Neutral Citation: [2022] UKFTT 00133 (TC)

Case Number: TC 08464

FIRST-TIER TRIBUNAL
TAX CHAMBER

By remote video hearing

Appeal reference: TC/2020/02072

Income tax – residence – appellant exceeding 45 days in the UK - whether appellant would not be present at the end of the day but for exceptional circumstances beyond her control which prevented her from leaving the UK – paragraph 22 Schedule 45 FA 2013

Heard on: 1 and 2 March 2022
Judgment date: 19 April 2022

Before

JUDGE GUY BRANNAN
ANN CHRISTIAN

Between

A TAXPAYER

Appellant

and

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS

Respondents

THE TRIBUNAL DIRECTS pursuant to Rule 14(b) of the First-Tier Tribunal (Tax Chamber) Rules that no one shall publish or reveal the name or address of the Appellant or any member of her family who is referred to in these proceedings or publish or reveal any information which would be likely to lead to the identification of the Appellant or any such family member in connection with these proceedings.

Representation:

For the Appellant: James Kessler QC and Rebecca Sheldon instructed by Andrew Cole CBE

For the Respondents: Christopher Stone and Sam Way of counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs

DECISION

INTRODUCTION

1. The Taxpayer ("the Appellant") appeals against amendments made by the Respondents ("HMRC") to her self-assessment tax return for the tax year ended 5 April 2016 ("the 2015/16 tax year") by a closure notice issued on 10 March 2020. The amendments showed additional tax due of £3,142,550.58.

2. Essentially, the Appellant contends that she was non-UK resident throughout the 2015/16 tax year, whereas HMRC contend that the number of days which she spent in the UK meant that she was UK resident. The Appellant argues that some of the days that she spent in the UK in December 2015 and February 2016 should be disregarded under the exemption contained in paragraph 22(4) Schedule 45 Finance Act 2013 ("FA 2013").

3. In summary, this exemption provides that an individual's day spent in the UK may be disregarded if the taxpayer would not be present in the UK at the end of that day but for exceptional circumstances beyond the taxpayer's control that prevent the taxpayer from leaving the UK and the taxpayer intends to leave the UK as soon as those circumstances permit.

4. We shall set out in greater detail the terms of this exemption later in this decision. For the sake of brevity we shall refer to it as the "exceptional circumstances" or "the paragraph 22(4)" exemption, but bearing in mind that the exemption contains a number of conditions that must be satisfied beyond that of "exceptional circumstances".

5. The Appellant's case is that both in December 2015 and February 2016, she came to the UK to look after her twin sister ("twin sister") and her two children. The twin sister was suffering from alcoholism and was, according to the Appellant, suicidal.

6. In the course of the written submissions and the hearing, it became apparent that there were two main issues in this appeal. First, there was a dispute between the parties as to the correct statutory interpretation of the paragraph 22(4) exemption – an exemption from the statutory test of individual residence for tax purposes i.e. the Statutory Residence Test ("SRT"). Secondly, there was a dispute concerning whether the Appellant satisfied the statutory test on the facts. We shall deal with these two issues in turn.

7. As regards the factual dispute, it was also common ground that the Appellant's appeal could only succeed if she satisfied this Tribunal that five of the six days under consideration fell within the paragraph 22(4) exemption and therefore did not fall to be counted towards the SRT. As we shall explain, we consider that all of the six of the days did fall within the exemption.

8. In accordance with the directions of this Tribunal on 13 July 2021, the hearing was held in private.

THE EVIDENCE

9. We were provided with an electronic bundle of documents of over 600 pages. The Appellant and her husband ("husband") provided witness statements and were cross-examined.

THE STATUTORY PROVISIONS

10. As already mentioned, the SRT rules regarding UK residence are contained in Schedule 45 FA 2013. These are known as the SRT. The following summary of the relevant provisions, providing the statutory background, is adapted from HMRC's skeleton argument and which was uncontroversial. Paragraph 22 of Schedule 45 FA 2013 – the critical provision in this

appeal – is part of a set of provisions which are described in the legislation as "Key Concepts"[1]. Paragraph 22 therefore is an important provision. It was common ground that this was the first time that paragraph 22 has been the subject to judicial consideration.

11. Section 218(1) of FA 2013 provides that:

> "(1) Schedule 45 contains—
>
> (a) provision for determining whether individuals are resident in the United Kingdom for the purposes of income tax, capital gains tax and (where relevant) inheritance tax and corporation tax,
>
> (b) provision about split years, and
>
> (c) provision about periods when individuals are temporarily non-resident."

12. Under the SRT, a person is resident in the UK for a year in which either the automatic residence test or the sufficient ties test is met.

13. The automatic residence test requires an individual to meet *none* of the automatic overseas tests, and at least one of the automatic UK tests (paragraph 5).

14. Many of the automatic overseas tests (paragraphs 12, 13 and 14), and the automatic UK tests (paragraphs 7 and 8) depend on the number of days that the individual spends in the UK.

15. If the automatic residence test is *not* met, the "sufficient ties" test will apply.

16. Under the sufficient ties test a person's residence is determined by a combination of the number UK ties and the number of days the person spends in the UK.

17. The number of ties that are sufficient to make a person resident in the UK in each case depends on:

> "(a) whether P was resident in the UK for any of the previous 3 tax years, and
>
> (b) the number of days that P spends in the UK in year X." (paragraph 17(3)).

18. The combinations of days spent in the UK and the number of ties required are set out in Tables at paragraph 18 and 19 of Schedule 45 to FA 2013.

19. The concept of "day counting" is important to the SRT, both in the application of the automatic residence test and the sufficient ties test.

20. It was common ground between the parties that:

(1) The Appellant's residence in 2015/16 is to be determined in accordance with the SRT.

(2) The Appellant was neither automatically resident in the UK nor automatically non-resident.

(3) In 2015/16 tax year, for the purposes of the 'sufficient ties' test, the appellant had three ties to the UK: family, accommodation and 90-day tie. In addition, she was resident in the UK in at least one of the previous three tax years.

[1] For example, whilst paragraph 22 defines the concept of "days spent" in the UK, other provisions under the heading "Key Concepts" define a "Home", "Work", "Location of work" etc.

(4) In accordance with the Table in paragraph 18 of Schedule 45, for 2015/16 tax year the appellant was: *(a) resident in the UK if she spent 46 days or more in the UK;* (b) *non-resident in the UK if she spent 45 days or fewer in the UK.* (Emphasis added)

21. The number of days that an individual spends in the UK is determined by application of the rules in paragraph 22 of Schedule 45. This is the crucial provision in this appeal. It provides:

> "(1) If P [the taxpayer] is present in the UK at the end of a day, that day counts as a day spent by P in the UK.
>
> (2) But it does not do so in the following two cases.
>
> (3) The first case is where—
>
> (a) P only arrives in the UK as a passenger on that day,
>
> (b) P leaves the UK the next day, and
>
> (c) between arrival and departure, P does not engage in activities that are to a substantial extent unrelated to P's passage through the UK.
>
> (4) The second case is where—
>
> (a) P would not be present in the UK at the end of that day but for exceptional circumstances beyond P's control that prevent P from leaving the UK, and
>
> (b) P intends to leave the UK as soon as those circumstances permit.
>
> (5) Examples of circumstances that may be "exceptional" are—
>
> (a) national or local emergencies such as war, civil unrest or natural disasters, and
>
> (b) a sudden or life-threatening illness or injury.
>
> (6) For a tax year
>
> (a) the maximum number of days to which sub-paragraph (2) may apply in reliance on sub-paragraph (4) is limited to 60, and
>
> (b) accordingly, once the number of days within sub-paragraph (4) reaches 60 (counting forward from the start of the tax year), any subsequent days within that subparagraph, whether involving the same or different exceptional circumstances, will count as days spent by P in the UK."

THE FACTS

Background

22. The Appellant was resident in the UK at periods up to and including the 2014/15 tax year, living with her husband and their two children in the UK. In the 2015/16 tax year, the Appellant declared herself, on her self-assessment tax return, as non-UK resident under the SRT. She had moved with her younger daughter to Ireland on 4 April 2015.

