Neutral Citation: [2023] UKFTT 72 (TC)

Case Number: TC08707

FIRST-TIER TRIBUNAL
TAX CHAMBER

Decided on the papers

Appeal reference: TC/2020/00577

PROCEDURE – publication of interlocutory decision – application by third party – application allowed

Decided on the papers
Judgment date: 19 January 2023

Before

TRIBUNAL JUDGE ANNE REDSTON

Between

ANDREW LILLICRAP

Appellant

and

THE COMMISSIONERS FOR
HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

and

JOHN MESSORE

Third Party Applicant

The Application was made by Mr Messore of Innovation LLP. It was decided on the basis of written submissions from Mr Messore and Mr Lillicrap, and from Sabeella Mallik, Litigator of HM Revenue and Customs' Solicitor's Office, on behalf of the Respondents

DECISION

INTRODUCTION AND BACKGROUND

1. This decision concerns an application by Mr Messore for an unpublished interlocutory decision ("the Decision") to be published. The background to the Decision was as follows:

(1) Mr Lillicrap had been paid a car allowance by his employer for the years 2010-11 to 2016-17. He considered that this allowance was not subject to National Insurance Contributions ("NICs"), but HMRC disagreed.

(2) Mr Lillicrap appealed against HMRC's refusal of his claim for the repayment of the NICs, and his case was stayed behind *Laing O'Rourke Services v HMRC*, which also concerned a car allowance. That appeal was decided on 8 June 2021 under reference [2021] UKFTT 211 (TC).

(3) Mr Lillicrap then applied to the Tribunal for the stay to be lifted, but HMRC objected. Having considered the parties' submissions and the case law, I issued the Decision lifting the stay on 1 November 2021. The Decision was not published.

(4) Preparations for the hearing of Mr Lillicrap's appeal resumed, but shortly before the date of the listed hearing, the parties settled their dispute. On 14 October 2022, Mr Lillicrap withdrew his appeal.

2. On 15 November 2022, Mr Messore wrote to the Tribunal saying that he had been working with Mr Lillicrap on his case, and had been given a copy of the Decision. He asked whether it was "a document of public record and therefore whether it can be referred to in other similar ongoing cases".

3. On 6 December 2022, the Tribunal clerk wrote to Mr Messore at my direction asking whether he was applying for the Decision to be published, and that if this was the case, inviting Mr Lillicrap and HMRC to provide any relevant submissions.

4. On 12 December 2022, Mr Messore confirmed he was applying for the Decision to be published, and he put forward detailed supporting submissions. Mr Lillicrap said he had no objection to publication, but HMRC did object.

5. For the reasons set out below, I have decided to publish the Decision and it is attached as an Appendix to this Decision.

PRELIMINARY MATTERS

6. I first set out a few preliminary matters: the meaning of an "interlocutory decision"; relevant provisions of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 ("the Tribunal Rules"); and my understanding of the practice of this Tribunal as regards the publication of interlocutory decisions

Interlocutory decision

7. The Oxford English Dictionary defines an "interlocutory" decision as one "pronounced during the course of an action; not finally decisive of a case or suit". Jowett's Dictionary of English Law similarly says that "a proceeding or application is interlocutory when it is peripheral to the main hearing determining the outcome of the case, whether before or after judgment", and that the concept includes, for example, applications for disclosure.

8. The Decision was "interlocutory" because it lifted the stay from Mr Lillicrap's appeal and so was plainly "not finally decisive".

Short, summary and full decisions

9. Rule 35 of Tribunal Rules applies where a decision "finally disposes of all issues in proceedings" or where it decides "a preliminary issue" which has been heard separately following a direction given under Rule 5(3)(e)".

10. Rule 35 allows the Tribunal to issue three types of decision: short, summary and full:

(1) short decisions give the outcome of the appeal, and can only be issued if both parties consent, see Rule 35(3);

(2) summary decisions include a summary of facts and reasons, see Rule 35(3)(a); and

(3) full decisions give full facts and reasons, see Rule 35(3)(b). A person can only appeal if a full decision has been issued, see Rule 35(4).

