



Between

████████████████████

Appellant

and

THE REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This matter comes before the Tax Appeals Commission (hereinafter “the Commission”) as an appeal against a refusal of the Revenue Commissioners (hereinafter “the Respondent”) to allow a claim for relief in accordance with the provisions of section 477C Taxes Consolidation Act 1997, as amended (hereinafter “TCA 1997”) which is known as the “Help to Buy (“HTB”) incentive scheme”.
2. By notice in writing dated 25th July 2022, the Respondent refused to grant relief to the Appellant on the basis that the Appellant was not a “first-time purchaser” within the meaning of section 477C (1) TCA 1997.
3. The Appellant duly appealed that refusal to the Commission on 31st August 2022 in accordance with section 949I TCA 1997. The oral hearing of the appeal took place remotely on 20th April 2023. The Appellant was represented by his agent and the Respondent was represented by three staff officials.

Background

4. The Appellant purchased a property with an address at [REDACTED] [REDACTED] (“the property”) on 19th May 2010 for a consideration of €45,000. In the stamping document the property was classed as a residential property.
5. When the property was acquired, it was in a bad state of repair and as such was uninhabitable. The Appellant subsequently renovated the property to a habitable state and sold the property as a residence on 19th May 2017.
6. The Appellant and his spouse subsequently bought a site and built their family home on that site. In or around, June 2022, the Appellant submitted a claim to the Respondent seeking assistance under the HTB incentive scheme.
7. The Respondent refused that claim on the grounds that the Appellant was not a “first-time buyer” and as such was ineligible for payments under the HTB incentive scheme.
8. This decision was notified to the Appellant in writing by the Respondent on 25th July 2023. Within that decision, the Appellant was notified of his right of appeal to the Commission.
9. On 31st August 2022, the Appellant exercised his right of appeal to the Commission. Section 949 (1) TCA 1997 required the Appellant to have submitted his appeal within 30 days of the date of the Respondent’s decision.
10. Subsequently, the Commission wrote to the Respondent on 6th September 2022. This correspondence notified the Respondent that the Appellant had submitted a notice of appeal and enclosed a copy of that document. Within the correspondence, the Respondent was requested to notify the Commission if it had any objection to the appeal being accepted by the Commission in accordance with the provisions of section 949L TCA 1997.
11. As no such objection was received by the Commission, the appeal was accepted and the matter proceeded to hearing on 20th April 2023.

Documentation received by the Commission

12. Included within the documentation received by the Commission was the following:

- 12.1 A document entitled “Building Condition Survey” dated 3rd March 2010 prepared by [REDACTED]. This document confirmed that the author was requested to “*carry out a pre-purchase inspection of the property to ascertain its current condition and to determine if the said property is fit to fulfil its intended purpose as office space*”. The document confirmed that

the property's exterior was overgrown and that structural cracks were evident throughout the rear of the property. In addition, the document confirmed that the entire interior of the property was in poor condition and as such, required extensive refurbishment. The document concluded that the property "*as it stands is not fit for occupancy of any kind unless extensive refurbishment works are carried out*" and contained details of suggested reconfiguration enhancements for the property. Annexed to the document was a number of photographs of the interior and exterior of the property which illustrated the findings contained within the document.

- 12.2 A stamp duty certificate dated 21st May 2010 with a date of execution being 19th May 2010. This certificate recorded the purchaser of the property as being the Appellant, showed chargeable consideration of €45,000 and stamp duty payable of nil.
- 12.3 A draft schematic layout supplied by the Appellant to the Respondent. This showed in drawing format, the proposed layout of the property and was dated May 2010. The drawing outlined a reception room, a canteen, a wash room and a number of separate offices.
- 12.4 A copy of loan offer from [REDACTED] to the Appellant. This document was dated 9th March 2010 and the loan was referred to as a "housing loan facility" in the sum of €67,500. The document set out the repayments and listed an "all sums mortgage" against the property. Included within the rear of the loan offer was a declaration under the Family Home Protection Act 1976 which was required to be signed by the Appellant's spouse. The included statutory warning stated "*Your home is at risk if you do not keep up payments on a mortgage or any other loan secured on it*".
- 12.5 Copy of a letter from [REDACTED], estate agents, referencing the property and dated 21st October 2016. This letter noted the agent's appointment and stated "*We would recommend that this property is offered for sale as a residential property, due to the demand for housing*".
- 12.6 A copy of [REDACTED] internet listing of the property dated 8th November 2016. This listing described the property as a "*wonderful three bedroom mid-terrace property in town centre within walking distance of all amenities*". It showed a number of pictures of the exterior and interior of the property. These pictures showed that the property was in pristine condition, laid out in a

residential manner and each interior room in the photographs were fully furnished.

