



Neutral Citation: [2024] UKFTT 00702 (TC)

Case Number: TC09249

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Decided on papers

Appeal reference: TC/2015/04850
TC/2015/04893

PROCEDURE — application for reinstatement of appeal struck out for non-compliance with Directions – late application – Martland applied – application refused

Heard on: 19 July 2024
Judgment date: 23 July 2024

Before

TRIBUNAL JUDGE GREG SINFIELD

Between

**ANTHONY SMITH
PAUL THOMPSON**

Appellants

and

THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS
Respondents

DECISION

INTRODUCTION

1. This decision concerns out of time applications by the Appellants, Mr Anthony Smith and Mr Paul Thompson, for their appeals, which were struck out in December 2023, to be reinstated. For reasons set out below, I have decided to refuse the applications.

BACKGROUND

2. In Directions released on 12 July 2023, the Tribunal granted the Appellants' applications dated 16 November 2022 for their appeals, which had been struck out by the Tribunal in a letter dated 4 August 2022, to be reinstated only as far as the Appellants' appeals related to penalties. The Directions went on to make case management directions to bring the appeals against the penalties to a hearing, the material parts of which were as follows:

“WITNESS STATEMENTS

4. Not later than 24 July 2023 the Appellants shall send or deliver to the Respondents statements from all witnesses on whose evidence they intend to rely at the hearing setting out what that evidence will be and shall notify the Tribunal that they have done so.

5. Not later than 21 August 2023 the Respondents shall send or deliver to the Appellants statements from all witnesses on whose evidence they intend to rely at the hearing setting out what that evidence will be and shall notify the Tribunal that they have done so.

LISTING INFORMATION

6. Not later than 4 September 2023 the parties shall send to the Tribunal and each other a statement providing the following information to enable the Tribunal to list the appeals for a hearing at Taylor House, Rosebery Avenue, London:

(1) names and roles of all persons (including witnesses) who will attend the hearing for that party;

(2) confirmation that all participants for that party will attend the hearing at the specified hearing centre in person for the face to face hearing of the appeal;

(3) whether any witnesses will attend the entire hearing or only attend to give their evidence;

(4) the expected duration of the hearing (together with a draft trial timetable if the hearing is expected to last four days or more);

(5) whether any pre-reading time should be allocated to the panel in addition to the time estimated for the hearing in (4) above and, if so, how long;

(6) two agreed periods of time for the hearing which are within or shortly after a hearing window starting 30 October 2023 and ending 1 March 2024 and each of which is at least as long as the longest time estimate for the hearing provided under (5) above OR if the parties are unable to agree such periods, then each party must provide their dates to avoid for a hearing in the same hearing window.

7. Shortly after 4 September 2023, the Tribunal will fix the date of the hearing even if a party has not provided their dates for a hearing or to avoid. A request for postponement on the grounds that the date of the hearing is

inconvenient is unlikely to succeed if the applicant did not comply with the above or if, having provided dates for the hearing, the applicant then failed to keep the dates clear of other commitments.

INDEX FOR HEARING BUNDLE

8. Not later than 11 September 2023, the Appellants shall serve on the Respondents (and notify the Tribunal that they have done so) a draft index to the bundle of documents. The index shall include:

- (1) the notice of appeal provided under Tribunal Procedure Rule 20;
- (2) the statement of case provided under Tribunal Procedure Rule 25;
any documents on the lists of documents which are to be referred to in the hearing;
- (3) the witness statements provided as previously directed; and
- (4) any directions issued by the Tribunal or correspondence in the appeal which the parties intend to refer to in the hearing.

9. Not later than 18 September 2023 the Respondents shall serve on the Appellant (and notify the Tribunal that they have done so) any additions to the draft index to the bundle of documents.

HEARING BUNDLE

10. Not later than 2 October 2023 the Appellants shall prepare an electronic hearing bundle ('the PDF Bundle') which complies with the Tribunal's guidance at Tax Chamber PDF bundles guidance (June 2021) and provide it to the Respondents and the Tribunal by email or electronic transfer."

3. On 17 July 2023, the Appellants' representative, Ms Dawn Bull, using the email address Montpelier-tax@outlook.com, made an application to the Tribunal on notepaper headed MTM Consultants Limited for the deadline of 24 July in Direction 4 to be extended by seven days to 31 July. HMRC agreed to the extension of time.

4. In compliance with Direction 4, Ms Bull filed the Appellants' witness statements on 31 July by email using email address mail@mtmconsultants.com.

5. On 4 August, HMRC applied for an extension of time to comply with Direction 5. On 8 August, I granted this application and extended the dates for compliance with Directions 5, 6 (and the date mentioned in Direction 7), 8, 9 and 10 by 28 days.

6. By email dated 27 September 2023, HMRC requested additional time to serve their witness statements. I agreed to this application on 5 October and directed that all dates for compliance in Directions 5 – 10 should be extended by a further 28 days and the hearing window for the appeal was now 4 December 2023 – 26 April 2024. Accordingly, the amended dates for compliance with the Directions were as follows:

Direction 5 – 16 October – HMRC to provide witness statements;

Direction 6 – 30 October – Parties to provide listing information including agreed dates for hearing;

Direction 8 – 6 November – Appellants to provide index for hearing bundle;

Direction 9 – 13 November – HMRC to provide any additions to hearing bundle; and

Direction 10 – 27 November – Appellants to serve electronic hearing bundle.

