



Neutral Citation: [2022] UKFTT 161 (TC)

Case Number: TC08488

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

Appeal reference: TC/2019/01593 &TC/2021/01424

*INCOME TAX-Assessments following investigation -whether a taxpayer has failed to notify chargeability to income tax-yes;-whether taxpayer has failed to notify tax liabilities-yes;-whether taxpayer has failed to accurately return his total income-yes;-whether assessments made are excessive-no;-whether taxpayer acted deliberately in failing to accurately return his income -yes;-whether closures notice, discovery assessments and penalties have been issued in accordance with relevant legislation-yes;-Appeal dismissed  
Sections 9A,28A,29 and 50, Schedule 24 Taxes Management Act 1970; Schedule 36 Finance Act 2008; Schedule 41 Finance Act 2009.*

**Heard on: 24 February 2022  
Judgment date: 09 May 2022**

BETWEEN

**HENRY RAFFERTY**

**Appellant**

**-and-**

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

**Respondents**

**before**

**TRIBUNAL JUDGE RUTHVEN GEMMELL WS  
CELINE CORRIGAN**

**Sitting in public in Belfast on 24 February 2022**

**Mr Joe Quinn, Accountant, of J. Quinn & Co. for the Appellant**

**Ms Paula O'Reilly, Litigator of HM Revenue and Customs' Solicitor's Office, for the Respondents**

## **DECISION**

### **INTRODUCTION**

1. This was an appeal by Henry Rafferty (“HR”) against (1) a closure notice for the year 2014/15 (“closure notice of appeal”); (2) assessments for the years 2001/02 to 2013/14 and 2015/16 to 2016/17 (“assessment appeals”); (3) the validity of penalty determinations for the years 2001/02 to 2008/09 and penalty assessments for 2009/10 to 2011/12 and 2012/13 to 2016-17 (“penalty determination and assessment appeals”); and (4) a penalty issued under Schedule 36 FA 2008 for failure to comply with an information notice (“information penalty appeal”) all issued by the Commissioners for Her Majesty’s Revenue and Customs (“HMRC”).

2. As a result of delays during the hearing, principally because by HMRC taking over 25 minutes to locate documentary evidence to answer an enquiry made by the Tribunal and in view of the COVID 19 restrictions which required the courtroom to be cleared in the afternoon the Tribunal made an oral direction that written submission should be made to HM Courts and Tribunals Service within 14 days of the date of the hearing.

3. Immediately prior to the expiry of that deadline, HMRC made an application for written directions to the same effect. By the time these directions had been received by the Tribunal, the submissions had been received and, accordingly, as a matter of formality, the application is refused as no longer necessary.

4. Although the sitting was in public, the Covid/Lockdown restrictions would have prevented any member of the public attending but none did so. The parties agreed to restrict their number or representatives and supporters in light of the same restrictions.

### **FINDINGS OF FACT AND EVIDENCE**

5. HR registered with HMRC for self-assessment as a self-employed taxi driver from 20 August 2012, declaring profit figures of £3,200 as at 5 April 2013, £6,481 as at 5 April 2014, £6,344 as at 5 April 2015 and £8,572 at 5 April 2016. Consequently, no tax was charged. HR had held a taxi driver licence from 8 October 1997, which had been renewed every 5 years subsequently.

6. Gillian Duffy, (“GD”) an officer of HMRC and investigator for their Fraud Investigation Service (“FIS”), who gave evidence, became involved with the investigation on 25 October 2017 when she was asked to consider a referral from the Local Network Individuals and Small Business Compliance team in Belfast.

7. An enquiry had been opened on 11 January 2017 into HR’s 2014/15 tax return and the matter was referred to FIS in October 2017 because the information provided by HR showed, in HMRC’s view, significant bankings which were not commensurate with his declared income and purported lifestyle.

8. HMRC’s review concluded that HR had no national insurance record meaning that he had no previous employment on which national insurance contributions had been made and understood his income to be solely from welfare benefits.

9. HR gave evidence and stated that he had always been a great saver and had never gambled and never consumed alcohol nor smoked cigarettes. He and his wife, Mrs Patricia Rafferty (“PR”), who also gave evidence, have 4 children aged 31,30,23 and 15. The latter two children are diagnosed autistic and are or have been in PR’s full-time care.

10. The two elder children have been working and contributing to PR's family income since 2007/08 and 2016/17.

11. PR gave evidence that all the benefits in relation to her children were paid into her personal bank account and that she paid all the household expenses for her and the children from that bank account and that the benefits were sufficient in amount to look after them.

12. HR gave evidence that in October 2006 his father had given him £26,000 to hold, in his own name, for the care of HR's mother and if unused, which it was, was to be then split between HR and his siblings.

13. HR confirmed that he had a taxi licence since 1997 but was unable to work during these periods and only made a self-assessment tax return when he needed to do so. HR confirmed that all payments in relation to his children were given to his wife PR and that he had been living with and caring for his mother for some time. HR received a carer allowance in respect of his mother.

14. Consequently, HR did not during the periods under appeal live with his wife and children at 64 Coolnasilla Park East Belfast ("CPE") which had been purchased on 30 April 2015 for £153,000 without loans or the proceeds of sale of another property. A previous home at 54 Anderstontown Park Belfast was sold, approximately 16 months later, in September 2016 for £119,000.

15. HR stated that in 2012 he inherited £42,000 from his father who died in that year. This was inclusive of the £26,000 that have been given to him in October 2006.

16. HR gave evidence that in the period 2001/02 to 2016/17 his son James was working and earning £131,000 that was brought into the family income and in the period 2016/17 his daughter earned £20,000 p.a. that was similarly brought into the family income.

17. In 2014/15 HR had attempted to purchase 13 Hillhead Drive, Belfast but this purchase failed and, accordingly, the proceeds which had been sent to HR's solicitor for this purchase were returned to his bank account.

18. During the periods under appeal, HR had received ex gratia payments from Bradford & Bingley, Halifax and Northern Bank, as a consequence of their corporate restructurings, £7,640 in insurance claims in the period 2002/03 to 2013/14 and, in addition, held funds in a number of bonds, bank, building society and credit union accounts. HR stated that his total family income in the period 2001/2002 to 2016/17 was £568,866.

19. Following the opening of the enquiry on 11 January 2017, a meeting took place between HMRC, HR and his then accountant on 16 February 2017.

20. HR says that £153,000 was held in his bank account or available in 2014/15 which year had been reviewed by HMRC and he could not understand why this had been raised as an issue again.

21. HR stated that, on the figures provided by his agent, the Rafferty family income was £95,000 in excess of the amount assumed by HMRC.

22. In relation to the amount contributed by his children, HR stated these figures were surplus amounts and took account of the amounts the children spent on themselves. On February 2017 a new agent, J Quinn & Co. was appointed.

