Neutral Citation: [2026] UKFTT 00041 (TC)

Case Number: TC09742

FIRST-TIER TRIBUNAL
TAX CHAMBER

Taylor House

Appeal reference: TC/2023/09420

Strike out application – lack of co-operation with the Tribunal – inaccurate use of AI – strike out refused

Heard on: 22 September 2025
Judgment date: 08 January 2026

Before

TRIBUNAL JUDGE ALLATT

Between

MR GARY ELDEN

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

The Appellant represented himself.

For the Respondents: Mr T Pearson, litigator of HM Revenue and Customs' Solicitor's Office.

DECISION

INTRODUCTION

1. This is an application made by HMRC for the appeal to be struck out under rule 8(3)(b) of the Tribunal Procedure (First-tier Tribunal)(Tax Chamber) Rules 2020 ("the Tribunal Rules").

BACKGROUND

2. The substantive appeal consists of the Appellant's appeals against closure notices ("the Closure Notices") that were issued to the Appellant by HMRC Officer Cameron Smith on 15th February 2021 under Section 28A(1B) and (2) of the Taxes Management Act 1970 for the tax years 2013/14 and 2014/15.

3. The subjects of the Closure Notices were:

> (a) For both years, the treatment of dividends payable on 510,000 SThree PLC Shares that were used as collateral in a personal loan arrangement with International Capital Group ("ICG"). Closure Notices charge the Appellant to income tax on the dividends in the amount of £427.62 for 2013/14 & £21,816.57 for 2014/15.
>
> (b) For 2013/14 only, the treatment of the disposal of Flat 4, 128 Mount Street ("Mount Street"). The Closure Notice charges the Appellant to capital gains tax on the disposal in the amount of £188,990.90.

PROCEDURAL TIMELINE

4. The procedural timeline is at the core of this case and therefore is set out here in some detail. The matter rests mainly on the compliance or otherwise with directions issued in October 2024, but matters before that also shed some light on the issues.

5. At all times, HMRC and the Tribunal have communicated with the Appellant's representative using the email address given by the Appellant in the Notice of Appeal. Most, but not all, emails have also been copied into the Appellant. All replies from the Appellant's representative have come from the email address given on the Notice of Appeal.

6. The Appellant's representative is Strauss Phillips & Co. They are a firm of chartered accountants regulated by the ICAEW.

7. The following background has been taken from the Respondents Skeleton Argument and was not challenged by the Appellant except where made clear below.

8. On the 11 August 2023, the Appellant notified his appeal, in respect of the closure notices, to the Tribunal.

9. On the 30 October 2023, the Appellant's Representative wrote to the Respondents explaining that two matters, the 'Dividend issue' and 'Capital Gains issue', remained outstanding. A request for information was made by the Representative, asking for the following information:

> "A copy of the technical advice received that suggested to HMRC Officer Cameron Smith that the Private Residence Relief ("PRR") could not be claimed"
>
> "The Statute upon which that advice was based".
>
> "The qualifications and experience of the person giving that advice".

10. The Appellant's Representative indicated that if the Respondents did not provide this information, then an application to the Tribunal would be made to request the information from the Respondents

11. On the 13 November 2023, at 10:44, the Respondents made an application for Further & Better Particulars, copying in both the Appellant and their Representative

12. The Respondents requested that the Tribunal direct the Appellant to provide their amended grounds of appeal within 30 days of the Further & Better Particulars application being granted.

13. Subsequently, on the 13 November 2023, at 16:55, the Appellant's Representative submitted their own application for Further & Better Particulars to the Tribunal. The Appellant's Further & Better Particulars application stated:

> "The Appellant submits that the respondents have not properly detailed their reasoning for the issuance of the assessments and furthermore, that the respondents have already accepted that part of the assessments are improper and incorrect and need amendment, but have not been amended"
>
> "The Appellant would further point out that they consider this matter was referred to Tribunal prematurely and only (1) at the insistence of the respondents themselves and (2) in the absence of the respondents giving sufficient information to the appellant in order for the Appellant to properly understand the position that the respondents are taking"
>
> "The Appellant also takes this opportunity to remind the Respondents that they bear the burden of proof with respect to this tax liability"
>
> "The Appellant would remind the Tribunal that it is not the responsibility of the Appellant to decide what the respondents consider is payable and that consideration, by the respondents, is the starting point for any appeal and that point has yet to be reached, by the respondents themselves. That is why the Appellant has made it clear that this matter reaching Tribunal is clearly a premature position and that the respondents are duty bound, under law, to define their position in a far clearer and consistent manner than it is currently defined, both in terms of amounts and reasoning, before any appeal procedure should begin"

14. On the 7 March 2024, Judge Bailey, of the First-tier Tribunal, wrote to both parties in respect of the two applications for Further & Better Particulars stating "Even if HMRC had not explained their position, this is not HMRC's appeal to the Tribunal. This is the Appellant's appeal and he is reminded that he will bear the onus of displacing the conclusions in the closure notices (or assessments) that have been issued. If he [the Appellant] cannot make a positive case as to why those closure notices (or assessments) are incorrect then he is unlikely to be successful in this appeal. In respect of the assertions made by the Appellant in his application, I assume the Appellant is aware of the basis on which he submitted his tax returns for the tax years ended 2014, 2015, 2016 and 2017, and the claims he made in his returns for those years. The Appellant must also be aware of any changes to his position as a result of his correspondence with HMRC. Therefore, the Appellant's grounds of appeal are already within his own knowledge. Neither HMRC nor the Tribunal are expected to guess

those grounds, or trawl through correspondence in the hope of deciphering the correct position".

15. Judge Bailey granted the Respondents' application for Further & Better Particulars, allowing the directions sought by the Respondents to be issued. The Appellant's application for Further & Better Particulars was refused.

16. The Appellant had until the 8 April 2024 to respond to the Respondents' application for Further & Better Particulars, but failed to comply with this direction.

17. On the 22 April 2024, the Respondents submitted their first application for an 'Unless Order' to the Tribunal, Appellant, and his Representative. The Application requested a direction that unless the Appellant confirmed with 7 days his intention to continue with the appeal and provide their amended grounds of appeal, then the Appellant's appeal should be struck out

18. On the 7 May 2024, the Appellant's representative wrote to the Tribunal copying in the Respondents. The Appellant's representative apologised to the Tribunal for the lateness of the response, stating that the late provision of the information was "due to information relating to this matter being in storage and only recently recovered". The email contained considerable detail about the Appellant's position in the matters under dispute.

19. The Appellant's Representative further wrote to the Respondents on 7 May 2024, requesting that they withdraw the 'Unless Order' application following the serving of information to the Tribunal

20. On the 7 May 2024, following the receipt of the Appellant's email which the Respondents treated as the Appellant's amended Grounds of Appeal, the Respondents withdrew their application for an 'Unless Order' application.

21. On the 5 July 2024, the Respondents made an application for a 'Extension of Time' to file the Statement of Case. The Appellant and his Representative did not comment on this application.

22. On the 1 August 2024, the Respondents filed their Statement of Case.

23. On the 30 August 2024, in accordance with Rule 27(2) of the Tribunal Rules [to provide the List of Documents within 42 days from serving the Statement of Case], the Respondents submitted their original List of Documents with the Tribunal, copying in both the Appellant and his Representative.

24. On the 2 September 2024, the Representative wrote to the Respondents, stating: "None of the list contains any reference to the legal framework that you intend to rely upon, but merely copies of documentation sent between the parties". The Representative requested a copy of the legal framework from the Respondents.