23. On 16 September 2014 the Appellant's husband transferred a shareholding to the Appellant. In the accounting period ended 31 March 2016 the Appellant received dividends of approximately £8 million on this shareholding. The amendments to the closure notice for the tax year 2015/16 sought to levy UK tax on this dividend – the amendments showed additional tax due of £3,142,550.58.

The evidence of the Appellant

Move to Ireland and Background

24. The Appellant is a UK citizen, domiciled in the UK. As already noted, before the beginning of the 2015/16 tax year she moved to the Republic of Ireland and set up home there with her younger daughter, who went to school in Dublin studying for her A-levels. Her husband remained in the UK in the former family home. The Appellant's elder daughter was at university in Oxford. The Appellant and her husband were not separated. The Appellant's evidence was that it was intended that her husband would retire in two years' time and join her in Ireland.

25. The younger daughter would travel with the Appellant when the Appellant came back to the UK.

26. The Appellant's family history was that she had a non-identical twin sister. They were born in August 1973. In addition, the Appellant had one older sister and two older brothers. The five siblings experienced a difficult and traumatic childhood, which included physical and mental abuse at the hands of their father. As result, they became particularly close and relied upon each other for emotional and, at times, practical support. However, the Appellant's elder sister, as the Appellant put it, had "decided not to be part of their lives" and therefore provided no support in relation to the Appellant's twin sister. The elder sister appears to have played no part in the events which form the subject matter of this appeal.

27. The Appellant had a close emotional bond with her twin sister, something to which the Appellant's husband also testified. The Appellant described herself as the more dominant twin when she and her twin sister were young and was particularly protective of her.

28. On 20 December 1996, one of the twin sisters' older brothers committed suicide by hanging at the age of 29 – he had had a history of drug misuse, addiction and mental health issues. We shall refer to this brother as the "deceased brother".

29. The Appellant's twin sister had the task of identifying their deceased brother's body as she was based in New York where he had taken his own life. The Appellant's evidence was that her twin sister found the experience distressing and that this marked the beginning of her problems with alcohol and mental health issues. In particular, her twin sister struggled at the time of the anniversary of their brother's death.

30. The twin sister was married to the Appellant's husband's cousin. However the relationship between the twin sister and her husband broke down in 2010. In 2011 the twin sister decided to leave her husband and relocate from the south of England to an area outside Manchester close to the Appellant's family home (see below).

31. Since the Appellant's move to Dublin, she had regular contact with her surviving elder brother (we shall refer to this brother as the "brother"), who at that time lived some 20 miles away from the twin sister and her children (a young son and daughter, who at the material times, were aged 11 and 13).

The events of 2015 and 2016

32. The twin sister's mental and physical health gradually worsened as time passed but the Appellant said that towards the end of 2015 "matters worsened dramatically and her plunge into drug and alcohol addiction accelerated at a sudden and alarming rate." The Appellant said that, with hindsight, she realised that up until that time, the twin sister had been a functioning alcoholic and had been very adept at hiding this illness from her and others. When the Appellant moved to Dublin, the twin sister appeared to be coping both emotionally and financially.

33. Since the failure of the twin sister's marriage, the twin sister had lived approximately 6 or 7 miles away from the Appellant's former family home in the UK prior to the Appellant's move to Dublin (and where the Appellant's husband continued to live). Over the course of 2015, the twin sister became involved in an acrimonious custody dispute with her ex-husband over their two children.

34. The Appellant's opinion was that her twin sister had taken steps to conceal her alcohol and drug dependency – she described her twin sister as "a master of disguise". In the Appellant's opinion, her twin sister's desire to move to the north of England stemmed from her desire to conceal her addiction from friends in her previous home area, but the move had accelerated the twin sister's decline because she removed herself from whatever support she had had at her home in the south of England. We note that this was simply the Appellant's opinion and there was no medical or third-party evidence to corroborate this.

35. In her witness statement, the Appellant said that there was no one other than her brother who could have properly assessed or monitored the twin sister's emotional and physical decline and that, given his location, he was not available to see her on a daily or even weekly basis. However, in an appendix to a letter sent by the Appellant's agents (KPMG) to HMRC in September 2018, the Appellant stated, in relation to her visit to look after her twin sister in December 2015, that her twin sister had two very good friends who between them were checking up on the twin sister and the children several times a day. In addition, in that letter, the Appellant said that her brother was also keeping a "close eye" on the twin sister.

36. In cross-examination, it was suggested to the Appellant that her statement in her witness statement that no one other than her brother could have properly assessed or monitored the twin sister was inconsistent with the statement that that there were two good friends who checked up on the twin sister regularly. The Appellant said that it was not possible to rely on friends in the same way that it was possible to rely on family.

37. The Appellant also said that her twin sister entered into a number of, what she described as, short-term and meaningless relationships with male partners, who tended to have their own problems with alcohol and little ability to accept responsibilities. She felt that she could not trust her twin sister with any of these partners let alone her twin sister's children.

38. In December 2015 and February 2016, the twin sister was in a casual relationship with a man whom we shall refer to as Mr X. The Appellant considered that Mr X was unable to support her twin sister and noted that following the twin sister's admission to The Priory clinic in April 2016, he took her to a nearby pub on one of her days out. The Appellant had no confidence in any of the twin sister's casual partners having the ability to assess her mental state of health, suicide risk or provide any meaningful support.

The December 2015 visit

39. In November 2015, a representative of the firm of solicitors who represented the twin sister in her custody case against her ex-husband telephoned the Appellant to alert her to the fact that they were becoming increasingly concerned as to her well-being. The only evidence of this call was in the Appellant's witness statement – no telephone records relevant to this call were provided. The Appellant could not remember when she was telephoned by her sister's solicitors.

40. The Appellant, in correspondence, mentioned that she had heard rumours about her twin sister's drinking and behaviour in the local area. For example, she had received a telephone call from a stranger who had found her twin sister incoherent in a graveyard. The

Appellant had called one of her friends to go and collect her. The Appellant could not remember the date of the call.

41. The Appellant said that her brother contacted her in December 2015 expressing grave concerns for the twin sister's welfare as she had been talking about "ending things". The Appellant could not remember when her brother telephoned her. As mentioned above, no telephone records were produced and the only evidence of this call was the Appellant's own witness statement and oral evidence.

42. Her brother was not, she considered, strong enough to cope with such situations and had therefore turned to the Appellant to help the twin sister. She said that her brother had contacted her because he feared the twin sister was suicidal, although the Appellant could not remember when her brother contacted her. Accordingly, she considered that she had no option but to travel from the UK to Dublin. She said that there was no doubt in her mind that her twin sister's illness and mental state meant that she was capable of taking her own life.

43. The Appellant's evidence was that there was no one whom she could ask to provide support to her twin sister and her children. In addition, the situation was exacerbated by the fact that this was the anniversary of the deceased brother's suicide. The Appellant considered that she was the only person capable of giving her twin sister the immediate help and support she needed.

44. The Appellant noted that her husband had also provided practical and emotional support to the twin sister. However, in December 2015 her husband was embroiled in a criminal prosecution brought against him by HMRC and the CPS which demanded his full attention (in addition to running his business). Charges were brought against her husband in December 2015. In December 2017, all the charges were dismissed because of a flawed investigation process. HMRC paid her husband's legal costs and together with the CPS wrote unreserved letters of apology to him. It followed, therefore, that in December 2015 the Appellant's evidence and that of her husband was that he was unable to provide the twin sister with the support that he might otherwise have done. We accept this evidence.

45. Accordingly, the Appellant travelled from Dublin to the UK, arriving on 18 December and 2015 leaving on 20 December 2015. Thus, for the purposes of the SRT, the Appellant spent two days in the UK.