12.7 Copy of a stamp certificate dated 26th May 2017 with a date of execution as 19th May 2017. This document confirmed that the Appellant sold the property on that date as a residence and that the residential rate of stamp duty was paid on the execution of the document.

12.8 A number of photographs of the property date stamped 25th May 2010. These photographs showed a number of pictures of the interior and exterior of the property on that date and showed that the property was in a state of disrepair.

12.9 A Google map image of the exterior of the property dated June 2017. This showed the exterior of the property in good condition as at that date.

12.10 Copy of an email dated 29th August 2022 sent by an [REDACTED] official to the Appellant. This email stated:

“Further to our telephone conversation I wish to advise that the loan, provided to you in 2010, was provided as a commercial loan rather than personal mortgage. The lending was done at our Base lending rates at branch rather than as a mortgage facility.

This was financed on the provision of commercial offices for your business in the said property”.

12.11 An undated Google map image of the property. Underneath that image was the view from the front of the property. This view showed a number of commercial units adjacent to the property.

12.12 Further Google map images of the external of the property dated April 2009, September 2009, September 2011, June 2017, August 2018, September 2019 and November 2022. Those photographs illustrated that the front of the property and the garden had been renovated between September 2009 and June 2017 (being the nearest date ranges in which the Appellant owned the property).

12.13 A letter from the Appellant’s solicitor to the Respondent dated 21st July 2022. This letter sought to clarify certain matters in relation to the Appellant and his spouse’s eligibility under the HTB incentive scheme. Included within that letter was the following narrative:

“In an effort to remove any ambiguity associated with [the Appellant’s] connection to this premises, we can confirm that the property was purchased in 2010 whilst [the Appellant] was trading as a sole trader and the property was purchased in a dilapidated state in order to establish an office premises for the business of [the Appellant]...

We confirm that the funds for the purchase and refurbishment works were provided by [REDACTED] as a commercial loan/business loan and I attach herewith a copy of the loan for your attention...

Unfortunately, due to the economic climate and our client’s profession being entirely dependent on the construction industry and bearing in mind, that the construction industry bore the brunt of the recession, our client chose to cease trading at that time, therefore in 2010, an opportunity presented itself to our client to return to the workforce as a PAYE employee and therefore, the business premises as purchased was no longer required and was put on the market for sale...

We confirm that our client is and was very dependent on this Help to Buy Scheme when commencing construction of their property and relied upon this sum to finish their property which up to now [sic] erroneously been withheld”.

Legislation

13. The legislation relevant to this appeal is as follows:

Section 477C TCA1997 – Help to Buy

(1) In this section—

...

“first-time purchaser” means an individual who, at the time of a claim under subsection (3) has not, either individually or jointly with any other person, previously purchased or previously built, directly or indirectly, on his or her own behalf a dwelling;

...

(3) Where an individual has, in the qualifying period, either -

(a) entered into a contract with a qualifying contractor for the purchase by that individual of a qualifying residence, that is not a self-build qualifying residence, or

(b) drawn down the first tranche of a qualifying loan in respect of that individual's self-build qualifying residence,

that individual may make a claim for an appropriate payment.

- (4) On the making of a claim by an individual referred to in subsection (3), a payment (in this section referred to as an 'appropriate payment') shall, subject to the provisions of this section, be made in accordance with subsection (16).*

Section 949 (1) TCA 1997 – Appeals against determinations of certain claims, etc.

- (1) Any person aggrieved by any determination by the Revenue Commissioners, or such officer of the Revenue Commissioners (including an inspector) as they may have authorised in that behalf, on any claim, matter or question referred to in section 864 may, subject to Chapter 6 of Part 41A and on giving notice in writing to the Revenue Commissioners or the officer within 30 days after notification to the person aggrieved of the determination, appeal to the Appeal Commissioners.*

...

Section 949I TCA 1997 – Notice of Appeal.

