



TC06521

**Appeal number: TC/2016/01561
TC/2016/01581
TC/2016/01619**

INCOME TAX – employment expenses – cleaning costs for work clothes – personal hygiene costs – section 336 ITEPA 2003 – whether expenses paid – whether wholly, exclusively and necessarily in performance of the duties of employment – appeals dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

**(1) KARL HIGGINBOTTOM Appellants
(2) KARL CRITCHLEY
(3) MICHAEL LYONS**

- and -

**THE COMMISSIONERS FOR HER Respondents
MAJESTY’S
REVENUE & CUSTOMS**

**TRIBUNAL: JUDGE JONATHAN CANNAN
MRS RAYNA DEAN FCA**

Sitting in public in Manchester on 1 February 2018

Dr J D Banks appeared for the Appellants

Mr Paul Hunter of HM Revenue & Customs appeared for the Respondents

DECISION

Background

1. These appeals were heard together and each is concerned with the availability of relief for employee expenses. In each case the expenses claimed relate to the cost of cleaning and sanitising working clothes and the cost of toiletries for personal hygiene. Save where the context otherwise requires we shall refer to these costs all together as cleaning costs.

2. In the case of Mr Higginbottom the decisions under appeal are PAYE coding notices issued by HMRC for 2016-17 and 2017-18. The coding notice for 2016-17 includes underpayments of tax for 2014-15 and 2015-16 in relation to the same type of expenses. Mr Higginbottom contends that his coding notices for 2016-17 and 2017-18 should have given relief for the cleaning costs incurred in those years and for 2016-17 should not have recovered any underpayments of tax for the prior years in relation to cleaning costs. Mr Higginbottom claims to be entitled to relief for cleaning costs of £2,200 in relation to all four tax years.

3. In the case of Mr Critchley the decision under appeal is a PAYE coding notice for 2016-17 which includes underpayments of tax for 2014-15 and 2015-16. Mr Critchley claims to be entitled to relief for cleaning costs of £2,200 for all three tax years.

4. In the case of Mr Lyons the decision under appeal is a PAYE coding notice for 2016-17 which includes underpayments of tax for 2014-15 and 2015-16. Mr Lyons claims to be entitled to relief for cleaning costs of £2,200 in relation to all three tax years.

5. We heard oral evidence from Mr Higginbottom and Mr Critchley, as well as from Ms Amanda Smith, an officer of HMRC. Mr Lyons was unwell on the day of the hearing. Dr Banks sought to postpone the hearing of Mr Lyons' appeal. We refused that application. In doing so we took into account that Mr Lyons had failed to serve a witness statement. Tribunal directions released on 23 March 2017 required him to serve a witness statement by 2 June 2017. At that time Mr Lyons stated that he did not intend to rely on any witness evidence. He was given a further opportunity to serve a witness statement in a letter from the tribunal dated 4 December 2017. It had been made clear to Mr Lyons that the requirement for service of witness statements extended to his own evidence. Whilst we refused to postpone the hearing we told the parties that we would take into account as evidence on behalf of Mr Lyons the factual matters set out in his grounds of appeal.

Statutory Framework

6. Relief for expenses paid by employees is governed by *Chapter 2 Income Tax (Earnings and Pensions) Act 2003* ("ITEPA 2003"). All references to section numbers in this decision are to ITEPA 2003, save where otherwise appears. Section 333 provides as follows:

“ 333(1) A deduction from a person’s earnings for an amount is allowed under the following provisions of this Chapter only if the amount—

(a) is paid by the person, or

(b) is paid on the person’s behalf by someone else and is included in the earnings.”

5 7. The general rule which applies to deductions from earnings of an employee’s expenses is set out in section 336 which provides as follows:

“ 336(1) The general rule is that a deduction from earnings is allowed for an amount if—

(a) the employee is obliged to incur and pay it as holder of the employment, and

10 (b) the amount is incurred wholly, exclusively and necessarily in the performance of the duties of the employment.”