46. The Appellant and her husband had the use of a private jet. When the Appellant travelled to the UK on Friday 18 December 2015, the aircraft flew from Weston Airport near Dublin to Manchester Airport. The flight took off at 3:30 p.m. and landed at Manchester 4:15 p.m. On the return journey on Sunday 20 December 2015, the Appellant's aircraft departed Manchester Airport at 8:00 p.m. and landed at Dublin Airport at 8:45 p.m. – the return flight did not land at Weston Airport because that airport could not handle night-time flights. The Appellant had no recollection of when she arranged the flight from Dublin to Manchester.

47. The passengers on the outward and return flights were the Appellant and her younger daughter. The Appellant was asked whether her younger daughter was at school and whether the timing of the flights was arranged to coincide with her finishing school on the Friday and starting school on the Monday. The Appellant said that she did not know whether the outward journey was to coincide with her daughter finishing school, but assumed that her daughter would start school on the following Monday morning. The Appellant said that she could not remember why the flight times had been arranged as they were or when she had decided to return to Dublin.

48. The Appellant said that when she arrived in the UK on 18 December 2015 she had found her twin sister in "a dreadful and agitated state". She told us that she shared her

brother's concerns over her twin sister's mental welfare and suicidal tendencies, heightened by the anniversary of her deceased brother's death. She said that on that visit she had considered whether professional medical intervention may be required but balanced this with the possibility that this would result in her children being removed from her twin sister's custody which, she feared, would have been "the final trigger". In cross-examination, however, the Appellant admitted that she did not research professional or nursing care at the time. There were many practical steps which the Appellant said she had to take in order to stabilise the position as far as her twin sister and children were concerned. Because of their close relationship, the twin sister was amenable to being helped. The Appellant was, she said, able to calm her and, with some help from her brother, guide her through this crisis.

49. In her witness statement the Appellant said that she had had no idea what she would find when she arrived at her twin sister's home and whether she would be able to return to Dublin that same day. She said that events unfolded rapidly and any thought of returning immediately to Dublin was soon put to the back of her mind because the care and welfare of her twin sister and her children were her priority. She said that it took her three days to reach a point where she was satisfied that her twin sister was no longer at risk of taking her own life and that was the first opportunity that she could return to Dublin. Once she returned to Dublin, the Appellant said that she maintained regular contact with her twin sister, who had rejected an offer to join the Appellant in Dublin. The Appellant had also kept in constant touch with her brother with whom it had been agreed that, if circumstances worsened again, she would return.

50. In relation to her brother, the Appellant accepted that her brother was helping out during the visit in December 2015, but the Appellant could not say exactly how and when she saw him during that visit.

51. The Appellant was unable to remember withdrawing £250 in cash from a cash machine in Wilmslow on 19 December 2015. In addition, the Appellant could not remember paying £76 for food at midday on 20 December 2015 at a cafe in Alderley Edge or whom she was with at the cafe or what she did before flying back to Dublin later that evening.

52. The Appellant could not remember which nights during her December 2015 visit she has spent at her twin sister's house in which nights she spent at her previous family home.

53. The Appellant accepted that after her visit in December 2015, she went skiing in the Alps. The Appellant also accepted that, after her visit, she had put in place no arrangements to ensure the well-being of her twin sister other than her reliance on her brother and the twin sister's friends. The Appellant said that the particular sensitivity about the anniversary of the deceased brother's death had passed.

The February 2016 visit

54. Once the Appellant had returned to Dublin after the December 2015 visit, she said that "life seemed to level out" for her twin sister but only for a while. She said that by February 2016, her brother "was again at the end of his tether with" the twin sister. He was aware that the twin sister was again in financial difficulties and was also concerned for her well-being. The Appellant knew that she had to travel to the UK again because the twin sister was, she said, displaying suicidal tendencies.

55. The Appellant said that she and her husband were in Rome for a rugby match when her brother telephoned her to ask her to come to the UK to see her twin sister. She said that she was due to fly back to Dublin but, instead, got off in Manchester – the original plan had been to fly from Rome to Manchester to drop off her husband and she would then continue on to Dublin. She said that her brother's call had caused her to change her plans. She could not

remember exactly when her brother had called her and asked her to come back to the UK – there had been ongoing conversations. The Appellant's recollection was that her brother called her on Monday 15 February 2016, although she could not be certain.

56. She described telephone calls with her brother while she was in Rome as the "crisis point". Her brother was worried that the twin sister was suicidal and that "he thought the worst" and needed the Appellant to come.

57. The Appellant flew from Rome to Manchester on the private jet on Monday, 15 February 2016. The flight departed from Rome at 11:00 a.m. local time (10:00 a.m. UK time) and landed in Manchester at 12:56 p.m. (UK time). As to the timing of her brother's call, the Appellant said that she was due to go back to Dublin and spoke with him and was told it was serious enough that she needed to come and see her twin sister.

58. It was clear that the Appellant had retained itemised telephone records, but not texts and emails. As we have said, the Appellant did not produce the itemised telephone records for the relevant months in evidence (they had not been requested by HMRC in the course of the enquiry into her tax return) and therefore there was no documentary evidence of whether and at what times the telephone conversations with her brother took place.

59. In a letter from KPMG to HMRC on 22 October 2018, the Appellant's replies to questions asked by HMRC were enclosed. At paragraph 10, the Appellant stated: "I was planning to come back into the UK on my return [from Rome] with the intention of dropping off [my husband] first and then to check on my sister on my route back to Dublin." This suggested, contrary to the Appellant's oral evidence, that there was no change of plans and that it had always been her intention to call in on her twin sister on the way back from Rome. Moreover, it was clear from the aviation details that there was no need for the private jet to reposition and it would have been available had the Appellant wished to return from Rome early.

60. The itinerary prepared for the Appellant's trip to Rome stated that a transfer to Ciampino Airport (outside Rome) had been arranged for 9:30 a.m. on 15 February 2016.

61. The Appellant accepted in cross-examination that she had left Rome at the time envisaged in her pre-planned itinerary. In other words, she did not leave Rome prematurely. The Appellant also accepted that she had planned to visit her twin sister on the way back from Rome, but said she had not planned to stay the night in the UK.

62. Having landed back in Manchester at 12:56 p.m. the Appellant had a car available for her. The Appellant is recorded as having paid for a meal at a restaurant called Gusto at 2:53 p.m. spending £68. The restaurant is approximately four miles from the Appellant's previous home near Manchester, where her husband continued to reside. The route from Manchester airport to Gusto would take the Appellant close to the twin sister's address. In addition, on the same day, the Appellant spent £239 at Vision Express in the small town in Cheshire where the twin sister lived. In cross-examination, the Appellant could not recall either the visit to Gusto or to Vision Express. In respect of the visit to Vision Express, the Appellant suggested that she may have given her credit card to her younger daughter. But because the Appellant had previously indicated that her daughter was partially sighted and that she would not leave her daughter alone, we do not consider that suggestion to be credible.

63. Essentially, the Appellant had no memory of and could not explain why she had visited Gusto and Vision Express on the afternoon of day that she arrived back in the UK to care for her sister who was, she said, threatening suicide.

64. In cross-examination, Mr Stone (appearing with Mr Way for HMRC) put to the Appellant that if she had had a genuine belief that her twin sister was demonstrating suicidal

tendencies, either she would have come home earlier from Rome, would not have gone to Gusto's restaurant and would not have visited Vision Express. The Appellant said that she could not recall exactly where and when and what she did during her February 2016 visit, but she tried to keep the children entertained, kept her twin sister from drinking and crying, and getting food for the children. She described it as a shocking situation.

65. Mr Stone further suggested that it had always been the Appellant's intention to call into the UK to see her twin sister on the return from Rome, she did not come back early from Rome, she did not rush to see her twin sister on landing, instead she went to Gusto and Vision Express, and it was at that point that her condition was worse than the Appellant had anticipated. Mr Stone further suggested that the Appellant had not been told in advance that her sister was suicidal, but rather she became concerned about her condition once she eventually saw her. The Appellant said that she did not recall exactly what she did or whether she gave her daughter her credit card but that there had been earlier conversations (by which we understood her to mean conversations with her brother) to the effect that the twin sister was not "in a good space" and that she was worse than anticipated.