- (1) Any person who wishes to appeal an appealable matter shall do so by giving notice in writing in that behalf to the Appeal Commissioners.*
- (2) A notice of appeal shall specify—*
- (a) the name and address of the appellant and, if relevant, of the person acting under the appellant's authority in relation to the appeal,*
 - (b) in the case of an appellant who is an individual, his or her personal public service number (within the meaning of section 262 of the Social Welfare Consolidation Act 2005) or, in the case of any other person, whichever of the numbers in respect of the person specified in paragraphs (b) and (c) of the definition of “tax reference number” in section 885(1) is appropriate,*
 - (c) the appealable matter in respect of which the appeal is being made,*
 - (d) the grounds for the appeal in sufficient detail for the Appeal Commissioners to be able to understand those grounds, and*
 - (e) any other matters that, for the time being, are stipulated by the Appeal Commissioners for the purposes of this subsection.*

- (3) *Where the provisions of the Acts relevant to the appeal concerned require conditions specified in those provisions to be satisfied before an appeal may be made, a notice of appeal shall state whether those conditions have been satisfied.*
- (4) *Where an appeal is a late appeal, the notice of appeal shall state the reason the appellant was prevented from making the appeal within the period specified by the Acts for doing so.*
- (5) *A copy of the notification that was received from the Revenue Commissioners (that is to say, the notification in respect of the matters the subject of the appeal) shall be appended to a notice of appeal.*
- (6) *A party shall not be entitled to rely, during the proceedings, on any ground of appeal that is not specified in the notice of appeal unless the Appeal Commissioners are satisfied that the ground could not reasonably have been stated in the notice.*

Section 949L TCA 1997 – Objection by Revenue Commissioners.

- (1) *Where the Revenue Commissioners consider that—
 - (a) *an appeal is not a valid appeal, or*
 - (b) *the appellant has not complied with the requirements of section 949O,*they may send to the Appeal Commissioners a written notice of objection to the making of the appeal and that notice shall state the reason for their objection.*
- (2) *Where the Revenue Commissioners do not send the notice referred to in subsection (1) to the Appeal Commissioners within 30 days after the date on which the Appeal Commissioners send the notice of appeal to them, the Appeal Commissioners shall not be required to have regard to the objection in deciding whether to accept an appeal.*
- (3) *Where the Revenue Commissioners send a notice of objection in accordance with subsection (1), the Appeal Commissioners shall notify such objection to the appellant.*

Submissions

Appellant

14. The Appellant submitted that he purchased the property, which was situated in a mixed zoned area, with the intention of establishing a base for his then business. The Appellant stated that the property was returned on the stamp duty return as a residential property due to the fact that this was what the property was utilised as prior to his acquisition of it.

15. The Appellant submitted that he did not claim “first-time buyer’s relief” on his loan on the property. This relief applied to interest paid on mortgages used to buy a taxpayers’ primary home. The relief was available for mortgages taken out between the period 1st January 2004 and 31st December 2012 and was calculated at various percentile rates (depending on the amount of time the mortgage had been drawn down) which were offset against a taxpayers’ tax liability.
16. The Appellant submitted that the reason why he did not claim this relief was because he was ineligible to do so. He explained that as the loan he acquired was a business loan rather than a residential mortgage, and as relief is only afforded to non-business loans then this prohibited him from claiming the relief.
17. The Appellant acknowledged that he was required to be a first-time buyer to avail of the HTB incentive scheme. The Appellant submitted that the definition of a dwelling is “*a self-contained unit of accommodation used by one or more households as a home such as a house, apartment, mobile home, houseboat vehicle or other “substantial structure”*”. The Appellant stated that as the property was uninhabitable when he acquired it, then this is evidence that he did not own a dwelling (as defined) and as such he qualified as a first-time buyer and was eligible for the relief.
18. The Appellant stated that he “naively” paid Local Property Tax (“LPT”) on the property in error and did so without the benefit of professional advice. Owing to this position, the Appellant submitted that he should not be penalised for his “innocent error” and the Commission should disregard that he paid LPT on the property in coming to its findings.
19. The Appellant stated that he sold the property in 2017 as a residential unit rather than as a commercial unit on the advice of his estate agent. He stated that he made this decision due to low demand for commercial properties at that time. He further advised that owing to the flexibility of the layout of the property, accompanied by the fact that the area where the property was situate was a mixed zoned area, he elected to sell the property as a residential unit as this “provided the best possible disposal route”.
20. The Appellant submitted while he sold the property as a residential unit, that this did not mean he was not a first-time buyer when he acquired his second property in 2022. He reiterated as the property was uninhabitable when he acquired it and as he did not occupy it as a dwelling, then his second property was his first dwelling and hence he qualified as a first-time buyer for the purpose of the HTB incentive scheme.