11. Rule 35 therefore does not apply to interlocutory decisions, because they do not finally dispose of all issues in the proceedings, and neither do they decide an identified "preliminary issue". Decisions within Rule 35 are known as "substantive decisions", rather than "interlocutory decisions".

The Tribunal's practice

12. The Tribunal publishes all full substantive decisions on its own website and on other websites. Short and summary decisions are not published, because they do not set out any or all of the facts and reasons which underpin the decision.

13. In relation to interlocutory decisions, the Tribunal's practice is not to publish those which relate to routine matters, such as adjournments and extensions of time, because these are of interest only to the parties as they move towards the hearing of the appeal. Exactly where the line is drawn between routine decisions and other decisions is a matter of judicial discretion, to be exercised in the light of the principle of open justice.

The principle of open justice

14. In *Dring v Cape Intermediate Holdings Ltd* [2019] UKSC 38 ("*Dring*") at [2], the Supreme Court approved the following passage from Toulson LJ's judgment in *R (Guardian News and Media Ltd) v City of Westminster Magistrates' Court* [2013] QB 618 ("*Guardian News*"):

> "Open justice. The words express a principle at the heart of our system of justice and vital to the rule of law. The rule of law is a fine concept but fine words butter no parsnips. How is the rule of law itself to be policed? It is an age old question. *Quis custodiet ipsos custodes*—who will guard the guards themselves? In a democracy, where power depends on the consent of the people governed, the answer must lie in the transparency of the legal process. Open justice lets in the light and allows the public to scrutinise the workings of the law, for better or for worse."

15. The Supreme Court in *Dring* also held as follows:

> "42. The principal purposes of the open justice principle are two-fold and there may well be others. The first is to enable public scrutiny of the way in which courts decide cases—to hold the judges to account for the decisions they make and to enable the public to have confidence that they are doing their job properly…
>
> 43. But the second goes beyond the policing of individual courts and judges. It is to enable the public to understand how the justice system works and why decisions are taken. For this they have to be in a position to understand the issues and the evidence adduced in support of the parties' cases…"

16. Mr Messore echoed this, saying he was "a firm believer that justice must not only be done but be seen to be done – which is why there are wider benefits to the decision being published".

17. Ms Mallik did not address the "open justice principle", but said that as the dispute with Mr Lillicrap had been settled, there was "no good reason for the judgment to be published".

WHETHER THE DECISION SHOULD BE PUBLISHED

18. In deciding whether the Decision should be published, I took into account the principle of open justice, and also the factors set out below.

The Decision was already in the public domain

19. In *Moneybrain (Privacy Application) v the Financial Conduct Authority* [2022] UKUT 00308 (TCC), I considered the relevant case law and decided that once a judgment has been handed down to the parties it enters the public domain, whether or not the judgment has been published on a judicial website or elsewhere. Thus, the Decision is already in the public domain because it had been issued to the parties.

The passage of time

20. The Decision was issued on 1 November 2021, and there have been subsequent case law developments. For instance, the Decision refers to *Murphy v HMRC* [UKUT] 2021] 152 (TCC), but the Court of Appeal have since decided *HMRC v Murphy* [2022] EWCA Civ 1112.

21. However, this is always the position with Tribunal or court judgments: the position may change after they are issued, and readers always have to take into account subsequent legislative and/or case law developments.

Reliance and reference in subsequent cases

22. One of the reasons given by Mr Messore for his application was that a Tribunal may not allow a party to refer to or rely on an unpublished Tribunal judgment. In *Ardmore Construction Limited v HMRC* [2014] UKFTT 0453 (TC) at [22], Judge Brooks refused to allow HMRC to rely on an unpublished judgment of the Special Commissioners because HMRC had copies of all Special Commissioners and Tribunal judgments, and it was not fair for them to rely on a case which the taxpayer could not access.

23. More recently, in *Greencyc v HMRC* [2021] UKFTT 0480 (TC), Judge Alexander first cited the relevant passages from *Ardmore* and then refused permission for the *taxpayer* to rely on an unpublished interlocutory decision. He said:

> "what is sauce for the goose must also be sauce for the gander – if it is not proper for HMRC to cite an unpublished decision, fairness dictates that it is also improper for the appellant to cite an unpublished decision."