25. On the 19 October 2024, the Tribunal wrote to both parties, providing the directions for the appeal. The Tribunal directed that

> LIST OF DOCUMENTS
> 1. Not later than 18 November 2024 each party shall:
> (1) send or deliver to the other party and the Tribunal a list of documents in its possession or control which that party intends to rely upon or produce in connection with the appeal ("documents list"); and
> (2) send or deliver to the other party copies of any documents on that documents list which have not already been provided to the other party and confirm to the Tribunal that

they have done so.
WITNESS STATEMENTS
2. Not later than 16 December 2024 each party shall send or deliver to the other party 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
3. Not later than 13 January 2025 both parties shall send or deliver to the Tribunal and each other a statement detailing:
(1) Whether counsel is appointed;
(2) The number and role of participants for that party;
(3) Confirmation that all participants for that party will attend the hearing centre for the face to face hearing of the appeal;
(4) Where a participant is a witness, whether the witness will attend the entire hearing or only attend to give his or her evidence.
(5) How long the hearing is expected to last (together with a draft trial timetable if the hearing is expected to last four days or more);
(6) Whether reading time should be allocated to the panel in addition to the time estimated for the hearing in (5) above and, if so, how long;
(7) two or three agreed periods of time for the hearing which are within or shortly after a hearing window starting 17 March 2025 and ending 1 August 2025 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.
4. Shortly after 13 January 2025 the Tribunal may fix the date of the hearing despite any non-compliance with 3(7) above. 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.
BUNDLE FOR HEARING
5. Not later than 27 January 2025 the Respondents shall provide to the Appellant and the Tribunal by email or electronic transfer a PDF bundle of documents which complies with the Tribunal's guidance at Tax Chamber PDF bundles guidance (June 2021) ("the PDF Bundle").

26. Within the email providing directions to both parties, the Tribunal confirmed that the Appellant's Representative's request, on 2 September 2024, for the 'Legal Framework' from the Respondents was covered under Direction 11 which stated that any authorities were due no later than 14 days before the substantive hearing

27. On the 28 October 2024, the Respondents wrote to the Appellant and their Representative, via email, checking whether any documents within the previously served List of Documents from the 30 August 2024 were not in the Appellant's possession. Within the same email to the Appellant and their Representative, the Respondents further attempted to agree listing dates, offering to accommodate any times/dates not suitable for either the Appellant or the Representative. The Respondents did not receive a response to this email.

28. The Appellant confirmed at the hearing that he received this email. The Appellant's representative says they did not receive this email.

29. On the 15 November 2024, the Respondents submitted a revised List of Documents to the Tribunal, Appellant and their Representative, with one new document included. The Respondents had not received any response from the Appellant or their representation regarding any documents not in their possession. As the Respondents did not hear from either the Appellant or their Representative, the Respondents provided documents which they reasonably believed were not in the Appellant's possession.

30. On the 18 November 2024, the Appellant failed to comply with the Direction 1(1) to provide their List of Documents and Direction 1(2) to provide documents not in the Respondents' possession.

31. On the 28 November 2024, the Respondents submitted a second application for an 'Unless Order' to the Tribunal. The Respondents requested that the Tribunal direct that unless the Appellant provide their List of Documents and documents in the document list not already provided to the Respondents, then the Appellant's appeal should be struck out. The Respondents have not withdrawn this second 'Unless Order' application.

32. On the 2 December 2024, the Representative wrote to the Tribunal, providing their List of Documents, as per Direction 1(1). The Representative stated their intention for an application to extend the List of Documents deadline by 14 days be granted, so that the direction could be (retrospectively) fully complied with. The Representative deliberately did not provide copies of the documents within their List of Documents, stating that; "On the basis of the appellant providing a list of documents and on the basis that such list includes all documentation that either (a) was provided to the respondents previously and the respondents have confirmed receipt or (b) was issued by the respondents, that the respondents must be in possession of such, the appellant considers that direction 1(1) and 1(2) have been complied with"

33. The Representative stated that if the Respondents did not withdraw their application for a 'Unless Order', the Appellant would then apply for the Respondents' application to be refused.

34. In addition, within the Appellant's Representative's response to the Respondents' application for an 'Unless Order', the Representative sought an application for a 'Clarification of the Assessments'. On review of this information, the Respondents considered this application to have already been addressed by Judge Bailey on 7 March 2024.

35. The Appellant wrote in their List of Documents from the 2 December 2024 that a Witness Statement was "To be provided" however neither the Appellant nor his Representative ever filed a Witness Statement by the Direction 2 deadline of the 16 December 2024.

36. The Respondents reviewed the Appellant's List of Documents, noting that 3 documents – item 2), item 9) and item 13), as well as the Appellant's Witness Statement, were not in the Respondents' possession.

37. On the 13 January 2025, having attempted unsuccessfully to seek agreed listing dates on the 28 October 2024, the Respondents filed their Listing Information with the Tribunal The Appellant and his Representative failed to comply with Direction 3, to file any Listing Information with the Tribunal by the 13 January 2025.

38. On the 14 January 2025, the Tribunal wrote to both parties, directing the Respondents to provide their representations on the Appellant's application for a 'Clarification of the Assessments' within 14 days.

39. Despite not having all of the Appellant's documents within their List of Documents, the Respondents sought to comply with Direction 5 with the documents available and issue a bundle for the hearing not later than the 27 January 2025.

40. On the 22 January 2025, during the production of the document bundle, the Respondents noted that the bundle would exceed the 36MB limit on transferring files via email. In response, the Respondents wrote to the Appellant's Representative via email, requesting their support to register for the Secure Data Exchange Service ("SDES"), to ensure that the Respondents could serve the bundle. The email provided instructions on how to register for this service. This email was not copied to the Appellant.

41. On the 23 January 2025, the Respondents emailed the Appellant's Representative, following up the previous email regarding SDES registration from the 22 January 2025. The Respondents advised on the requirement to register for SDES and requested that the Representative provide three missing documents from the Appellant's List of Documents, as well as the Appellant's missing Witness Statement which had not been filed.

42. On the 23 January 2025, the Appellant's Representative emailed the Respondents, in response to the Respondents' request to set up SDES registration and provide the missing List of Documents and Witness Statement not in the Respondents' possession. The email stated: "Please note that we are currently in self-assessment mode and will not be dealing with this issue until early February". This email was not copied to the Appellant.

43. On the 28 January 2025, the Respondents provided the response to the Appellant's application for 'clarification of the assessment' from the 2 December 2024 as directed by the Tribunal on the 14 January 2025 to the Appellant, his Representative, and the Tribunal. Within the same email, the Respondents also provided an 'Application for Strike Out' and accompanying 'Application for Strike Out Document Bundle' in support of the application. The Respondents activated delivery receipts of this email to the Tribunal, Appellant & Representative and received notification that all parties had successfully received the email

44. On the 11 February 2025, the Representative emailed the Respondents to query registration for SDES. Registration was complicated for the Representative due to the fact he did not have a UK National Insurance number, but the Respondents understood this matter to have been resolved by 12 February.

45. The Respondents believe they were able to transfer the document bundle to the Appellant on the 12 February 2025.

46. At the hearing, the Appellant stated that the representatives have said they have not received the bundle.

47. No email has been received by the Respondents from the Appellant's Representative stating this nor has any attempt been made to receive the bundle another way.

