CO/11572/08

Neutral Citation Number: [2009] EWHC 3734 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2A 2LL

Friday 18, December 2009

B e f o r e:

CMG OCKELTON
(Sitting as a Deputy High Court Judge)
Between:
THE QUEEN ON THE APPLICATION OF PARISSIS AND OTHERS
Claimants

v

JEREMY GRINYER, INSPECTOR OF HER MAJESTY'S REVENUE AND CUSTOMS
First Defendant

And

COMMISSIONERS FOR THE GENERAL PURPOSES OF INCOME TAX, OXFORD CITY DIVISION

Second Defendants

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Mr K Gordon and Miss X Montes Manzano (instructed by Sharpe Prtichard) appeared on behalf of the **Claimant**s
Miss P Whipple (instructed by the Solicitor for Her Majesty's Revenue and Customs) appeared on behalf of the **First Defendant**
The **Second defendant did not appear and** was not represented

J U D G M E N T
(As approved)

1. THE DEPUTY JUDGE: This application for judicial review raises a short point on the construction of section 20 of the Taxes Management Act 1970. Permission was granted by Bean J on limited grounds on 12 May 2009.

2. Section 20 empowered Her Majesty's Revenue and Customs ("HMRC") to require a taxpayer, or other person, to deliver documents or furnish information for the purposes of assessing liability to tax. Section 20 had a considerable legislative history. In its emanation in the 1970 Act it was amended a number of times. It was repealed in full by section 113 of the Finance Act 2008. That repeal, and new statutory provisions in replacement of section 20, came into force on 1 April 2009.

3. So far as relevant to this application, the provisions of section 20 are, or were, as follows:

> "Power to call for documents of taxpayers and others
>
> 20(1)Subject to this section, an inspector may by notice in writing require a person-
>
> (a) to deliver to him such documents as are in the person's possession or power and as (in the inspector's reasonable opinion) contain, or may contain, information relevant to-
>
> (i) any tax liability to which the person is or may be subject, or
>
> (ii) the amount of any such liability, or
>
> (b) to furnish to him such particulars as the inspector may reasonably require as being relevant to, or to the amount of, any such liability."

4. Subsection (3) enables an Inspector to give a notice to a person other than the taxpayer who he believes has information relating to the taxpayer's affairs:

> "(7) Notices under subsection (1) or (3) above are not to be given by an inspector unless he is authorised by the Board for its purposes; and-
>
> (a) a notice is not to be given by him except with the consent of a General or Special Commissioner; and
>
> (b) the Commissioner is to give his consent only on being satisfied that in all the circumstances the inspector is justified in proceeding under this section.
>
> ...
>
> (8E) An inspector who gives a notice under subsection (1) or (3) above shall also give to -

(a) the person to whom the notice applies (in the case of a notice under subsection (1) above), or

(b) the taxpayer concerned (in the case of a notice under subsection (3) above), a written summary of his reasons for applying for consent to the giving of the notice."

5. The claimants are taxpayers to whom notices under section 20(1) were issued. The first defendant, represented by Miss Whipple, is the Inspector, Mr Grinyer, whose notices they are. He is an Inspector authorised under subsection (7). The second defendant is the General Commissioners of the Oxford City Division, who have taken no part in these proceedings, other than indicating that they oppose the claimants' claim.

The Facts

6. The claimants were directors of two companies. In January 2007 HMRC gave notice of an investigation into the companies' corporation tax returns for the accounting period ending on 31 December 2005. In the course of that investigation, requests were made for various documents from the claimants. On 9 January 2008, HMRC wrote to the claimants' agent informing him that the scope of enquiries had been extended, and inviting a response to specific questions concerning the individual tax liability of the three claimants. In March 2008 there was a meeting between Mr Paul Gaskell and Mr Rob Keating of HMRC, and the claimants' agent, at which the question of obtaining personal financial information from the claimants was discussed. On 25 July 2008 Mr Gaskell wrote to each of the claimants making informal requests for documentation, information and sight of private financial records, as a precursor to issuing any formal notice.

7. The documentation and the information sought by HMRC was not forthcoming, and an application was therefore made to the General Commissioners for the Division of Oxford City (the second defendant) on 5 September 2008 for consent to six notices being issued pursuant to section 20(1). It appears that both Mr Grinyer and Mr Gaskell were present at the hearing before the General Commissioners.

