Neutral Citation: [2024] UKFTT 00237 (TC)

Case Number: TC09111

FIRST-TIER TRIBUNAL
TAX CHAMBER

By remote video hearing

Appeal reference: TC/2023/00146

STRIKE OUT – repeated non-compliance by appellant's accountant caused earlier appeal to be struck out – no reinstatement application – instead new appeal against the same HMRC decision – HMRC application for new appeal to be struck out – whether cause of action estoppel applies – held no, in relation to strike outs for procedural failures – whether abuse of process applied – whether reliance on adviser provided a special reason for refusing the strike out – appeal struck out – whether the Tribunal has any powers in relation to the accountant

Heard on 11 March 2024
Judgment date: 20 March 2024

Before

TRIBUNAL JUDGE ANNE REDSTON

Between

DAVID HENRY

Appellant

and

THE COMMISSIONERS FOR
HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Ms Jacqueline Anderson, friend of the Appellant

For the Respondents: Ms Jane Chris-Tagoe, Litigator of HM Revenue and Customs' Solicitor's Office, for the Respondents

DECISION

INTRODUCTION AND SUMMARY

1. On 9 November 2015, Mr Henry sold a property and subsequently reported a capital gain. On 18 August 2020, HM Revenue & Customs ("HMRC") issued him with a Closure Notice. On 27 April 2021, Mr Henry appealed to the Tribunal against the conclusions of that Notice and the consequential amendments to his self-assessment ("SA") return.

2. That appeal was made on Mr Henry's behalf by his accountant, Mr James Wright-Anderson ACCA of James Wright & Co, a firm of accountants in Purley; it was registered under reference TC/2021/01445 ("the First Appeal").

3. Mr Wright-Anderson repeatedly failed to comply with the Tribunal's directions, and the First Appeal was eventually struck out on 27 October 2022 following non-compliance with an "Unless Order". The Tribunal informed both Mr Wright-Anderson and Mr Henry of the strike out, and about the requirements for a reinstatement application.

4. No such application was made. Instead, on 10 January 2023, Mr Wright-Anderson filed a new Notice of Appeal on Mr Henry's behalf; this was given the reference TC/2023/00146 ("the New Appeal"). The New Appeal was against the same Closure Notice as the First Appeal and relied on the same grounds.

5. HMRC applied for the New Appeal to be struck out ("the Application"). Mr Henry tried to contact Mr Wright-Anderson about the Application, but he failed to return Mr Henry's calls. Mr Henry instructed another accountant, Mr Abiodun Albert Adeboyejo, but Mr Adeboyejo refused to attend this hearing on the basis that he was insufficiently familiar with the case. Mr Henry then asked Ms Anderson, a friend of his and an English teacher, to provide support and help (Ms Anderson has no connection with Mr Wright-Anderson or with his firm; the shared surname is a coincidence).

6. At the inception of the hearing, Ms Anderson applied for an adjournment to allow Mr Henry to obtain new representation, or for Mr Adeboyejo to "get to grips with the case". I refused that application for reasons explained later in this judgment.

7. In relation to the Application, Ms Chris-Tagoe submitted on behalf of HMRC that the New Appeal should be struck out because:

   (1) it was substantially identical to the First Appeal, and the legal principle known as "cause of action" estoppel applied; or in the alternative

   (2) it would be an "abuse of process" to allow the New Appeal to continue.

8. Having considered the case law, I decided that:

   (1) Cause of action estoppel only applies where the cause of action has been "decided in earlier proceedings". In a strike out for procedural reasons, such as happened in the First Appeal, the cause of action set out in the appellant's Notice of Appeal has not been decided.

   (2) Instead, the relevant principle is abuse of process. Where a case has been struck out for "want of prosecution" or wholesale disregard of the Tribunal's rules, as happened in relation to the First Appeal, a second appeal covering the same subject matter will be struck out "unless there is special reason not to do so", see the case law authorities cited later in this judgment.