48. Also on 11 February 2025, the Appellant's Representative emailed the Respondents stating: "In reference to Mr. Elden, he currently has not prepared a witness statement. If he considers he needs to have one, he will apply to Tribunal for permission to submit".

49. On the 21 February 2025, the Representative emailed the Tribunal providing their representations to the Strike Out Application served by the Respondents on the 28 January 2025 stating: "The appellant would apply for the Directions issued on 19/10/2024, be amended, by allowing the appellant to respond to point (3), listing information by 21/2/25. The appellant would point out that they have never received any respondents' offers of dates and therefore could not agree a date. The appellant would also state that they were confused regarding this area and assumed a hearing date for the hearing of the appellant's application

in (6) below would be arranged instead. The appellant would state that the reason why they have not complied with directions was a confusion, on their part, where they assumed that, having made an application on 2/12/2024, asking for clarification of assessments, that application and any hearing to hear that application would supersede the directions issued on 19/10/24. That application has not been either heard or even responded to by Tribunal and is attached to this application. The appellant now appreciates that the Directions stand as is and that appreciation has only arisen in the past 3 days, hence the delay in response to the Directions...The appellant has not prepared a witness statement and will give witness testimony in hearing....the appellant still requires a response to their application of 2/12/24, alternatively, the Respondents can confirm, to the Tribunal that they will amend the assessments to recognize the mistakes within the original assessments issued, those mistakes having been agreed by the Respondents, but remain unamended"

50. On the 25 February 2025, the Respondents wrote to the Tribunal, including both the Appellant and their Representative, providing a response to the Appellant's email of the 21 February 2025 stating; "On review of the Appellant's representations, the Appellant has failed to comply with the direction 1(2) to provide list of documents not in the Respondents possession and has stated their intention not to comply with Direction 2 to provide their Witness Statement to the Respondents which they intend to rely on at hearing.....The Appellant has requested that the Tribunal direct the Respondents to provide representations to their application for clarification from the 2nd December 2024. The Respondents point out that the Tribunal did provide a direction for the Respondents to issue their representations within 14 days on the 14th January 2025. The Respondents provided representations on the 28th January 2025, along with the Application for Strike Out. As the Appellant has provided representations against the application for Strike Out, they must be aware of the Respondents representations included within the same email. The Respondents additionally have delivery receipts from both the Appellant and their Representative's email providers confirming delivery of the representations and 'Strike Out' application from the 28th January 2025".

51. On the 26 February 2025, the Appellant's Representative emailed the Respondents and the Tribunal, acknowledging receipt of the Respondents' email from the 25 February 2025 stating; "In reference to the directions; 1(2) - There are none [missing LOD documents] that the appellant is aware of.....The appellant would state that the respondents were advised that no witness statement has been prepared and won't be. The respondents already confirmed that they had the other documents on the List of Documents, so there were no documents that applied to directions 1(2)"."The appellant would also point out that the appellant is the appellant, not a witness and the appellant is not going to ask for any other party to attend to be witness. So, the appellant considers that they have complied with direction 2 as there is no witness appearing for the appellant and the appellant has never stated that any witness would be appearing, there is just the appellant alone, so there is no requirement to provide a witness statement, because there is no witness"."No witness statement has ever been received coming from the respondents and certainly none were issued before the directions deadline in December 2024. So the appellant finds it unusual that the respondents would raise issue with a direction that the appellant considers they have complied with but where the respondents haven't".

52. On the 21 March 2025, the Tribunal issued directions to the Respondents, directing that the Respondents provide a response to the Appellant's email from the 26 February 2025, before the matter "would be referred to a Judge".

53. On the 4 April 2025, the Respondents provided written representations to the Tribunal, Appellant & his Representative stating; "In respect of Direction 1(2), the Appellant's claim

that no witness statement will be prepared/required, the Respondents note that this runs contrary to both the Appellant's List of Documents list and the Appellant's statement from the 26 February 2025, in which they state - "the appellant has never stated that any witness would be appearing, there is just the appellant alone, so there is no requirement to provide a witness statement, because there is no witness" "To date, the Respondents have still not received item 2, item 9 & item 13 from the Appellant's List of Documents list""In respect of Direction 2, the Respondents do not intend to rely upon a witness whose evidence they intend to rely upon at hearing. As explained to the Appellant by Judge Bailey on the 7 March 2024, "this is the Appellant's appeal and he is reminded that he will bear the onus of displacing the conclusions in the closure notices (or assessments) that have been issued". The Respondents have previously informed the Tribunal and Appellant via email, on the 13 January 2025, that the Respondents do not intend to submit a witness statement" "In respect of the 'clarification of the assessment application' from the 2 December 2024, the Respondents consider that no response is required for the enquiry year 2016/17". "Following Directions from Judge Bailey on 7 March 2024, the Appellant provided an amended 'Grounds of Appeal' for two issues relating to matters for the enquiry years 2013/14 & 2014/15". "The Appellant's application on the 2 December 2024 does not explicitly make clear that they are seeking clarification for the 2016/17 amendment. The Respondents do not consider it necessary to clarify matters before the Tribunal for an amendment which is not subject to the appeal raised before the Tribunal"

54. On the 9 April 2025, the Appellant's Representative wrote to the Respondents and the Tribunal, in response to the Respondents' representations from the 4 April 2025 stating:

> (1) [In response to the Appellant's failure to comply with directions and provide their amended Grounds of Appeal, as directed by Judge Bailey on the 7 March 2024 - Point 8] "It is of little value for the respondents to refer to a matter of dispute, where the respondents had a differing opinion to that of the appellant and where a Judge made a decision and, in response to that decision and in good time, the appellant responded accordingly and that response dealt with the matter"
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> (2) [In respect of the Respondents email on the 18 October 2024 to the Appellant, representative & Tribunal checking LOD items and requesting Listing Dates - Point 15] "It should be noted that this email of 28/10/24 was seemingly not properly sent out, certainly the agents never received a copy and so were unaware of its existence. The appellant has no knowledge and cannot find the email that was sent either but, in any case, was relying upon the agents to advise him. As soon as the agents became aware of the fact that the email of 28/10/24 hadn't been received, they ensured a suitable response and explanation as issued. There was no delay here, the respondents hadn't sent out the email properly"
>
> (3) [In respect of the missing documents] 'Items (2), (9) and (13) have been supplied previously on more than one occasion and are supplied within this email, all 3 documents, to ensure this no longer remains an issue'. No such attachments were in fact sent with the email.
>
> (4) [In respect of the Appellant's Witness Statement - Point 19] "When that document was issued, the witness statement was in the process of being prepared, but the appellant then decided to give evidence in hearing instead. That decision was made after that document was issued and has been properly reported to the respondents, at the time the decision was made. No witness statement has been prepared and all parties are aware of this and have been aware for some time. It was felt that as all parties

understood this, there was no need to amend that LOD. This matter was dealt with in the correspondence sent on 26/2/25"

(5) [In respect of the Appellant's position on the grounds of appeal - Point 34] "The Grounds of appeal referred to all 3 years (2013/14, 2014/15 & 2016/17)"

55. On the 27 May 2025, the Tribunal, on behalf of Judge Sukul, provided directions to both parties stating: "The parties shall, no later than 14 days from the issuance of these directions, deliver to the Tribunal their agreed available dates during the next 4 months for a one-day, in-person (at Taylor House, London) hearing of HMRC's Strike Out application of 28 January 2025" "Not later than 7 days before the hearing, both parties shall provide to the Tribunal and each other an electronic copy of their skeleton argument including the details of any legislation and case law authorities to which they intend to refer at the hearing"

56. Following the Respondents' email to the Appellant and his Representative on 30 May 2025, the Respondents submitted their dates to avoid for the Strike Out hearing on 5 June 2025. On the same day, the Appellant's Representative provided their own availability to both the Tribunal and the Respondents. On 17 July 2025, the Tribunal formally notified both parties that the Strike Out hearing had been listed for 22 September 2025 at Taylor House, London.

