case in ways that are proportionate to the complexity of the issues and avoiding delay so far as compatible with proper consideration of the issues. I consider that, in the circumstances of this case, directing that the Limitation Issue be dealt with as a preliminary issue is consistent with the overriding objective in the FTT Rules in that it is proportionate and should not unduly delay the final resolution of the whole appeal.

DECISION

23. At the end of the hearing on 19 January, I announced that, having considered the pre-reading material and the parties' submissions and weighed up the various factors, I had formed the view that there should be a preliminary hearing of the Limitation Issue as described above.

24. As the Limitation Issue had never been precisely defined and it appeared to me that the parties had very different views about what needed to be decided in order to determine it, I told the parties that I would issue my case management directions for the preliminary hearing in draft without reasons but leaving the description of the Limitation Issue to be agreed by the parties or, in default of agreement, make written submissions on how it should be defined.

25. On 21 January, the FTT issued my draft directions and, in a covering letter, asked the parties to agree (if possible) a description of the terms of the preliminary issue to be decided, focussing on the interpretation and effect of the statutory provisions, and to provide any comments on the draft directions by no later than 27 January. The parties provided an agreed description of the Limitation Issue and comments on the draft directions on 27 January. Unfortunately, the parties' further written submissions were not provided to me until the afternoon of 2 February 2021. . In view of that delay, I have extended some of the dates for compliance in the directions. I have also included the parties' description of the Limitation Issue which should be read in the light of my comments at [11] above, and amended the draft directions to reflect their comments.

DISPOSITION

26. For the reasons given above, I make the directions which are set out in the annex to this decision.

JUDGE GREG SINFIELD
CHAMBER PRESIDENT

Release date: 3 February 2021

ANNEX

DIRECTIONS

HAVING CONSIDERED the Applicants' application for an unless order and amended directions dated 25 September 2020 and the Respondent's response and application for a preliminary issue hearing dated 30 September 2020 and the Applicants' response dated 3 November 2020 and the parties' skeleton arguments for and submissions at the case management hearing on 19 January 2021 and the parties' further written submissions on 27 January 2021

AND HAVING DECIDED to grant the Applicants' application for an unless order but on terms that it also applies more generally and to both parties and to grant the Respondents' application for a preliminary issue hearing subject to the directions below

IT IS DIRECTED pursuant to rules 2, 5, 6 and 8 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 that:

PRELIMINARY ISSUE

1. There shall be a hearing by video to determine the following preliminary issue in the appeal (the 'Preliminary Issue'):

> "Whether the application made by the Applicants, under section 100C of the Taxes Management Act 1970 ('TMA'), for a penalty to be imposed by the Tribunal on the Respondent, which application was filed and served by the Applicants on 22 May 2019, was commenced in time, with the parties agreeing that the relevant time limit is that prescribed by section 103(4) TMA, namely 'at any time within six years after the date on which the penalty was incurred or began to be incurred."

STATEMENT OF AGREED AND DISPUTED FACTS AND ISSUES

2. Not later than 9 February 2021, the Respondent shall send or deliver to the Applicants a draft Statement of Agreed and Disputed Facts and Issues in relation to the Preliminary Issue (that is, a statement of the facts that are agreed together with a statement of the principal legal and factual issues which remain in dispute and a short summary of each party's contentions in relation to such issues).

3. Not later than 16 February 2021, the Applicants shall confirm to the Respondent whether the draft Statement of Agreed and Disputed Facts and Issues is agreed and in the event that it is not agreed shall indicate to the Respondent which parts are not agreed and if appropriate suggest an alternative form of wording.

4. The parties shall then make good faith endeavours to agree the Statement of Agreed and Disputed Facts and Issues by 23 February 2021.

5. In the event that agreement is reached as to the form, wording, and content of the Statement of Agreed and Disputed Facts and Issues then the Respondent shall file the Statement of Agreed and Disputed Facts and Issues with the Tribunal no later than 24 February 2021.

6. In the event that the form, wording, and content of a Statement of Agreed and Disputed Facts and Issues is NOT AGREED the parties shall inform the Tribunal of that fact and shall each file their respective Statements of Facts and Issues with the Tribunal no later than 26 February.