23. On 4 April 2017, Mr Quinn of J Quinn & Co. sent an email detailing amendment to the notes of meeting of 16 February 2017 and HMRC responded by email on 11 April 2017 including an informal request for information and asking for more details for the suggested changes to the recorded information.
24. On 12 May 2017, in the absence of a response, HMRC issued a notice requesting information including all bank statements for the period 2014/15 under Schedule 36 of the Finance Act 2008. On 12 June 2017 HMRC explained why further bank information was required and on 20 June 2017 charged an initial penalty of £300 to HR for failure to comply with the 12 May 2017 notice.
25. Some bank information and a summary of interest received was sent on behalf of HR on 11 July 2017 and HMRC replied on 14 July 2017 requesting bank statements.
26. On 18 July 2017, HR requested a review of the initial penalty of £300 and on 15 August 2017 HMRC issued their decision letter upholding the £300 penalty, detailing the reasons.
27. HMRC issued daily penalties on 24 August 2017 to HR for continuing to fail to comply with the information request dated 12 May 2017.
28. HR appealed the daily penalties on 29 August 2017 and wrote subsequently on 8 September 2017, detailing the ill-health of HR and PR and requesting Alternative Dispute Resolution.
29. On 19 September 2017, HMRC issued HR with their view of the matter in respect of daily penalties and on 10 October 2017 HR wrote to HMRC disagreeing the daily penalty position. On 11 October 2017, HMRC advised HR that the matter was not suitable for ADR.
30. On 16 October, 2017 HR provided some explanation of bank lodgements and on 8 December 2017 HMRC issued their conclusion letter cancelling daily penalties of £620.
31. On 25 January 2018, HMRC wrote to HR offering an opportunity to enter the Contractual Disclosure Facility by making a full disclosure of all tax frauds and irregularities.
32. HR responded by letter dated 29 January 2018 referring to the enquiry into the 2014/15 return and requesting that HMRC issue a closure notice. This letter referred to a forthcoming Tribunal hearing on 28 February 2018 at which stage HR intended to request the Tribunal to order a closure notice if one had not been put in place before then.
33. On 11 April 2018, HMRC wrote to HR advising that the Contractual Disclosure Facility offer had expired and that HMRC's investigation would continue. On 13 April 2018, HR sent an email asking what further information was required.
34. On 26 April 2018, HMRC asked for further information in relation to an Ulster Bank account and in particular for the transactions for the period 01 January 2012 to 01 February 2017 and specifically pages 1 to 11 and 16 to 26 which had been previously omitted.
35. On 23 May 2018, HR's agent wrote advising that HR would not attend a meeting and that he would not supply the requested information as it did not relate to 2014/15.

36. On 22 June 2018, HMRC wrote to HR's agent once again explaining the basis of their investigation and enclosing a copy of a notice to HR, of the same date, under schedule 36 Finance Act 2008 requesting the bank information as had been requested on 26 April 2018. This was appealed by HR's agent on 22 June 2018.
37. On 4 September 2018, HMRC wrote to HR's agent explaining why an email dated 23 July 2018 did not constitute an appeal and enclosing a copy of the notice of the same date of an initial penalty of £300 to HR.
38. On 18 September 2018, HR's agent submitted an appeal against the £300 penalty and it was later ascertained on 1 October 2018 that HR's agent required an independent review of the £300 penalty.
39. A review was carried out and the conclusion letter was issued on 27 November 2018, upholding the penalty.
40. HR's agent's response dated 13 December 2018 was treated as an appeal against the information notice dated 22 June 2018
41. HMRC issued its view of the information notice by letter dated 20 December 2018. A conclusion letter dated 30 January 2019 was issued by HMRC upholding the information notice but restricting compliance with the notice to the dates 22 June 2012 to 01 February 2017. The reviewing officer also upheld the £300 penalty.
42. On 8 March 2019, HR appealed to the Tribunal against the £300 penalty and applying for a closure notice on the 2014/2015 enquiry.
43. The Tribunal hearing took place in Belfast on 21 January 2020 and on 30 January 2020 the Tribunal issued directions adjourning as part heard allowing time for compliance with the information notices dated 12 May 2017 and 22 June 2018. Subject to this compliance, HMRC was to advise the Tribunal by 21 April 2020 whether a closure notice 2014/15 had been issued.
44. On 12 February 2020, HR's agent provided missing credit union statements.
45. On 17 February 2020, HMRC confirmed that the information notice dated 22 June 2018 had now been complied with and also listing the information outstanding in respect of the May 2017 notice. HMRC also again asked for a meeting with HR as he had been unable to attend the Tribunal hearing.
46. On 20 February 2020, HR's agent provided the remaining Nationwide transactions and most of the requested Ulster bank transactions by email attachments.
47. Following the national lockdown on 23 March 2020 the Tribunal deadline was extended to 21 May 2020.
48. On 4 June 2020, HMRC wrote stating that they intended to issue a closure notice for the enquiry into HR's 2014/15 tax return. They also stated that they would be issuing tax assessments for the years 2001/02 through to 2013/2014 and for 2015/16 and 2016/17. They also stated they would be issuing penalty determinations for all the years 2001/02 to 2016/17.
49. HMRC's reasons underlying these courses of actions were that in April 2015 HR had purchased a property outright for £153,000, a sum HR says he accumulated in his own bank account, when HMRC say he had no employment history until he registered for self-employment on 13 September 2012 as a taxi driver. His subsequent tax returns declared a very low turnover and profit figures which HMRC say were insufficient to support any wealth accumulation.

50. HMRC stated that HR's only known income prior to his self-declared self-employment was welfare benefits income. They did not believe it was credible that he had accumulated £153,000 from welfare benefits as well as supporting a growing family.

51. HMRC had looked at the average family expenditure as quantified by the Office for National Statistics ("ONS") (omitting cigarettes and alcohol spending) which exceeded the level of benefits available to HR. HMRC's conclusion was that the benefits were insufficient to maintain the family and must have been supplemented by other income.

52. HMRC's 04 June 2020 letter referred to the fact that HR had applied for a taxi driving licence in 1997 and had renewed it every 5 years and that it was not unreasonable to conclude that his self-employment income commenced much earlier than declared.

53. The letter continued "In 2014/15 your unsupported bank lodgements exceed your declared turnover and the excess has therefore been treated as undeclared income. These additions take the level of income to a comparable amount to the average family expenditure per the ONS. My assessments are based on income from self-employment to meet the estimated requirements of the family, extrapolated from the proposed additions for bank lodgement in 2014/15 and with an additional amount to support an accumulation of savings over the period."

54. The letter of 4 June 2020 by HMRC also attached a notice of penalty determination for the years 2001/02 to 2008/09 under the provisions of Section 7 (8) Taxes Management Act 1970 ("TMA") on the basis that HR deliberately failed to notify his liability.

55. This set out that the penalty can be up to 100% of the tax charge but had been abated by 5% in relation to disclosure (nothing omitted); cooperation 20% (limited to one year and information powers required) and seriousness 15% (failure to notify over a prolonged period). It also advised that penalties for the year 2009/10 to 2016/17 would be issued under separate cover.