24. Ms Mallik submitted that this was the correct approach, and that the Tribunal should neither publish the Decision, nor should any person (other than the parties) be able to refer to or rely on it.

25. However, my own view is that there is a difference between HMRC citing and relying on unpublished judgments, and the taxpayer doing so. Taxpayers rarely have copies of unpublished judgments; this usually only happens if they or their advisers know an appellant in a previous case, or if the adviser maintains a library of judgments in earlier cases in which they represented an appellant.

26. In contrast, HMRC is the respondent in all tax appeals. They have an entire and complete library of unpublished judgments. If HMRC were permitted to rely on these judgments at the Tribunal, they could select one from that library, and the taxpayer (and the Tribunal panel) would not know whether other contradictory or conflicting unpublished judgments also existed.

27. But the position is not the same where the taxpayer seeks to rely on an unpublished judgment. HMRC know whether or not that judgment is atypical, an outlier, or reflects the consensus view of previous Tribunals who have considered similar issues. They are thus in a position to challenge reliance on an unpublished judgment, whereas the taxpayer is not.

28. This reflects the position in *Ardmore,* where Judge Brooks first noted at [20] that:

> "HMRC has copies of all decisions made in the various tax courts, because, of course, it is always a party to such proceedings.…This means that HMRC has the ability to draw upon some decisions of the tax courts that are not freely available to the general taxpayer,"

29. He then said:

> "This clearly raises the question of fairness and whether HMRC should be permitted to rely on an unpublished (as opposed to an unreported) decision not freely available to the general taxpayer, especially as we are obliged to give effect to the overriding objective, contained in Rule 2 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (the 'Tribunal Rules'), to 'deal with cases fairly and justly' which includes dealing with a case in ways which 'are proportionate' to the 'resources of the parties'."

30. Thus, I would allow a taxpayer to rely on an unpublished judgment as long as HMRC had had due notice, but I would not allow HMRC to do the same. In other words, the HMRC goose and the taxpayer gander are not in the same position. I accept, however, that other judges may take a different view.

Conclusion

31. The principle of open justice requires that judgments be accessible to the public. The only reason for not publishing routine interlocutory judgments is that they are of insufficient interest to the wider public.

32. When I decided not to publish the Decision it was on the basis that it fell on that side of the line. It is now clear from Mr Messore's application that this was incorrect. I therefore attach the Decision as an Appendix to this judgment.

33. That conclusion is reinforced by the fact that publication will ensure that both HMRC and taxpayers can, should they wish to do so, refer to or rely on the Decision in future court or Tribunal hearings.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

34. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

ANNE REDSTON
TRIBUNAL JUDGE

Appendix: the Decision

Appeal number: TC/2020/00577

FIRST-TIER TRIBUNAL
TAX CHAMBER

ANDREW LILLICRAP **Appellant**

- and -

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

The Tribunal makes this interlocutory (case management) Decision, having considered:

- Mr Lillicrap's grounds of appeal dated 5 February 2020 and his amended grounds of appeal dated 29 September 2020;
- The stay of his case behind that of Laing O'Rourke Services Ltd and others
- Mr Lillicrap's applications to "unstay" his case, dated 30 April 2021 and his reiteration of his position in subsequent emails;
- the Tribunal's directions dated 27 August 2021 allowing HMRC 28 days to respond;
- HMRC's application for an extension of time, dated 22 September 2021, which was overlooked by the Tribunal's Service and so was not forwarded for judicial determination until 21 October 2021, after the requested extension period had expired;
- HMRC's objection to the lifting of the stay, dated 20 October 2021, and
- Mr Lillicrap's response, dated 21 October 2021.

INTERLOCUTORY DECISION

1. For the reasons set out in this decision, I have decided to lift the stay which had applied to Mr Lillicrap's appeal. Directions for the ongoing progress of his appeal are being issued at the same time as this decision.

The applications

2. Mr Lillicrap's appeal concerns a claim by for the repayment of NICs totalling £2,195 in relation to a car allowance paid to him by his employer for the years 2010-11 to 2016-17. His case was stayed behind *Laing O'Rourke Services v HMRC,* which also concerned a car allowance. That appeal was decided on 8 June 2021 under reference [2021] UKFTT 211 (TC) ("*Laing O'Rourke*").