66. The Appellant said that in the few days that she was with her twin sister, she was shocked at her sister's obvious decline. Her twin sister's house was, she commented, neglected and in a disgusting state, to the extent that it needed professional cleaners to sanitise the interior and make it habitable. The Appellant could not recall when the cleaners came and how they were paid. We were not taken to any record of such payment. The Appellant said that her twin sister's children were in a dreadful state and crawling with nits. Her twin sister was drinking excessive quantities of neat vodka and the children, then aged 11 and 12, were clearly not been cared for. As was the case in December, the Appellant said that she could not return to Dublin until matters were stabilised and the risks sufficiently mitigated. She said that it took her a few days to reach the point where she was satisfied that her twin sister was no longer at risk of taking her own life and that she then returned to Dublin at the first opportunity.

67. In relation to the visits in December 2015 and February 2016, the Appellant said that she genuinely believed that her twin sister was fully capable of taking her own life and felt that she had to stay until this had passed.

68. As regards the suggestion from HMRC that, having a private jet at her disposal (with pilots on permanent standby), she could have flown backwards and forwards daily from Dublin to visit her twin sister, the Appellant said that the idea did not even occur to her. The journey door-to-door would have been at least three hours. She considered that she could not have managed this and provided the care that her twin sister needed. She found the idea totally absurd.

69. As already noted, the private jet which was available to the Appellant and her husband, usually flew in and out of Weston airport near Dublin, which could only be used for daytime flights. The Appellant explained that they would not normally fly into Dublin airport because there was limited parking space for the aircraft, it was expensive and there were limited landing slots. Dublin airport was, therefore, less convenient than Weston airport because its availability was not guaranteed.

70. The Appellant also accepted that she had flown back from the UK to Dublin airport or on a day visit without any apparent difficulty. She also accepted that she had the means to make several day trips to the UK to check on her twin sister and added that, if she was concerned that her twin sister might take her own life, she would have done.

71. The Appellant's recollection of both visits (i.e. December 2015 and February 2016) was that on arrival she found a completely dysfunctional family household. Her twin sister

was drunk and incapable of caring for herself or her children. Having cleaned and sobered her up, the Appellant then checked for any obvious means by which her twin sister could cause harm to herself. She said that she sought to understand from discussions with her twin sister why she felt suicidal. She also spent time reassuring and calming her twin sister's children who were very distressed and deeply concerned for their mother. The children needed practical support, including cleaning, feeding, comforting and schooling. The Appellant said that it was only after stabilising the family household and satisfying herself that her twin sister no longer posed a suicidal risk that she was able to return to Dublin.

72. The Appellant could not remember what she was doing on specific days during her February 2016 visit. She said that the entire time was spent handling a critical situation, ensuring the safety of her twin sister and her children – she described the period as a "blur".

73. In relation to the February 2016 visit, Mr Stone referred to the records which showed that on 16 February 2016 the Appellant had visited local shops such as Waitrose, Marks & Spencer and Tesco, all at unknown times. In addition, she had also visited Superdrug in Wilmslow at 13:11, also making a payment of £1,133 to an estate agent in respect of her elder daughter's university accommodation. The Appellant said that she did a lot to keep her twin sister occupied in running around different places. She did her food shopping, visiting the vet, purchasing dog food, giving her cash to make sure she had provisions for school dinners. She assumed, but was not certain, that her twin sister was with her all the time on 16 February because she was unable to be left. However, she said this was merely speculation because the whole week was, according to the Appellant, a "blur".

74. On 17 February 2016, the records showed that the Appellant had withdrawn £400 from Manchester Hospital children's ward. The Appellant could not recall why she was at Manchester Hospital nor did she have any recollection of visiting Manchester or who she was with.

75. On 18 February 2016, there was a credit card receipt for a vet in the sum of £98.12. The Appellant thought that this was likely to be for her twin sister's dog.

76. On 19 February 2016, there was a bill for The Botanist restaurant, indicating three people were having lunch. Mr Stone suggested that the presence of two Americano coffees on the bill suggested that there were two adults and a child. The Appellant could not remember any details about the lunch, the bill or with whom she had lunch.

77. Mr Stone suggested to the Appellant that the receipts, bank and credit card statements did not support her case. She did not know why she was in Manchester, she assumed that her twin sister was with her (but did not know). The evidence indicated that she was not 100% engrossed with her twin sister or that she was a genuine suicide risk. The Appellant denied this. She said that her twin sister was a genuine suicide risk and that everything in that week involved looking after her and her children, but she could not specifically remember at what time she was doing what activity.

78. On 19 February 2016, the Appellant flew from Manchester airport to Dublin airport, departing at 6 p.m. and arriving at 6: 47 p.m.

79. During the visits in December 2015 and February 2016, the Appellant split her time between staying overnight with her twin sister and staying at her family home nearby with her husband. She could not remember which nights she spent in which place or how many nights she spent in each location.

November 2015 visit

80. Mr Stone asked the Appellant about a visit the Appellant had made to the UK in 2015. The Appellant could not remember any details about the visit. Similarly, the Appellant's husband also seemed unaware of the purpose of the visit.

81. In the event, however, the details of the flights in the private jet records indicated that the journey to and from the UK in November 2015 related to a trip to Scotland (landing and departing from Prestwick airport). In the circumstances, it seemed unlikely to be related to the illness of the twin sister.

Twin sister's alcohol dependency and Admission to the Priory

82. The Appellant said she had not realised in December 2015 and February 2016 the extent of her twin sister's alcohol problem. She said that she first became aware of the extent of the problem when her twin sister was admitted to the Priory in April 2016. When the Appellant moved to Ireland, she was not aware that her twin sister was suffering from alcohol dependency, but knew that she liked a drink. She said that her twin sister was a master of deception in disguise when it came to her alcohol problem.

83. The Appellant accepted that there had been other periods of crisis, before the first visit in December 2015, in which the twin sister had relied on the Appellant to give her emotional support. The Appellant said that her twin sister was a very vulnerable individual and had gone through her life facing a host of difficulties, mostly self-inflicted. However, the Appellant said that, notwithstanding these earlier crises, her twin sister appeared to be functioning adequately – the children were showing up to school clean with a packed lunch. The Appellant said that she could not predict future crises.

84. In cross-examination, Mr Stone challenged the Appellant's assertion that she did not know the full extent of her twin sister's alcoholism until she was admitted to The Priory in April 2016. Mr Stone noted that the Appellant had previously found her twin sister drunk and incapable, her house was dirty, that she had to sober her twin sister up, that her twin sister's solicitors had raised concerns and a stranger had found her twin sister incapable in a graveyard. Mr Stone suggested to the Appellant that these were not isolated incidents but were a pattern of behaviour of her twin sister being an alcoholic and being unable to cope. The Appellant said that she did not have prior experience of an alcoholic's pattern of behaviour and of the extent to which they hid the evidence of their alcohol abuse. She was aware that her twin sister liked a drink but was not aware of the extent of her situation. The Appellant said that her twin sister's behaviour eventually became a pattern and that she had attempted to commit suicide four times after her stay at The Priory. She said that at the time she did not recognise the extent of her sister's problems – she had her husband whom she described as "fighting for his life" against HMRC's prosecution; with hindsight it was possible to say that there was a pattern developing but at the time this was not how she thought about it.

85. The Appellant accepted that she had not researched treatment options and nursing care options for assisting someone with alcohol dependency prior to April 2016. The Appellant had also not researched support services for someone who might have suicidal tendencies before April 2016. The Appellant thought that she was the only person that her twin sister would listen to. She had been a "mother" to her twin sister all her life. Moreover, there was a risk that her children might be removed from her twin sister.

86. By April 2016, the Appellant's twin sister was, as the Appellant claimed, "again in the depths of despair, even worse than on the previous visits I had made." She said that her twin sister's children had been removed from her due to her addictions which were spiralling out of control and she was again making threats to kill herself. We were not informed by what

process her children were removed – whether this was a result of local authority action or the success of her former husband in obtaining custody, but we understand from correspondence in the bundle that the twin sister's ex-husband gained custody of the twin sister's children. The Appellant said that there was no option but to place her twin sister into the hands of professionals.