Respondent

21. The Respondent stated at the time the Appellant purchased the property, he availed of first-time buyer's relief for stamp duty purposes. The Respondent explained that the effect of this election was that the Appellant did not pay any stamp duty on the acquisition of the property whereas if he had purchased it as a commercial unit, he would have been required to pay stamp duty at the rate of 4%, which was the applicable rate of stamp duty chargeable on commercial properties at that time.
22. The Respondent further stated that the property was registered for LPT on 9th March 2013 and the Appellant was the designated owner of the property for LPT purposes for the period 9th March 2013 to 18th May 2017. The Respondent submitted that an exemption was available for uninhabitable properties for LPT purposes, but for reasons unknown, the Appellant did not submit a claim for this exemption.
23. The Respondent submitted that as the property was sold as a residential property in 2017, then this was evidence that the property was a residential unit, rather than a commercial unit, and this rendered the Appellant ineligible for payments under the HTB incentive scheme.
24. The Respondent stated that it was contacted by the Appellant's agent on 16th May 2022 requesting that its decision to refuse the Appellant relief under the HTB incentive scheme be reviewed. By way of reply on 14th June 2022, the Respondent stated that they wrote to the Appellant's agent and requested evidence that the property was uninhabitable for the period of ownership, such as an engineer's report.
25. The Respondent advised that the Appellants agent replied to the correspondence on 16th June 2022 and provided a number of photographs of the property date stamped 25th May 2010. As this information was insufficient to establish that the property was uninhabitable for the period of ownership, the Respondent further wrote to the Appellant on 7th November 2022 requesting additional information. Despite providing additional information after that date, the Respondent submitted that the Appellant failed to provide any evidence that the property was uninhabitable or uninhabited after 25th May 2010.
26. In those circumstances, the Respondent submitted that the Appellant had failed to demonstrate that he was not a first-time buyer when he acquired his second property in 2022. As section 477C TCA 1997 requires the applicant to be a first-time buyer to be eligible for the relief and as the Appellant had failed to satisfy this requirement, then the Respondent submitted that his claim could not succeed.

Material Facts

27. The Commissioner finds the following material facts:-

- 27.1 The Appellant purchased a property on 19th May 2010. For stamp duty purposes, the property was returned as a residential property and stamp duty at the residential rate was chargeable on the property purchase.
- 27.2 The property's use prior to the date of acquisition was that of a residence and it was laid out in the format of a residence.
- 27.3 When the property was purchased, it was in a bad state of repair and absent renovation works was uninhabitable.
- 27.4 The Appellant was self-employed when he acquired the property but subsequently ceased his business and became a PAYE worker in 2010.
- 27.5 When the Appellant acquired the property, he intended on using the premises as an office for his business. No evidence was provided to the Commission that the property was ever converted into or utilised by the Appellant as an office.
- 27.6 The Appellant acquired a loan from a financial institution to assist him with the property purchase. Within the accompanying loan documentation the loan was described as a "housing loan facility" and contained a declaration under the Family Home Protection Act 1976. The loan documentation also included the narrative – "*Your home is at risk if you do not keep up payments on a mortgage or any other loan secured on it*".
- 27.7 No evidence was provided to the Commission that the property was uninhabited or uninhabitable for the period 25th May 2010 (being the date stamped on the photographs provided by the Appellant which showed that the property was uninhabitable) to the date the Appellant sold the property.
- 27.8 The Appellant sold the property on 19th May 2017. The property was sold as a residential property and photographs were provided to the Commission of the property's sale listing. These photographs illustrated that the property was laid out as a residence and was fully furnished.

Analysis

28. The appropriate starting point for analysis of the issues is to confirm that in an appeal before the Commission, the burden of proof rests on the Appellant, who must prove on the balance of probabilities that he is entitled to the payment sought. This proposition is now

well established by case law; for example in *Menolly Homes v The Appeal Commissioners and Anor* [2010] IEHC 49 where Charleton J held at paragraph 22:-

“The burden of proof in this appeal process is ... on the taxpayer. This is not a plenary civil hearing.”

29. This burden was reiterated in the recent High Court case of *O’Sullivan v Revenue Commissioners* [2021] IEHC 118, where Sanfey J. held at paragraph 90:

“...The burden of proof is on the taxpayer to prove his case, and for good reason. Knowledge of the facts relevant to the assessment, and retention of appropriate documentation to corroborate the taxpayer’s position, are solely matters for the taxpayer. The appellant knew, from the moment he submitted his return, that it could be challenged by Revenue and he would have to justify his position...”