57. The Respondents provided a skeleton argument for the hearing on 12 September. The Appellant's skeleton argument, issued in his name but provided by his representative, was provided on 14 September.

58. On 15 September the Appellant provided a witness statement for this hearing (not the witness statement for the substantive hearing), and the missing items from his List of Documents labelled Item 2 and Item 9. He also stated that item 13 was a draft document that had never been sent to HMRC and he now wished to withdraw this item from the list.

59. On 18 September HMRC emailed the Tribunal, the Appellant and his Representative raising concerns about the use of AI in the Appellant's skeleton argument, and the inaccurate citing of authorities within it. The Tribunal responded that these matters should be brought to the attention of the Tribunal at the hearing itself.

RELEVANT TRIBUNAL RULE

60. 51. Rule 8(3)(b) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2020 ("the Tribunal Rules");

> The Tribunal may strike out the whole or a part of the proceedings if…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.

SUBMISSIONS BY HMRC

61. The Respondents contend that there has been a catalogue of both repeated and deliberate non-compliance from the Appellant, stemming throughout the course of their appeal to the Tribunal, which has prevented the Tribunal from dealing with the proceedings both fairly and justly. The Respondents also contend that the Appellant's Representative has continuously and wilfully delayed proceedings to such an extent that the Respondents cannot deal with the appeal both fairly and justly.

62. As evidence for this, HMRC point both to the repeated failure of the Appellant to comply with directions, and also to the inaccuracies in the Skeleton Argument of the

Appellant, however caused, leading to considerable increase of time required to deal with this matter.

63. HMRC's position is that failure to comply by a deadline is a failure to comply regardless of whether the information was provided at a later date.

64. HMRC's summary of the failure to comply is as follows:

(1) Judge Bailey's directions of 7 March 2024 were not complied with by the due date of 8 April 2024. After an Unless Order request, they were complied with on 7 May 2024.

(2) Direction 1 (1) of the directions issued on 19 October (to provide a list of documents) was not complied with by the due date. After another Unless Order application, it was complied with 14 days late.

(3) Direction 3 (to provide Listing Information and agreed time periods) was complied with 39 days late.

(4) Direction 5 (for HMRC to provide the Appellant with the bundle) was delayed due to the refusal of the Appellant's representative to engage in the secure document transfer service.

(5) Direction 1 (2) (to provide documents not within HMRC's possession) was, at the date of HMRC's skeleton argument, 298 days late. It was finally complied with on 15 September 2025.

(6) Direction 2 (to provide a witness statement) has still not been complied with (and is therefore over 270 days late).

65. These constitute all the substantive directions in the appeal, and HMRC considers that no adequate reasons for the failure or lateness of the compliance have been provided.

66. HMRC says that the timeline above also shows that they have reminded the Appellant and his representative on numerous occasions of the deadlines, including resorting to Unless Orders.

67. HMRC rely on the following cases to support their application for a Strike Out.

68. The Respondents note the opinion of Judge Mosedale, in *Clarke v. HMRC* [2018] UKFTT 123 (TC), who addressed the particular importance of efficiency of Litigation and enforcing compliance with the Tribunal rules;

> [30] "The new approach requires the Tribunal to give significant (but not paramount) weight to the need for litigants to respect the Tribunal's rules and directions. If the litigants do not respect the need for compliance, the Tribunal will be unable to meet is overriding objective of dealing cases fairly and justly, as it would be building into the litigation process procrastination and delay. Where a Tribunal excuses a delay which has occurred for no good reason, the result is not only that the litigants concerned are encouraged to think non-compliance will not receive a sanction but that litigants in other cases also get the message that procrastination is permitted."

69. In *XG Concept Ltd v HMRC* [2017] UKFTT 92, Judge Jones set out at paragraph [46] – [48] as follows:

> [46] "Nevertheless in this case the appellant's five failures to comply with three different sets of directions over a period of five months

> might properly be described as litany of defaults. They have cumulatively and individually affected the fairness and justice of the proceedings to date and indicate that the approach of the appellant is likely to continue. The third and fifth of the appellant's breaches, in response to the October and December directions, to provide witness statements and grounds to oppose the strike out application, were serious and significant breaches in their own right".
>
> [47] "This conduct is compounded by the appellant's failure to attend or oppose the strike out application at the hearing itself",
>
> [48] "This catalogue of non-cooperation means that the Tribunal can reasonably extrapolate that the appellant's conduct of the proceedings would continue in the same vein in the future were the case to proceed to a final hearing.
>
> This would mean that the Tribunal would not be able to deal with the case fairly or justly. This is an appeal where the appellant's repeated failure to engage with the process means that a fair and just determination is not possible".

70. HMRC also point to *Mohammed Hafeez Katib v HMRC* [2019] UKUT 189, where Judges Mann and Richards said:

> 58. It is clear from the Decision that Mr Bridger did not provide competent advice to Mr Katib, misled him as to what steps were being taken, and needed to be taken, to appeal against the PLNs and failed to appeal against the PLNs on Mr Katib's behalf (see [7] and [16]). But extraordinary though some of Mr Bridger's correspondence was, 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.

71. HMRC further submit that the failure/deliberate decision not to produce a witness document is an attempt to ambush HMRC at the main hearing by requesting at that point that Mr Elden can give witness evidence, at which point HMRC will be unable to prepare for cross examination.

SUBMISSIONS BY THE APPELLANT

72. The Appellant's case was advanced by the Appellant himself orally at the hearing, and by his Skeleton Argument, submitted in his name by his Representatives.

73. The Appellant explained that he did not contribute to the preparation of the Skeleton Argument. HMRC believe AI was heavily used to produce the document. This was put to the Appellant's Representatives by the Appellant, and they neither confirmed nor denied the use of AI, but he stated they stood by everything in the document save where the Appellant himself contradicted it.

74. The Appellant's case, in both the skeleton argument and oral submissions, broadly, is that HMRC have not been prejudiced by any delays to compliance with directions. He submits that delayed compliance is none the less compliance. HMRC have everything they require to prepare for the hearing. In detail, the Appellant submits as follows:

(1) The Appellant's Representative did not receive an email, sent by the Tribunal on 28 October to both the Appellant and his Representative, asking whether the Appellant required any documents from HMRC's list of documents, and attempting to agree a range of hearing date possibilities.

(2) In regard to missing information, the Skeleton says: 'The Respondents also raise the failure of the provision of missing information. The appellant would point out that there are 3 instances where such is mentioned, one in an email which was seemingly provided the very same day as another email and which seemingly also hasn't been received, the second being an application which is being heard today and the 3rd being a document which does not mention this issue. This therefore constitutes, at best, one request, which has not been answered until today. The appellant would point out that (a) they didn't receive that request and (b) they have complied.'

(3) In regard to the file transfer, the skeleton argument says 'The Respondents' reliance on a file transfer that never reached the Appellant further demonstrates the weakness of their case.'