87. On 16 April 2016 (i.e. in the following tax year), the Appellant came over from Dublin and found her twin sister in such a state that she called an ambulance and she was committed, initially to an NHS hospital and then for 30 days, to a residential mental health institute, The Priory. The twin sister was treated for severe alcohol and drug misuse, anxiety, depression and a number of physical symptoms. The Appellant and her husband provided financial support to the Appellant whilst she was receiving medical care.

88. In May 2016, the Appellant visited her sister while still at The Priory. However, on being discharged from residential care, her twin sister relapsed and between then and July 2016 made four other attempts at taking her life to the use of alcohol and drugs. She was again admitted to hospital and spent the following six days in residential care undergoing detox.

Medical records

89. At her Counsel's suggestion, the Appellant obtained a copy of The Priory clinic file which was in evidence before us. The Priory file records the position during the dates 16 April 2016-21 June 2016 i.e. after the period of the visits in December 2015 and February 2016.

90. The Appellant said that HMRC had asked her to ask her twin sister for her GP records and hospital admission records for the period 6 April 2015-16 April 2016. The Appellant refused to do this. She said that her twin sister was unaware of the present tax dispute. The Appellant was able to provide the file relating to The Priory and hold her twin sister that she needed information in relation to her tax return (because she had paid the bill). Her sister had given permission for the records to be disclosed to third parties on the understanding that those third parties would treat the information as confidential. In the Appellant's opinion the distress if her twin sister found out the extent of the tax dispute, or if her confidentiality was breached, "would be shocking". Given her twin sister's frailty, which was ongoing, the Appellant considered it would be catastrophic to her if she were to be aware of the dispute.

91. The Appellant said that she did not know what documents were held in her twin sister's GP and hospital files but said that she had no reason to think that they would hold anything detrimental to her appeal.

92. We were provided with the twin sister's medical records from The Priory's files, which included what appeared to be notes from an NHS hospital at which the twin sister was treated immediately before her admission to The Priory. The relevant parts of those notes read as follows:

> "16 April 2016: "History from paramedic - known alcohol dependence - this week had her children taken away and lost her driving licence - had no alcohol since yesterday - her Sister has flown over from Ireland to support her - wants to go to the Priory privately- 1 bed available- needs GP referral · Will bring all relevant documentation to apt
>
> Known to has [sic] Alcohol dependency For last 3yrs started after divorce. Has 2 kids 11Yrs and 12 yrs old, children were taken off from her this week and lost driving licence due to drinking and driving.

Sister flew from Dublin to support her, Spoken to Priory, advised GP referral For admission, Drinks 2 bottles of wine per day, didn't drink any alcohol today. Bed is available.

Examination Details:

Looks anxious and with drawl [sic] symptoms noticed

But conscious and able to give information.

For admission at Priory for alcohol withdrawal symptoms.

Clinical Codes:

E23 Alcohol dependence syndrome

Diagnosis:

Alcohol Withdrawal symptoms"

93. Also on 16 April 2016 there was a doctor's admission report from The Priory which stated:

"PSYCHIATRIC HISTORY

Reason for admission (including presenting psychiatric symptoms):

Alcohol withdrawal features, for in-patient detox

Presenting complaint:

– Craving

– Tremors

– Sweatiness

– Nausea

– Anxiety

[the above symptoms were noted as having occurred within the last 24 hours]

Forensic history:

Recently charged for drunk driving

Use of alcohol & drugs:

Alcohol use disorder probably started 2009, soon after her divorce. Drinks all varieties of alcohol. Drinking up to 250 units weekly. [Redacted] …

MENTAL STATE EXAMINATION

Appearance:

Appropriately dressed for the season

…"

94. In a nursing assessment from The Priory also dated 16 April 2016 it was stated:

"*Reason for admission:*

Alcohol misuse since 2009, currently drinking 250 units weekly. Recent drink driving – to be sentenced. Previous use of Ecstasy, amphetamines and cannabis.

Patient's understanding of reason for admission:

Appeared insightful and motivated to change.

Patient's motivation and goals:

To get control of life again, to stop using alcohol.

Expected adherence to care plan:

No concerns. "

95. The admissions report recorded that the twin sister was accompanied by her partner, Mr X, and her sister.

96. The medical papers also included an "Observation and Engagement Report" dated 29 April 2016. Essentially, this report recorded observations of the twin sister's behaviour throughout the day. On the form was a row of boxes against a narrative "Risks associated with service user". The boxes related to various named risks: "Self-harm", "Suicide", "Violence", "Arson", "Vulnerable" and "Other". Only the box relating to "Other" was ticked.

97. The same type of report was included for 5 May 2016. Again, only the box relating to "Other" was ticked.

98. Similar reports were included for 16, 17, 18, 19, 20, 21, 23, 24, 25, 26, 27 April 2016 but on these reports none of the boxes was ticked. A similar report for 13 and 14 May 2016 was included but on this report none of the boxes was ticked. The report noted that the twin sister was discharged on 14 May 2016.

99. Most of the above reports stated that the twin sister was suffering from alcohol withdrawal. There was no reference, as far as we can see, to the twin sister threatening to commit suicide.

100. On 13 May 2016 there was a letter from a doctor at The Priory which stated:

> "This is to confirm that [the twin sister] was admitted to The Priory Hospital, Altrincham on 16/04/2016 for a 28 days Addiction Treatment Programme for alcohol dependence and underlying depressive disorder,
>
> She has participated in the Addiction Treatment Programme and has successfully completed it. She is due to be discharged from hospital on 13/05/2016."

101. On 21 June 2016, the twin sister's consultant psychiatrist at The Priory wrote a report[2] to a doctor, whom we assume was her GP, as follows:

> "[The twin sister] was admitted to The Priory Hospital Altrincham from the 16 April 2016, and discharged on the 14 May 2016, with a diagnosis of alcohol dependence syndrome, and co-morbid dep [illegible]disorder. [The twin sister] stated that she started drinking about seven years ago, and over [time?] drinking has gradually increased. At the time of admission she said she was drinking up to [illegible] a week. She reported craving, and withdrawal symptoms, including tremors, sweating, and which were relieved by alcohol.
>
> [Redacted]You have been treating her for depression [redacted].
>
> She reported a possible family history of psychiatric illness. She said her brother had schizo [illegible] and committed suicide in 1996. She said her father has a drink problem, although he has [illegible] any treatment. [The twin sister] was recently charged with a drink/ drive offence.
>
> She reported a difficult childhood. She said her education was disrupted, although she [illegible] GCSE's. She worked in an office, in administration,

[2] The copy of the report provided to us was only partly legible with one side being cut off.

> up until the time she became unemployed [illegible] 2015. She is divorced from her husband, although she is in a relationship.
>
> She lives with her two children, aged eleven and twelve. At the time of admission her ex-h[usband] had custody of her children.
>
> **Mental state examination:**
>
> [The twin sister] is a Caucasian lady. Her height was 5'4", and weight 9 ½ st. Her general self-c [illegible] good. She was tremulous and withdrawing from alcohol. Her mood was anxious, and depressed. She had no suicidal ideation, and she was not psychotic. She was fully orientated.
>
> Her mental state was monitored. Her depressive symptoms remained stable, although she reported anxiety symptoms…
>
> Her anxiety symptoms settled.
>
> She was able to engage in our Addiction Treatment Programme to deal with the issues involving her drinking problems."

102. In her witness statement the Appellant stated:

> "I was not aware of this diagnosis and note that it postdates my second emergency attendance on [the twin sister]. Having reflected on [the consultant psychiatrist]'s diagnosis, I believe the critical point here is that [the twin sister] was anxious to be discharged from the Priory. She knew that her discharge would not happen if she were to confirm any suicidal ideation to medical staff. She simply wished to return home and continue with her alcohol and drug abuse which continues to spiral; [the twin sister] was and continues to be a master of disguise."