3. Mr Lillicrap has asked for the stay to be lifted because:

(1) the dispute began in 2016; the case has already been stayed and further delay is not in the interests of justice;

(2) the facts of *Laing O'Rourke* are significantly different from those in his case;

(3) he did not make a profit from the car allowance, and so the principles in *Cheshire Employer and Skills Development Limited* (previously *Total People Limited) v HMRC* [2012] EWCA Civ 1429 ("*Cheshire*") apply;

(4) in the recent case of *Murphy v HMRC* [UKUT] 2021] 152 (TCC) ("*Murphy*"), the UT held that a person was only subject to tax and NICs if he "can properly be said to have made an overall profit (i.e. a net profit) from their employment as a result of the payment from their employer", and that was his position; and

(5) his appeal concerns a sum of £2,195 and the time and personal cost of continuing with the case if it is further stayed are disproportionate.

4. HMRC have asked for Mr Lillicrap's case to remain stayed until:

(1) the final determination of any appeal against *Laing O'Rourke*; and

(2) the final determination of *Murphy*, in relation to which permission has been granted for an appeal to the Court of Appeal, if Mr Lillicrap is relying on the UT's judgment in *Murphy*.

5. HMRC seek to rely on *RBS Deutschland Holdings GmbH* [2007] STC 814 ("*RBS Deutschland*"), where the Court of Session held at [22]:

> "a tribunal or court might sist [stay] proceedings against the wish of a party if it considered that a decision in another court would be of material assistance in resolving the issues before the tribunal or court in question and that it was expedient to do so."

6. HMRC submit that these tests are satisfied in Mr Lillicrap's case. In particular, they draw attention to the fact that both the FTT in *Laing O'Rourke* and the UT in *Murphy* referred to the case of *Donnelly v Williamson* [1982] STC 88 ("*Donnelly*"). In HMRC's permission application to the Court of Appeal in *Murphy* includes the submission that the *dicta* relied on by both tribunals were *obiter* and should not have been followed.

7. HMRC also disagree with Mr Lillicrap as to the lack of factual similarities between his case and that of *Laing O'Rourke*. They say that in both "there was a flat allowance paid" which did not depend on mileage.

The principles in *RBS Deutschland*

8. The principle set out in *RBS Deutschland* is that an appeal may be stayed against the wish of a party if "a decision in another court would be of material assistance in resolving the issues before the tribunal" and it is "expedient" to do so.

9. The threshold is therefore that the decision of the other court or tribunal "would" (not "might") be of "material" assistance; it must also be "expedient" to stay the appeal. In the next part of this judgment, I first consider *Laing O'Rourke* and *Murphy,* and then the question of expediency.

Laing O'Rourke

10. HMRC's submission that there is a similarity between the employees in *Laing O'Rourke* and Mr Lillicrap because both received "a flat allowance" is surprising, given that this was also the case in *Cheshire,* and that case was decided in favour of the taxpayer.

11. In the review letter issued by HMRC to Mr Lillicrap, the review officer said that, following *Cheshire,* it is "necessary for HMRC to consider refund claims on the facts of each mileage allowance claim". In other words, receipt of a flat allowance does not determine the issue: it is instead necessary to look at the facts of the particular case.

12. The statement by the review officer that it is necessary to look at the facts of each mileage allowance claim is consistent with *Hochstrasser v Mayes* [1960] AC 376 ("*Hochstrasser*"). That concerned the taxation of a payment of £350 made by an employer to compensate an employee for the loss on a sale of his house on moving to a different job with the same employer. The House of Lords approved the following passage from the judgment of Upjohn J (emphasis added):

> "in my judgment the authorities show this, that it is a question to be answered in the light of the particular facts of every case whether or not a particular payment is or is not a profit arising from the employment."

13. I agree with Mr Lillicrap that on the facts as put forward by both parties, there are significant and material differences between his case and that of *Laing O'Rourke*. In particular, the FTT in *Laing O'Rourke* found that payments were made to employees based solely on grade and not on mileage driven, see [102], [105(2)] and [140] of the judgment. In addition, at least one-third of those in receipt of the payments did no business mileage, see [105(5)]. In contrast, the heart of Mr Lillicrap's case is that he made no profit from the payments but in remained out of pocket even after the allowances.