7. On 1 November at 12:32, HMRC emailed Ms Bull at Montpelier-tax@outlook.com to try to agree dates for a hearing. The email set out the dates on which HMRC were available

for a hearing. As is obvious from the email address line in the heading, that email between HMRC and Ms Bull was not copied to the Tribunal. Five minutes later on the same day, at 12:37, HMRC emailed the Tribunal to apologise that the date (30 October) for the parties to supply agreed listing dates in accordance with Direction 6(6) had passed without them being provided. They said the parties were in correspondence and hoped to provide the agreed dates by 3 November. That email was copied to Ms Bull at the usual email address.

8. On 3 November, Ms Bull sent an email from Montpelier-tax@outlook.com to HMRC and the Tribunal. It was a reply to HMRC's email of 1 November at 12:37 to the Tribunal which is shown immediately below Ms Bull's email. In the email, Ms Bull stated:

“Please accept our apologies, due to illness/absence, I have not as yet been able to obtain dates from our clients but have asked that they provide these by early next week, I will be in touch as soon as we receive them.”

9. Unfortunately, I was not sent the emails of 1 and 3 November until 28 November.

10. The Appellants contend that, on 9 November at 14:52, Ms Bull sent an email from Montpelier-tax@outlook.com to HMRC and the Tribunal stating:

“Further to my email of 3rd November, we can confirm our availability for the dates in March and April 2024 as detailed in your email of 1st November.”

11. The email was clearly intended for HMRC and not the Tribunal as it refers to “your email of 1st November”. As the email of 1 November which referred to dates in March and April 2024 was from HMRC to Ms Bull and had not been copied to the Tribunal, the reference in Ms Bull's email to “the dates in March and April 2024” would have been a complete mystery to the Tribunal.

12. I first saw the email of 9 November from Montpelier when I was provided with a copy of it as part of the Appellants' evidence in the reinstatement application of 28 March 2024. Unlike the email of 3 November, which was also included in the reinstatement application, the copy provided was not a printout of the email from the Montpelier-tax@outlook.com account. It was contained in an email forwarded by Ms Bull from the Montpelier-tax@outlook.com account to her personal email account on 19 March 2024 and then printed and scanned. The Appellants have not provided any explanation why the email was not simply printed from the Montpelier-tax@outlook.com account as the email of 3 November had been but had been forwarded to another email account before being printed. Like the email of 3 November, the 9 November email was a reply to HMRC's email of 1 November at 12:37 which appears immediately below it. There is no sign of Ms Bull's email of 3 November and no explanation of why Ms Bull did not simply ‘reply all’ to that email which would have provided the context for her email of 9 November but instead replied to HMRC's email of 1 November for a second time.

13. Having received the email of 9 November, I asked the Tribunal staff if any such email had been received and simply never referred to me (see [31.] below). I was told that there was no trace of the email in the paper files relating to these appeals and it was not on the system. In their Objection to the Appellant's' Application for Reinstatement, dated 3 June 2024, HMRC state that they had also never received the email dated 9 November.

14. On 17 June 2024, Mr Smith and Mr Thompson provided further evidence that the email of 9 November 2023 had been received by the Tribunal in the form of an automatic acknowledgement of receipt email from the Tribunal's Tax Appeals inbox sent to Ms Bull at the email address Montpelier-tax@outlook.com. It showed that the acknowledgment email was received in Ms Bull's inbox at 14:52. The subject line of the email was “Auto reply” and

although it acknowledged receipt of an email, it contained no details that identified the subject of the email concerned.

15. Following receipt of this further evidence, I asked the Tribunal staff to conduct a further search. A member of staff carried out a search of the Tribunal's emails by appeal reference, name and the Montpelier@outlook.com email address but there was no trace of any email from Montpelier@outlook.com on 9 November. The Tribunal maintains a further record of emails received: members of staff record all emails received on the Tribunal's case management system ('GLiMR') in the notes section for the relevant appeal. Again, there was no record of any email from Montpelier@outlook.com on this date recorded on GLiMR under these appeals. I discuss my finding of fact in relation to the issue of whether the email of 9 November was sent and received and the reasons for it at [40.] below.

16. On 22 November, HMRC sent a further email to the Tribunal providing their dates to avoid for the period 4 December 2023 to 26 April 2024. This email was copied to Ms Bull at Montpelier@outlook.com. It was received by the Tribunal on 22 November but, unfortunately, it was not forwarded to me until 6 December. The Appellants say in paragraph 9 of their submissions of 28 March 2024 (see [29.] below) that they "have no record of HMRC providing a copy of the email sent to the Tribunal dated 22nd November 2023". They do not say, and presumably cannot know, whether the email was received by their representative at Montpelier@outlook.com on 22 November or thereafter.

17. On 28 November, I gave instructions that the parties should have a further 14 days from the date of a letter to be sent to them in which to provide the listing information and dates for a hearing.