56. HR in a submission to the HMCTS, dated 11 November 2020 stated that the reference to the purchase of the property outright for £153,000 was incorrect in the following areas: – "(1) the £153,000 in April 2015 is being treated as a discovery to justify raising assessments as far back as 20 years where in fact it was a known figure in the bank account seen by HMRC in the 14/15 enquiry year that was not mentioned or questioned during the 3 ½ year enquiry period before closure noted was issued on 4 June 2020. A 3-hour interview by two HMRC officials in early 2017 did not refer to it. Fraud has not been proven to go back 20 years and no discovery to justify going back even 6 years. Indeed at the Tribunal Hearing on 21 January 2020 heard by Judges Staker and Moore there was no mention of the £153,000 and there was no documents in the HMRC bundle referring it to be of interest. The point is that the sudden use of this figure plucked from a year not under formal enquiry is for want of an excuse to justify raising excessive further assessments for the years 01/02 to 16/17"

57. It continued in relation to HMRC's claim of no employment history until registered for self-employment on 13 November 2012: - "please see 91/92, 92/93 and 93/94 copy Inland Revenue documents that show HR was registered as a taxi driver back then. He continued as such until 2001 when he became a carer for a special needs son which ceased when he returned to self-employment on 13.09.12".

58. In relation to HMRC's claim that HR's subsequent tax returns declared very low turnover and profit-insufficient to support wealth accumulation, it stated "the further tax assessments do not show all the income received by his family over the years 01/02 to 16/17, the HMRC information is incomplete and the assumptions therefore flawed."

59. In relation to HMRC's claim and comparison with average family expenditure as quantified by the Office of National Statistics ("ONS"), HR's agent stated that HMRC did not consider any benefits available and "continue to raise what I can only describe as family assessments in my client's name only, HMRC are being unfairly selective"

60. In relation to HMRC's claim that "the 2014/15 unsupported bank lodgement exceeded his declared turnover and the excess is therefore being treated as declared income", HR's agent stated "Firstly there are no unsupported bank lodgements in 14/15 as during the over 3 years enquiry every bank lodgement was identified and accounted for and that is why the 21 January 2020 hearing was partly about and why the 14/15 enquiry was closed with no findings of undeclared income. Secondly, HMRC admit the Further Assessment additions were in line with the ONS average family expenditure and yet they only use the appellants income for a few years to assess the income increases and totally ignore the other family incomes/benefits. This is an incomplete and therefore incorrect computation by HMRC".

61. HR's agents referred to the family income calculations and compared these in a tabular schedule ("the Rafferty/HMRC table") between HMRC and "Rafferty family actuals". The email stated "the family income of £568,866 for the year over 01/02 to 16/17 is greater by £95,119 than the HMRC ONS Family income figures added to the £60,000 HMRC cash accumulation estimate. Therefore, excluding the £60,000 then the actual family income is £568, 866 which is £155,119 greater than the £413,747 HMRC family ONS figure which is greater than the £153,000 cash accumulation at the centre of HMRC's reasons for their family further assessments put upon Mr Rafferty alone".

62. During their investigations into the 2014/15 tax return HMRC investigated HR's Ulster Bank account and noted that the total cash lodgements less those evidenced amounted to £16,690 and in addition in the Santander account there was £2,880 and in the credit union account £2,000. Consequently, HMRC say there were total additions to the bank account of £21,570 which were not otherwise explained as income to which they added cash expenses of £7,988, which had been claimed as expenses in relation to the taxi business and where there was no evidence of these expenses having been paid from the bank accounts. Accordingly, they assessed a revised net profit of £29,558

63. HMRC having satisfied themselves that the 2014/15 return was inaccurate, then considered HR's taxation history.

64. HMRC made reference to the meeting with HR on 16 February 2017 at which he advised that he had commenced self-employment as a taxi driver years ago, on and off, and that he had not received money from any other source other than his self-employment, with the exception of a claim he received during 2014/15 for a car accident that was paid into a Nationwide account.

65. During their investigation HMRC found that HR had purchased the property at CPE on 30 April 2015 for a purchase price of £153,000 which was purchased in HR's sole name and without the need of a mortgage. At that time HR jointly owned the property at 54 Andersontown Park that was not sold until 2 September 2016 so the

proceeds of that sale, £119,500 could not have contributed to the funds used to purchase CPE.

66. HMRC then consider how HR was “supporting a family of himself, his wife and 4 children on declared taxi profits of £3,200 for 2012/13, £6,481 for 2013/14 and £6,344 for 2014/15 and for the years prior to 2012/13 on no income other than benefits”.

67. HMRC then took into account amounts in relation to a road traffic accident and related payments amounting to £7,589 and also the sale of Andersontown Park of £112,419 but noting that this was not available until 6 September 2016.

68. HMRC felt it was unlikely that all of the £7,589 was available as the first payment of £2,500 of this amount had been received in 2002

69. HR confirmed that he had received an additional amount of £10,000 in the 1980s from the Northern Ireland Office (“NIO”) as compensation but even taking this into account HMRC say they have received no documentary evidence that this amount or any part of that amount was still available to support the funding of the purchase of CPE.

70. In the absence of documentary evidence HMRC took the view that the funds available to purchase CPE were accumulated from unreturned income earned as a self-employed taxi driver.

71. HMRC proceeded to issue assessments under Section 29 TMA and believing that they complied with the conditions of that section, issued assessments on 4 June 2020.

72. HMRC state that they have not seen bank statements for the years 2001/2 to 2011/12 and accordingly have taken the figure of uplift from the 2012/13 return and used RPI to calculate an equivalent amount for the earlier years.

73. These figures were then compared to figures from the ONS family spending survey and HMRC were satisfied that their conclusions were commensurate with the figures.

74. In relation to the accumulated savings of £153,000, HMRC estimated that if this was built up over the previous 14 years it would mean assessing an amount of £11,000 per year. Having then consider the amounts that would have been available from the uplifted profits and also considering that HR had stated he neither smoked nor drank and was a prolific saver, HMRC assessed £5000 each year from 2001/02 to 2013/14 as having come from self-employed income and therefore assessable to income tax.

75. HR stated that 2015/16 was not a year under a Section 9 TMA enquiry notice and that the figure of £153,000 was not a discovery.

76. HR says that HMRC have not included £10,000 per year for disability living allowance and personal independence payments for 2 special needs children; £3000 a year for carers allowance; £2000 per year for income support, £1750 per year child benefit and £15,000 per year of “tax benefits”. This also ignored a substantial inheritance in 2012 on the death of HR’s father; several large injury claims and funds held in bonds.

77. Prior to the hearing HR’s agent submitted the Rafferty/HMRC table setting out the family income calculations including a difference between HMRC’s estimation and the Rafferty family estimation being an increase in the Rafferty family income of £95,119. This included amounts of £26,000 paid in the tax year 2005/06 and a further



amount from his father in the tax year 2011/12 of £16,000 making a total of £42,000. HR say that these figures were taken into account in the enquiry into the year 2014/15 which closed with no irregularities being found after 3 years of investigation.