(4) In regard to the list of documents, the Skeleton Argument says: 'As to the allegation that the appellant never provided the list of documents, (point 28) this is untrue. The list was provided. It was provided later than ideal, but it was provided nonetheless. HMRC suffered no prejudice, since they already had the documents and now have the formal list too. A late list is, at most, a minor procedural lapse, not grounds for strike-out under Rule 8(3)(b).'

(5) In regard to the missing documents, the Skeleton Argument says: 'Of the 3 documents that the respondents comment are missing in this skeleton argument, document (2) the document dated 1/2/20 was in fact 1/2/21, which was obvious considering that it came after a letter dated 2/6/20 and before a letter dated 15/2/21, that was an email to Inspector Fernie, who responded by refusing to even consider it and instead issued assessments, the document marked item 9 was an email sent to Inspector MacKay and was responded to on 29/11/22 and the document marked item 13 was seemingly a document that was prepared but never sent and was put onto the schedule by mistake, so is irrelevant. The two relevant documents (items 2 and 9) are attached but do not state anything that hasn't been stated elsewhere. So as not to delay any further, the appellant has now provided them but would point out that the lack of provision of these documents could not constitute a failure on which Rule 8(3)(b) could rely upon for strikeout, as other measures could be used, such as a Tribunal judge not allowing that evidence at hearing. As the evidence has now been supplied, that now concludes any requirement to supply.'

(6) In relation to the witness statement, the Skeleton Argument says:

> 'The Respondents submit that the Appellant is attempting to engage in "trial by ambush" by not serving a witness statement whilst intending to give oral evidence at the hearing. This is misconceived for several reasons:

(i) The Appellant has been transparent: he informed the Respondents in advance that he would not be serving a witness statement. There has been no concealment.

(ii) The Appellant accepts that, under Tribunal procedure, a party who has not served awitness statement may not be permitted to give oral evidence-in-chief. That is a matter for the Tribunal at the substantive hearing.

(iii) The Appellant is entitled, however, to make submissions as a party in person, and to cross-examine the Respondents' witnesses.

(iv) If the Tribunal considers that oral evidence should not be admitted in the absence of a witness statement, that is a proportionate case-management decision. It is not a basis for strike-out.

The Respondents' "trial by ambush" argument is unsustainable. The essence of "ambush" is surprise. Here, the Respondents were expressly informed of the Appellant's decision not to serve a witness statement. There has been no surprise, and no prejudice.'

(7) In relation to the document transfer, the skeleton argument says: 'The Respondents rely heavily on an email of 23 January 2025 in which they sought document bundle transfer. The Appellant's representative acknowledged the email and explained that the matters would be dealt with in early February, due to self-assessment season. The Respondents characterise this as evidence of "wilful disregard" and predictive of future non-compliance. That characterisation is incorrect: (i) The representative's email did not refuse to comply. It stated that compliance would be delayed until early February due to professional workload at the peak of self-assessment season. (ii) The explanation given was a practical and time-limited one, not an indication of a "wilful desire" to ignore the Tribunal's directions. (iii) The Appellant did, in fact, subsequently attempt to comply but was unsuccessful due to a failure in HMRC systems. This demonstrates that the delay was temporary and not predictive of future non-compliance.

75. The Appellant's skeleton argument also mentions several cases in support of his case. No detailed quotes are given from these cases. The paragraphs mentioning these cases are repeated in full below:

Key Authorities

1. Fairford Group plc & Others v HMRC [2014] UKUT 329 (TCC)

The Upper Tribunal held that strike-out is a draconian power which must only be exercised sparingly.

Even where there have been defaults, the Tribunal must consider whether the case is nonetheless arguable and whether alternative case management tools would suffice.

2. BPP Holdings Ltd v HMRC [2016] UKSC 55

The Supreme Court endorsed the Tribunal's power to issue debarring orders or strike out for non-compliance, but stressed that the overriding objective (Rule 2) must guide the Tribunal — proportionality and fairness are key.

The case is often cited by HMRC, but it cuts both ways: it shows strike-out is not automatic; the Tribunal must assess the seriousness of the conduct and whether lesser sanctions would work.

3. Atlantic Electronics Ltd v HMRC [2012] UKUT 45 (TCC)

Confirmed that mere non-compliance or delay is not enough for strike-out unless it prevents the Tribunal from dealing with the case fairly and justly.

Stressed that tribunals should generally use case management powers (directions, unless orders) before striking out.

4. Hok Ltd v HMRC [2011] UKUT 363 (TCC)

Reinforces that the Tribunal's overriding duty is to deal with cases fairly and justly.

HMRC had applied for strike-out due to procedural failings, but the Tribunal emphasised that striking out an otherwise arguable appeal should not be done lightly.

5. Leeds City Council v HMRC [2014] UKUT 0350 (TCC)

Underlines that proportionality is central: the Tribunal must weigh the seriousness of the non-compliance against the impact of denying a party a hearing on the merits.

Further comments in the document

Fairford and Atlantic Electronics argues that strike-out is draconian and reserved for extreme cases.

BPP Holdings stresses proportionality and fairness.

Hok Ltd and Leeds CC dictate that lesser measures are appropriate where a case is arguable.

Hok Ltd v HMRC [2011] UKUT 363 (TCC): Even procedural failings do not justify strike-out where the appeal remains arguable. The proper response is case management, not extinguishing the appeal.

BPP Holdings v HMRC [2017] UKSC 55: The Tribunal has broad case-management powers to deal with procedural default. Sanctions should be proportionate to the failing. Exclusion of oral evidence may be appropriate; strike-out is a last resort.

Atlantic Electronics Ltd v HMRC [2012] UKUT 45 (TCC): Strike-out requires conduct that prevents a fair hearing. Where the issue can be dealt with by managing the evidence (e.g. excluding oral testimony), strike-out is inappropriate. Authorities (supporting proportionality)

BPP Holdings v HMRC [2017] UKSC 55: The Supreme Court emphasised that sanctions must be proportionate. Minor or inadvertent breaches should be met with proportionate responses.

Fairford Group plc v HMRC [2014] UKUT 329 (TCC): Strike-out is a draconian measure, to be used sparingly and only where no lesser measure would suffice.

Atlantic Electronics Ltd v HMRC [2012] UKUT 45 (TCC): Strike-out for conduct requires conduct so serious that a fair hearing is impossible.

DISCUSSION (CONDUCT OF THE APPELLANT AND THE APPELLANT'S REPRESENTATIVE THROUGHOUT THE MANAGEMENT OF THE APPEAL)

76. A common thread running throughout the communication between HMRC, the Tribunal, and the Appellant's Representative in the management of this appeal is that the Representative appears to be either unfamiliar with Tribunal case management, or deliberately choosing to apply tactical delays at every point, or both.

77. In addition, some positions taken by the Appellant's representative are at best evidence of a significant lack of care in dealing with matters relating to their client.

78. For example, as pointed out by Judge Bailey, the starting point for the Appellant's case should be the basis on which he filed the original returns. His appeal relies on him being able to advance a positive case that that is the correct basis on which to file. At the point that the matter reaches the Tribunal, asking for copies of technical advice received within HMRC, or qualifications of the person giving the advice, is irrelevant to the matter. In addition, saying 'the Appellant has made it clear that this matter reaching the Tribunal is clearly a premature position' makes no sense when it is the Appellant who has made the appeal to the Tribunal.