18. On 6 December, I was told by the Tribunal staff that the letter asking the parties to provide the listing information within 14 days had never been sent due to administrative oversight. At the same time, I was provided with a copy of HMRC's email of 22 November providing their dates to avoid for a hearing.

19. On 18 December, I gave instructions that another letter should be sent to the Appellants' representative directing them that they must provide the information about the Appellants' availability during the period 4 December (which by then, of course, had passed) to 26 April within 14 days from the date of that letter and that failure to respond may lead to the appeals being struck out under rule 8(3)(a) and (b) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 ('FTT Rules').

20. That letter, as sent, stated as follows:

"We acknowledge receipt of emails dated 1 and 3 November 2023 from HMRC and the Appellants' representative asking for further time to provide agreed listing dates which were originally due by 30 October 2023. We have also received an email dated 22 November from HMRC giving their dates to avoid for the period 4 December to 26 April. This matter has been referred to Judge Sinfield. He has directed that you should provide the information about your availability during the period 4 December to 26 April within 14 days from the date of this letter. Failure to respond may lead to the appeals being struck out under rule 8(3)(a) and (b) of the Tribunal Procedural Rules."

21. The letter was addressed to Montpelier Group (Tax Consultants) Ltd at Ballavale House, Santon in the Isle of Man and sent by email to Montpelier@outlook.com on 21 December 2023. In paragraph 11 of their submissions of 28 March 2024 (see [29.] below),

the Appellants say that the letter dated 21 December 2023 was “never received by my representative either by mail or email”.

22. On 26 January 2024, I was told that the Tribunal had not received anything from the Appellants in response to the letter of 21 December 2023. On the same day, having reviewed the history of the matter, I instructed the Tribunal staff to issue Directions striking out the Appellants’ appeals on the following grounds:

“... the Appellants have failed to agree dates for a hearing with the Respondents or provide the Appellants’ own availability for a hearing despite being allowed extensions of time in which to do so and have now failed to respond to the Tribunal’s direction contained in its letter of 21 December 2023.”

23. On 31 January 2024, the Tribunal sent the Direction striking out the Appellants’ appeals to Montpelier Group (Tax Consultants) Ltd at Ballavale House, Santon in the Isle of Man by email to Montpelier~~tax~~@outlook.com. The letter stated:

“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 by reasons, including an explanation of why the direction was not complied with.”

24. Accordingly, the deadline for applying for the proceedings to be reinstated was 28 February 2024. No such application was received by the Tribunal until 18 March (see [26.] and [27.] below).

25. On 13 March 2024, HMRC sent both Appellants materially identical letters stating that HMRC had been notified by the Tribunal that the appeals had been struck out. The letters stated:

“The Tax Tribunal wrote to Montpelier Group (Tax Consultants) Ltd on 31 January 2024 informing your agent that your appeal had been struck out and that if they wanted the proceedings to be reinstated, they should do so with (*sic*) 28 days of that letter.

This was issued following the Tax Tribunal’s letter dated 21 December 2023. I attach copies of both letters. No application to reinstate has been made.”

26. On 18 March 2024, Mr Thompson emailed the Tribunal. The substantive part of Mr Thompson’s email was as follows:

“I am writing to you in desperation as there appears to be a significant miss communication regarding our appeal. Following on from Judge Sinfields (*sic*) Directions after our hearing on 19-6-23. The instructions gave us until the 31-7-23 for us to issue witness statements to HMRC and the tribunal services which we duly did through our representative Mr Gittins and Dawn Bull of MTM Consultants ltd. We were then advised that HMRC were to issue the same to us by 21-8-23. I have continually chased MTM for any correspondence received and they have assured me that other than a list of available dates for attending a tribunal they had received no documents from HMRC or the Tribunal Services. To make sure we were providing a response to anything received Tony and I furnished dates of our availability for a hearing. The last email, following a chase from me, from MTM states that we are waiting to hear from the Tribunal and there is nothing we can do until then. The letter from Barry Charles [HMRC Officer] informing us the appeal had been struck out and copies of the letters sent by you to

Montpelier are the first time we have heard anything since our last appeal. I am aware that we have missed the deadline to reinstate but would ask that you may reconsider this as we have been completely unaware of what has been going on with the communications to our representative. I can furnish you with all of the emails chasing MTM for an update to the situation together with their responses in order for you to see that we have been completely in the dark.

I hope you can look favourably on my request to reinstate and if you need further clarification on the circumstances I can furnish you with anything you might need.”

27. On 18 March 2024, Mr Smith emailed the Tribunal. The substantive part of Mr Smith’s email was as follows:

“Further to Mr P Thompsons (*sic*) email on 18th March, we confirm that we were not aware of our appeal being struck out until we received correspondence dated 13th March from Mr Barry Charles, informing us that our case had been stuck out.

However we complied with Judge Sinfields (*sic*) Directions after our video hearing on 19-6-23, and we provided witness statements to HMRC and the Tribunal Services through our representative Mr Gittins and Dawn Bull of MTM Consultants Ltd. We were assured that our availability dates had been submitted and were waiting for a response. In the absence of any further communication we have continually chased MTM Consultants and were repeatedly advised that they were still waiting to hear from the Tribunal and there was nothing we could do until then.

