



Neutral Citation: [2024] UKFTT 00784 (TC)

Case Number:TC09274

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Tribunal Hearing Centre
Alexandra House
Parsonage
Manchester

Appeal reference: TC/2022/11962

PROCEDURE - Rule 14 - Application by a third party (a bank) that the decision in the substantive appeal should be redacted so as not to identify the third party, or certain other circumstances in which substantive appeal arose - Application dismissed

Determined on: 24 July 2024
Judgment date: 29 August 2024

Before

**TRIBUNAL JUDGE CHRISTOPHER MCNALL
TRIBUNAL MEMBER SUSAN STOTT**

Between

**(1) EQUITY ADVISORY LIMITED
(2) CRAIG ALLAN MELLOR**

Appellants

and

A BANK

Third Party

and

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

Respondents

Representation:

For the Appellants: Mr Michael Ripley, of Counsel.

For the Respondents: Ms Joanna Vicary, of Counsel, instructed by HM Revenue and Customs' Solicitors' Office and Legal Services.

For the Bank: No appearance.

DECISION

The Third Party's Application for the redaction of certain information in the published decision, and for other orders, is dismissed.

This Decision will be released in a form which does not identify the Third Party.

REASONS

1. This is our decision in relation to a case management matter, on an application made by a third party, and concerns the permissible extent of confidentiality in the Tribunal's (yet to be) published decision in the underlying substantive appeal.

2. We have decided that it is appropriate to determine the third party's application by way of a full decision:

(1) Anonymity and the associated issue of confidentiality is a developing area of the Tribunal's jurisprudence: for example, see the recent decision of the Upper Tribunal (composed of Mrs Justice Bacon, the Chamber President, and Upper Tribunal Judge Thomas Scott) in *HMRC v The Taxpayer* [2024] UKUT 12 (TCC);

(2) The application before us is an unusual one, of a kind not specifically discussed in *The Taxpayer* case.

BACKGROUND

3. The hearing of the appellants' appeals was listed on a face-to-face basis in Manchester on 22-24 July 2024.

4. Part of the background of the Appellants' appeals concerns a payment made by a bank in settlement of a claim brought against it by an associate of Mr Mellor.

5. On 8 July 2024, the bank applied, firstly, for an order that "certain commercially sensitive matters" be redacted in the Tribunal's eventual Decision ('the Application').

6. Those "commercially sensitive matters" were set out in the draft order which was attached to the witness statement. They were:

(1) "The identity of the bank ('the Bank');"

(2) "The amount of the payment made by the Bank to settle a claim ('the Settlement Sum'); and

(3) "Any information likely to allow members of the public to identify either the Bank or the Settlement Sum ('the Confidential Information')."

7. The draft order further provided that the Decision should refer only to "the Bank" and "the Settlement Sum" in those terms.

8. A secondary element to the Application - necessarily contingent on the first part being resolved in favour of the Bank - was that, if any other person were to request that the First-tier Tribunal "exercise its inherent jurisdiction to require disclosure of pleadings or other documents", then this Tribunal would "invite submissions from the Bank and the parties on appropriate redactions" - that is to say, redactions in relation to the pleadings and "other documents".

9. The reasons for the Application were set out as follows:

"[the Bank] is concerned that, because banks operate in a commercial environment where they are regarded as having 'deep pockets' by potential claimants, the approach taken by any bank - including the Bank - to the management of its litigation exposure including appetite for, and levels of settlement, are of interest to the claimant community (particularly the pro-claimant law firms).

In relation to the Bank's identity itself, the Bank is concerned that inclusion of its name in the judgment may well reignite press - and other - discussion of the Settled Claim in a manner that is unlikely to be flattering to the Bank and may cause real harm to its reputation".

10. The Application relied exclusively on Rule 14 of the Tribunal's Rules. That reads, in full:

Use of documents and information

The Tribunal may make an order prohibiting the disclosure or publication of—

- (a) specified documents or information relating to the proceedings; or
- (b) any matter likely to lead members of the public to identify any person whom the Tribunal considers should not be identified."

11. Rule 14 does not contain any more detailed guidance, and the Bank did not point to any of the Tribunal's other Rules, any reported decision of this Tribunal or otherwise supportive of the Bank's position, nor any practitioner work or commentary.

12. The Bank invited the Tribunal to deal with the Application in advance of the hearing. The Application stated that HMRC, through its solicitors, had consented to the terms of the draft order. Before the hearing, the Appellants' representatives contacted the Tribunal to say that they wished to make submissions on it, including as to whether the Bank had standing to make such an application.

13. Taking all the above into account, Judge McNall, as the judge tasked with chairing the panel which was to hear the substantive appeals, decided to defer consideration of the Application until the evidence and submissions were concluded. Thereafter, the Tribunal invited submissions from the parties:

- (1) HMRC, through its counsel, stood by its consent to the draft order, but subject to the observation that the proposed terms were perhaps, on reflection, wider than strictly necessary, especially in terms of redaction of the so-called 'Confidential Information'. The Tribunal also detected some recognition by HMRC that an order of this scope potentially carried ramifications wider than the present appeal;

(2) The Appellants, through their counsel, were expressly neutral in relation to the Application, but simply expressed a doubt as to whether the Bank had standing. It should be added that the Appellants' reluctance to adopt any substantive adverse stance in relation to the Application was not surprising. As he explained to us in his evidence, Mr Mellor regarded himself as subject to a 'non-disparagement' clause which he had agreed with the Bank, and repeatedly emphasised that he wished to adhere to that clause.