78. HR state that £150,0819 was sent back to HR's account from his solicitors following the failed house purchase. In evidence, Gill Duffy ("GD") confirmed that whilst acknowledging these proceeds had come from a bank account, she had not seen all the bank statements to evidence this.

79. GD stated that she did not accept that the bank statements exhibited in relation to the enquiry into 2014/15 showed an appropriate build-up of the finances and that it was the right thing to do to issue further assessment given that the Tribunal had directed the issuance of a closure notice.

80. GD stated that she did not accept the amounts put forward such as the contribution from HR's daughter as when comparing the figures provided by HR with HMRC's PAYE system the actual amount the daughter received was significantly less.

81. GD similarly stated that she did not believe the figure set out in HR's agent's correspondence and in view of all the circumstances HMRC decided to subsequently issue an assessment. The failure to provide information resulted in the issuance of an information notice and the delays between October 17 and June 20 were as a result of the appeals and reviews requested by HR.

82. GD confirmed that there was evidence of one bond amounting to £46,719 with Abbey National subsequently Santander.

#### **HR's submissions.**

83. HR say that HMRC's fraud discovery in a figure of £21,570 was a justification for 20 years of further assessment.

84. Notwithstanding this, HR say that over the amounts of £21,570 were included in HMRC's letter of 9 September 2017 and HR responded to this on 13 October 2017.

85. HR say that HMRC did not respond to that letter nor indicate that the explanations were not accepted and HR stand by their explanation as true and correct.

86. HR state, in relation to an allegation by HMRC that their intelligence suggested that HR traded in second-hand vehicles, that he had never done so and his only dealing with Wilsons Auctions was to buy his taxi cab and £200 on a car for his son. HR say that HMRC treated this unfounded allegation in the same way as they have done about HR's "purported lifestyle" and HR's "income solely from welfare benefits" as to cast aspersions on him without any evidence whatsoever.

87. HR say there was no redaction of any information covered by section 9A TMA following the further direction by the Judges at the 21 January 2020 hearing and any claim to the contrary is incorrect.

88. HR say that HMRC was fully aware of HR's "father's lifetime savings" that were entrusted and available to him as cash flow but chose to ignore such a large amount when preparing the further assessment figures.

89. HR say that the amounts held by him include the following: - On 24 March 2010 a NIO pay out for vehicle incidents which resulted in a cheque payable for £4500. On 12 February 2014, AXA sent a cheque for £250 in settlement of a claim.

90. In October 2002, Madden Finucane solicitors confirmed a pay-out of £2500 settlement of a road traffic accident on 13 March 2002.

91. On 6 September 2016 McFadden Perry solicitors wrote to HR and PR advising that the balance of the sale of 54 Andersonstown Road of £112,419 was to be “transferred to the bank”.
92. On 20 May 2014, AXA claims department paid £339 in respect of damage as no driver had been identified as the party.
93. HR received a £10,000 claim from the NIO in the 1980s after a neck stabbing, he had received.
94. Before his father died in 2012, he was entrusted with his father’s lifetime savings which included “several inheritances from his sisters’ estates to be used for HR’s mother’s respite and to distribute what was left equally “between the 7 siblings”.
95. HR’s Ormeau credit union account showed a closing balance of £1,000 of shares and no loans on 22 February 2017. Similarly, his Ulster Bank accounts showed lodgements £12,770.96 in the tax year 2015/16 and £25,854 in 2016/70.
96. HR says that HMRC’s further assessments are fundamentally flawed as they were based on assumptions made by HMRC that can be proven to be incorrect.
97. The £300 penalty was dealt with by the Tribunal on 21 January 2020 and should have been vacated when the first 2014/15 section 9A TMA enquiry was supposedly closed. This “concerns a request for information outside the 2014/15 section 9 A enquiry year that was considered unlawful as the current section 9 a enquiry notice was in place when FIS instigated a 2<sup>nd</sup> enquiry which is no longer legally permissible (TMA 1970 notice of enquiry (3) and J 26, J 27)”.
98. There “was subsequently no Discovery of undisclosed income forthcoming from the volunteered information and no relevant information was redacted at any time”
99. There was no unexplained significant banking as this has all been fully explained to HMRC. To state that HR has a purported lifestyle is simply casting aspersions on his good name and character as he has always been a teetotaler, never gambled and has a lifetime record of being a prolific saviour.
100. HR was a self-employed taxi driver and tax returns were made for all the periods concerned.
101. To say that he has “no in date employment” is incorrect. HR did have previous employments and to say that his income comes solely from welfare benefits is factually incorrect.
102. HMRC have no “prima facie evidence of a potential income source as HR’s tax returns were made until family duties of caring for his autistic son began”.
103. HR did not advise that his wife and children rented CPE as it was purchased in 2015 and was not/never rented.
104. The sum of £153,0000 paid for CPE was part of a 2014/15 enquiry which was closed without suspicions over this figure. The use of this available money was not suspicious and there was no need of a mortgage.
105. In essence HR says that HMRC plucked from an unreliable source figure which were fundamentally flawed and used them as the basis for further tax assessments.
106. Further assessments arose after the 2014/15 Section 9A TMA Enquiry Notice was formally closed with reference to directions of the Tribunal dated 30 January 2020 and should have been at an end as the “enquiry” window was not open. It was

immediately replaced with 2014/15 further assessments based on a “so called Discovery figure of £153,000 that was already a figure considered as part of the original closed 2014/15 notice that was closed with no discovery. This is a procedural irregularity by HMRC.”

107. HR cited the following cases in his Skeleton Argument but made no reference to them: *Bloomfield v Revenue & Customs* [2013] UKFTT 593 (TC) and *Assan Khan v Revenue & Customs* [2014] UKFTT 018 (TC).

## **HMRC’s submissions**

### *Enquiry year*

108. HMRC say they opened enquiry under section 9Aa TMA on 11 January 2017 within the statutory time limit and it is therefore a valid enquiry. HR’s self-assessment return for the year 2014/15 showed declared income from self-employment of £14,322 with a net profit of £6344.

109. This was then compared to lodgements in HR’s bank account for the year 2014/15 and HMRC could not find satisfactory explanations for the amounts.

110. HMRC reviewed HR’s Ulster Bank account... 3384 and believed there was a revised profit of £29,558. In addition to the lodgements in the bank account, HR claimed expenses of £7,988 on his return and as there was no evidence of these expenses having paid from the bank accounts HMRC had seen, they say it is reasonable to believe they were paid in cash.

111. HMRC says the onus is on HR to show the adjustment to his self-assessment is excessive. *Nicholas v Morris* 51 TC 95 (110) and he has failed to do so.

### *Discovery*

112. HMRC consider that the findings in the case of *Jonas v. Bamford* [1973] STC 519, where the presumption of continuity was considered, is applicable as HR had not advised of any material change in his business. The High Court held that the onus was on the taxpayer to show that additional assessments were wrong.