Mr Charles (*sic*) correspondence also enclosed copies of Tribunal letters dated 21st December 2023 and 31st January 2024, neither of which Mr Thompson or I have ever seen. Meanwhile we can provide supportive evidence of our ongoing communication with MTM Consultants, and were not aware at any time of any outstanding issues with the Tribunal.

In view of the circumstances beyond our control can you please advise on how we can reinstate the hearing.”

28. The Tribunal forwarded both emails from the Appellants to me on 21 March.

29. On 28 March, the Tribunal sent me two further emails from the Appellants dated 28 March containing applications, with attached documents, for their appeals to be reinstated. Although the emails of 28 March from each Appellant were differently worded, the attached reinstatement applications were materially identical and as follows:

“I refer to your letter dated 31st January 2024 advising that my appeal in the aforesaid proceedings has been struck out. I only became aware of the strike out following receipt of a letter from HMRC dated 13th March 2024 [Tab 1]. For the reasons set out below I believe that the strike out was wrong and my appeal should be reinstated.

The strike out notice was because, allegedly, I failed to comply with a direction of the Tribunal dated 21st December 2023.

Key Chronology

1 . On 12th July 2023 following a video hearing Judge Sinfield issued detailed directions, a copy of which is attached [Tab 2]

2. On 9th October 2023 Judge Sinfield extended the date for compliance with directions 5 - 10 by 28 days and the hearing window revised to 4th December 2023 to 26th April 2024.

3. By email dated 1st November 2023, HMRC advised their available dates for the hearing between 4th December 2023 and 26th April 2024 [Tab 3],

4. By an email to the Tribunal (copied to HMRC) dated 3rd November 2023 my representative apologised for the delay in providing dates due to illness but said that they would be provided early the following week [Tab 4].

5. By an email to the Tribunal (copied to HMRC) dated 9th November 2023 my representative confirmed that the following dates were available, that is to say [Tab 5],

March 4/5, 11/12, 18/19 and 25/26

April 8/9, 15/16 and 22/23

6. By a letter dated 21st December 2023 [Tab 1] purportedly (see below) sent by the Tribunal to my representative the Tribunal said that it had received an email from HMRC dated 22nd November 2023 giving dates to avoid. Judge Sinfield by his letter directed that I had 14 days to provide dates of availability.

7. By a letter dated 31st January 2024 [Tab 1] purportedly (see below) sent by the Tribunal to my representative, my appeal was struck out.

Submissions

8. My representative (see 5 above) by an email to both the Tribunal and HMRC on the 9th November 2023 provided dates of availability between 4th December 2023 and 26th April 2023. In summary confirming any of the dates provided by HMRC in its email dated 1st November 2023 (see 3 above).

9. While I presume that the HMRC copied the Tribunal with its email to my representative dated 1st November 2023 providing dates, I have no record of HMRC providing a copy of the email sent to the Tribunal dated 22nd November 2023.

10. Paragraph 7 of the directions dated 12th July 2023 (1 above) states as follows:

“Shortly after 4th September 2023, the Tribunal will fix the date of the hearing even if a party has not provided their dates for the hearing or to avoid. A request for postponement on the grounds that the date of the hearing is inconvenient is unlikely to succeed if the applicant did not comply with the above or if having provided dates for the hearing, the applicant then failed to keep the dates clear of other commitments.”

It is therefore clear that even if I had not provided dates for a hearing or dates to avoid (which were provided) it was then solely for the Tribunal to fix a date in accordance with the aforesaid direction 7. For this reason alone it is difficult to understand the Tribunal letter dated 21st December 2023.

11. Finally, I should point out three further matters as follows:

(a) The Tribunal letters dated 21st December 2023 and 31st January 2024 [Tab 1] were addressed to Montpelier Group (Tax Consultants) Limited whereon (*sic*) my representative at the time was MTM Consultants Limited.

(b) I am advised that the letters in (a) above were never received by my representative either by mail or email. The letters do not refer to an email address. I attach a copy of confirmatory email dated 26th March 2024 [Tab 6],

(c) The letter from the Tribunal dated 23rd (*sic*) December 2023 is a warning of strike out and the letter dated 31st January 2024 is a strike out notice. Given their importance I would have expected that copies of the letter would be sent to me. But it was not.

Conclusion

I do not believe for the reasons set out above my appeal should have been struck out and in the circumstances the overriding objective of the Tribunal to deal with cases fairly and justly has not been met. I would be grateful if you could refer this letter to a judge.”

30. In support of the matters mentioned at paragraph 11(b) of the application, both Appellants attached an email dated 26 March 2024 from Mr Watkin Gittins (using a personal email address and not MontpelierTax@outlook.com) stating:

“This is to confirm that the attached letters (21st December 2023 and 31st January 2024) address (*sic*) to Montpelier Group (Tax Consultants) Limited were never received at Ballavale, Santon, Isle of Man.

Furthermore your representative at the time was MTM Consultants Limited to whom the letters should have been addressed. The Tribunal was aware of the change of representative as documentation submitted to them came from MTM Consultants Limited.”