8. Chapter 4 ITEPA 2003 also provides for certain “fixed allowances” by way of deduction from an employee’s earnings as follows:

15 “ 366 A deduction from an employee’s earnings for an amount is allowed under this Chapter where the amount has been fixed by the Treasury by reference to the employee’s employment.

367(1) A deduction is allowed for the sum, if any, fixed by the Treasury as in their opinion representing the average annual expenses incurred by employees of the class to which the employee belongs in respect of the repair and maintenance of work equipment.

20 (2) The Treasury may only fix such a sum for a class of employees if they are satisfied that—

(a) the employees are generally responsible for the whole or part of the expense of repairing and maintaining the work equipment, and

(b) the expenses for which they are generally responsible would be deductible from the employees' earnings under section 336 if paid by them.

25 (3) No deduction is allowed under this section if the employer pays or reimburses the expenses in respect of which the sum is fixed or would do so if requested.

(4) If the employer pays or reimburses part of those expenses or would do so if requested, the amount of the deduction is reduced by the amount which is or would be paid or reimbursed.

30 (5) In this section “work equipment” means tools or special clothing.

(6) This section needs to be read with section 330(2) (prevention of double deductions).”

9. In the present appeals the decisions under appeal are all PAYE coding notices. Appeals against PAYE coding notices are made pursuant to *Regulation 18 Income Tax (Pay As You Earn) Regulations 2003* which provides as follows:

“ 18(1) An employee who objects to the determination of a code must state the grounds of objection.

(2) On receiving the notice of objection the Inland Revenue may amend the determination of the code by agreement with the employee.

5 (3) If the Inland Revenue and employee do not reach agreement, the employee may appeal against the determination of the code by giving notice to the Inland Revenue.

(4) On appeal that is notified to the tribunal, the tribunal must determine the code in accordance with these Regulations.”

10 10. The effect of regulation 18 is that the tribunal has a full appellate jurisdiction to determine whether a code is correctly calculated, and in the circumstances of the present appeals whether the appellants are entitled to relief by way of their PAYE codes for the cleaning costs. Mr Hunter accepted that the jurisdiction of the tribunal extended to determining whether the coding notices for 2016-17 should include any adjustments for what HMRC say are underpayments of tax resulting from claims relating to 2014-15
15 and 2015-16.

Findings of Fact

11. We shall deal with the evidence and make findings of fact in relation to each appellant separately.

(1) Mr Higginbottom

20 12. Mr Higginbottom lives in Stalybridge and works for Amey Services as a drainage worker, more specifically as a jetting operative. He commenced working for Amey services on 13 February 2017. Mr Higginbottom’s employment with Amey Services therefore covers the latter part of tax year 2016-17 and the whole of 2017-18.

25 13. Mr Higginbottom’s work with Amey involves daily travel around the north of England. At the relevant time Amey provided Mr Higginbottom with 3 sets of protective clothing. They also provided a washing machine and a drying room at each of their depots, including Brighouse which is the depot closest to Stalybridge. That depot is still some 30 miles from Mr Higginbottom’s home.

30 14. In theory, when Mr Higginbottom was working for Amey he could have made a special trip to the depot in Brighouse where he could have washed and dried his work clothes. This would have involved an hour and a half round trip plus waiting time for which he would not be paid. There was a single washing machine for 70 employees.

35 15. In the period prior to 13 February 2017 Mr Higginbottom was employed by Euro Environmental Group (“EEG”) as a drainage worker, more specifically as a camera operator. Mr Higginbottom told us that he commenced working for EEG in 2014. In the absence of any suggestion to the contrary we find that he was employed by EEG throughout 2014-15, 2015-16 and for most of 2016-17 prior to joining Amey.