113. HMRC considered all the available evidence when deciding if there had been a liability to income that had either been not declared or had been understated.

114. HR acquired a taxi driver licence on 8 October 1997 and renewed this in 2002, 2007 and lastly on 14 October 2012. He had also been in receipt of carers allowance since 2003. At his interview with HMRC on 16 February 2017, HR advised that he had commenced self-employment as a taxi driver years ago on off and that he had not received money from any other source of self-employment with the exception of a claim he received during 2014/15 for a car accident.

115. HMRC say that HR has no employment history record prior to his registration as self-employed. Additionally, he purchased the property CPE on 30 April 2015 for a purchase price of £153,000. This was purchased in his sole name and without the need for a mortgage. At the time HR jointly owned the property at 54 Andersonstown Park which was not sold until 2 September 2016 so the proceeds of sale of £119,500 could not have contributed to the funds used to purchase CPE

116. HMRC did not believe that HR could support a family of 6,( himself, his wife and 4 children) on his declared taxi profits and/or income other than benefits. Similarly,

HMRC do not accept that HR could fund the purchase of this property and have supported his family on his declared income.

117. HR advised that he had accumulated cash in relation to a settlement for road traffic accidents in 2002 and 2010 of a total amount of £7,000 and two payments from AXA in 2014 of £589. In addition, in 6 September 2016 he received the sale proceeds of 54 Andersonstown Park of £112,419.

118. HMRC do not believe that the £7,589 was used to purchase CPE and questioned how the balance of £145,411 was funded.

119. HMRC say that HR has failed to provide any documentary evidence that this amount or any part of this amount was still available to support the funding of the purchase of CPE and his level of accumulated savings.

120. HMRC reviewed the bank statements of 2014/15 and having discovered lodgements which exceeded the declared turnover and in the absence of documentary evidence to demonstrate the source of these amounts they assessed them to income tax. These were sums which HMRC believed ought to be assessed to income tax but which had not been assessed.

121. In the years 2001/2 to 2011/12 was a failure to notify chargeability and therefore the further conditions of section 29 TMA do not need to be satisfied.

122. For the years 2012/13 onwards, having satisfied section 29 (1) TMA, HMRC must also satisfy either section 29 (4) or section 29 (5) TMA 1970 to allow them to issue an assessment

123. HMRC reviewed the behaviour leading to the alleged failure to accurately return income as deliberate and, therefore, section 29 (4) TMA was satisfied. If the Tribunal finds that HR's behaviour was neither deliberate nor careless, it is HMRC's position that as at the time of the submission of bank statements, on 02 February 2020, HMRC were unable to open an enquiry into any of the years 2012/13, 2013/14, 2015/16 and 2016/17. In that case section 29 (5) TMA entitles them to issue assessments for years outside the enquiry year.

124. To enable HMRC to issue an assessment under section 29 TMA 1970 it is only necessary to satisfy either paragraph (4) or (5). In relation to the former, HMRC believe they have satisfied the condition based on the behaviour of inaccurate self-assessment returns. Section 29 (5) TMA entitles them to issue assessments for years outside the enquiry.

125. HMRC say they satisfied the time limits in the legislation under section 29 TMA 1970. The assessments were issued on 4 June 2020 and they are entitled to make an assessment at any time not more than 4 years after the end of assessment. Accordingly, the assessment of 2016/17 falls within this timeframe.

126. Section 36 (1) allows for an assessment to be made at any time not more than 6 years after the end of the year of assessment if the loss of taxes was brought about carelessly. HMRC say that the loss of tax for 2015 /16 was brought about deliberately but if not deliberately then at least carelessly so they are permitted to issue an assessment.

127. Section 36 (1A) allows for an assessment to be made up to 20 years after the end of the year assessment if the behaviour that brought about the loss was deliberate. HMRC's position is that by not declaring the full level of his turnover as a self-

employed taxi driver the years 2009/10 to 2014/15, HR acted deliberately and, therefore, HMRC are entitled to issue assessments to recover income tax.

#### *Calculation of income to be assessed*

128. In calculating the income to be assessed HMRC reviewed the bank statements for 2012/13, 2013/14, 2015/16 and 2016/17 provided by HR and in doing so they found amounts lodged to the bank which exceeding the income declared.

129. In doing so they found that the amounts lodged to the bank exceeded the income as follows: – 2012/13, £21,115; 2013/14, £7498; 2015/16, £4198 and 20 16/17, £4198. For the years 2001/2 to 2011/12, for which HMRC had not seen any bank statements, HMRC took the figure of 2012/13 and used RPI to calculate equivalent amounts for the earlier years.

130. HMRC considered the results of their conclusions and compared them to figures from the ONS family spending survey and were satisfied their conclusions were commensurate with those figures.

131. HMRC considered that HR had accumulated £153,000 over the previous 14 years which would mean assessing an amount of £11,000 per annum

132. HMRC then considered the amounts that would have been available from the uplifted profits and also considered that HR neither smoked nor drank and was a prolific saver. In light of this they assessed £5000 each year from 2001/02 to 2013/14 as having come from self-employed income and therefore liable to income tax.

133. HMRC's position is that they satisfied the conditions for the discovery and it is for HR to provide evidence that the amounts assessed are excessive. Otherwise, they should stand good.

#### *Penalties*

134. In relation to penalties HMRC considered these under section 7(8) TMA and levied penalties for failure to comply with an obligation to notify and where the tax due was not paid before 31<sup>st</sup> January next following the year of assessment.

135. HMRC concluded that HR did not notify HMRC for the years 2001/2 to 2008/9 and the tax was not paid by 31<sup>st</sup> January next following those years and charged penalties. They allowed abatements for disclosure of 5%, cooperation of 20% and seriousness of 15%, totalling 40% so the penalty was charged at 60%.

136. Schedule 41 of the Finance Act 2018 allows for penalties were a person fails to comply with an obligation under section 7 TMA. HR did not notify HMRC for the years 2009/10 to 2011/12. Having considered abatements, of 0% for Telling, 20% for Helping and 15% for Giving the penalty was charged at 61.25%.

137. Schedule 24 Finance Act 2070 allows for a penalty for submission of inaccurate documents to HMRC that result in an understated tax liability.

138. As a result of their investigations HMRC established that there had been an understatement of such a liability and considered the behaviour leading to the submission of such inaccurate self-assessment returns as deliberate. The disclosures were prompted as no disclosure was made before HMRC opened an enquiry into HR's affairs. HMRC gave reductions for the quality of disclosure totalling 35% made up of Telling 0%, Helping 20%, and Giving 15%. The penalties were, therefore, charged at 57.75%. HMRC do not consider that there are any special circumstances in which they may reduce the penalty based on established case law.

139. HMRC issued the notice of assessment on 22 February 2021 which clearly detailed the periods covered by the penalty. HMRC did not believe that the suspension was appropriate as the behaviour leading to the inaccuracy in the present case was deliberate.