31. On 28 March, I sent the following instructions to the Tribunal:

“Please do the following:

1. Write to Mr Smith and Mr Thompson to acknowledge receipt of their letters of 28 March 2024 and say that the letter and attachments have been passed to Judge Sinfield who has asked for the case file to be sent to him for his review.

2. Search the inbox and check whether any email dated 9 November 2023 from MTM Consultants Limited relating to these appeals was ever received. (In their letters, the Appellants refer to an email dated 9 November 2023 from their representative (MTM Consultants Limited – not Montpelier Group (Tax Consultants) Limited) which gave their available dates for a hearing. I have never seen such an email.)

3. Send me the paper files for both appeals as soon as possible.”

32. On 12 April, I instructed the Tribunal staff to issue directions for HMRC and the Appellants to provide further submissions and indicate if they wanted the Tribunal to deal with the applications on the papers or at a hearing. Unfortunately, the directions were not sent out until 29 April. The Appellants and HMRC all asked for the application to be dealt with on the papers.

33. There were further emails between HMRC and the Appellants in May but they are not material.

34. On 3 June, HMRC provided their objections to the reinstatement of the appeals. HMRC disputed the Appellants’ claim that Ms Bull sent her email on 9 November 2023, and that she did not receive the Tribunals’ emails of 21 December 2023 or 31 January 2024. HMRC submitted that Ms Bull did receive them, and simply ignored or forgot about them and did not forward them to the Appellants. In support of their submissions, HMRC pointed out that:

(1) Ms Bull had not provided any statement that confirmed that her email of 9 November 2023 actually left her MontpelierTax@outlook.com account and that the

Tribunals' emails of 21 December 2023 or 31 January 2024 had never been received by the same email account;

(2) the Appellants referred to the Tribunal's directions of 17 July 2023, and the extension of time for compliance issued in October 2023 so they were clearly aware of other directions requiring compliance, eg in relation to the hearing bundle, yet they did not comply with them; and

(3) despite purportedly having provided their dates to avoid for a hearing and having other directions which needed to be complied with, the Appellants did not contact the Tribunal between 9 November and 13 March.

35. On 13 June, the Appellants provided further evidence in the form of an automatic acknowledgement of receipt email from the Tribunal timed at 14.52:36 on 9 November 2023 (see [14.] above).

36. On 17 June, the Appellants provided their response to HMRC's objections. Referring to the Tribunal's acknowledgment of receipt email referred to above, the Appellants stated that they did not know why HMRC had not received the 9 November email but it was clear that the Tribunal had received it. The Appellants also stated that Ms Bull had confirmed that the email to HMRC did not come back as undeliverable. The Appellants submitted that the letters from the Tribunal dated 21 December 2023 and 31 January 2024 were:

(1) addressed to Montpelier Group (Tax Consultants) Limited when their representative at the time was MTM Consultants Limited;

(2) sent by post and not copied by email when emails have been the normal method of communication; and

(3) not copied and sent to the Appellants despite their grave consequences.

37. The Appellants also contended that, once they had been notified of them by HMRC on 13 March, they had dealt with the matter as quickly as they would have done had the letters of 21 December 2023 and 31 January 2024 been received.

DISPUTED EMAILS

38. Apart from an email dated 31 July 2023, all the emails relating to the appeals sent by Ms Bull to the Tribunal and HMRC between 17 July and 9 November 2023 were sent from the Montpeliertax@outlook.com email address. There is no dispute that all those emails except for Ms Bull's email of 9 November were received by the relevant addressees. All emails from the Tribunal and HMRC to Ms Bull were sent to the Montpeliertax@outlook.com email address. It is not disputed that all the emails were received by Ms Bull except for two emails sent by the Tribunal on 21 December 2023 and 31 January 2024.

39. The Appellants maintain that Ms Bull sent an email on 9 November 2023 from Montpeliertax@outlook.com to the Tribunal and HMRC. HMRC say that they never received this email and they dispute that Ms Bull actually sent it. As stated at [12.] and [15.] above, there is also no trace of any such email on the paper files relating to the appeals, in the Tribunal's email system or any record of it on the Tribunal's GLiMR case management system. However, the Appellants have produced a copy of an acknowledgment of receipt email from the Tribunal, referred to at [14.] above, which they contend shows that Ms Bull's email of 9 November was received by the Tribunal on that date and at the time shown on the email.

40. There are some unexplained anomalies in relation to the copy of the email of 9 November (see [12.] above) but the most puzzling aspect is how, if it was sent to and

received by them, neither the Tribunal nor HMRC have been able to find any trace of it. It is the only example of an email which was sent by Ms Bull and not received by the person or persons to whom it was addressed. It seems to me to be very unlikely that an email addressed to two persons would not be received by either of them if it had been sent or, if received, would have vanished from both email systems without a trace.

41. In favour of the email having been successfully sent and received by the Tribunal, the Appellants rely on the copy of the Tribunal's acknowledgment of receipt email. If that acknowledgement does relate to the Appellants' appeals then the only explanation for the Tribunal being unable to find any trace of the 9 November email is that it was deleted from the Tribunal's email system after the automatic acknowledgement had been sent but without being recorded on GLiMR or filed on the paper files for either appeal. Although that is not impossible, it seems to me to be improbable. It is equally unlikely that the same email would also have been deleted from HMRC's email system without being recorded. When both are considered, it seems to me to be highly unlikely that an email sent to both the Tribunal and to HMRC should vanish from both systems.