16. Mr Higginbottom's work involves going in and out of sewers some 12 or 13 times a day. For the purposes of his job Mr Higginbottom is provided with protective clothing including waterproof jackets and overpants with reflective strips. Much of Mr Higginbottom's work is on the highway so it is important that the protective clothing is
5 clean to maintain its reflective properties. In the course of his work Mr Higginbottom is exposed to a variety of harmful diseases such as Leptospirosis and Hepatitis B.

17. When Mr Higginbottom worked for EEG he was based at their depot in Wigan. There were no facilities for washing clothes at the depot. In any event, Mr Higginbottom's work for EEG involved nationwide travel, often to Scotland. He would
10 stay away from home for whole weeks at a time, for up to 12 weeks a year. EEG provided Mr Higginbottom with 2 sets of protective clothing. When he was staying away from home he would wash his work clothes, including protective clothes, in the bath or shower of the hotel or guesthouse where he was staying. Occasionally he would use launderettes. We infer that Mr Higginbottom would purchase washing powder and
15 fabric conditioner separately for this purpose although no receipts were in evidence.

18. Throughout the four relevant tax years Mr Higginbottom would wash his clothes after every shift, either whilst at home or staying away. When he was staying at home he would wash all his work clothes every night. He would use the family washing machine and tumble dryer. His work clothes included socks, t-shirts, jumpers and
20 boxers, all worn under the protective clothing, and his bobblehat. This would be a full load in the washing machine.

19. When washing his clothes at home, Mr Higginbottom used the household washing powder and fabric conditioner. His wife also bought disinfectant used only for washing his clothes and for Mr Higginbottom to use in the bath or shower. The items
25 were not purchased separately but as part of the weekly household shopping and no receipts were kept. Mr Higginbottom's employers made no contribution to his cleaning costs.

20. Mr Higginbottom together with Dr Banks made an estimate of £2,200 for Mr Higginbottom's annual expenditure on cleaning products. We were told that this
30 included washing powder, disinfectant, fabric conditioner, shower gel and shampoo. We were told that it also included an estimated proportion of utility bills for the cost of running the washing machine and tumble dryer and a sum to represent additional wear and tear of the machines.

21. The estimate of expenditure for 2014-15 to 2017-18 is £2,200 per tax year. The
35 amount claimed for 2013-14 which is not the subject of this appeal was £3,240. The reduction in the estimate from £3,240 to £2,200 was on the advice of Dr Banks to avoid the need to register for self-assessment. We understand that it was HMRC policy to require anyone claiming relief for expenditure over £2,200 to make a self-assessment return.

40 (2) *Mr Critchley*

22. Mr Critchley has worked for Knowsley Borough Council for approximately 14 years. He is an environmental worker involved in outdoor maintenance services such as grounds maintenance. Mr Critchley is part of a schools team which covers all schools in the Kirby area. He works on playing fields and wooded areas and his work includes
5 grass cutting, hedge trimming, cutting back overgrown areas, spraying weeds and line marking. This work can bring him into contact with potentially harmful things such as used needles, stagnant water, animal faeces and rodents.

23. Mr Critchley's employer provides him with a fluorescent jacket, two pairs of pants, two yellow jumpers, three yellow polo shirts and a pair of safety boots. If Mr
10 Critchley is spraying weeds he is also provided with a single use paper overall. Knowsley Borough Council does not provide any washing facilities for Mr Critchley and makes no contribution to his cleaning costs. He washes his work clothes every night using the household washing machine and tumble dryer, apart from his jacket which he washes once a week. The household washing powder and fabric conditioner is used.

15 24. Mr Critchley together with Dr Banks made an estimate of £2,200 for Mr Critchley's annual expenditure on cleaning products. We were told that this included washing powder, disinfectant, fabric conditioner, shower gel and shampoo. We were told that it also included an estimated proportion of utility bills for the cost of running the washing machine and tumble dryer and a sum to represent additional wear and tear
20 of the machines.