103. We treat the Appellant's evidence on this point with caution. In the first place, it appeared to be pure speculation. Secondly, the twin sister was apparently very frank about her severe alcoholism and her depression. It seems unlikely to us that she would not also have been frank about having, what the consultant psychiatrist described as, "suicidal ideation". Moreover, the letter from the consultant psychiatrist was written after the twin sister had been in The Priory for a month and had been under constant observation (as mentioned in the Observation and Engagement Reports). In addition, there was no reference to a potential suicide risk in the admission notes apparently prepared by an NHS doctor immediately prior to the twin sister's admission to The Priory in April 2016.

Day count

104. In cross-examination the Appellant accepted that when she moved to Ireland, before the start of the 2015/16 tax year, she was aware that she had, in effect, an allowance of 45 nights to use before she became UK resident and that if she stayed in the UK for 46 nights or more she risked becoming UK resident and that that would defeat the purpose of her move to Ireland. She was also aware that she had to keep a record of where she was each day and said that that was why she had retained receipts and had recorded the day count in a diary i.e. for the purposes of showing her location. The Appellant accepted that by 21 November 2015, she had used up 44 days of the 45 day allowance and that two additional nights in the UK would, subject to the application of the paragraph 22(4) exemption, make her UK resident. She accepted, in the light of the receipt of the dividend referred to in paragraph 23 above, that there was "a lot riding on the day count". The Appellant said that she knew that at 20 December 2015 she would be seeking to rely on the "exceptional circumstances" exception, but this was not at the forefront of her mind at the time.

105. The Appellant accepted that she had not sought or received further advice from her accountants, KPMG, about the need to retain evidence that the circumstances fell within the "exceptional circumstances" exception.

106. In re-examination, however, the Appellant said that she was not familiar with the rules in Schedule 45 FA 2013 nor with the rules about "exceptional circumstances", appearing to contradict her earlier answer.

Evidence of the Appellant's husband

107. The husband gave evidence in support of the Appellant's appeal.

108. The husband addressed an issue raised in HMRC's Statement of Case where it was asked why the twin sister's "support network" could not have provided the support which the twin sister required.

109. The husband explained that in November 2015 he was aware that he may imminently be charged with criminal offences relating to tax fraud, relating to an enquiry that had commenced in 2012. Charges were, indeed, brought on 10 December 2015.

110. He explained that his entire focus was on fighting this criminal case whilst at the same time attempting to protect and carry on his business.

111. In his witness statement, he said:

> "At the time [the Appellant] was first required to return to the UK and address [the twin sister]'s crisis, December 2015, I had just learned that I had been charged. My defence team had advised that I should apply for an expedited judicial review of the Crown's decision to charge me. This required a great deal of work and was a priority for me. To my horror the application was dismissed in January 2016 with the consequence of my first appearance in the criminal case in Birmingham Magistrate's Court 23 February 2016.
>
> I was now facing trial. I was working sometimes 19 hours a day post charge both keeping my business interests going and preparing for my court case. My only opportunity to 're-group' was at the weekend when I would return to our home in Ireland where my family resided.
>
> It was only after [the Appellant] had been able to manage [the twin sister]'s plight in December 2015 that I became aware of how very severe the events were. Similarly, it was only after [the Appellant] had dealt with matters in February 2016 that she informed me of those circumstances. On both occasions pivotal events were happening in the criminal case and [the Appellant] just did not want to add to my woes. "

112. In May 2017, all the charges against the husband were dismissed. It was found that the Crown Prosecution Service and HMRC had pursued the prosecution in the face of a fundamentally flawed investigation. The Crown had paid the husband's reasonable legal costs and he had received unreserved letters of apology from both the Crown Prosecution Service and HMRC.

113. The husband greatly regretted, and felt guilty about, not being able to provide his wife, the Appellant, with more support in dealing with the distressing issues concerning her twin sister.

114. He said that the Appellant had a very close emotional bond with her twin sister. He described the Appellant as the twin sister's "rock".

115. In relation to the Appellant's brother, he said that he did not appear to have the mental strength to deal with many issues, particularly the twin sister when she was at her worst state.

116. The husband accepted that during the Appellant's February 2016 visit, he was not involved with or cared for the twin sister during that time. He said that the Appellant was in constant communication with her brother in relation to the twin sister. He also mentioned that the twin sister had been arrested for drink-driving. The drink-driving had happened "a few times" but he could not remember when she was actually arrested.

117. The husband said that when the twin sister was admitted to The Priory in April 2016 it was only then that he and the Appellant became aware of the full extent of the twin sister's drinking problem.

118. In relation to the December 2015 visit by the Appellant, the husband said that the Appellant "was living in a position where the next phone call was going to be that [the twin sister] was dead."

Dublin Institute of Design

119. The Appellant enrolled on a degree course with the Dublin Institute of Design ("the Institute") which commenced in September 2015. The second year of the degree course (2016/2017) was postponed by the Institute due to "unforeseen circumstances". In a letter dated 5 September 2016 to the Appellant, the Institute noted that the Appellant wished to continue the course at the next opportunity which would be September 2017.

120. On 3 October 2016 the Appellant emailed the Institute as follows:

> "I have had a family emergency and am having to care for my sister and her kids (she is an alcoholic and has attempted suicide)
>
> I may need to defer my place for a year as I need to take care of this. Let me know how the land lies please."

121. The Institute replied by email on the same date agreeing to defer the Appellant's place on the course.

122. We mention this because of the reference in the Appellant's email to the Institute to her twin sister's attempted suicide. We recognise, of course, that this correspondence took place several months after the December 2015 and February 2016 visits to the UK. The correspondence did, however, occur before HMRC opened its enquiry into the Appellant's tax return for the 2015/16 tax year on 10 January 2018.

Witnesses availability and disclosure of evidence

123. The Appellant accepted that she spoke to her twin sister and her brother on the telephone and that she had itemised telephone bills for her mobile phone. These phone records had not been disclosed because, according to the Appellant, HMRC had not asked for them. Furthermore, text messages between the Appellant, her twin sister and her brother had also not been retained.

124. Mr Stone asked the Appellant why she had not called her brother to give evidence. Mr Kessler QC objected to this question on the basis that legal advice about calling the brother as a witness was the subject of legal professional privilege. The Tribunal indicated that if the answer to that question was that the Appellant had received legal advice not to call her brother, that advice was privileged and HMRC could not pursue the matter further.

125. In the event, the Appellant said that her brother was not aware of the proceedings before this Tribunal. She described her brother as a vulnerable individual who had suffered abuse and who could not deal with stress. She preferred that he did not know about this

appeal. She added that if she had known that HMRC wished to receive evidence from the brother, she would have spoken to him about it.

SUBMISSIONS ON AND ANALYSIS OF THE LAW

126. It was common ground that the provisions of paragraph 22(4) Schedule 45 FA 2013 have to be construed purposively. To this we would add, although we did not understand it to be in dispute, that the statutory provisions also have to be interpreted in their statutory context.

127. It was also common ground that the burden of proof lay upon the Appellant to demonstrate that the conditions for the application of the exemption contained in paragraph 22(4) were satisfied and that the standard of proof was the ordinary civil standard of proof, i.e. the balance of probabilities. There was, however, a dispute as to whether the Appellant has satisfied that the burden of proof in this case.

128. HMRC submitted that the purpose of the SRT was to provide for greater certainty in the application of the test of tax residence than had been the case previously under the common law. In support of this submission, which we did not understand to be contested, HMRC cited a consultation paper: "Statutory definition of tax residence: a consultation" (June 2011). HMRC also cited HM Government's response to the consultation ("Statutory definition of tax resident and reform of ordinary residence: a summary of responses" (June 2012) as being:

> "– introduce a statutory definition of tax residence (statutory residence test) that is transparent, objective and simple to use. This should not affect the resident status of the vast majority of people; and
>
> – reform the concept of ordinary residence to provide greater simplicity and clarity."

129. Thus, the objective of the SRT was to provide greater certainty in the application of the concept of tax residence than had previously been the case under common law. Day-counting was an important aspect of these provisions because it provided certainty by allowing an individual to plan their time in and out of the UK.