42. A more rational explanation, in my view, is that the email of 9 November was not sent from the Montpeliertax@outlook.com email account. This is supported by the fact that if the Appellants' representative, whether Ms Bull or Mr Gittins, had believed that they had complied with Direction 6 of the Tribunal's Directions then they would also have known that they were required to comply with Direction 8 on 6 November and applied for an extension of time to comply with that direction and further extensions in relation to Directions 9 and 10. In fact, the Appellants' representative has never complied with Direction 8 (or 10) or, indeed, ever contacted the Tribunal again. The next communication with the Tribunal was by the Appellants themselves, without copying in their representative, on 13 March and it made no reference to their representative having complied with Direction 6 on 9 November. The Appellants have not given any reasons why their representatives did not comply with these Directions.

43. For those reasons, I find on the balance of probabilities that the email of 9 November 2023 was not sent from the Montpeliertax@outlook.com email on that date. I am not able to explain the acknowledgment of receipt email sent to the Montpeliertax@outlook.com inbox on the same date but, on the evidence available, I am not satisfied that it related to the 9 November email or these appeals.

44. The second and third disputed emails are ones that were sent by the Tribunal to Montpeliertax@outlook.com on 21 December 2023 and 31 January 2024 which the Appellants say were never received by them or their representative until they were sent to the Appellants by HMRC on 13 March.

45. HMRC dispute the Appellant's statement about the emails. HMRC contend that the emails of 21 December 2023 and 31 January 2024 were received in the Montpeliertax@outlook.com inbox and Ms Bull either simply ignored them or forgot to respond to them and did not forward them to the Appellants.

46. In his letter of 18 March, Mr Thompson firmly placed the blame on the Appellants' representatives, Mr Gittins and Ms Bull of MTM Consultants Ltd, saying:

"I have continually chased MTM for any correspondence received and they have assured me that other than a list of available dates for attending a tribunal they had received no documents from HMRC or the Tribunal Services. To make sure we were providing a response to anything received Tony [Mr Smith] and I furnished dates of our availability for a hearing. The last email, following a chase from me, from MTM states that we are waiting

to hear from the Tribunal and there is nothing we can do until then. ... I can furnish you with all of the emails chasing MTM for an update to the situation together with their responses in order for you to see that we have been completely in the dark.”

47. Mr Smith did the same in his letter of the same date, saying:

“We were assured [by MTM Consultants Ltd] that our availability dates had been submitted and were waiting for a response. In the absence of any further communication we have continually chased MTM Consultants and were repeatedly advised that they were still waiting to hear from the Tribunal and there was nothing we could do until then.

... Meanwhile we can provide supportive evidence of our ongoing communication with MTM Consultants, and were not aware at any time of any outstanding issues with the Tribunal.”

48. It is clear from the Appellants’ letters of 18 March that they “continually chased” their representative to obtain information about the appeal proceedings. This shows that there were gaps in communications between the Appellants and their representative and supports HMRC’s contention that Ms Bull failed to forward the Tribunal’s emails to the Appellants.

49. However, the Appellants’ submissions of 28 March and 17 June were entirely different and did not seek to place any blame on their representative and may be summarised as follows:

- (1) the letters dated 21 December 2023 and 31 January 2024 were sent by post and not sent by email which had been the normal method of communication between the parties;
- (2) the letters were addressed to Montpelier Group (Tax Consultants) Limited whereas the Appellants’ representative at the time was MTM Consultants Limited;
- (3) the letters were not copied to the Appellants despite their grave consequences; and
- (4) the letters were never received by Montpelier Group (Tax Consultants) Limited either by mail or email.

50. The first submission is simply factually incorrect. As stated above, the Tribunal emailed the letters of 21 December 2023 and 31 January 2024 to Montpeliertax@outlook.com which was the email address that the Appellants’ representative, Ms Bull, had used on all but one occasion during the relevant period to communicate with the Tribunal and HMRC.

51. As the letters were sent by email, the second submission is irrelevant. Even if the Appellants’ representative had changed to MTM Consultants Limited at some point, all correspondence continued to be sent to and from the email address used by Ms Bull, ie Montpeliertax@outlook.com. There is no dispute that Ms Bull received the two emails sent by HMRC to her at that email address on 1 November 2023. There are other examples on the file of Ms Bull responding to emails sent to her at that address on the file.

52. The third submission does not assist the Appellants. It is correct that the Tribunal did not copy the letters of 21 December 2023 and 31 January 2024 to the Appellants at their personal email addresses or by post. The Appellants had notified the Tribunal that they had authorised their representative, Montpelier Group (Tax Consultants) Ltd, to deal with the Tribunal on their behalf and the Tribunal has not been able to locate any email or other

communication notifying a change of representative and no such notification of a change of representative has been provided. In the absence of such notification, the Tribunal was entitled to consider that Montpelier Group (Tax Consultants) Limited continued to act on behalf of the Appellants and no reason why the Tribunal should email the Appellants directly.