25. The estimate of expenditure for 2014-15 to 2016-17 is £2,200 per tax year. The amount claimed for 2013-14 which is not the subject of this appeal was £3,240. The reduction in the estimate from £3,240 to £2,200 was again on the advice of Dr Banks to avoid the need to register for self-assessment.

25 (3) *Mr Lyons*

26. The evidence we have in relation to Mr Lyons is limited. We find that Mr Lyons works in the drainage and sewerage industry and he is exposed to diseases such as Leptospirosis and Hepatitis B. He has claimed £2,200 per tax year as the cost of
30 washing his work clothes and for toiletries, a figure which we infer was arrived at together with Dr Banks in the same way as Mr Higginbottom and Mr Critchley. Mr Lyons' employer made no contribution to such expenses.

Reasons

27. Dr Banks made various submissions on behalf of the appellants. We can summarise those submissions as follows:

35 (1) HMRC do not dispute that expenditure has been incurred but they are seeking to impose an arbitrary maximum relief of £60 per tax year to cover cleaning costs. Further, the figure of £60 was set in 2008-09 and has not been increased since to take into account inflation, in particular rising utility prices.

40 (2) HMRC are not entitled to rely on sections 366 and 367 because no amount has ever been set by the Treasury in relation to the appellants' employments.

Further, the expenses incurred do not fall within the types of expenses covered by those sections, namely the repair and maintenance of tools or special clothing.

(3) It is not possible for the appellants to provide “meaningful receipts” because the expenditure incurred is everyday household expenditure.

5 (4) In the case of Mr Higginbottom’s claim for 2016-17 and 2017-18, his access to facilities provided by Amey at their Brighouse depot does not prevent the expenditure being treated as necessarily incurred.

10 (5) The evidence adduced by the appellants establishes on the balance of probability that they incurred the expenditure claimed in the sum of £2,100, alternatively in such sum as the Tribunal considers fair and reasonable in all the circumstances. The appellants have satisfied the evidential burden on them, taking into account the nature of the expenditure. On the balance of probabilities the appellants have incurred expenditure far in excess of the 25p per day allowed by HMRC.

15 28. The submissions made by Mr Hunter on behalf of HMRC may be summarised as follows:

(1) HMRC accept that an employee is entitled to relief for the upkeep of protective clothing where that employee’s duties require it to be worn and where the employee bears the cost of upkeep.

20 (2) However, no relief is available in relation to the upkeep of “ordinary clothing”.

(3) HMRC do not accept that the appellants are unable to produce receipts to support their claims for relief.

25 (4) Any expenditure incurred by the appellants was not incurred wholly, exclusively and necessarily in the performance of the duties of their employment as the equipment and washing powder was also used for the family wash.

(5) The clothing used by the appellants fell within the term “special clothing” used in section 367.

30 29. The extent to which HMRC rely on sections 366 and 367 was not clear from Mr Hunter’s skeleton argument and oral submissions. HMRC appeared to rely on those sections to justify the amount of £60 per year given in the coding notices.

35 30. We are satisfied that sections 336 and 367 have no application to the present appeals. The Treasury has not fixed any amount for relief in relation to drainage and sewerage workers or ground maintenance workers. It is not necessary therefore to consider whether as a matter of construction the protective clothing in the present appeals is “special clothing” for the purposes of relief under those sections.

31. Mr Hunter referred us to various extracts from HMRC manuals. In particular HMRC’s Employment Income Manual at [32401] states as follows:

40 “ Where the cost of upkeep of clothing is deductible you should allow a reasonable deduction for any necessary cost of cleaning that the employee actually incurs. This

should not include notional amounts, for example an estimate of the employee's labour costs in carrying out the work at home. If the cleaning is carried out as part of the ordinary domestic wash the extra cost of cleaning work clothing should be small. EIM32485 suggests amounts that may be accepted as reasonable.

5 If the employer provides protective clothing but does not provide facilities for its cleaning a similar deduction may be made.”