9. Ms Anderson submitted that the Second Appeal should be allowed to proceed because:

(1) the First Appeal had been struck out because of Mr Wright-Anderson's repeated failures to comply with the Tribunal's directions;

(2) it was Mr Wright-Anderson who had incorrectly made the New Appeal instead of making a timely application for reinstatement; and

(3) Mr Henry should not be penalised as a result of Mr Wright-Anderson's failures.

10. However, the general approach of courts and Tribunals is that no distinction is made between a litigant (such as Mr Henry) and his advisers. I decided that Mr Henry's reliance on Mr Wright-Anderson did not constitute a "special reason" so as to depart from the normal approach in such cases.

11. I therefore agreed with Ms Chris-Tagoe that the principle of abuse of process applied. The Application is therefore allowed and the New Appeal struck out under Rule 8(3)(c) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 ("the Tribunal Rules").

12. Mr Henry and Ms Anderson asked the Tribunal for assistance in relation to Mr Wright-Anderson's failures, and I make some limited comments at the end of this judgment.

THE TRIBUNAL RULES

13. Rule 5 of the Tribunal Rules is headed "case management powers", and paragraph 1 reads:

> "Subject to the provisions of the 2007 Act and any other enactment, the Tribunal may regulate its own procedure."

14. Rule 8 is headed "Striking out a party's case", and so far as relevant, reads:

> "(1) The proceedings, or the appropriate part of them, will automatically be struck out if the appellant has failed to comply with a direction that stated that failure by a party to comply with the direction would lead to the striking out of the proceedings or that part of them.
>
> (2) The Tribunal must strike out the whole or a part of the proceedings if the Tribunal—
>
> (a) does not have jurisdiction in relation to the proceedings or that part of them; and
>
> (b) does not exercise its power under rule 5(3)(k)(i) (transfer to another court or tribunal) in relation to the proceedings or that part of them.
>
> (3) The Tribunal may strike out the whole or a part of the proceedings if—
>
> (a) the appellant has failed to comply with a direction which stated that failure by the appellant to comply with the direction could lead to the striking out of the proceedings or part of them;
>
> (b) the appellant has failed to co-operate with the Tribunal to such an extent that the Tribunal cannot deal with the proceedings fairly and justly; or
>
> (c) the Tribunal considers there is no reasonable prospect of the appellant's case, or part of it, succeeding.
>
> (4) The Tribunal may not strike out the whole or a part of the proceedings under paragraphs (2) or (3)(b) or (c) without first giving the appellant an opportunity to make representations in relation to the proposed striking out.

(5) If the proceedings, or part of them, have been struck out under paragraphs (1) or (3)(a), the appellant may apply for the proceedings, or part of them, to be reinstated.

(6) An application under paragraph (5) must be made in writing and received by the Tribunal within 28 days after the date that the Tribunal sent notification of the striking out to the appellant."

15. Rule 11 is headed "Representatives" and it reads, again so far as relevant:

"(1) A party may appoint a representative (whether a legal representative or not) to represent that party in the proceedings.

(2) If a party appoints a representative, that party…must send or deliver to the Tribunal and to each other party to the proceedings written notice of the representative's name and address.

(3) Anything permitted or required to be done by a party under these Rules, a practice direction or a direction may be done by the representative of that party, except signing a witness statement.

(4) A person who receives due notice of the appointment of a representative—

(a) must provide to the representative any document which is required to be provided to the represented party, and need not provide that document to the represented party; and

(b) may assume that the representative is and remains authorised as such until they receive written notification that this is not so from the representative or the represented party.

(5) At a hearing a party may be accompanied by another person who, with the permission of the Tribunal, may act as a representative or otherwise assist in presenting the party's case at the hearing.

(6) Paragraphs (2) to (4) do not apply to a person (other than an appointed representative) who accompanies a party in accordance with paragraph (5)."

THE FACTS

16. The facts were not in dispute and are as follows.

17. Mr Henry is a hairdresser by trade. He left school at 16 and his reading and writing skills are poor. His only qualification is a diploma in hairdressing.