79. This continues when the Representative appears not to understand that the List of Documents provided by HMRC would not contain any 'legal framework that you intend to rely upon', confusion about whether HMRC will be providing witnesses, and confusion about whether the Appellant is also a witness and therefore required to produce a witness statement.

80. In relation to the file transfer, the position of the Appellant's representative is that the bundle has still not been received. They have provided no evidence that knowing that HMRC attempted to transfer the file on 12 February, after some difficulties with registration on 11 February, they either confirmed non -receipt of the bundle or, at any point in the following 7 months made any attempt to receive what is an extremely important document in relation to this appeal.

81. Subsequent to the hearing, and copied to the Appellant and his Representative, HMRC have produced the email from HMRC Business support team to Mr Pearson, confirming upload of the bundle to the secure document system. The email says that the file will be available to the representative to download for 5 days. I admit this document into evidence.

82. A further submission was made by the Appellant's representative on 26 September 2025, stating that the HMRC officer had confirmed that the bundle could not be downloaded from outside the UK, and stating that the officer had undertaken to investigate whether a paper copy could be provided but no further contact was made [by HMRC].

83. In relation to the missing documents 2, 9 and 13 of the list of documents, the Appellant firstly appears not to understand that even if, at some point in time, HMRC had these documents, once it has confirmed to the Appellant in the course of the case management of the hearing that it does not have these documents, the onus is on the Appellant to provide them. The position of the Appellant's Representative has variously been that there are no missing documents (email on 25 February 2025), despite having been told what they were on 23 January 2025, that the Respondents had confirmed that there weren't any (25 February 2025), that they have supplied them previously on more than one occasion (email on 9 April 2025), that they are supplied within the email of 9 April (when they weren't) and finally, that one of them was a draft document that was never sent to HMRC (15 September).

84. Neither the Appellant nor his Representative have provided any evidence that they have previously supplied the missing documents.

85. In relation to an email on 28 October, sent by HMRC to the Appellant and his representative, the representative says they never received it. This email was sent to the same email address that the representative has used throughout the case management of this hearing, and was received by the Appellant.

86. I make the following findings of fact:

87. The email of 28 October was sent correctly by HMRC and was received by the appropriate server for the Appellant's Representative.

88. The document bundle was uploaded correctly by HMRC, and was available to the Appellant's Representative for a limited period of time.

DISCUSSION (USE OF AI AND/OR INACCURATE SUMMARIES OF CASES)

89. The Appellant's skeleton argument contained summaries of, but no direct quotes from, 5 cases that were put forward in support of the view that I should not strike out this case.

90. HMRC contend these are inaccurate summaries produced with the help of AI.

91. The Appellant's position is that he did not produce the skeleton argument, which he says was prepared by his representatives.

92. Through the Appellant at the hearing, the representative neither confirmed nor denied the use of AI, and said they stood by the summaries and it didn't matter whether AI was used or not.

93. In further submissions, the Representative said 'The suggestion that citing a published authority amounts to providing false material is misconceived. A court decision is a matter of public record. Whether a case applies is a matter of legal argument and opinion, not misrepresentation. It is entirely proper for parties to put forward different interpretations for the Tribunal to consider. To characterise this as "false material" is both unfounded and inappropriate.' It is not clear who the representative is quoting as saying false material was used. The wording used by HMRC was 'inaccurate use of AI/inaccurate authorities'.

94. To some extent, the Tribunal agrees that whether or not AI was used is not directly relevant. AI is a powerful tool that can be used to great effect, but the human who relies on its use bears the responsibility for the accuracy. At the same time, because AI is known to 'hallucinate', that is, to generate false or inaccurate information and present it as if it were factual, if AI has been used to produce a document and flaws are found in that document, particularly if the flaws, once pointed out, are not corrected, this leads to the rest of the document being treated with great caution. This then has a knock on effect on the time taken to consider and check all relevant points.

95. The use of AI in legal proceedings is a fast growing area of case law. This Tribunal has already seen 2 cases (*Felicity Harber v HMRC* [2023] UKFTT 1007 (TC) and *Bodrul Zzaman v HMRC* [2025] UKFTT 539 (TC)) where an unrepresented Appellant has used AI. In *Harber*, the AI hallucinated fictitious cases, and in *Zzaman*, it produced case citations that were not directly relevant to his case.

96. The High Court in the case of *Ayinde v London Borough of Haringey and Al-Haroun v Qatar National Bank* [2025] EWHC 1383 has also considered the use of AI and made the following remarks:

4. Artificial intelligence is a powerful technology. It can be a useful tool in litigation, both civil and criminal. It is used for example to assist in the management of large disclosure exercises in the Business and Property Courts. A recent report into disclosure in cases of fraud before the criminal courts has recommended the creation of a cross-agency protocol covering the ethical and appropriate use of artificial intelligence in the analysis and disclosure of investigative material. Artificial intelligence is likely to have a continuing and important role in the conduct of litigation in the future.

5. This comes with an important proviso however. Artificial intelligence is a tool that carries with it risks as well as opportunities. Its use must take place therefore with an appropriate degree of oversight, and within a regulatory framework that ensures compliance with well-established professional and ethical standards if public confidence in the administration of justice is to be maintained. As Dias J said when referring the case of Al-Haroun to this court, the administration of justice depends upon the court being able to rely without question on the integrity of those who appear before it and on their professionalism in only making submissions which can properly be supported.

6. In the context of legal research, the risks of using artificial intelligence are now well known. Freely available generative artificial intelligence tools, trained on a large language model such as ChatGPT are not capable of conducting reliable legal research. Such tools can produce apparently coherent and plausible responses to prompts, but those coherent and plausible responses may turn out to be entirely incorrect. The responses may make confident assertions that are simply untrue. They may cite sources that do not exist. They may purport to quote passages from a genuine source that do not appear in that source.

7. Those who use artificial intelligence to conduct legal research notwithstanding these risks have a professional duty therefore to check the accuracy of such research by reference to authoritative sources, before using it in the course of their professional work (to advise clients or before a court, for example). Authoritative sources include the Government's database of legislation, the National Archives database of court judgments, the official Law Reports published by the Incorporated Council of Law Reporting for England and Wales and the databases of reputable legal publishers.

8. This duty rests on lawyers who use artificial intelligence to conduct research themselves or rely on the work of others who have done so. This is no different from the responsibility of a lawyer who relies on the work of a trainee solicitor or a pupil barrister for example, or on information obtained from an internet search.

9. We would go further however. There are serious implications for the administration of justice and public confidence in the justice system if artificial intelligence is misused. In those circumstances, practical and effective measures must now be taken by those within

> the legal profession with individual leadership responsibilities (such as heads of chambers and managing partners) and by those with the responsibility for regulating the provision of legal services. Those measures must ensure that every individual currently providing legal services within this jurisdiction (whenever and wherever they were qualified to do so) understands and complies with their professional and ethical obligations and their duties to the court if using artificial intelligence. For the future, in *Hamid* hearings such as these, the profession can expect the court to inquire whether those leadership responsibilities have been fulfilled.

97. I consider it appropriate to evaluate the accuracy of the summaries used in the Appellant's skeleton with a view to establishing whether the person producing the skeleton complied with the duty to verify the output from AI before presenting it to this Tribunal.