32. Then, at [32485] the manual states as follows:

10 “ Where the conditions of EIM32480 are met a deduction can be permitted for the cost of laundering protective clothing or uniforms. The amount of the deduction will depend on the nature of the clothing and the frequency with which it is washed, taking account of any additional direct costs of washing clothing at home.

15 Some employees are covered by a nationally agreed flat rate expense that includes laundry costs, see EIM32700. A flat rate expense has been negotiated separately for nurses and other health care workers, see EIM67210 and EIM66790. For employees who are not covered by a nationally agreed flat rate expense the amounts set out below may be accepted as a reasonable estimate of the deductible expense.

[2008-09 onwards £60]

...

20 Deduction for a greater amount should not be permitted without adequate evidence of the expenditure actually incurred, see EIM32715.”

33. The manuals have no force of law. We must consider whether as a matter of law the appellants are entitled to the relief claimed. In particular, whether the expenditure falls within sections 333(1) and 336(1). We must therefore be satisfied that:

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- (1) The amounts claimed have been paid by the appellants;
 - (2) The appellants were obliged to incur and pay those amounts as a holder of the employment; and
 - (3) The amounts were incurred wholly, exclusively and necessarily in the performance of the duties of the appellants' employments.
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34. There was no detailed breakdown in the evidence before us showing how the estimate of £2,200 for cleaning costs in tax years 2014-15 onwards was arrived at. It seems that Dr Banks looked at various ways to estimate the cost and took an average as follows:

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- (1) The cost of going to a launderette would be £12 per visit. Assuming 3 visits a week for 48 weeks a year the cost would be £1,728. The cost of detergents and toiletries was put at £7 per week giving a grand total of £2,064. There was no evidence before us as to the cost of visiting a launderette. Indeed, it was only Mr

Higginbottom who might ever have used a launderette and that was an exception rather than the rule. Further there was no supporting evidence as to the cost of detergents and toiletries.

5 (2) The cost of water, gas and electricity for domestic washing was put at £60 per month each, equating to £1760 per 48 week year. The cost of detergents and toiletries was again put at £7 per week giving a grand total of £2,096. There was no evidence before us as to the cost of running a domestic washing machine and tumble dryer.

10 (3) Ignoring direct costs, Dr Banks estimated that the cost of employing someone on the minimum wage for one hour a day to carry out these tasks would be £1,800 per year, together with detergents and toiletries at £7 per week giving a grand total of £2,136.

15 35. In fact, the average of these three totals is £2,099 rather than the £2,200 previously claimed. Dr Banks in his submissions limited the claims to £2,100 in respect of each year and each appellant.

20 36. We say that there was no supporting evidence as to the weekly cost of detergent and toiletries. Dr Banks did produce 3 receipts he had obtained from different supermarkets showing purchases of such items ranging between £7.00 and £7.95. Whether what was purchased would last a week or more we do not know. We do not consider that those receipts support the appellants' cases as to the amount they actually paid by way of cleaning costs.

25 37. It seems to us that the appellants could have purchased cleaning products solely for cleaning their protective clothing and evidenced this by way of receipts. The principal cost might be expected to be the cost of running the washing machine and tumble dryer. There is no reason why reliable estimates for running those domestic appliances should not be available. We do not consider that the estimates produced by Dr Banks are reliable. The cost of visiting a launderette will be priced for the owner of the launderette to recover its fixed and variable costs and a profit margin. They are commercial machines. The round figures of £60 per month for water, gas and electricity appear to be nothing more than guesses without any supporting analysis. The cost of employing someone to carry out the washing is, with respect to Dr Banks, irrelevant.