8. The consent of the Commissioners was granted and the notices were issued on the same date. The notices were sent to the respective addressees under cover of letters dated 8 September 2008. The notices are all in the same form, and I take it that it is a standard form of words. No particular issue has been the subject of any substantive submission before me in relation to it, other than a point as to the person to whom the addressee of the notice should deliver the documents in question. That point was made in criticism of the notices but it is not said that it invalidated them. I do not need to give it any further attention.

9. The letters are also all in the same form. There are six of them, one accompanying each notice. There are two notices to each of the taxpayers. I will read out one of the letters, addressed to Mr Harrison, who is the second claimant:

"Dear Mr Harrison,

Requests for documents and particulars

Section 20(1) Taxes Management Act 1970

We refer to our letter of 25 July 2008 when we requested information and documentation in connection with our enquiries into your personal tax situation. We are now enclosing formal documents under the provisions of section 20(1) Taxes Management Act 1970, duly signed by a General Commissioner along with a summary of the statutory provisions. In order to comply with the notices you should forward the documents and particulars referred to us on them to reach us no later than 13 October 2008.

In accordance with section 20(8E) Taxes Management Act 1970 we can confirm that the documents and particulars required have been requested by us as part of our enquiries into your tax affairs as they will help us to establish whether your income is fully assessed to income tax. Our reasons for requiring them have been set out in previous correspondence such as our letter of 9 February 2008 to your agent Andrew Brown of Andrew Brown 57 Limited. We also discussed our concerns at length with Mr Brown when we met with him at his office on 4 March 2008. In summary the documents and particulars will assist in quantifying your income, establishing whether you have sufficient funds to finance your lifestyle and acquisitions of capital assets checking whether these funds can be identified as originating from known sources. Please do not hesitate to telephone me on the site if you have any enquiries.

A copy of this letter and a copy of the notices have been forwarded to your agent Andrew Brown of Andrew Brown 57 limited.

Yours sincerely,

Paul Gakell

HM Inspector of taxes."

10. Each of the letters and the notices was accompanied also by a transcript of section 20. The notices are each signed by the first defendant, who, as I have said, is an Inspector authorised under section 20(7). They are also signed by the General Commissioner who authorised them. The letters, albeit expressed in the second person plural, are signed only by Mr Gaskell. He is not the person who issued the notices and, as he is not an Inspector authorised by subsection (7), he could not have issued them.

The claimants' case

11. There is no doubt that a certain amount of energy has been expended on both sides on issues relating to the signature on the letters. At one stage it did indeed appear that the principal question being raised by the claimants was whether there was compliance with subsection (8E) if the letter was signed by a person not able to give the subsection

(1) notice. In the course of oral argument it became clear that the question of who signs the letter was not really important to the claimants. Their claim is as follows: first, the taxpayer is entitled to require compliance with section 20(8E); secondly, compliance means being informed of the authorised Inspector's reasons for seeking the notice; thirdly, the letters are signed by a person who is not the authorised Inspector, use "we" in a purely general or conventional sense, and do not specifically say that the reasons given are the reasons of the Inspector, rather than the reasons of the writer of the letter; fourthly, the taxpayer is entitled not to be in any doubt that the letters do indeed comply with section 20(8E) by giving the authorised Inspector's reasons; fifthly, therefore, if there is any ambiguity, section 20(8E) has not been complied with; sixthly, if section 20(8E) has not been complied with the section 20(1) notice is invalid, or at best imperfect, so as to be for the present ineffective.

The validity of the letters as compliance with subsection (8E)

12. I have been referred to a number of authorities bearing on how the duty to give reasons under various statutes is to be carried out. Under section 166(2) of the Housing Act 1957 a Notice of Proceedings from a local authority under that Act "shall be signed by their clerk or his lawful deputy". In Graddage v Haringey London Borough Council [1975] 1 WLR 242 Walton J held that a notice signed by the Borough Treasurer, who was not the clerk or his lawful deputy, was invalid and created no liability. That conclusion was, with respect, hardly surprising.

13. The position in relation to Housing Benefit reviews by a Review Board acting under the Housing Benefit (General) Regulations 1987 was a little more complex. Here, by regulation 83:

> "(4) The Chairman of the Board shall:
>
> (a) record in writing all its decisions; and
>
> (b) include in the record of every decision a statement of the reasons for such decisions and of its findings on questions of fact material thereto.
>
> (5) Within 7 days of the Review Board's decision or, if that is not reasonably practicable, as soon as possible thereafter, a copy of the record of that decision made in accordance with this regulation shall be given or sent to every person affected."