LISTING INFORMATION

7. Not later than 26 February 2021 both parties shall provide to the Tribunal and each other a statement providing the following information to enable the Tribunal to list a two day hearing by video to determine the Preliminary Issue:

(1) the number of participants for that party;

(2) the name and role of each participant in the hearing for that party;

(3) where a participant is a witness, whether the witness will attend the entire hearing or only attend to give his or her evidence;

(4) the telephone number and email address of each participant (such information may be redacted from the copy sent to the other party);

(5) confirmation that each participant possesses the necessary IT equipment to participate in the hearing, ie at a minimum, a reliable broadband connection, and the ability to access the electronic bundle while simultaneously attending the hearing by video.

(6) confirmation that each participant has access to a quiet room for the duration of the hearing so that the hearing will not be disturbed by noise made by other persons in the vicinity of the participant;

(7) confirmation that each participant understands that they should act and dress as if in a court room and that it is contempt of court to record proceedings without the consent of the Tribunal;

(8) how each party intends to communicate with their representatives (if any) and any other participants during the hearing (e.g. text messages/email/social media apps); and

(9) two or three agreed dates during the period 2 April to 30 June when the parties are available for a two day hearing OR if the parties are unable to agree such periods, then each party must provide their dates to avoid for a hearing in the same period.

8. Shortly after 26 February 2021, the Tribunal will fix the date of the hearing and any request for postponement on the grounds that the date of the hearing is inconvenient is unlikely to succeed if the party did not provide their dates to avoid or if, having provided dates for the hearing, the party applying for postponement then failed to keep the dates clear of other commitments.

HEARING BUNDLE

9. No later than 28 days before the date of the hearing, the Respondent shall serve a draft index to the bundle of documents on the Applicants (and notify the Tribunal that they have done so). The index shall include:

(1) the Statement of Agreed and Disputed Facts and Issues or each party's Statement of Facts and Issues relating to the Preliminary Issue;

(2) any witness statements relevant to the Preliminary Issue which to the extent that they have not already been served shall be served at the same time; and

(3) any documents which either party intends to rely on in relation to the Preliminary Issue and refer to at the hearing.

10. No later than 21 days before the date of the hearing, the Applicants shall confirm to the Respondent whether the draft index of documents is agreed and, if it is not agreed, provide the Respondent with a list of any additional documents they require to be included in the hearing bundle and to the extent that they have not already been served copies of such documents.

11. No later than 14 days before the date of the hearing, the Respondent shall prepare and provide to the Applicant and the Tribunal by email or electronic transfer an electronic bundle of documents, which complies with the Tribunal's guidance at https://www.judiciary.uk/wp-content/uploads/2020/07/200623-FTT-Tax-Chamber-PDF-bundle-guidance.pdf ("the PDF Bundle").

SKELETON ARGUMENTS

12. Not later than 7 days before the hearing each party shall send to the other and to the Tribunal a skeleton argument relating to the Preliminary Issue including the details of any legislation and case law authorities to which it intends to refer at the hearing.

AUTHORITIES BUNDLE

13. Not later than 3 days before the hearing the Respondent shall send or deliver to the Applicants and the Tribunal by email or electronic transfer an electronic bundle of authorities (comprising the authorities mentioned in both parties' skeleton arguments) arranged in chronological order and prepared in accordance with the Tribunal's guidance above in relation to the PDF Bundle.

WITNESS ATTENDANCE AT HEARING

14. 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).

TRANSCRIPTS

15. If either party requires a transcript, that party shall obtain quotes from at least three of the approved transcription services and will provide these to the other party. That party will arrange for the transcriber whose quote is accepted by both parties to prepare a transcript on each day of the hearing and to provide the transcript to both parties and to the Tribunal (in such manner as the Tribunal may direct) as soon as it becomes available. The parties agree to meet 50% of the transcription costs and each party will then meet its own costs of any additional services that one party uses that the other does not (such as hard copy transcripts).

FAILURE TO COMPLY

16. Both parties TAKE NOTE that any failure to comply with these Directions may result in the proceedings being STRUCK OUT (in the case of non-compliance by the Applicants) or the Respondent being BARRED from taking further part in the proceedings (in the case of non-compliance by the Respondent) SUBJECT TO any application for reinstatement or lifting of the bar as the case may be.

FURTHER DIRECTIONS

17. All other directions by the Tribunal in relation to this appeal which have yet to be complied with are hereby set aside.

18. Any party may apply for these Directions to be amended, suspended or set aside or for further Directions.

19. The case management of this appeal is reserved to Judge Sinfield.