130. In keeping with this desire for certainty, Schedule 45 FA 2013 contains, as mentioned above, a number of "bright line" tests in relation to tax residence. It is fair to describe these tests as prescriptive. However, as HMRC accepted in this appeal, Parliament acknowledged that the SRT must incorporate a degree of flexibility. It did so, *inter alia*, by the inclusion of the "exceptional circumstances" exemption in paragraph 22(4) Schedule 45.

131. In HMRC's skeleton argument, it was acknowledged that the flexibility contained in the exceptional circumstances test was "included for the purposes of ensuring that the predictability and certainty in the SRT did not create injustice, by being resistant to an individual being unable to leave the UK for reasons out of that individual's control."

132. It seems to us that that encapsulates Parliament's intention in enacting paragraph 22(4) Schedule 45 FA 2013. That provision is intended to prevent the injustice which HMRC identify. Against the background of prescriptive rules concerning residence and days spent in the UK, paragraph 22(4) provides a measure of relief against the hard edge of those "bright line" rules.

133. HMRC submitted that paragraph 22(4) was tightly drawn. We accept that submission. Although we have referred to paragraph 22(4) as the "exceptional circumstances" test, it is clear that it contains a number of cumulative conditions, all which must be satisfied.

134. It was common ground that the Appellant had to show:

(1) that the circumstances were exceptional;

(2) the circumstances were beyond the Appellant's control;

(3) the circumstances prevented the Appellant from leaving the UK;

(4) the Appellant would not be present in the UK at the end of the day but for those circumstances;

(5) the Appellant intended to leave the UK as soon as those circumstances permitted.

135. Against that background, HMRC accepted in its Statement of Case that the Appellant would not have been present in the UK but for her twin sister's serious illness and that the Appellant intended to leave the UK as soon as she was able (subject to HMRC's submission that the Appellant had failed to establish that she was in fact prevented from leaving for each day claimed as an exceptional circumstance). It was also common ground that the "exceptional circumstances" test must be applied each day at the time the Appellant stayed in the UK and at the end of the relevant day.

136. Nonetheless, the submissions before us demonstrated a marked divergence in the interpretation of paragraph 22(4) between the parties.

137. We have acknowledged that paragraph 22(4) is tightly drawn in the sense that it requires the satisfaction of a number of cumulative provisions. To that extent, we agree with HMRC's submissions, as we have indicated. We do not, however, accept that the statutory provision must be more restrictively construed than its language requires or permits.

138. As we have explained, the "exceptional circumstances" exemption provided for by paragraph 22(4) constitutes a relaxation (albeit it a tightly drawn relaxation) from the prescriptive provisions of Schedule 45 which contain the rules relating to the SRT. Those rules are intended to provide certainty. Paragraph 22(4) was intended, as HMRC acknowledged, to provide a measure of relief from those prescriptive rules where, otherwise, injustice may result.

139. This is an entirely common statutory format in the context of tax legislation. As we mentioned in the course of argument, there are many contexts in tax legislation where strict and prescriptive rules also contain defences or ameliorating provisions which Parliament intended to prevent injustice or unfairness. For example, various tax penalty provisions are prescriptive (indeed punitive), but enable a taxpayer to avoid a penalty if it is possible for the taxpayer to demonstrate that there was a reasonable excuse for the default. Parliament has, broadly speaking, entrusted this Tribunal with the task of deciding what constitutes a reasonable excuse. It has not sought, with a few specific exceptions, to define what constitutes a "reasonable excuse".

140. In our view, paragraph 22(4) follows a similar format, although of course the statutory language and context are very different. Parliament has charged this Tribunal, in its role as a primary finder of fact, with the duty of determining whether the "exceptional circumstances" test in paragraph 22(4) has been satisfied. This is an evaluative exercise to be determined in in the light of all the relevant facts and circumstances.

141. The words used by Parliament in paragraph 22(4) are clear and are non-technical; they are not ambiguous or obscure and they do not give rise to absurdity. There is no justification, as HMRC accepted, for looking at Parliamentary material under the rule in *Pepper v Hart.*

142. The language of paragraph 22(4) consists of ordinary English words. Those words do not need the deployment of numerous synonyms or the use of a Thesaurus. The dangers of using synonyms, which can carry different shades of meaning from the statutory language, in substitution for the words used by Parliament were clearly explained by Richards LJ in *Raftopoulou v HMRC* [2019] 1 WLR 1528 at [41].

143. We were referred to the comments of Lord Bingham in *R v Kelly* [2000] QB 198 at 208 B-D ("*Kelly*"), which concerned the construction of section 2a of the Crime (Sentences) Act 1997 which dealt with the sentencing of persons convicted of a second 'serious offence'. That provision required the court to impose a mandatory life sentence on such a person unless there were exceptional circumstances, relating to either of the offences or the offender, which justified a decision not to impose such a sentence. Lord Bingham said:

> "Under s 2 the court is not relieved of the duty to impose a life sentence, as it is of the duty to impose the minimum mandatory penalties prescribed under ss 3 and 4, where it is of the opinion that there are special circumstances which would make the prescribed penalty unjust in all the circumstances. Parliament has not chosen to give the court the opportunity to exercise that judgment under s 2. But even under s 2 the mandatory duty imposed on the court is not absolute. It is relieved of the duty to impose a life sentence where two conditions are met: first, that the court is of the opinion that there are exceptional circumstances relating to either of the relevant offences or to the offender; and secondly, that the court is of the opinion that those exceptional circumstances justify the court in not imposing a life sentence. We must construe 'exceptional' as an ordinary, familiar English adjective, and not as a term of art. It describes a circumstance which is such as to form an exception, which is out of the ordinary course, or unusual, or special, or uncommon. To be exceptional, a circumstance need not be unique, or unprecedented, or very rare; but it cannot be one that is regularly, or routinely, or normally encountered."

144. The statutory provisions and context in *Kelly* were of course entirely different from those in the current appeal. Nonetheless, Lord Bingham's words provide helpful guidance, but always bearing in mind that ultimately it is the statutory language which we must interpret and apply and not that of synonyms.

145. HMRC argued for a narrow construction of paragraph 22(4) and made a number of submissions seeking to limit the application of that provision. However, we do not agree with the following submissions made by HMRC which sought, in our view, to limit the ambit of paragraph 22(4) in a way which was not justified either by purposive construction or by the statutory context.

146. First, HMRC submitted that in construing the expression "exceptional circumstances" it was necessary to exclude foreseeable circumstances because where circumstances were foreseeable a taxpayer could plan ahead to avoid those circumstances from preventing them from leaving the UK – as well as not being exceptional, the circumstances would also not then be beyond a person's control.

147. In the context of the present appeal, it was acknowledged that the Appellant's twin sister was an alcoholic and had mental health difficulties and apparently had suffered from these complaints for some time. HMRC argued that, because the Appellant would have been able to foresee a need to support her twin sister when she took the decision to take up residence in Ireland, this prevented those circumstances from constituting "exceptional circumstances". We do not agree. There is no requirement in the statutory language for foreseeability or non-foreseeability to determine whether circumstances are "exceptional". Foreseeability is not the statutory test. It is true that foreseeability may be an element of exceptionality, but it is not a determining factor which, of itself, excludes the application of the exemption. For example, it may be (and this assumes an issue which is in dispute and which we discuss below) that a non-resident has a UK-located family member who has a long-term degenerative disease. It may be foreseeable that that condition may worsen and become life-threatening. That does not, however, lead to the conclusion that when the

condition worsens and becomes life-threatening the circumstances become non-exceptional simply because they were foreseeable. We therefore reject the submission that foreseeability is, of itself, a factor which excludes the application of the "exceptional circumstances" test.

148. Furthermore, the fact that some or all of the circumstances claimed to be exceptional may be foreseeable does not necessarily mean that those circumstances are within the control of the taxpayer. Whether those circumstances are beyond the taxpayer's control is a matter to be determined in the light of all the relevant facts. Certainly, foreseeability may be a relevant factor in this context but it is not a determining factor.