18. On 9 November 2015, Mr Henry sold a property in Peckham High Street. He had been sent a Notice to File his SA return for 2015-16, but did not file the return by the due date. HMRC were notified of the property sale via the Land Registry, and on 27 October 2017, Officer Kemp wrote to Mr Henry, copying Mr Wright-Anderson, reminding him of his obligation to file the return. No reply was received.

19. On 31 January 2018, Officer Kemp wrote again, saying she would be using the information in HMRC's possession to issue a determination. The SA return was finally submitted on 8 February 2018; it included a capital gain relating to the sale of the property.

20. On 17 July 2018, Officer Kemp opened an enquiry into Mr Henry's 2015-16 return; Mr Wright-Anderson acted for Mr Henry during that enquiry. On 19 August 2020 HMRC issued a closure notice under s28A TMA 1970, increasing the tax payable by £110,990.08.

21. On 27 April 2021, Mr Wright-Anderson, acting as Mr Henry's representative, filed a Notice of Appeal with the Tribunal against the Closure Notice; this, the First Appeal, was given the reference TC/2021/01145.

22. On 13 December 2021, the Tribunal issued directions to progress that appeal, including requiring both parties to provide a list of documents by 21 January 2022, witness statements by 18 February 2022 and listing information by 4 March 2022, and that HMRC provide the hearing Bundle by 18 March 2022.

23. On 2 and 3 February 2022, HMRC wrote to Mr Wright-Anderson because they had not received the list of documents. On 8 February 2022, the Tribunal similarly wrote to him chasing the list of documents, and directing that it be filed and served within the next seven days. Mr Wright-Anderson did not comply.

24. On 28 February 2022, HMRC chased Mr Wright-Anderson for service of the witness statements. Mr Wright-Anderson responded to HMRC (but not the Tribunal) on the same date, saying he had been out of the country but "hoped to have any issues resolved within the next 30 days!".

25. On 3 March 2022, HMRC wrote again Mr Wright-Anderson saying that he had not responded to the direction about witness statements, and reminding him that the deadline for filing and serving the Bundle was approaching. Mr Wright-Anderson did not respond.

26. On 17 March 2022, HMRC served the Bundle using only the documents on the HMRC list; in a covering letter they pointed out that it did not contain a witness statement from Mr Henry.

27. On 21 April 2022, the Tribunal issued Mr Wright-Anderson with an "Unless Order" stating that the First Appeal would be struck out due to his failure to comply with the directions to provide the list of documents, witness statement(s), and listing information, unless he responded within seven days to confirm that Mr Henry intended to continue with the appeal,

28. Mr Wright-Anderson replied the same day, stating:

> "We can confirm that we have been waiting on some additional written evidence from our client that he has had difficulties in obtaining due to the passage of time so it does appear that a further extension of time, not exceeding 90 days would allow our client to resolve these issues."

29. On 13 May 2022, the Tribunal allowed Mr Wright-Anderson's application for an extension of time, and issued a new compliance date of 11 August 2022. Mr Wright-Anderson did not comply.

30. On 23 August 2022, following the expiration of that extension of time and having received no response from Mr Wright-Anderson, HMRC applied for the First Appeal to be struck out under Rule 8(3)(b) of the Tribunal Rules on the basis of Mr Wright-Anderson's failure to comply with the Tribunal's directions.

31. Mr Wright-Anderson replied by return, saying:

> "We have repeatedly stated that we wish to have the matter proceed to a full hearing as our client has no further written evidence beyond those already supplied to yourselves!".

32. HMRC responded by asking why Mr Wright-Anderson had previously requested a 90 day extension of time if there was no further evidence to supply.

33. On 12 October 2022, the Tribunal issued Mr Wright-Anderson with a further Unless Order, stating that the First Appeal would be automatically struck out under Rule 8(1) of the Tribunal Rules unless, within seven days, Mr Wright-Anderson supplied the listing information including dates to avoid. The Tribunal observed that:

> "Given the Appellant's repeated failures to cooperate, the Tribunal has today considered warning the Appellant that the Tribunal proposes striking out the appeal…for failure to cooperate with the Tribunal to such an extent that the Tribunal cannot deal with the proceedings fairly and justly…These directions might be considered overgenerous in not moving straight to that."