35 38. Following the hearing, during which we expressed some doubt as to the approach taken by Dr Banks, he produced a letter from HMRC to Mr Critchley dated 24 March 2016 in which HMRC provided estimates of 87p per wash to use a washing machine including electricity, washing powder and fabric conditioner. Dr Banks pointed out that HMRC had not identified the source of that figure. However, what HMRC seek to argue in correspondence and what this tribunal will accept as cogent evidence are two different things. The burden is on the appellants to establish that they have incurred employment expenses. Dr Banks also produced after the hearing an internet page from
40 the nPower website suggesting that a washing machine on average costs 50p per hour in electricity to run. Based on this material and some further estimates Dr Banks suggested a revised figure of £600 per year.

39. Dr Banks emphasised that he was not seeking to introduce new material and in circumstances where HMRC have not had an opportunity to address us on it we do not admit this material in evidence. We accept that the appellants do incur cleaning costs as set out in our findings of fact. However, the evidence before us does not enable us to make any findings as to the actual amount paid by the appellants in respect of those cleaning costs. There is no cogent evidence as to what the appellants actually spent on washing their work clothes or on toiletries for personal hygiene.

40. Even if we had been satisfied as to the sums paid by the appellants in respect of cleaning costs, we would also have to be satisfied that the appellants were obliged to incur and pay those sums as the holder of an employment. Neither party specifically addressed their submissions to this requirement. One issue taken by HMRC which may have been directed towards this requirement concerned Mr Higginbottom's claim, and the availability of washing facilities at the Amey Services depot in Brighouse. We do not consider that the availability of a single washing machine and drying room for 70 employees which would involve Mr Higginbottom in an hour and a half round trip plus waiting time for which he would not be paid means that he is not obliged to incur the cost of cleaning his work clothes.

41. We would also have to be satisfied that the cleaning costs were incurred wholly, exclusively and necessarily in the performance of the appellants' duties of employment. In *Ward v Dunn [1979] STC 178* it was held by Walton J that a surveyor who was required to visit construction sites was not entitled to an allowance for wear and tear in respect of his ordinary clothing. Such expenditure was not "wholly" in the performance of his duties. Similarly it was said that the cost of cleaning such clothing was partly as a result of what might happen on a construction site but also so that the taxpayer might wear clean clothing and not dirty clothing.

42. In the present case, the clothing of Mr Higginbottom and Mr Critchley includes clothing which it not "ordinary clothing". It includes the protective outer clothing provided by their employers and in Mr Critchley's case yellow jumpers and yellow polo shirts which are not protective clothing as such. We infer that Mr Higginbottom and Mr Critchley were both required to wear the clothing provided by their employers. In Mr Lyons' case there was no evidence as to the type of clothing involved.

43. We can see that the cost of cleaning protective and other clothing provided by an employer which an employee is required to wear would be incurred wholly, exclusively and necessarily in the performance of the duties of employment. In the case of Mr Lyons we are not satisfied that there is any evidence he was required to wear such clothing. In the case of Mr Higginbottom and Mr Critchley there was such clothing, but they also wore other "ordinary clothing" which is included in the cleaning costs claimed. We do not consider that they would be entitled to relief for the cost of cleaning ordinary work clothes.

44. Finally, in relation to the cost of toiletries we are not satisfied that such expenses are incurred wholly and exclusively in the performance of the duties of the employment. Such expenses are incurred partly for purposes of everyday personal hygiene.

45. We are not satisfied therefore that the appellants are entitled to any relief over and above the £60 per year which the respondents have been prepared to grant in relation to cleaning costs. We acknowledge that the figure of £60 per year has not changed since 2008-09 and may therefore be viewed as somewhat out of date. However, HMRC itself accepts that the figure of £60 may be increased where there is evidence of the actual costs incurred. It is for the appellants to establish the actual costs incurred and that they are wholly, exclusively and necessarily incurred in performing the duties of their employments. On the evidence before us we are not satisfied that any higher figure has been incurred on such expenses.

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Conclusion

46. For the reasons given above we must dismiss the appeals.

47. 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.

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TRIBUNAL JUDGE CANNAN

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RELEASE DATE: 4 JUNE 2018