140. Schedule 36 of the Finance Act 2008 allows HMRC to issue a formal request for information and this was given on 22 June 2018 with a date for compliance of 23 July 2018. HMRC say this was permissible because there was an open enquiry and there was a suspicion that the taxpayer had been under assessed or may have underpaid tax.

141. Following a Tribunal hearing on 21 January 2020, the Tribunal directed the appellant to provide the information requested in the information notice, and it was only after this, on 12 February 2020, that HR complied with the information notice.

142. However, on 4 September 2018, in the absence of the information HMRC had issued a penalty in an amount of £300. HR became liable to a penalty on 24 July 2018 and the penalty was within the statutory deadline and valid

143. HMRC say that the bank statements were reasonably required to assist in their investigation and HR failed to provide a response within the stated time.

#### *Income*

144. HMRC do not accept that the purchase of CPE was not included in correspondence that ensued during the investigation and agree it was not discussed at the hearing on 20 January 2020 as that hearing was in respect of a request for the issue of a closure notice 2014/15.

145. At the hearing the HMRC were required to demonstrate why they were unable to close the enquiry at that point in time and the reason for this was the bank statements have not been provided to allow HMRC to form an opinion.

146. This was the only point under consideration in relation to the enquiry at that hearing. It was not appropriate to discuss the full details of the enquiry at that time.

147. HMRC say that they do not hold returns for years before 1995/96 but say that HR made no SA returns for the years 1996/7 to 2001/2 and accordingly HR's statement that he continued as a taxi driver until 2001 when he became a carer for his son who had special needs cannot be correct and is untrue.

148. HMRC say they have seen no evidence to support the contention that a financial contribution was made by HR's daughter nor any evidence in support of these amounts. HMRC say that there is no documentary evidence to substantiate an inheritance of £42,000 received by 2012 and, in the absence of such evidence, HMRC's position is this amount came from business activities.

149. In essence HMRC do not accept the figures contained in the Rafferty/HMRC table submitted by HR on 11 November 2020 and not seen by HMRC until 13 August 2021. They were not provided to HMRC during their investigation when they would have been open to exploration.

150. No evidence has been provided to support any of the figures included in the Rafferty/HMRC table. The figures are mainly round sums and look like estimates, the basis of which had not been explained. HMRC view these figures as estimated, excessive and unreliable.

151. Consequently, the figures provided by HR do not satisfy the onus of proof placed on him as explained in *Jonas v. Bamford* 539, to displace the closure notice 2014/15 and assessments for the years 2001/2 to 2013/14 and 2015/16 to 2016/17.

152. The £300 penalty was not dealt with at the last hearing as suggested by HR as can be seen from the Directions issued following the Tribunal hearing.

153. There is a contradiction in the evidence given at the hearing that HR was caring for his mother and the letter submitted from the disability and carer services in Belfast dated 29<sup>th</sup> of March 2017 that he was caring for his son from 2002.

154. HMRC say was only one enquiry and not two as alleged by HR, into 2014/15 and this was opened by notice issued under section 9A TMA on 11 January 2017 and closed by issue of a notice under section 28A TMA 1970 on 4 June 2020.

155. HMRC say there has been no procedural irregularity in the issue of the enquiry notice, the closure notice or the discovery assessments and associated penalties. In addition, the discovery provisions do not apply to a year where an enquiry has been opened.

#### *Self-employed income*

156. HMRC say their historic records show that HR has no record of class 2 NIC for the years 1991/2 to 1993/94 and for the years 1994/95 and 1995/6 the only entries were in relation to unemployment benefit. For the years 1996/7 to 2001/2, the only entries were of jobseeker's allowance

157. in summary, the 2012/13 to 2016/17 bank statements submitted showed total lodgements which exceeded the returned turnover. In the absence of satisfactory explanations or evidence as to the source of these funds it is HMRC's position that they must have come from HR's business.

158. HMRC do not accept that HR did not make any significant contributions to the normal day-to-day financial needs of his family and have seen no documentary evidence to show what contribution PR made to the family expenditure.

159. HR bought a property at CPE on 30 April 2015 which is the family home and HR extended the property after purchase. This property was later transferred to him and his wife in joint names which HMRC say would demonstrate in itself the action of a person who was financially supporting his family.

160. HR has not provided any details of benefits received by himself or PR prior to the document dated 11 November 2020, first seen by HMRC on 13 August 2021, which was provided after the investigation had been concluded.

161. As HMRC have seen no evidence to support the figures stated to be received in benefits and contributions by the family, they have been unable to take account of these.

162. HMRC do not find credible that the amounts purportedly received from HR's children, having checked their net of tax and national insurance salaries from HMRC's records, as this would mean that every penny the child earned was contributed to the household.

163. No evidence been provided of the children's bank accounts to confirm or refute this assumption

164. Overall HMRC say they have received no evidence in relation to the alleged household income support or any of the £42,000 received as an inheritance came from HR's father for his mother's possible support

### *Carer's Allowance*

165. Carer's allowance is a taxable benefit if you care for someone for at least 35 hours a week and is taxable if your income is over the personal allowance. It is paid to assist with the additional costs of caring on top of the usual costs of daily living. Accordingly, the amount of benefit received should either be excluded from the calculations or the level of spending increased as these are in excess of "normal household expenditure".

166. HR has included in his calculations the carer allowance for an adult with one dependent adult and 2 dependent children for the years 2002/3 to 2011/12. HR's evidence, however, was in respect of carer's allowance for his mother and not for his sons.

### *Build-up of Capital*

167. HMRC say that they do not dispute that was a build-up of capital allowing HR to purchase CPE in April 2015 without the need for a mortgage, what is disputed is how this was supported.

168. HR says he was a prolific saver and in addition received an inheritance of £42,000 but there is no evidence to support that any of the amount of £42,000 came from HR's father.

169. HR has presented conflicting evidence as to when the amount was received, firstly it was all received in 2012 on the death of HR's father then he received it in two tranches of £26,000 in 2005/6 and then £16,000 in 2011/12.

170. In HR's letter of 15 February 2018 and in oral evidence HR stated the funds have been received from his father and had been put into his care in 'trust'. The purpose of the funds was purported to be for the financial care of his mother during her lifetime and on her death any funds remaining were to be split between 7 siblings. HR admitted in evidence that he had used the funds for his own benefit despite claiming that he held them only in trust for either his mother or siblings.

171. There is no evidence to support HR's position as to the source of funds and he has admitted that he has acted contrary to what he claims to have been instructed to do and largely for his own benefit. HMRC do not find the explanations regarding the inheritance credible and believe it is more credible that the funds have accumulated as a result of HR carrying on self-employed taxi business without declaring the income he earned.

172. Leaving aside the figure of £42,000 there is still a balance of £145,411 used for the purchase of CPE and HMRC have seen no evidence of how that sum was amassed.