34. Mr Wright-Anderson failed to respond to the Unless Order. On 19 October 2022, the appeal was struck out under Rule 8(1).

35. On 27 October 2022, the Tribunal wrote to Mr Wright-Anderson, stating that the appeal had been struck out due to the failure to comply with the Unless Order, and adding (emboldening in original):

> "You have the right to apply for the proceedings to be reinstated but such an application must be made in writing and received by the Tribunal within **28 days** from the date of this letter. Such an application should be supported with reasons, including an explanation of why the direction was not complied with".

36. On the basis of Mr Henry's evidence at the hearing, I find that he was sent a copy of that letter, and that he handed it to Mr Wright-Anderson.

37. The deadline to request a reinstatement was 24 November 2022. Mr Wright-Anderson did not make a reinstatement application by the due date or at all. Instead, on 10 January 2023, he made the New Appeal. This seeks to appeal the Closure Notice issued on 18 August 2020; in other words, to appeal the same decision as the First Appeal.

38. On 3 April 2023, HMRC made the Application. Mr Henry tried to contact Mr Wright-Anderson in relation to the New Appeal and the Application, but Mr Wright-Anderson did not respond to his calls. Mr Henry called HMRC and was told that Mr Wright-Anderson had also failed to reply to them. Mr Wright-Anderson did not attend the hearing of the Application.

39. Given Mr Wright-Anderson's failure to respond, Mr Henry instructed Mr Adeboyejo, an accountant recommended by a friend. In reliance on Mr Henry's evidence at the hearing, I find that he had instructed Mr Adeboyejo "some months ago".

40. However, Mr Adeboyejo did not provide a written response to the Application, and he refused to attend the hearing on the basis that he was insufficiently familiar with the case, or, as Ms Anderson put it, because he had not "got to grips with it". She understood this was because Mr Wright-Anderson had not provided him with relevant documentation

41. Mr Henry then asked Ms Anderson to attend to provide him with support and help. She is Mr Henry's friend and works as an English teacher, she has no training in tax or accountancy. Nevertheless, she provided competent assistance during the hearing.

MS ANDERSON'S APPLICATION FOR AN ADJOURNMENT

42. Ms Anderson referred to the fact that Mr Henry had tried to get both Mr Wright-Anderson and Mr Adeboyejo to attend the hearing, but the former had failed to respond and the latter had refused. She asked the Tribunal to adjourn the hearing of the Application to allow Mr Henry to obtain representation.

43. Ms Chris-Tagoe objected to the adjournment application and I agreed. In my judgment, it was not in the interests of justice to adjourn the hearing of the Application because:

> (1) Mr Henry had been informed of the strike out well over a year ago, and he was also told what action had to be taken should he wish to reinstate the appeal. Although his reading and writing skills are limited, he was able to ask Ms Anderson to assist him for this hearing, and it is reasonable to infer that he could have asked her, or another friend

or acquaintance, to read the strike out decision when it arrived; this would have ensured that he knew for himself what action was required, rather than relying only on Mr Wright-Anderson.

(2) Mr Henry had instructed new accountants some months ago. There was no good reason why Mr Adeboyejo could not have "got to grips with" the Application before this hearing. If Mr Wright-Anderson was not co-operating in relation to the provision of earlier documents, Mr Adeboyejo could have contacted HMRC and asked for copies.

(3) The Tribunal is well-used to hearing from litigants in person who attend the hearing without an accountant or lawyer.

(4) Other taxpayers would be prejudiced by an adjournment. Both HMRC and the Tribunal would divert resources away from other appeals, and as Davis LJ said in *Chartwell Estate Agents v Fergies Properties* [2014] EWCA Civ 506 at [28], the interests of justice include "the interests of other court users: who themselves stand to be affected in the progress of their own cases by satellite litigation, delays and adjournments occurring in other cases..."