98. I first turn to the case of Atlantic Electronics. The Appellant's skeleton argument says it 'Confirmed that mere non-compliance or delay is not enough for strike-out unless it prevents the Tribunal from dealing with the case fairly and justly. Stressed that tribunals should generally use case management powers (directions, unless orders) before striking out.'

99. I have read the entire case, which is 9 pages long. This case concerned HMRC's appeal against a First-tier Tribunal decision refusing permission to admit additional evidence from two witnesses in an MTIC (Missing Trader Intra-Community) VAT fraud appeal. It is not a case about strike out. It says nothing about what powers Tribunals should consider using before strike out. I am satisfied that the case of Atlantic Electronics is not directly relevant to this case and that the summary produced in the Appellant's skeleton argument is inaccurate.

100. Turning next to the case of Leeds City Council, I again read the entire case (11 pages long).

101. This case concerned HMRC's application for costs following its successful defence of Leeds City Council's VAT appeal. The application was submitted four working days late and without an accompanying schedule of costs. Leeds objected, relying heavily on the Court of Appeal's decision in Mitchell v News Group Newspapers Ltd and the Upper Tribunal's decision in McCarthy & Stone, which had adopted a strict approach to procedural compliance.

102. Judge Colin Bishopp considered whether the delay should be excused and an extension of time granted. He reviewed the relevant authorities, including Mitchell, Denton, and Data Select, and concluded that while procedural rules must be respected, the tribunal should not adopt an unduly rigid approach. He found the delay to be short, the explanation weak but understandable, and the prejudice to Leeds minimal. By contrast, refusing the extension would deprive HMRC of a costs award it would otherwise have expected.

103. The judge declined to follow McCarthy & Stone, finding its reasoning too strict for tribunal practice. He emphasised that proportionality and fairness remain central under the tribunal's overriding objective. The extension was granted, and the application admitted, with costs issues left for further resolution.

104. I am satisfied that the case of Leeds City Council is not directly relevant to this case and that the summary produced in the Appellant's skeleton, whilst not saying that the case is in relation to strike out, is inaccurate to the extent of being misleading, as it implies that it was about 'denying a full hearing on the merits' when it is not.

105. In relation to Hok [*Hok Ltd v HMRC* [2012] UKUT 363 (TCC)] I firstly note that the case reference produced by the Appellant was slightly incorrect, as they had the case dated as 2011.

106. The case is not about strike out. It concerns the jurisdiction of the FTT in relation to fixed penalties imposed by HMRC for late submission of PAYE returns. I note that, in common with most Upper Tribunal and First Tier Tribunal decisions from the Tax Chamber, the first page of the decision contains a 'keyword summary' as follows: *PAYE — employer's year-end return — penalties for late submission — jurisdiction of First-tier Tribunal — whether includes ability to discharge penalty on grounds of unfairness — no — whether finding that HMRC's failure to send prompt reminder unfair sustainable — no — whether penalties due — yes — appeal allowed.*

107. I am confident that no human being competent to summarise case law could summarise this case, which was not in relation to strike out at all, as 'HMRC had applied for strike-out due to procedural failings, but the Tribunal emphasised that striking out an otherwise arguable appeal should not be done lightly.'

108. I find that the case summaries were produced using AI and that they have not been verified for accuracy with sufficient care as should be used when producing submissions for a Tribunal hearing. As mentioned in *Ayinde,* there are serious implications for the administration of justice and public confidence in the justice system if artificial intelligence is misused.

109. This case provides an example of the harm that will come to the judicial system if AI is used uncritically, particularly by professionals on whom the court ought to be able to rely to act with due skill and competence.

110. Tribunal time, both in case management by judges and others, and in hearing cases, is a public resource. In this case, as in others such as *Harber* and *Zzaman,* a considerable amount of time has been taken up by the consideration of cited cases which have no relevance to the case at hand.

CORRESPONDENCE AFTER THE HEARING

111. A draft decision, containing all the paragraphs above, and paragraphs 130 to 160 below, was sent to both parties on 11 November 2025. The Tribunal then entered into correspondence with the Appellant's representative about the summaries of the cases *Hok, Atlantic* and *Leeds City Council* contained within the skeleton argument.

112. The Tribunal requested reasons as to why the misleading and materially incorrect summaries were contained within the skeleton argument.

113. The Representative confirmed that AI had been used in the preparation of the skeleton argument. 'to aid conciseness and consistency' and accepted that 'references to those cases required better explanation as to their inclusion in the skeleton argument and their relevance'.

114. A further, longer reply sought to justify the relevance of *Atlantic* and *Leeds City Council* (it made no reference to *Hok*), but did not address why the summaries were inaccurate other than the limited time they had to complete the task.

115. A subsequent reply to a further request for an explanation of the inaccuracies stated that they did not accept that the summaries were wholly inaccurate or that they misrepresented the decisions. It said 'they were accurate summaries of the propositions extracted from the authorities, and the subsequent fuller explanations we provided demonstrate that the summaries are entirely consistent with the underlying judgements.'

116. The letter requested that the allegation that the summaries were inaccurate should be particularised. The letter again sought to explain the relevance of *Atlantic* and *Leeds City Council*, and again made no reference to *Hok*. It admitted that part of the comments in relation to *Atlantic* were meant to refer to BPP Holdings [*BPP Holdings Ltd v HMRC [2017] UKSC 55*] which had been cited in the original skeleton.

117. The Tribunal responded, pointing out that this decision clearly sets out the concerns with the summaries in relation to *Hok, Atlantic* and *Leeds City Council*, and that no detailed explanation had been given in relation to the inaccurate summaries.

118. The Representative responded asking for time to complete a full response. The full response was received on 6 December.

119. The response explained that the firm was instructed at a very late stage, because 'The Appellant, who was self-represented, had initially understood the hearing to be a substantive/final hearing and the first draft skeleton was therefore prepared on that basis. It was only very late that it became clear that the hearing was concerned with strike-out/procedural disposal rather than a final merits determination, and the skeleton then required urgent refocusing and reduction so that something intelligible could be filed within the deadline. It was during those late-stage amendments that the citation/heading substitutions and associated misattributions occurred.'

120. The explanation was that 'the error arose from human editing and document-control at the final stage under acute time pressure, resulting in misattribution of text to the wrong case headings.'

121. It further explained 'the individual reviewing the final draft accidentally replaced Biguzzi v Rank Leisure plc [1999] 1 WLR 1926 (CA**)** with *Hok* and *Atlantic* in places under severe time pressure, while associated wording remained. That is why certain passages did not correspond to the cases cited. The relevant passages were drafted as paraphrases of intended propositions rather than verbatim quotations. When the case headings/citations were mistakenly substituted at the final stage, the accompanying paraphrasing was also edited to align with the substituted case names, which compounded the misattribution.'

122. All references to *Hok* in the skeleton argument were withdrawn by the Representative.

123. All passages attributed to *Atlantic* were withdrawn as summaries of that authority, and new authorities given (Biguzzi v Rank Leisure plc [1999] 1 WLR 1926 (CA) and Denton v TH White Ltd [2014] EWCA Civ 906)

124. It was reiterated that *Leeds City Council* was not relied on as a strike out authority, and 'To the extent any wording could be read as suggesting the case was itself a strike-out authority, that implication is withdrawn.'

TRIBUNAL COMMENT ON THE FINAL POSITION OF THE APPELLANT'S REPRESENTATIVE

125. The Tribunal welcomes the eventual full engagement of the Appellant's representative in this matter and the fact that the summaries of *Hok* and *Atlantic* are now withdrawn.