173. HMRC say that £145,111 is a significant amount of money and if it had been accumulated over a number of years from prolific savings it would have an audit trail readily available.

174. It would be reasonable for a person saving with a view to purchase a property to keep the funds in a savings account or other financial product. HR has failed to provide any documentary evidence or explanations other than he was a prolific saver. HMRC do not find this credible.

175. HMRC's position is that the sum of £153,000 used to purchase CPE was monies earned by HR as a self-employed taxi driver over the years 2001/2 to 2013/14.



*Signature on declaration confirming completeness of 2014/15 SA return.*

176. HMRC dispute that the signature stating that the information contained within the 2014/15 SA return was correct and complete and say that without expert evidence the authenticity of the signature cannot be determined.

*Extension to CPE*

177. At a meeting held on 16 February 2017 HR stated that there had been no improvements or extensions to CPE. The evidence shows this was incorrect and that HR has been untruthful. Despite receiving no planning permission to extend CPE HR continued to build such an extension. HMRC are unaware of when the extension was built how much it cost and how it was funded.

178. HMRC say that HR was untruthful in saying whether there been any improvements or extensions to the property at CPE. HMRC submitted written evidence that planning permission was refused on 16 September 2015 and furthermore that by letter dated 10 December 2018 it was clear that despite planning permission being refused HR continued to build an extension to the property.

179. During the hearing HR stated that amendments had been made to the joint meeting notes but HMRC say they have never received these nor have they been provided with these before or since the Tribunal hearing.

180. HMRC say that HR has submitted inaccurate self-assessment returns for the years 2012/13 to 2016/17.

181. HR has failed to notify the chargeability for the years 2001/2 to 2011/12. The closure notices were being issued in accordance with section 28 8 TMA and the assessments have been issued in accordance with section 29 TMA.

182. HR has failed to satisfy the onus, placed on him, to displace the amounts assessed.

183. All penalties charged and issued have been charged in accordance with the appropriate legislation.

184. HR fail to comply with an information notice so a £300 penalty has been charged correctly

185. Accordingly, the closure notice, discovery assessments and all penalties in the amounts assessed should be confirmed and the appeal dismissed.

186. HMRC say that the withdrawal of a penalty of £620 did not mean that there had been full compliance and state that it is not significant on the matters under appeal. Similarly, HMRC say the £300 penalty issued on 4 September 2018 is lawful as the information requested by the Schedule 36 notice issued on 22 June 2018 was not provided by the due date of 23 July 2018.

187. HMRC say that the £300 penalty has been charged in accordance with the legislation and that the matter of discovery has no impact on the charging of a penalty for failure to comply with an information notice.

**Decision**

*Assessment Appeals*

188. HMRC's assessments primarily relate to the belief that HR has failed to declare all his income to HMRC for the years 2001/2 to 2016/17 following their investigations, and consequently that he had submitted inaccurate self-assessment tax returns. HMRC then issued assessments for the years 2001/2002 through June 2013/14 and 2015/16 and 2016/17 and issued penalty determinations for all years from 2001/02 to 2016/17.

189. The reason for these actions, and the issue of the closure notice into the tax year 2014/15 in accordance with the directions of the Tribunal dated 30 January 2020, was that in April 2015 HR purchased the property CPE outright for £153,000, a sum accumulated in his own bank accounts when HMRC said he had no employment history until he registered for self-employment on 19 September 2012 as a taxi driver.

190. HMRC stated that HR's tax returns declared very low turnover and profit figures which were insufficient to support any wealth accumulation based on his receipt of only welfare benefits income and the need to support his wife and 4 children.

191. HMRC considered the benefits income and compared this to the average Family Expenditure Survey ("FES") quantified by the ONS (omitting cigarettes and alcohol spending) and concluded that this exceeded the level of benefits available and thus was insufficient to maintain his family and must have been supplemented by other income to do so and to accumulate savings.

192. At the hearing evidence was given that at one time HR was caring for his son but also that his wife, PR was caring for all their children in a separate household at CPE and that she had sufficient income from those sources to support them.

193. GD's evidence, which was accepted by the Tribunal, was that HR had submitted a self-assessment return declaring a source of taxi driving income commencing 20 August 2012 with profit figures that resulted in no tax being charged. His national insurance record confirmed that he had no previous employment income on which national insurance benefits had been paid/credited.

194. HR held a taxi driver licence from 8 October 1997 which had been renewed every 5 years subsequently which HMRC took as prima facie evidence of a potential source of income.

195. At a meeting on 16 February 2017, HR confirmed his address was his parents' home and he advised that his wife and children resided at CPE which was rented and that rent was paid by his daughter. The property had been purchased on 30 April 2015 and the previous family home at Andersontown Park, Belfast was sold later in September 2016 £119,000. The Tribunal accepted the evidence that the property register indicated no indication of mortgage liability in respect of CPE and that it had been purchased outright without loans or the proceeds of the sale of another property.

196. The issues, therefore, before the Tribunal was the credibility of the claims made by HR that he had been able to accumulate the wealth he said he had from known sources of income and capital payments so as to accumulate savings sufficient to purchase CPE without a mortgage.

197. During their investigations HMRC, on 25 January 2018, wrote to HR stating they had reason to suspect that HR had committed tax fraud and offered him to make disclosure under the Contractual Disclosure Facility. The time limit for this offer expired and had not been accepted.

198. In May 2018 HR's agent wrote advising that HR would not attend a meeting and would not supply information requested as it did not relate to 2014/15.

199. By February 2020 HR had provided most of the bank transaction information requested by HMRC and the closure notice had been issued, following the previous Tribunal hearing.
200. It was clear to the Tribunal that there had been a lack of progress and difficulty in obtaining information from HR and no meeting was possible as he had decided not to attend one.
201. HR and his agent stated that much of the information, prior to the decision of the Tribunal, was not relevant to the 2014/15 investigation.
202. HMRC prepared a spreadsheet to quantify the sums involved which, based on their information, detailed a shortfall of available income to meet household expenditure as defined by the FES, as adjusted.
203. HMRC concluded, on the balance of probabilities, that HR's turnover from taxi driving had been understated and concentrated on the year 2014/15 for which they had the most information to arrive at a revised turnover figure. HMRC then calculated additional liabilities as they saw them, based on these amounts which totalled £98,798.
204. HR emphasised throughout the hearing that he was a "prolific saver" and that he neither smoked nor drank alcohol.
205. The Tribunal noted that from his various bank accounts there was a pattern of lodgements and intra account transfers demonstrating planning, financial awareness and regular account intervention. The Tribunal agreed with HMRC's conclusion that HR had experience of government administration in terms of benefits and compensation and had an awareness of regulations.
206. HMRC had concluded that on the balance of probabilities that HR chose not to declare his income from taxi driving they surmised that this may have been because he did not wish to jeopardise his income from benefits.
207. After HMRC's investigations had ended and prior to the hearing, HR's agent produced the HMRC/Rafferty Table which set out the basis on which HR had accumulated savings and how they could be justified. At the hearing, the Tribunal heard oral evidence from HR and PR in support of the propositions put forward in support of the figures in the table.
208. HR and PR were persuasive and candid in setting out their personal and family circumstances in their oral evidence in relation to the receipt of a number of sources of income and capital receipts. However, in relation to significant amounts, including those said to be received, which were not cross-referenced to bank accounts, there was a significant lack of documentary or other supporting evidence.
209. There were also inconsistencies including whether HR was caring for his sons or caring for his mother.
210. There was no documentary evidence to support any of the amounts said to have been made over from HR's father and the evidence was conflicting as to whether it had been received in 2012 or in two tranches of £26,000 in 2005/6 and then £16,000 in 2011/12.
211. The Tribunal considered that the source of these funds is critical in respect of the capital build up to allow a purchase of CPE without a mortgage.