THE APPLICATION

44. I now move on to consider to the Application. I first summarise the parties' submissions (arguments) and then my reasons for allowing the Application.

Ms Anderson's submissions on behalf of Mr Henry

45. Ms Anderson submitted that it would be unfair to allow the Application because it was Mr Wright-Anderson's failures which had caused the First Appeal to be struck out, and it was he who had incorrectly failed to make a reinstatement application by the due date. Mr Henry had tried to find a new accountant, but Mr Adeboyejo had also failed to assist. Ms Anderson asked the Tribunal to allow the New Appeal to proceed and be taken forward by a new accountant.

Ms Chris-Tagoe's submissions on behalf of HMRC

46. Ms Chris-Tagoe submitted that cause of action estoppel applied, and in consequence the Tribunal had no jurisdiction to decide the New Appeal; it should therefore be struck out under Rule 8(2)(a).

47. She submitted in the alternative that it would be an abuse of process for the New Appeal to continue, and it should therefor be struck out under Rule 8(3)(c). The legal position was, she said, unchanged by Mr Henry's reliance on Mr Wright-Anderson or by the fact that it was the latter's failures that had caused the First Appeal to be struck out.

Discussion

48. Osborn's Concise Law Dictionary (12 ed) defines "cause of action" as "the fact or combination of facts which gives rise to a right of action". In *Arnold v National Westminster Bank plc* [1991] 2 AC 93 at 104, Lord Keith explained cause of action estoppel as follows:

> "Cause of action estoppel arises where the cause of action in the latter proceedings is identical to that in the earlier proceedings, the latter having been between the same parties or their privies and having involved the same subject matter. In such a case the bar is absolute in relation to all points decided unless fraud or collusion is alleged, such as to justify setting aside the earlier judgment. The discovery of new factual matter which could not have been found out by reasonable diligence for use in the earlier proceedings does not, according to the law of England, permit the latter to be reopened."

49. Those principles were considered and reaffirmed in *Virgin Atlantic v Zodiac* UKSC [2013] UKSC 46, in which Lord Sumption gave the only judgment. After a discussion of the principles, he confirmed that cause of action estoppel operated as an absolute bar to new proceedings, saying at [26]:

> "Where the existence or non-existence of a cause of action has been decided in earlier proceedings, to allow a direct challenge to the outcome, even in changed circumstances and with material not available before, offends the core policy against the re-litigation of identical claims."

50. It is true that the First Appeal and the New Appeal are essentially identical, but for cause of action estoppel to apply, there must first have been a "decision" on that cause of action by a court or tribunal.

51. In considering whether the striking out of an appeal constituted a "decision" on the underlying grounds put forward by an appellant, I was assisted by *Takhar v Gracefield Developments Ltd* [2019] UKSC 13. In that case, Lord Sumption (with whom Lords Hodge, Lloyd-Jones and Kitchin agreed) held that where a case is struck out for a procedural reason, the "cause of action" is the set aside application itself, and this "relates to the conduct of the earlier proceedings, and not to the underlying dispute". Lord Sumption went on to say that, as a result. "there can therefore be no question of cause of action estoppel" applying. In other words the substantive issues in the appeal have not previously been decided. Although *Takhar* concerned a strike-out application on the basis of fraud, in my judgment the principle is the same in other cases.

52. That this is the right approach can also be inferred from *Kishore v HMRC* [2021] EWCA Civ 1565. The background to that case was that:

(1) Mr Kishore's original appeal had been struck out by the Tribunal for failure to comply with an Unless Order.

(2) His application for reinstatement of that appeal was refused.

(3) HMRC then issued Mr Kishore with a penalty assessment.

(4) Mr Kishore appealed that assessment on essentially similar grounds to those in his first appeal.

(5) The Tribunal struck out the second appeal, and there was an onward appeal to the Upper Tribunal ("UT") and then to the Court of Appeal.