14. In R v Solihull Metropolitan Borough Council Housing Benefit Review Board, ex parte Simpson (1994) 82 LGR 719, the Court of Appeal had to consider whether a letter from the local authority, purporting to set out the Board's decision and reasons, was capable of complying with those regulations. Kennedy LJ, giving the leading judgment, with whom the other members of the court agreed, rejected submissions made on behalf of the claimant that in order to be his "record" the Chairman must himself make it, and that if the communication is in the form of a letter the Chairman must sign it. Kennedy LJ also pointed out at 728 that:

> "The regulation can be complied with without bringing into existence a standard form, or for that matter without the Chairman actually placing his signature on the document."

He did, however, hold this at 727:

> "In my judgment the effect of regulation 83(4) and (5) is to require the Chairman to bring into existence a public document, namely his record, of which every person affected by the Review Board's decision is entitled to receive a copy. It should therefore be apparent to the recipients what the document is, so that if they care to consider the matter they may know that there has been compliance with regulation 83(4) and (5). In my judgment, the letter ... simply failed to meet that test. It was, as Mr Collins, who appeared on behalf of the claimant said, on the face of it not a copy of the Chairman's record, but an original letter from a local authority official advising solicitors and the applicant of the decision of the Board. In fact the Chairman of the Board had approved the comments of the letter, but the letter itself is silent as to that."

15. The question, therefore, was whether on its face the document was a document such as the regulations require. If it was not, then evidence that it had in fact been approved by the Chairman in order to be sent to the parties did not help.

16. A similar issue arose before HHJ Rich QC, sitting as a Deputy Judge of this court, in R v Chorley Borough Council ex parte Bound (1996) 28 HLR 791. There the document in question was again a letter from the local authority. However, counsel for the claimant did not argue that this letter, given its specific terms, was not a public record of the sort to which Kennedy LJ referred. In that context the judge examined the evidence relating to approval of the contents of the letter, and on the basis of that evidence concluded that the Chairman had authorised the record of the meeting and the letter as setting out the decision and the reasons for it.

17. The comparison between the two cases is instructive. In the Solihull case the letter was not a record. That is, it was not the sort of document that the regulations required. As it was not a record, no evidence of authorisation could make it the Chairman's record. In the Chorley case the first question was not in issue, and the court therefore approached the matter on the basis that in that case the letter was a record; that is it was the sort of document that the regulations required. As it was a record, evidence could show whether it was the Chairman's record. The judge was able to conclude that it was, and so complied with the requirements of the regulations. That was despite the fact that the authentication was not apparent on its face, and was not apparent to the recipients of the letter.

18. A similar distinction may be drawn between the facts of two of the reported cases on subsection 20(8E) itself, although the actual outcome of each case was the reverse of what might have been anticipated from the consideration of this point in isolation. Both turn on the application of provisions in subsections (8G) and (8H), which I do not need to set out, enabling the statement of reasons required by subsection (8E) to be limited,

so as not to disclose the identity of any person on whose information the authorised Inspector was acting. Such limitations also, like the notice itself, required the approval of a Special or General Commissioner.

19. In R v Inland Revenue Commissioners, ex parte Continental Shipping SA and Atsiganos SA [1996] STC 813 the Inspector had taken the view, which had been approved by the Commissioner, that, bearing in mind the limitation, the only reason he could give under subsection (8E) was so bland as to be not worth giving at all: so he gave none. Tucker J said at page 815 that the Inspector had misunderstood the requirements of the section. The effect of subsection (8G) was not to remove the obligation to give reasons, but to limit it. As in the present case there were no reasons, there was (at 816): "a failure to comply with the statutory provisions". On the particular facts of the case, however, Tucker J declined to quash the notices.

20. In R v MacDonald and Inspector of Taxes ex parte Hutchinson 71 TC 1, reasons were given and they were indeed bland, as set out at pages 12 to 13 of the report. Carnwath J, as he then was, held that in the circumstances of that case the reasons were not adequate reasons. Too much had been regarded as confidential that ought to have been disclosed. In addition, there had been a defect in the procedure before the Commissioners, so that there was some compromise in each of the safeguards laid down in section 20. In those circumstances Carnwath J said at 21:

> "Overall these defects leave me in sufficient doubt as to the fairness of the procedure to justify quashing the relevant parts of the notices,"

although he observed that the taxpayer should accept that in principle the Inspector was entitled to the information he sought.