14. Hence, as apparent, we have not had the benefit of proper adversarial argument in relation to the Application, in circumstances where the Application itself was substantially silent as to the relevant law or principles which should fall for consideration.

15. Both parties acknowledge - in our view, rightly - that, even had they consented to the Bank's order as drawn, the Tribunal would nonetheless have retained a discretion to decline to make it.

DISCUSSION

16. Neither the Appellants (nor, for that matter) HMRC has asked the Tribunal to anonymise the decision in the substantive appeals: that is to say, neither Mr Mellor nor EAL is asking for anonymity. Nor, at least on one reading of its Application, is the Bank asking for the identity of the claimant (which was not Mr Mellor) in the Settled Claim to be kept anonymous.

17. It was notable that the Bank did not apply for a direction that all or any part of the hearing be held in private (Rule 32), nor asserted, even in terms, that such a direction was required (for example, "in order to maintain the confidentiality of sensitive information": Rule 32(2)(c)).

18. Nor did the Appellants or HMRC make any such request. Perhaps that was a recognition on all sides of the strength of the principles of open justice, recently reiterated by the Upper Tribunal.

19. Accordingly, notice of the hearing was published, and the hearing, in the usual way, was held in public (albeit, as is frequently the case, it did not seem from the Bench as if anyone other than the parties, their representatives and advisers actually attended).

STANDING

20. For present purposes, and without deciding the point, we proceed on the footing that the Bank has standing to make the Application, even though the Bank is not a "party", within the strict reading of Rule 1(3), and so cannot make an application under the strict reading of Rule 6(1).

21. Our interpretation and application of any Rule is necessarily subject to the overriding objective. The Tribunal may regulate its own procedure (Rule 5), and may, "in particular, and without restricting the general powers in paragraphs (1) and (2) "permit or require a party or another person to provide documents, information or submissions to the Tribunal or a party": Rule 5(3)(d) (underlining is emphasis added by us). It is also possible, using Rule 9(2), to add a person to the proceedings as a respondent, and to give such consequential directions as the Tribunal considers appropriate.

REDACTION

22. The redaction sought, in relation to the Bank, is, in effect, a form of anonymisation.

23. In some countries, tax decisions are routinely anonymised. But the default position in the United Kingdom is that this Tribunal names appellant taxpayers.

24. In its decisions, the Tribunal does sometimes name non-parties, and, even exercising a degree of judicious discretion, includes details of their affairs which perhaps those other persons would have preferred not to be ventilated in a publicly accessible document. But it seems to us that is part and parcel of the nature of public decision-making and there have to be strong reasons to redact.

25. Whilst, arguably, the identity of the Bank and the size of the Settlement Sum are discrete items which are capable of redaction whilst preserving the textual integrity and intelligibility of the rest of the decision, the redaction of "any information likely to allow members of the public to identify either the Bank or the Settlement Sum" (ie, the so-styled 'Confidential Information') is not.

26. In *Attorney-General v BBC (Nr 3)* [2022] EWHC 1189 (QB), Chamberlain J had to consider an application, in a national security context, to prevent the BBC broadcasting a programme which might lead to the identification of individual, 'X', said to have been a spy for MI5.

27. At Para [24], the Court said:

"The court must be alert to the possibility of "jigsaw" identification. One piece of information may on its own seem innocuous, but when taken together with other information known to a particular ... actor, it may lead to the identification of an individual with greater or lesser confidence [...] although the court must be alive to the threat of jigsaw identification, it must also be astute not to allow the threat to justify a blanket prohibition on disclosure of any piece of the jigsaw."

28. Chamberlain J cited and agreed with the decision of Hayden J in *A Local Authority v A Mother* [2020] EWHC 1162 (Fam) at Para [18]"

"The potential for jigsaw identification, by which is meant diverse pieces of information in the public domain, which when pieced together reveal the identity of an individual, can sometimes be too loosely asserted and the risk overstated... [J]igsaws come with varying complexities."

29. We agree with both observations.

30. In this case, it is impossible to know what "information" would be end up being captured by such a direction, (i) especially in the light of 'jigsaw' identification, and (ii) even if the expression "likely to lead" is read in the restricted sense of leading to "a real risk" or "real chance" that the Bank and/or the Settlement Sum would be identified.

31. If one were to err on the side of caution, it is possible to contemplate whole swathes of the decision being - at least potentially - subject to redaction.

32. In an appropriate case, that might be just and fair. But this is not such a case. In our view, the reasons put forward here, set out in full above, do not even come close to justifying redactions of the scope sought, whether in terms of the identity of the Bank, or the size of the Settlement Sum, or the Confidential Information.

ACCESS TO DOCUMENTS ETC

33. Given that conclusions, the second limb of the Application - being one seeking to prospectively give the Bank a right to make representations on redactions to "the pleadings" (ie, the Grounds of Appeal and HMRC's Statement of Case) and "other documents" therefore does not fall for determination. However, it is possible to see - for some of the reasons

already set out - that an application to redact "other documents" (the scope of which is not set out: the hearing bundle? the parties' skeleton arguments?) is, on the face of it, ambitious.

OUTCOME

34. The Application is dismissed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

35. 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.

36. The application must be received by this Tribunal not later than 56 days after the decision in the substantive appeal (and not this decision) is released. 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.

Dr Christopher McNall
TRIBUNAL JUDGE

Release date: 29th AUGUST 2024