30. Furthermore, in cases which seek an exemption from taxation or where the taxpayer seeks entitlement to a payment or relief, the Courts have held that the taxpayer must fall unambiguously within the relevant exemption or within the provisions of the TCA 1997 which entitle him to that relief. In *Revenue Commissioners v Doorley* [1933] IR750 at paragraph 765, Kennedy CJ held:

“...Now the exemption from tax, with which we are immediately concerned, is governed by the same considerations. If it is clear that a tax is imposed by the Act under consideration, then exemption from that tax must be given expressly and in clear and unambiguous terms, within the letter of the statute as interpreted with the assistance of the ordinary canons for the interpretation of statutes. This arises from the nature of the subject matter under consideration and is complimentary to what I have already said in its regard. The court is not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute, clearly and without doubt and in express terms, excepts for some good reason from the burden of a tax thereby imposed generally on that description of subject-matter. As the imposition of, so the exemption from, the tax must be brought within the letter of the Taxing Act as interpreted by the established canons of construction so far as applicable.”

31. The rules for statutory interpretation are set out in the judgment of McDonald J. in *Perrigo Pharma International DAC v John McNamara, the Revenue Commissioners and ors.* 2020 IEHC 552 (“*Perrigo*”) where he summarised the fundamental principles of statutory interpretation at paragraph 74 as follows:

“The principles to be applied in interpreting any statutory provision are well settled. They were described in some detail by McKechnie J. in the Supreme Court in Dunnes

Stores v. The Revenue Commissioners [2019] IESC 50 at paras. 63 to 72 and were reaffirmed recently in Bookfinders Ltd v. The Revenue Commissioner [2020] IESC 60. Based on the judgment of McKechnie J., the relevant principles can be summarised as follows:

(a) If the words of the statutory provision are plain and their meaning is self-evident, then, save for compelling reasons to be found within the Act as a whole, the ordinary, basic and natural meaning of the words should prevail;

(b) Nonetheless, even with this approach, the meaning of the words used in the statutory provision must be seen in context. McKechnie J. (at para. 63) said that: "... context is critical: both immediate and proximate, certainly within the Act as a whole, but in some circumstances perhaps even further than that";

(c) Where the meaning is not clear but is imprecise or ambiguous, further rules of construction come into play. In such circumstances, a purposive interpretation is permissible;

(d) Whatever approach is taken, each word or phrase used in the statute should be given a meaning as it is presumed that the Oireachtas did not intend to use surplusage or to use words or phrases without meaning.

(e) In the case of taxation statutes, if there is ambiguity in a statutory provision, the word should be construed strictly so as to prevent a fresh imposition of liability from being created unfairly by the use of oblique or slack language;

(f) Nonetheless, even in the case of a taxation statute, if a literal interpretation of the provision would lead to an absurdity (in the sense of failing to reflect what otherwise is the true intention of the legislature apparent from the Act as a whole) then a literal interpretation will be rejected.

(g) Although the issue did not arise in Dunnes Stores v. The Revenue Commissioners, there is one further principle which must be borne in mind in the context of taxation statute. That relates to provisions which provide for relief or exemption from taxation. This was addressed by the Supreme Court in Revenue Commissioners v. Doorley [1933] I.R. 750 where Kennedy C.J. said at p. 766: "Now the exemption from tax, with which we are immediately concerned, is governed by the same considerations. If it is clear that a tax is imposed by the Act under consideration, then exemption from that tax must be given expressly and in clear and unambiguous terms, within the letter of the statute as interpreted with the assistance of the ordinary canons for the

interpretation of statutes. This arises from the nature of the subject-matter under consideration and is complementary to what I have already said in its regard. The Court is not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute, clearly and without doubt and in express terms, except for some good reason from the burden of a tax thereby imposed generally on that description of subject matter. As the imposition of, so the exemption from, the tax must be brought within the letter of the taxing Act as interpreted by the established canons of construction so far as possible.”

32. The Appellant seeks to claim a payment under the provisions of section 477C TCA 1997.

To be eligible to receive this payment, the Appellant is required to fulfil the conditions imposed under sections (3) and (4) of section 477C TCA 1997. These provisions require for the Appellant to be entitled to the payment sought, he is required to satisfy the condition that he is a “first-time purchaser”.

33. A “first-time purchaser” is defined by section 477 (1) TCA 1997 as:

“an individual who, at the time of a claim under subsection (3) has not, either individually or jointly with any other person, previously purchased or previously built, directly or indirectly, on his or her own behalf a dwelling”.