53. That Court decided that case, not by reference to cause of action estoppel, but by applying a line of authorities relating to abuse of process. These included *Securum Finance v Ashton* [2001] Ch 291 ("*Securum*"), where Chadwick LJ gave the only judgment, with which Ratee J agreed. He observed at [15] that:

> "whether it is an abuse of process to seek to litigate, in subsequent proceedings, issues which have been raised (but not adjudicated upon) in earlier proceedings which have themselves been struck out (whether on grounds of delay or on other grounds)…is a different question from the question whether a party should be allowed to raise, in subsequent proceedings, issues which have already been determined or 'laid to rest' (whether by adjudication, or by concession, or as the result of a decision to withdraw) in earlier proceedings".

54. Having considered the case law, he then said at [34]:

> "For my part, I think that the time has come for this court to hold that the 'change of culture' which has taken place in the last three years—and, in

> particular, the advent of the Civil Procedure Rules - has led to a position in which…the court must address the application to strike out the second action with the overriding objective of the Civil Procedure Rules in mind - and must consider whether the claimant's wish to have 'a second bite at the cherry' outweighs the need to allot its own limited resources to other cases."

55. In *Kishore,* Newey LJ gave the only judgment with which Nujee and King LJJ both agreed. He summarised *Securum* and the subsequent case law at [27(ii)] as follows:

> "Where a civil claim has been struck out as an abuse of process on account of intentional and contumelious conduct, want of prosecution or wholesale disregard of rules of Court or, perhaps, struck out by reason of other 'inexcusable' procedural failure on the part of the claimant, a second claim covering the same subject matter will be struck out unless there is special reason not to do so."

56. Although Newey LJ went on to hold that this line of authority did not apply on the facts of Mr Kishore's case, it does apply to Mr Henry. I thus agree with Ms Chris-Tagoe's alternative submission, that the correct principle to consider here is whether it would be an abuse of process to allow the New Appeal to continue. I also agree with her that in *Shiner v HMRC* [2018] EWCA Civ 31, the Court of Appeal confirmed at [19] that Rule 8(3)(c) gives this Tribunal the power to strike out an appeal for abuse of process.

57. It is clear from the facts that the First Appeal was struck out following Mr Wright-Anderson's failure to comply with the Unless Order, and that this was the last in a long line of failures to comply with the Tribunal's directions. It is thus a case where there has been both "want of prosecution" and inexcusable procedural failures. It follows that the New Appeal should therefore be struck out for abuse of process unless there is a "special reason" not to do so.

Special reason?

58. The heart of Ms Anderson's submissions was that Mr Henry had not known about these failures of his representative, and should be allowed to make the New Appeal. I considered whether this was a "special reason".

59. It is true that almost all the Tribunal's directions were sent only to Mr Wright-Anderson and not to Mr Henry. However, the Tribunal Rules allows the Tribunal to communicate with the appointed representative and not to copy the litigant (the person whose case it is), see Rule 11(4)(a) cited above. The normal practice of the Tribunal, once a representative is appointed, is to send communications only to that person. In addition, Mr Henry received the strike out letter of 27 October 2022 which explained the action to take; but he had simply given it to Mr Wright-Anderson. Thus, even if the Tribunal *had* copied Mr Henry on its directions, there is no reasonable inference that he would have taken action to remedy the position.

60. Courts and Tribunals have frequently considered the approach to take when a representative is incompetent. In *Hytec Information Systems v Coventry City Council* [1997] 1 WLR 666 ("*Hytec*"). Ward LJ, giving the leading judgment, said at p 1675:

> "Ordinarily this court should not distinguish between the litigant himself and his advisers. There are good reasons why the court should not: firstly, if anyone is to suffer for the failure of the solicitor it is better that it be the client than another party to the litigation; secondly, the disgruntled client may in appropriate cases have his remedies in damages or in respect of the wasted costs; thirdly, it seems to me that it would become a charter for the incompetent..."