53. The Appellants' fourth submission is not supported by the evidence. In paragraph 11 of their submissions of 28 March (see [29.] above), the Appellants say "the letters ... were never received by my representative either by mail or email" and provide an email dated 26 March from Mr Watkin Gittins in support of that statement. However, Mr Gittins says nothing about email. He simply says that the letters "were never received at Ballavale, Santon, Isle of Man". Mr Gittins does not say anything about whether the letters were received in the Montpeliertax@outlook.com inbox. As HMRC point out, the Appellants have not provided any evidence, such as a statement by Ms Bull, to show that these emails were never received by the Montpeliertax@outlook.com email account. In fact, the Appellants do not say anywhere in their submissions that the letters by email were not received by the Montpeliertax@outlook.com account.

54. In conclusion on this point, The Appellants have not satisfied me that the emails were not received in the Montpeliertax@outlook.com account and I find that it is more likely than not that the Tribunal's letters of 21 December 2023 and 31 January 2024 were received by the Appellants' representative who failed to respond to them or forward them to the Appellants as suggested by their initial submissions of 18 March.

APPLICATIONS TO REINSTATE

55. The time limit for applying to reinstate an appeal following a strike out is 28 days after the date that the Tribunal sent notification of the striking out (see rule 8(6) FTT Rules). Any application for reinstatement must be in writing and received by the Tribunal before the expiry of the time limit. In this case, the time limit expired on 28 February 2024, ie 28 days after the letter of 31 January. There was no response to the strike out or application for the appeals to be reinstated until 18 March. It follows that the Appellants' applications were made 18 days late.

56. There are therefore potentially two separate decisions to be made in relation to the Appellants' applications for their appeals to be reinstated:

- (1) whether to extend the 28 day time limit for applying for reinstatement of an appeal once it has been struck out and accept the late application; and, if the time limit is extended,
- (2) whether to grant the application and reinstate the appeals.

WHETHER TO EXTEND TIME TO APPLY FOR REINSTATEMENT

57. I first consider whether to extend the time limit to allow the Appellants to make an application to reinstate an appeal. In *Martland v HMRC* [2018] UKUT 178 (TCC) ('*Martland*'), the Upper Tribunal provided guidance on the correct approach to applications for permission to appeal out of time. It is clear from the judgment of the Supreme Court in *BPP Holdings Ltd v HMRC* [2017] UKSC 55 that the same approach should be applied to applications for proceedings to be reinstated where they have been struck out for failure to comply with a direction. The Upper Tribunal in *Dominic Chappell v the Pensions Regulator* [2019] UKUT 209 (TCC) ('*Chappell*') also applied the same approach to an application to reinstate an appeal which was made outside the time limit in rule 17(3) of the FTT Rules.

58. The Upper Tribunal's guidance is summarised at [44] of *Martland*:

"When the FTT is considering applications for permission to appeal out of time, therefore, it must be remembered that the starting point is that

permission should not be granted unless the FTT is satisfied on balance that it should be. In considering that question, we consider the FTT can usefully follow the three-stage process set out in [*Denton v TH White Ltd* [2014] EWCA Civ 906, [2014] 1 WLR 3926]:

(1) Establish the length of the delay. If it was very short (which would, in the absence of unusual circumstances, equate to the breach being “neither serious nor significant”), then the FTT ‘is unlikely to need to spend much time on the second and third stages’ – though this should not be taken to mean that applications can be granted for very short delays without even moving on to a consideration of those stages.

(2) The reason (or reasons) why the default occurred should be established.

(3) The FTT can then move onto its evaluation of ‘all the circumstances of the case’. This will involve a balancing exercise which will essentially assess the merits of the reason(s) given for the delay and the prejudice which would be caused to both parties by granting or refusing permission.”

59. The Upper Tribunal observed at [45] that the balancing exercise in stage three of the *Denton v TH White Ltd* process should take into account the particular importance of the need for litigation to be conducted efficiently and at proportionate cost, and for statutory time limits to be respected.

60. In applying *Martland in Chappell*, the Upper Tribunal held that the FTT should not take the merits of an appellant’s case into account when considering an application for reinstatement following striking out for failure to comply with an unless order, unless the appellant has an unanswerable case (see [86] and [93]). The Upper Tribunal also held at [95] that, in assessing the seriousness of the breach of an unless order, the FTT should consider the underlying breach and the failure to carry out the obligation which was imposed by the original direction or rule and extended by the unless order when assessing the seriousness and significance of that breach.

61. Applying the three-stage approach set out in *Denton v TH White Ltd*, I must first consider the seriousness and significance of the delay. In my view, a delay of 18 days in the context of a time limit of 28 days, is serious and significant and the Appellants have never contended otherwise.