21. The comparison between the documentation in these cases is exactly parallel to that between the facts of the two housing benefit cases. In Continental Shipping the letter had no reasons, so was not, on its face, a compliance with subsection (8E). In Hutchinson there were reasons. The notices were not bad on their face. They were quashed on examination of the reasons given, against the evidential background relating to the limitations.

22. If the document in question is of the form (and I use that word in its losest sense) that is required by the statutory or other rules, evidence may show, or, as in Hutchinson, may fail to show, that it meets the other requirements. However, if it is not a document of the right sort it is invalid on its face and evidence of the circumstances of its production will not validate it.

23. What then is the form required by subsection (8E)? What sort of document is the taxpayer entitled to receive? Stripped of words not necessary for this purpose, the subsection requires that an Inspector who gives a notice under subsection (1) shall also give a written summary of his reasons for applying for a consent to the giving of the notice.

24. I am not asked in these proceedings to say that "give a written summary" means any more than "make sure the person receives a written summary", nor am I asked to say that the written summary needs to be signed by an authorised Inspector. I should, in any event, have been unwilling to say either of those things. What is left? Only two requirements. The person is entitled to have a "written summary of reasons" and the reasons must be "his" reasons, that is to say they must be the reasons the authorised Inspector had for applying for consent for the giving of a notice.

25. A document which gives no summary of reasons is bad on its face. If the document does give reasons, then (where, as here, there is no challenge to the adequacy of the reasons) it would be bad if the reasons are not the reasons of the authorised Inspector.

26. The documents served on the claimants in this case contained reasons. They are not bad on their face. If a question arises as to whose reasons, or what reasons, they give, the matter is amenable to being decided on the evidence.

Ambiguity in the evidence in these proceedings

27. Mr Gordon's claim on behalf of the claimants is that the letters were ambiguous in that they did not make it clear that the reasons were the authorised Inspector's reasons, rather than the reasons of the writer of the letter. He points to the fact that the writer of the letter does not specifically say that the reasons are the authorised Inspector's reasons, rather than his own, and, as I have said, that the writer of the letter appears to use the first person plural in a rather over-inclusive way. However, I do not accept Mr Gordon's submission that if there is such an ambiguity or uncertainty it means that subsection (8E) has not been complied with. It might mean that it was uncertain whether subsection (8E) had been complied with, but that is all. The matter can be settled by evidence and in my judgment it has been.

28. The witness statement of the authorised Inspector, dated 17 June 2009, says at paragraph 6:

> "As regards the present case, we have worked closely together
>
> (a) the reasons for me deciding to seek permission to authorise the notices were reached as the result of investigations in which Mr Gaskell was in day-to-day charge and reached as the result of discussions that we had on the case;
>
> (b) we were both present at the hearing before the General Commissioners on 5 September 2008, where we were given permission to issue the notices
>
> (c) the section 20(8E) summary breach notice was discussed with me, drafted by Mr Gaskell and then read and authorised by me."

29. There is a trace in Mr Gordon's arguments, both orally and in writing, of a suspicion of two people who have the same reasons for taking a particular course of action. In his

written skeleton he sets out the legal points for decision as follows:

> "Can a statement of reasons purportedly given under section 20 (8E) of the Taxes Management Act 1970 be given by, or contain the reasons of, a person other than the authorised officer who gives the notice under subsection (1) of that notice? Can the statement of reasons be given by or contain the reasons of an officer who is not authorised in accordance with section 20(7)?"

30. In his written submission at the hearing he takes exception to the form of words in paragraph 6(c) of the witness statement. He says that had the defendant and Mr Gaskell complied with the law, the evidence would have read:

> "The section 20(8E) summary for each notice was discussed with Mr Gaskell, drafted by me and then read and checked by him."

31. Those submissions are inapposite. There is no reason why a person who is not an authorised Inspector should not, so to speak, make all the running in the investigation up to the point where a section notice is required. At that point an authorised Inspector has to make the application to the Commissioners and has to be in a position to give his (the authorised Inspector's) reasons for the application. He can only do that if he has reasons. However, there is no basis at all for saying that he cannot, if he thinks it right to do so, adopt the case worker's reasons for passing the file up to him, as his own reasons for making the application.