14. I find that the UT's judgment in *Laing O'Rourke* (assuming of course that permission is given for an appeal by the taxpayer) would not be of material assistance to the determination of Mr Lillicrap's appeal.

Murphy

15. The issue in *Murphy* was not mileage allowances, but payments to cover the costs of a successful court claim. The UT relied on Lord Denning's speech in *Hochstrasser*, where he said:

> "My Lords, tried by the touchstone of common sense - which is, perhaps, rather a rash test to take in a revenue matter - I regard this as a plain case. No one coming fresh to it, untrammelled by cases, could regard this £350 as a profit from the employment. Mr. Mayes did not make a profit on the resale of the house. He made a loss. And even if he had made a profit, it would not have been taxable. How, then, can his loss be taxable, simply because he has been indemnified against it?"

16. The UT also relied on two other cases, the first of which was *Pook v Owen* (1969) TC 571. The UT found that the judgments of Lord Guest and Lord Donovan in that case "both suggest that a key question is whether the employee has made an overall (i.e. net) profit" and on the facts of that case "there was no profit from the employment because the amount of the payment from the employer was equal to the expenses incurred by the employee (and so there was no emolument)".

17. The second case was *Donnelly*. The UT summarised the position as follows:

> "Walton J held that the payment was not an emolument on the basis that the payment was not received by the teacher 'for acting as an employee' (p93g) (i.e. on the basis of the 'from' issue). However, he went on to consider the earlier authorities, including the judgments in *Pook v Owen*. He concluded that the ratio of the majority (Lords Guest, Pearce and Donovan) was that 'repayment of expenses is not an emolument' and that this conclusion was 'unassailable' (at p97b-c). In the context of an allowance that was paid for the

> use of a car, the question was 'whether the allowance… in question was intended as a genuine estimate of the cost to the taxpayer of undertaking the journeys that she did take, or whether on the other hand, it included an element of bounty' (at p97e). If there was an element of bounty involved, then this would be a benefit that would be taxable; but, if the intention was only to reimburse expenses that had been genuinely incurred, then there was no real benefit, no profit, and so the reimbursement would not be taxable."

18. In *Cheshire* the Court of Appeal endorsed that part of the judgment of Walton J, saying at [55]:

> "What emerges from his judgment are the sensible propositions that, in a case where an employer establishes a general scheme for reimbursement of employees' travelling expenditure, then in determining whether the allowances are to be treated as the taxable earnings of the employees because they involve a profit element or they are to be ignored because they are reimbursement of expenditure."

19. HMRC now appear to be asking to stay Mr Lillicrap's case behind *Murphy* because they wish to argue at the Court of Appeal that the UT was wrong to rely on *Donnelly.* However, *Donnelly* was approved by the Court of Appeal in *Cheshire,* and that Court is normally bound by its own past decisions (*Young v Bristol Aeroplane* [1944]), so the position cannot be changed by appealing *Murphy.*

20. There is also a more fundamental point. The Social Security (Contributions and Benefits) Act 1992 is the primary legislation for charging NIC. Section 6 provides that NIC is payable on "earnings", and section 3 that earnings includes "any remuneration or profit derived from an employment". In *Forde and McHugh v HMRC* [2014] UKSC 14 at [17] the Supreme Court confirmed that "earnings" is not equated simply with "payment" by an employer in money or in kind. As the Court of Appeal said in *Cheshire* at [22], "it is implicit in the concept of earnings, remuneration and profit that there is some overall net financial benefit to the recipient". That is the principle on which Mr Lillicrap is seeking to rely, and *Murphy* is simply an example of its application.

21. I therefore find that Mr Lillicrap's case is not to be stayed behind *Murphy,* because:

(1) Mr Lillicrap referred to *Murphy* because of its reference to the principle that a person is not subject to tax or NICs if there is no profit element;

(2) that principle was confirmed by the Court of Appeal in *Cheshire*;

(3) the tribunal which will hear Mr Lillicrap's appeal is bound by the judgment in *Cheshire,* as is the Court of Appeal which will hear *Murphy*;

(4) a case is to be stayed behind another where the decision of that court "would be of material assistance in resolving <u>the issues before the tribunal</u>"; but

(5) it is not open to the tribunal hearing Mr Lillicrap's appeal to find that the meaning of earnings includes payments with no element of profit; and therefore

(6) that principle will not form part of the "issue" to be decided by that tribunal; instead, the tribunal must apply the law which is binding on it.