126. The Tribunal is disappointed that, given that this is now the position of the representative, it took protracted correspondence to get to that point and, despite the clear articulation in this judgement (see paras 106 and 107) the initial position of the representative, after seeing the draft judgement, was still (para 115) that the summaries were accurate summaries of the propositions extracted from the authorities.

127. Given the decision in this case, which remains identical to that set out in the draft judgement, it is not necessary for the Tribunal to undertake a detailed analysis of the decision in *Biguzzi*.

128. However the Tribunal would comment that given that *Biguzzi* is not a case involving HMRC, it seems surprising that human error could lead the case, attributed in the skeleton to *Hok*, to be summarised as 'HMRC had applied for strike-out due to procedural failings, but the Tribunal emphasised that striking out an otherwise arguable appeal should not be done lightly'. This is clearly more than a simple insertion error. The explanation 'accompanying paraphrasing was edited to align with the substituted case names' is presumably intended to cover what happened here, but this is an explanation that lacks full coherence.

129. The Tribunal would also comment that the Representative had been copied into the correspondence in paragraph 55 outlining that the hearing would be for the Strike Out Application. The Representative had replied (on behalf of the Appellant) giving dates to avoid. The Representative should therefore have been aware (even if the Appellant did not understand) that the hearing would be in relation to the Strike Out application, rather than a substantive hearing.

DISCUSSION (INVOLVEMENT OF THE APPELLANT)

130. As can be seen from the procedural background, the Appellant, up to the point of the hearing, had not involved himself in the management of this appeal. His explanation at the hearing was that he had left everything in the hands of his advisers.

131. He has been copied into virtually every interaction between HMRC and his representatives, with the exclusion of the exchange of emails around the transfer of the bundle. He cannot fail to have noticed that his representatives were not complying with the relevant deadlines.

132. The Appellant wants the matter to be brought to a full hearing as soon as possible.

133. At the application hearing, the Tribunal explained to the Appellant why it would be to his advantage to produce a witness statement for the full hearing, and why having that witness statement in advance is to the benefit of everyone, and why HMRC would be likely to object to an application for admission of a witness statement or oral evidence on the hearing day itself.

134. It was evident that this was not apparent to the Appellant up to this point.

135. The Appellant directly appealed to the Tribunal to be allowed a short extension of time for the production of a witness statement.

FINDINGS OF FACT

136. As mentioned above, I have made the following findings of fact:

137. The email of 28 October was sent correctly by HMRC and was received by the appropriate server for the Appellant's Representative.

138. The document bundle was uploaded correctly by HMRC, and was available to the Appellant's Representative for a limited period of time.

139. The case summaries were produced using AI and they have not been verified for accuracy with sufficient care as should be used when producing submissions for a Tribunal hearing. This lack of sufficient care amounts to professional incompetence on the part of any regulated individual or firm involved in the production of the skeleton argument.

DECISION

140. The decision I have to make is whether 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.'

141. The failures catalogued are summarised as follows:

(1) Repeated failures to comply with Tribunal directions in relation to production of documents and respecting directed timelines.

(2) Carelessness in answers to Tribunal directions such that case management becomes significantly delayed. Multiple different answers to the question 'Is a witness statement to be produced by the Appellant' have been given.

(3) Obfuscation in relation to answering the question about the use of AI in the production of the skeleton argument. It is not 'co-operating with the Tribunal' to neither confirm nor deny the use of AI. A straightforward answer detailing the use of anything that could amount to the use of AI would not be difficult.

142. I consider that it will not be possible for the Tribunal to deal with the proceedings fairly and justly without the production of a witness statement by the Appellant. There is currently no witness statement produced.

143. In favour of not striking out the appeal, I include the fact that there is not yet a hearing date, and there is time to produce a witness statement (which is now the main outstanding case management matter) in good time before such a date.

144. I also weigh the fact that the Appellant was clearly unaware (although he ought to have made himself aware) of why the witness statement is such a key document.

145. I have not been addressed by either side on the underlying merits or otherwise of the substantive appeal.

146. I consider that the conduct of the Appellant/his Representative up to the point of the hearing is such that a strike out would be fully justified. If a direction is not complied with at the due date, that is non-compliance. If at a later date, the information is provided, there may or may not be an adequate reason for this.

147. There has been no adequate reason provided for the late provision of information, or the non-provision of information.

148. I have considered carefully the cases referred to by HMRC in support of their case. In the case of *XG Concept Ltd* Judge Jones stated 'This catalogue of non-cooperation means that the Tribunal can reasonably extrapolate that the appellant's conduct of the proceedings would continue in the same vein in the future were the case to proceed to a final hearing.'

149. In that case the Appellant failed to attend or oppose the strike out application.

150. In this case, the Appellant did attend the application hearing, and was at pains to stress that he would ensure a change of attitude in providing items to the Tribunal and complying with deadlines. I am therefore satisfied that it would not be fair to extrapolate the conduct of the Appellant hitherto to automatically assume he will continue in the same vein.

151. I also bear in mind the comments of Judge Mosedale in *Clarke,* where she said 'Where a Tribunal excuses a delay which has occurred for no good reason, the result is not only that the litigants concerned are encouraged to think non-compliance will not receive a sanction but that litigants in other cases also get the message that procrastination is permitted."

152. I completely agree with this, but I am prepared to apply a sanction in this case that is less than immediate strike out.

153. I consider that it is possible to deal with the lack of co-operation to date by making case management directions.

154. Accordingly, I will make an Unless Order for the production of the witness statement within a stated timeframe. This will be a Will Unless Order, meaning that if the witness statement is not produced by this deadline, the appeal will be struck out on the due date without further reference to the parties.

155. I will also make a direction that HMRC provide the Appellant with an opportunity to create a SDES account and upload the bundle for the substantive hearing, or to ask to receive the bundle by post. I will then make a Will Unless Order which requires that unless the Appellant confirms receipt of the bundle again his appeal will be struck out automatically without further reference to the parties.

156. In addition, I will make directions in relation to the detail that the Appellant must include alongside the production of the skeleton argument for the substantive appeal hearing.

157. The skeleton argument must be accompanied by the full judgement of each case referred to by the skeleton argument. In addition, all references to cases in the skeleton argument must be referred to by direct quotes from the judgement, referenced by paragraph number or page and line references if no paragraph numbers are available. The skeleton argument must contain a brief summary of what the case is about and why it is relevant to the case at hand.

158. The skeleton argument must also be accompanied either by a statement of truth from the Appellant stating that he has produced the skeleton argument entirely himself, with or without the help of AI, and has personally checked each statement of fact or case summary and reference contained within it, OR must contain a statement of truth from any other person who has contributed to the skeleton argument, confirming which of the statements of fact or case summaries that person has checked. Every person other than the Appellant must include their professional qualifications, if any, and the professional body that regulates their employer, if any.

159. For the avoidance of doubt, it is not necessary for anyone assisting the Appellant to have any specific qualifications, nor to be employed by an employer that is regulated by any specific professional body. However, the Tribunal will consider making references to any professional body in relation to any person who submits to the Tribunal any item, the standards of which fall below the professional and ethical standards the Tribunal has a right to expect.

160. For the reasons given above, the strike out application is REFUSED.

161. For completeness, I note that at the date of the publication of this decision, the Appellant has already produced the witness statement and therefore no order in relation to that will be handed down.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

162. 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.

Release date: 08th JANUARY 2026