62. The second stage is to consider the reason for the delay. In their applications, the Appellants say that the reason that they did not apply for reinstatement within the 28 day time limit was that they were not aware of the Tribunal’s letter of 31 January 2024 striking out their appeal until they were sent it by HMRC on 13 March. As I have found that the Tribunal’s letter of 31 January 2024 was received by the Appellants’ representative via the MontpelierTax@outlook.com email account, that submission cannot assist the Appellants. It is well established that “when considering applications for permission to make a late appeal, failures by a litigant’s adviser should generally be treated as failures by the litigant” (see the Upper Tribunal’s decision in *HMRC v Katib* [2019] UKUT 189 (TCC) (*‘Katib’*) at [54]). In *Katib*, the Upper Tribunal had to consider the extent to which reliance on an adviser was a justifiable reason for failing to make an appeal in time. In that case, the adviser did not provide competent advice to Mr Katib, misled him as to what steps were being taken to appeal and failed to appeal on Mr Katib’s behalf. On the facts of the case, the Upper Tribunal concluded that failings by the appellant’s agent could not be relied upon by the appellant at any stage in the *Martland* analysis. The Upper Tribunal observed at [56] that:

“... the correct approach in this case is to start with the general rule that the failure of [the adviser] to advise Mr Katib of the deadlines for making appeals, or to submit timely appeals on Mr Katib’s behalf, is unlikely to amount to a ‘good reason’ for missing those deadlines when considering the second stage of the evaluation required by *Martland*. However, when considering the third stage of the evaluation required by *Martland*, we should recognise that exceptions to the general rule are possible and that, if Mr Katib was misled by his advisers, that is a relevant consideration.”

63. In [58] and [59], the Upper Tribunal said:

“... the core of Mr Katib’s complaint is that [the adviser] 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.”

59. [Counsel for Mr Katib] urged us to give particular weight to the FTT’s finding, at [15], that Mr Katib did not have the expertise to deal with the dispute with HMRC himself, but 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 [the adviser] or his own lack of experience in tax matters are sufficient to displace the general rule that Mr Katib should bear the consequences of [the adviser’s] failings and, if he wishes, pursue a claim in damages against him or [the adviser’s firm] for any loss he suffers as a result.”

64. Applying the approach required by the Upper Tribunal’s decision in *Katib*, with which I respectfully agree, I am bound to conclude that the fact that the Appellants’ representative did not act on the Tribunal’s letter of 31 January 2024 or forward it to them does not constitute a good reason for the failure to apply to reinstate in time.

65. The third stage of the *Denton v TH White Ltd* process is to consider all the circumstances of the case, balancing the merits of the reason(s) given for the delay and the prejudice which would be caused to both parties by granting or refusing to reinstate the appeal. In relation to prejudice, there is no doubt that the Appellants will be prejudiced if I refuse to extend time for them to apply for reinstatement of their appeals. In order to assess the degree of that prejudice, it is appropriate to consider the merits of their applications for reinstatement as there would obviously be no point in extending the time limit if the application to reinstate would not be granted, bearing in mind that a prospect of success is not the only criterion but merely one factor to be taken into consideration.

66. In this case, the Appellants’ submit that their appeals should be reinstated because:

- (1) the email of 9 November 2023 from Montpellier to the Tribunal complied with the Directions released on 12 July 2023 (as amended) and there was no reason for the Tribunal to issue the letter of 21 December; and
- (2) in any event, the Appellants never received the letter of 21 December until HMRC sent it to them on 13 March 2024 and thus were unable to respond to it confirming that they had already complied.

67. I have already found (see [43.] above) that the email of 9 November was not sent from the Montpeliertax@outlook.com email account and thus it was never received by the Tribunal. Accordingly, the first submission in favour of reinstatement fails as the Appellants had not complied with Directions. In any event, if I am wrong and the 9 November email was sent and received, the Tribunal was not aware of the email and was entitled to send the letter of 21 December 2023 asking the Appellant to provide the listing information. In the absence of any response to that letter, which warned that failure to respond may lead to the appeal being struck out, the Tribunal was entitled to strike out the appeal by the letter dated 31 January 2024.

68. I have found (see [54.]) that the letter of 31 January was received in the Montpeliertax@outlook.com email account and, therefore, by the Appellants' representative who failed to do anything with it. For reasons discussed at [62.] and [63.], the fact that the Appellants' representative did not forward the Tribunal's letter of 21 December to them does not constitute a good reason for failing to respond to the Tribunal's letter within the time specified.

69. The letter required the Appellants to respond within 14 days, ie by 4 January 2024. As the Tribunal did not receive any response from the Appellants or their representative, the Tribunal issued the letter dated 31 January striking out the appeal.

70. There is nothing in the circumstances of the case, taken as a whole, which would justify reinstating the appeals and allowing them to continue. On the contrary, this is the second time that these appeals have been struck out and, as the chronology set out above indicates, these proceedings have not been pursued with diligence and care. I accept that the Appellants will be prejudiced by not being able to pursue their appeals against the penalties but that cannot carry much weight in the circumstances. It cannot be the case that proceedings must be reinstated simply because the striking out has adverse financial consequences for the appellant or that would render the vast majority of strike outs nugatory.

71. In all the circumstances, there are no grounds for extending the time for the Appellants to make an application for their appeal to be reinstated and nothing would be gained by doing so as the application to reinstate does not have any reasonable prospect of success.

DECISION

72. For the reasons set out above, the Appellants' applications to extend the time limit for making applications for their appeals to be reinstated are refused. Accordingly, their appeals remain struck out.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

73. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the FTT Rules. 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.

**JUDGE GREG SINFIELD
CHAMBER PRESIDENT
RELEASE DATE: 23 JULY 2024**