34. In applying the principles promulgated in *Perrigo* and in giving those words their “ordinary and plain meaning”, it follows for the Appellant to be eligible for a payment under the provisions of section 477C he was required not to have previously purchased on his behalf a dwelling.

35. The use of the words “on his behalf” may be defined as in the “*in the name of the person*¹” and a dwelling may be defined as “*a place of residence, a dwelling-place, habitation, house*²”.

36. Therefore, it follows that the Appellant must be denied entitlement under the provisions of section 477C TCA 1997 if he previously acquired a place of residence in his name.

37. The Appellant submits that as the property was uninhabitable when he acquired it and as he did not reside in that property then he is not considered a first-time buyer and hence is eligible for the payment claimed. In taking this submission at its height, the Commissioner finds that there is nothing to support the Appellant’s submission as the criteria under

¹ Definition obtained from the Oxford English Dictionary - <https://www.oed.com/search/dictionary/?scope=Entries&q=on+his+behalf>
² *Ibid.* <https://www.oed.com/search/dictionary/?scope=Entries&q=dwelling>

section 477C TCA 1997 prohibits entitlement where a person purchased a residence in their own name. Contra to the Appellant's submission, there is nothing within the provisions of section 477C TCA 1997 to support the position that the Appellant was required to have lived there as his residence to be deemed ineligible for the relief.

38. Thus, as the property was acquired by the Appellant as a residence and sold by the Appellant as a residence, it follows that, prior to the acquisition of his second property (which forms the basis of his claim under the provisions of section 477C TCA 1997) the Appellant previously acquired a residence in his name. As this offends the eligibility criteria under the provisions of section 477C TCA 1997, it follows that the Appellant's appeal must be denied.
39. If the Commissioner is mistaken in this view and the provisions of section 477C TCA 1997 required the Appellant to have lived in the property as his residence to be deemed ineligible for payments under the HTB incentive scheme, the Commissioner finds that the Appellant produced no evidence to the Commission to establish that he did not reside in the property, at any time, during his period of ownership of the property.
40. In coming to that finding, the Commissioner notes that the Appellant purchased the property in 2010 with the intention of using the property as an office for his business. However, within his evidence the Appellant stated that he ceased his business in 2010 and commenced working as a PAYE employee at that time, which presumably negated the need for such an office. Despite this position, the Appellant chose to remain silent on the use of the property for the following seven years to the date of sale. Had the property been vacant for that timescale, the Commissioner would have expected the Appellant to have produced information of a type sought by the Respondent which established that the property was vacant or other information which lent some weight towards demonstrating the property's vacancy such as low usage utility bills or such like.
41. In addition, despite the Appellant, his solicitor and his bank official stating that the loan used to purchase the property in 2010 was a business loan, the Commissioner notes that the loan documentation refers to the loan as being a property loan for a family residence. Finally, the Commissioner notes upon the sale of the property in 2017, that the property was marketed for sale with photographs showing it laid out as a fully furnished residence.
42. The burden of proof has not been discharged to satisfy the Commissioner that the Appellant is entitled to avail of payments under the provisions of section 477C TCA 1997. Therefore, the Appellant's appeal is refused.

Determination

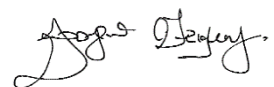
43. For the reasons set out above, the Commissioner determines that the within appeal has failed and that it has not been shown that the relevant claim is payable. The Commissioner appreciates that the Appellant will be disappointed with this determination but he was correct to seek legal clarity on his appeal.
44. This Appeal is determined in accordance with Part 40A of the TCA 1997. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ (6) of the TCA 1997.

Notification

45. This determination complies with the notification requirements set out in section 949AJ of the TCA 1997, in particular section 949AJ (5) and section 949AJ (6) of the TCA 1997. For the avoidance of doubt, the parties are hereby notified of the determination under section 949AJ of the TCA 1997 and in particular the matters as required in section 949AJ (6) of the TCA 1997. This notification under section 949AJ of the TCA 1997 is being sent via digital email communication only (unless the Appellant opted for postal communication and communicated that option to the Commission). The parties will not receive any other notification of this determination by any other methods of communication.

Appeal

46. Any party dissatisfied with the determination has a right of appeal on a point or points of law only within 42 days after the date of the notification of this determination in accordance with the provisions set out in section 949AP of the TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.



Andrew Feighery
Appeal Commissioner
3rd October 2023