32. If he does that, and I venture to suggest that in many cases that will be precisely what does happen, then the reasons will be the authorised Inspector's, but they will be the case worker's as well. The answer to the question posed by Mr Gordon's skeleton is obviously, "Yes, provided that the reasons given are also the reasons of the authorised Inspector". On a similar principle there is simply nothing wrong with the process described in paragraph 6 of the witness statement, provided that the authorised Inspector did indeed adopt the reasons as his own reasons and approve the letter as containing his reasons.

33. In fact, however, as Miss Whipple submits, it is difficult to see why any sensible reader could be in doubt about whether the reasons in the letters were stated as the authorised Inspector's reasons. The crucial part of each of the letters begins:

> "In accordance with section 20(8E) Taxes Management Act 1970 we can confirm..."

and goes on to give a reason. The text of section 20 was, as I have said, included with the letter. The sentence is quite unambiguous. The only requirement of compliance with subsection (8E) was by giving the authorised Inspector's reasons. Any sensible reader (and I accept Miss Whipple's submission that HMRC are entitled to write for sensible readers) would see that the reason being given in that sentence must be the authorised Inspector's reason for seeking the Commissioner's consent to the notice. That is the clear meaning of that sentence. I wholly reject the submission that the signature by Mr Gaskell, with whom the taxpayers have been dealing, or the previous

discussions between them and Mr Gaskell, or the use of the word "we", made that sentence unclear.

34. In that context, and remembering that there is no challenge to the reasons themselves, the letters could only be for bad for non-compliance with section 20(8E) if either the reason stated was not in fact the authorised Inspector's reason for the application, or possibly if the reason the authorised Inspector had for making the application was not put in full to the Commissioner. The presumption of regularity applies to the latter possibility (see R v Inland Revenue Commissioners, ex parte TC Coombs and Company [1991] 2 AC 283), but in any event there is not the slightest evidential basis in this case for either of those possibilities.

Conclusions

35. My conclusions are therefore as follows:

(1) The only form required by section 20(8E) is a written summary of reasons;

(2) If there is a written summary of reasons any question about whether the reasons stated are the reasons of the authorised Inspector for making the application for consent to the notice may be settled by evidence;

(3) The letters under challenge in the present proceedings contain written summaries of reasons;

(4) The letters also indicate clearly by their reference to section 20(8E) that the reasons are stated as the reasons of the authorised Inspector for applying for consent to the giving of notice accompanying each letter;

(5) If there had been any lack of clarity, it would have been settled by the evidence, which also makes it clear that the letters incorporate the authorised Inspector's reasons as required by section 20(8E);

(6) There has therefore been compliance with section 20(8E), and I do not need to decide what the position would have been otherwise.

36. This application is therefore dismissed.

MISS WHIPPLE: My Lord, in the circumstances the Revenue seeks its reasonable costs, please, of this application. My Lord, because the claim has in fact gone over the one day anticipated the statement of costs originally being prepared is really no longer of relevance. I would ask for an order simply that the claimants pay the first defendant's reasonable costs to be quantified by way of detailed assessment, if not agreed.

THE DEPUTY JUDGE: You cannot resist that, Mr Gordon?

MR GORDON: I cannot resist it. Indeed there was actually a typographical error in the defendant's first schedule of costs any way, so that has disappeared.

THE DEPUTY JUDGE: I have it in front of me. I will take no notice of it then. Yes, I will order the claimants to pay the first defendant's costs to be assessed on the standard basis if not agreed.

MR GORDON: I would seek, on behalf of my clients, leave to appeal to the Court of Appeal on this matter. It is always a difficult position to be in to say to your Lordship that everything your Lordship has said is wrong, we could not go quite so far, but in view of the lengthy, and far lengthier than expected, proceedings yesterday, would your Lordship be satisfied with simply (so that I do not repeat everything I said yesterday) either the evidence provided is not sufficient to authorise it, and to perfect the section 20(8E) reasons, and also perhaps I misunderstood your conclusion number four is that to have --

THE DEPUTY JUDGE: Conclusion number four is that the letters also indicate clearly by their reference to section 20(8E) that they are stating the reasons of the authorised Inspector. Conclusion 5 is if there had been any lack of clarity it is settled by the evidence.

MR GORDON: I would submit that the evidence in that case would be too late as well to satisfy the inherent with the section 20 regime. I have no further grounds to put forward.

THE DEPUTY JUDGE: I shall refuse permission because it is not, in my view, arguable, for the reasons I have given, that there was on the facts any non-compliance with section 20 in this case.

Thank you both very much. I should say thank you all three, though your colleague has not said a word except through you.

MISS MONTES MANZANO: I am grateful, my Lord.