Expediency

22. Even were I to be wrong on both of the above points, I would also refuse to direct the continuation of the stay because it is not expedient for Mr Lillicrap's case to remain stayed behind those of other taxpayers.

23. In (*R (oao McCormack) v St Edmund Campion Catholic School* [2012] EWHC 3928 (Admin), Beatson J considered the meaning of the word "expedient". He first agreed with counsel that it was to be characterised as "subjective and not hard edged" and continued:

> "A quick examination of dictionary definitions gives the following meanings: 'convenient and practical', 'suitable or appropriate'. The Oxford English Dictionary states: 'conducive to advantage in general or to a general purpose, suitable to the circumstances of the case.' There is also a more deprecative sense of 'useful or politic as opposed to just or right' and also 'something that helps forward or that conduces to an object'."

24. I respectfully agree with that definition. In *RBS Deutschland* the word is clearly not used in the deprecative sense, but instead means "convenient and practical", "suitable or appropriate" and "conducive to advantage in general or to a general purpose, suitable to the circumstances of the case".

25. It is not expedient further to stay Mr Lillicrap's appeal, because:

(1) a stay delays the resolution of this case for at least a year until *Murphy* is decided by the Court of Appeal, and possibly longer;

(2) the payments in dispute were made between 2010 and 2016, so between eleven and five years ago;

(3) whatever the outcome of *Murphy* and *Laing O'Rourke,* the facts of Mr Lillicrap's case will need to be found;

(4) the amount involved is small, just over £2,000; and

(5) Mr Lillicrap has already spent many hours corresponding with HMRC and the Tribunal about the stays of his appeal, and he rightly now seeks the resolution of his dispute.

Interests of justice

26. The Tribunal's power to stay appeals is given by Rule 5(3)(j) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. Rule 2(3) reads:

> "The Tribunal must seek to give effect to the overriding objective when it—
>
> (a) exercises any power under these Rules; or
>
> (b) interprets any rule or practice direction."

27. A decision by a tribunal to stay a case must therefore give effect to the overriding objective. As set out at Rule 2(1), it is "to enable the Tribunal to deal with cases fairly and justly". Rule 2(2) says:

> "Dealing with a case fairly and justly includes—
>
> (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;
>
> (b) avoiding unnecessary formality and seeking flexibility in the proceedings;
>
> (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
>
> (d) using any special expertise of the Tribunal effectively; and
>
> (e) avoiding delay, so far as compatible with proper consideration of the issues."

28. A further stay of this appeal would breach (a) above, because it would be disproportionate to:

(1) the importance of the case, which turns on its own facts and does not raise new points of principle;

(2) the complexity of the issues, as the legal principles have already been established by *Cheshire*;

(3) the costs of the hearing. These will not be reduced by the stay, because the issues are fact-dependent. Moreover, if the recent past is any indicator, Mr Lillicrap has had to engage in extensive and difficult debates with HMRC about other cases behind which HMRC seek to stay his appeal. This has come at the cost of his own time, and the amount at stake is only £2,195.

29. A further stay would also breach Rule 2(2)(e), because it would introduce yet more delay into these proceedings. It is between eleven and five years since the payments at issue, and almost two years since Mr Lillicrap notified his appeal to the Tribunal. A further stay is not required for there to be "proper consideration of the issues". The issues can be decided by the Tribunal on the basis of the facts as found and the law as set out in *Cheshire.*

Decision and appeal rights

30. The stay of Mr Lillicrap's appeal is lifted because a further stay behind *Laing O'Rourke* and/or *Murphy* would not be of material assistance in resolving the issues before the tribunal and because it is neither expedient nor in the interests of justice for the stay to continue.

31. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

ANNE REDSTON
TRIBUNAL JUDGE

RELEASE DATE: 19th JANUARY 2023