212. The Tribunal carefully considered HMRC's belief that it was more credible that the funds had been accumulated as a result of HR carrying on a self-employed taxi business without declaring the income he earned.

213. Notwithstanding the £42,000 which HR said he had received from his father, a further sum of £145,400 was required for the purchase of CPE. The HMRC/Rafferty Table whilst providing figures to demonstrate how the sum was achieved was seriously deficient in providing supporting documentary evidence.

214. The Tribunal furthermore noted that a significant number of the sums in the table were round numbers, which lacked credibility where no documentary or other evidence was produced to support them.

215. There was no documentary evidence to support the payments which were said to have been made by HR's two older children

216. The Tribunal believe that a prolific saver, saving with a view to purchase a property, would have systematically placed funds as they became available in a savings account or other financial product but this was not demonstrated.

217. In *Nicholson v Morris* 51 TC 95 (110), a decision which is binding on this Tribunal, it was made clear that the onus is on the taxpayer to show that any adjustment to his self-assessment tax liabilities is excessive.

218. In considering this the Tribunal is also bound by the findings of *Jonas v Bamford* 51 TC 1, where HMRC were convinced that the taxpayer company had undeclared sources of income and raised further assessments. In this case Mr Justice Walton stated "... the onus falls on the taxpayer to show that the Revenue figure was wrong - an onus which is not discharged merely by showing that there may have been an explanation for the accretion in the taxpayer's wealth but only by showing that there in fact was".

219. The Tribunal held that there was insufficient documentary evidence and oral evidence, on the balance of probabilities, to prove as facts the explanations and contentions made by HR as to how had been able to fund the purchase of CPE £153,000 without a mortgage or that the adjustments to his self-assessment tax liabilities were excessive.

220. There was considerable explanation but the law requires proof as a matter of fact and the lack of documentary evidence, including for significant sums such as those said to be received from HR's father and the lack of clarity as to the timing of its receipt, means that HR has failed to show sufficiently the facts surrounding the build-up of wealth necessary to have purchased CPE to the extent that they are credible.

221. Accordingly, the assessments are upheld and the appeal dismissed

#### *The Information penalty appeal*

222. The Tribunal considered the representations of HMRC and HR and concluded that the £300 penalty issued on 04 September 2018 had been charged in accordance with the legislation. The notice requested information outstanding which was to be received by 23 July 2018.

223. Paragraph 21 (4) of schedule 36 of the Finance Act 2008 ("Schedule 36") allows for a tax payer notice to be served if there is an open enquiry and paragraph 29 (6) allows the notice to be issued if an Officer has reason to suspect the taxpayer has been

under assessed or may have underpaid tax. The Tribunal considered that both these conditions were met.

224. The Tribunal considered that HR's bank statements were statutory records and accordingly paragraph 29 (2) of Schedule 36 withdraws the right of appeal against such a notice if the documents requested form part of a taxpayer's statutory records.

225. On 17 September 2018 HR's agent submitted an appeal against the penalty on the grounds that the bank statements requested were outside the enquiry year.

226. The Tribunal considered that the bank statements requested were reasonably required to assist HMRC with their investigation and that no bank statements were provided within the stated time limit.

227. The Tribunal noted that HR only complied with the information notice after 12 February 2020 after being directed to do so by the Tribunal in directions issued 30 January 2020 following the Tribunal hearing on 21 January 2020.

228. No reasonable excuse was put forward by HR.

229. Accordingly, the penalty is upheld and the information penalty appeal is dismissed.

#### *Closure Notice Appeal*

230. The Tribunal considered that the closure notice issued under section 28 A TMA for 2014/15 was valid and found that HR has failed to show that he has been overcharged by HMRC in terms of section 50 TMA.

231. HMRC issued a closure notice for the year 2014/15 and made assessments under section 29 TMA for the years 2001/2 to 2013/14 and 2015/16 to 2016/17 on 04 June 2020.

232. HR appealed against the closure notice and discovery assessment and penalties on 02 July 2020 and on 03 July 2020 set out the basis for this being that HR had returned all his income from self-employment. HR stated that his return had been enquired into over a three-year period and 'did not show more cash than declared income on the return... There was no Discovery'.

233. The Tribunal considers in light of the submissions put forward by HMRC, which it preferred to HR's, and the evidence before them that the closure notice and the resulting assessments made were valid and issued in accordance with section 28 TMA.

234. Accordingly, the closure notice appeal is dismissed.

#### *Penalty determination and assessment appeals*

235. The Tribunal held that the conditions contained in section 29 TMA to allow assessments to be made for the years 2001/02 to 2013/14 and 2015/16 to 2016/17, had been met on the facts and submissions put forward by HMRC.

236. The Tribunal also held that the penalties for failure to notify under section 7 TMA for the years 2001/2 to 2008/09, on 6 June 2020 and under Schedule 41 Finance Act 2008 for the years 2009/10 to 2011/12, on 05 June 2020, and for the submission of inaccurate documents under Schedule 24 Finance Act 2007 for the years 2012/13 to 2016/17, also on 05 June 2020, were valid on the facts and submissions put forward by HMRC.

237. Accordingly, the penalty determination and assessment were validly issued and the appeal is dismissed.

*Conclusion*

238. The Tribunal finds that HR has failed to notify chargeability to income tax for the years 2001/2 to 2011/12.

239. The Tribunal finds that HR has failed to accurately return his total income for the years 2012/13 to 2016/17 and as a result of his failure to notify the appellant is liable to penalties. His failure to notify and accurately return his income to HMRC was deliberate.

240. Whereas HR has provided explanations as to how he had accumulated sufficient capital to purchase CPE without a mortgage, he has not provided sufficient evidence to credibly prove the accumulations as fact being the test set down in *Jonas v Bamford*.

241. The Tribunal finds that the closure notice, discovery assessments and penalties have been issued in accordance with the relevant legislation.

242. All the appeals made by HR are dismissed.

**RIGHT TO APPLY FOR PERMISSION TO APPEAL**

243. 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.

**W RUTHVEN GEMMELL WS  
TRIBUNAL JUDGE**

**Release date: 10 May 2022**