61. In *Katib v HMRC* [2019] UKUT 189 (TCC) ("*Katib*"), the UT considered whether to allow a late application for permission to appeal, in part on the basis that the representative had been incompetent. They said at [58]:

> "the core of Mr Katib's complaint is that Mr Bridger was incompetent, did not give proper advice, failed to appeal on time and told Mr Katib that matters were in hand when they were not. In other words, he did not do his job. That core complaint is, unfortunately, not as uncommon as it should be. It may be that the nature of the incompetence is rather more striking, if not spectacular, than one normally sees, but that makes no difference in these circumstances. It cannot be the case that a greater degree of adviser incompetence improves one's chances of an appeal, either by enabling the client to distance himself from the activity or otherwise."

62. At [59] the UT considered the submission made on Mr Katib's behalf that "Mr Katib did not have the expertise to deal with the dispute with HMRC himself", but went on to say:

> "…that does not weigh greatly in the balance since most people who instruct a representative to deal with litigation do so because of their own lack of expertise in this arena. We do not consider that, given the particular importance of respecting statutory time limits, Mr Katib's complaints against Mr Bridger or his own lack of experience in tax matters are sufficient to displace the general rule that Mr Katib should bear the consequences of Mr Bridger's failings..."

63. Although UT in *Katib* was considering a different issue (a late appeal application), the case illustrates the application of the principles set out in *Hytec.* I similarly find that reliance on Mr Wright-Anderson does not provide Mr Henry with a special reason, so as to provide an exception from the approach set out in *Securum* and *Kishore.* In my judgment, allowing Mr Henry with a "second bite of the cherry" would be an abuse of process. I therefore strike out the New Appeal under Rule (3)(c) of the Tribunal Rules.

REINSTATEMENT?

64. That is sufficient to decide the Application, but for completeness I considered whether it would have been in the interests of justice to treat the New Appeal as a late application for reinstatement, in reliance on the Tribunal's broad case management powers at Rule 5(1) of the Tribunal Rules. However. I decided not to do so because:

(1) This was an entirely theoretical possibility, as no such application had been made.

(2) The New Appeal was made around six weeks after the end of the 28 day deadline for a reinstatement application. I would therefore also need to consider and apply the principles in *Martland v HMRC* [2018] UKUT 0178 (TCC), but there was no evidence from Mr Wright-Anderson as to the reasons why he did not make a reinstatement application by the due date.

(3) Reinstatement would not have been granted unless Mr Henry could have explained why there had been a failure to comply with the Tribunal's directions. It is reasonable to infer that he would have said he was entirely reliant on Mr Wright-Anderson, but he would also have had to convince me that Mr Wright-Anderson's actions should not be ascribed to him. This would be a difficult hurdle, see the case law summarised at §58ff above.

(4) The position of the other party, here HMRC, is also relevant: they reasonably believed that Mr Henry's appeal had come to an end when no reinstatement application was made within the 28 day period. The principle of finality would therefore be offended, and as the Supreme Court recently reaffirmed in *AIC v Federal Airports Authority of*

Nigeria [2022] UKSC 16 at [31], this principle has been in place for at least 175 years and was "of fundamental public importance".

MR WRIGHT-ANDERSON

65. Ms Anderson and Mr Henry asked if the Tribunal could take any action against Mr Wright-Anderson. It is true that the Tribunal can refer cases relating to tax advisers to the Tax Disciplinary Board of the Chartered Institute of Taxation, but Mr Wright-Anderson is not a Chartered Tax Adviser. He is a member of the Association of Chartered Certified Accountants ("ACCA"), but there appears to be no equivalent route so as to allow the Tribunal to make a reference or report directly to that body.

66. Complaints about poor advice given by an ACCA member must be made first to the person in question (here Mr Wright-Anderson) and can then be referred to the ACCA itself. But it is Mr Henry who would need to take that action; the Tribunal cannot step into his shoes, or act on his behalf. He may find some assistance at https://www.accaglobal.com/gb/en/footer-toolbar/contact-us/make-a-complaint-about-an-acca-member.html and he may wish to attach a copy of this decision notice to his letter(s).

OVERALL CONCLUSION AND APPEAL RIGHTS

67. For the reasons set out above, I allow the Application and strike out the New Appeal..

68. 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: 20th MARCH 2024