149. Secondly, HMRC submitted that the "exceptional circumstances" test did not encompass a person who came to the UK under a moral obligation or an obligation of conscience to care for a family member or other person. Instead, HMRC argued that the "exceptional circumstances" test only applied where a person came to and remained in the UK either under a legal obligation (e.g. to care for their minor child) or was physically prevented from leaving the UK (e.g. by a volcanic eruption which made flights impossible). HMRC based their submission on the word "prevent" which, so the argument ran, should be construed so as to preclude a moral obligation or an obligation of conscience. Mr Stone argued that the word "prevent" in paragraph 22(4)(a) should be given "real teeth".

150. We reject that submission. There is no justification for such a restriction in the statutory language. If, as we find as a fact[3], Parliament intended to avoid injustice in the application of the SRT by excluding exceptional circumstances beyond a taxpayer's control, then it would be hard to imagine a more unjust conclusion than that advocated by HMRC. To conclude otherwise, would favour the kind of injustice that Parliament intended to avoid. It could hardly have been Parliament's intention to have required the "exceptional circumstances" test to be failed if, for example, a taxpayer thought it necessary to be present because of serious illness or at the death bed of a close relative. The word "prevent" can encompass all manner of inhibitions – physical, moral, conscientious or legal – which cause a taxpayer to remain in the UK. To read in the restriction that HMRC suggests, is not an exercise in statutory interpretation (purposive or otherwise) but rather an exercise in reading words into a statute which are not there.

151. Thirdly, HMRC argued that the "exceptional circumstances" exemption applied only to persons who were already in the UK and, while they were in the UK, were overtaken by "exceptional circumstances" which prevented them from leaving. The exemption did not, according to HMRC, apply to a taxpayer who came to the UK because of the "exceptional circumstances" and who was then prevented from leaving by those same circumstances. Again, we consider that there is no statutory justification for such a limitation of the test. Interpreted in its statutory context, paragraph 22(4) looks at why a taxpayer is in the UK at the end of a particular day and whether a taxpayer is prevented from leaving the UK at that time in order to determine the number of days spent in the UK. It does not look at why the taxpayer came to the UK in the first place or whether the taxpayer was already in the UK. It seems to us that HMRC's view was entirely unsupported by the statutory language. Moreover, as Mr Kessler QC (appearing with Ms Sheldon for the Appellant) submitted, it was also contrary to HMRC's own published practice.

152. Finally, HMRC argued that the examples of circumstances that may be "exceptional" given in paragraph 22(5) suggested that "exceptional" should be given a narrow meaning. First, it must be pointed out that the examples set out in paragraph 22(5) are simply examples – they do not purport to be exhaustive. Nonetheless, they do provide some guidance. For

[3] The FTT's finding as to the purpose of a statutory provision is essentially a finding of fact: see [25] *Fowler v HMRC* [2020] UKSC 22 *per* Lord Briggs delivering the judgment of the Court.

example, they indicate that a life-threatening illness may be an "exceptional circumstance", indicating perhaps that an illness of a lesser severity, by itself, may not be. Secondly, paragraph 22(5) simply states that the illustrated examples "may" constitute an exceptional circumstance – it does not provide that the examples will, in every circumstance, constitute an exceptional circumstance.

153. In our view, HMRC have misapplied the concept of purposive construction by seeking, in effect, to read in limiting words into paragraph 22(4). The words used by Parliament in this statutory provision are, as we have been at pains to point out, entirely clear. Whilst a court or tribunal is not confined to a literal interpretation of the statutory words, but must consider the context and scheme of the Act as a whole, purposive construction cannot be used to give effect to a perceived different or wider (or narrower) policy objective in cases where the words used by Parliament do not bear that meaning: see *Flix Innovations Limited v HMRC* [2016] STC 2206 (Mann J and Judge Brannan) at [42] and *HMRC v Michael and Elizabeth McQuillan* [2017] UKUT 344 (Rose J and Judge Berner) at [34]-[38].

154. A manifestation of this mistaken approach is to be found in HMRC's closure notice of 10 March 2020 itself. It stated:

> "The circumstances should be *highly* exceptional, and *not merely* "unusual, not what happens regularly or is expected", but out of the ordinary *in the extreme*." (*Emphasis added*).

155. This is not a purposive interpretation of paragraph 22(4) but a re-writing of the statutory language in a way that is, in our view, entirely unjustified. It has infected HMRC's approach to this appeal from the outset. For example, in a letter dated 20 September 2018 HMRC said:

> "It is agreed the legislation relating to exceptional circumstances (s22 (4) and (5) Sch45 FA13) is silent on who the person, suffering the sudden or life-threatening illness or injury, must be. At the time the legislation was enacted HMRC's view was that the legislation [paragraph 22(4)] was intended to apply to the individual, the individuals' spouse, civil partner, person they live with as a partner or dependent child."

156. In other words, HMRC interpret paragraph 22(4) as not providing an exemption for, amongst others, siblings. No matter how many times we read paragraph 22(4), it is impossible to derive this limitation from the words actually used by Parliament. Whether "exceptional circumstances" can arise in relation to a sibling is a question of fact and degree to be determined in the light of all the circumstances of the particular case.

157. Recently and more generally, in a recent authority which was not cited to us, the Court of Appeal in *Hyman & Ors v HMRC* [2022] EWCA Civ 185 (Lewison, Simler and Snowden LJJ) has disapproved an attempt to limit the scope of a taxing provision[4] by reading into it words which are simply not there. In that case, the taxpayers owned land which comprised land and gardens. The First-tier Tribunal found that the entirety of the land was determined to be residential property only and fell within section 116(1)(b) of the Finance Act 2003 as land forming part of the garden or grounds of a building, and was therefore subject to the higher rate of stamp duty land tax, rather than land that consisted of or included land that was not residential and which would attract a lower rate of tax. The taxpayers argued that in order for gardens or grounds to count as residential property, they had to be required for the reasonable enjoyment of the dwelling having regard to its size and nature. The Court of Appeal dismissed this attempt to limit the scope of the statutory language. Lewison LJ said:

[4] We see no distinction for these purposes between a charging and a relieving provision.

> "32. The ambitious exercise on which [counsel for the taxpayers] has embarked is, in effect, to imply into an Act of Parliament a limitation which is not there. In my judgment that is not an exercise which enables the court to interpret the words of section 116 of the Finance Act 2003 in the way that he suggests. As Lord Salmon put it in *James Buchanan & Co Ltd v Babco Forwarding & Shipping (UK) Ltd* [1978] AC 141, 160:
>
> 'For a court to construe a statute is one thing but to graft a provision on to it on the ground that the court thinks it is reasonable to do so would bring the law into chaos … For the courts to graft a provision on to a statute or a contract is a practice which is entirely foreign to our jurisprudence and, as far as I know, to any other.'
>
> 33. In agreement with the UT, I consider that the words of section 116 are clear and unambiguous; and do not produce absurdity. The suggested qualification is not there."

CONCLUSIONS ON THE EVIDENCE AND DECISION

158. As we have already indicated, it was common ground that the burden of proof lay upon the Appellant to establish that she fell within the "exceptional circumstances" exception contained in paragraph 22(4) (section 50(6) Taxes Management Act 1970).

159. We have discussed the legal test to be applied under paragraph 22(4), when read with paragraph 22(5), which must be construed purposively and in the context of the legislation as a whole. As we have said, the "exceptional circumstances" exemption is tightly drawn, requiring a number of tests to be satisfied. Nonetheless, the language used by the provision consists of ordinary English words and we have rejected the submissions of HMRC designed artificially to narrow the meaning of those words. The task of this Tribunal is to apply the statutory language to the facts. This is, as we have said, an evaluative exercise.

160. In the first place, we reject HMRC's argument that the Appellant could have flown backwards and forwards from Dublin to Manchester each day on the basis that she had the use of a private jet. HMRC's argument was that because the Appellant could have commuted between Dublin and Manchester on a daily basis, the Appellant was not prevented from leaving the UK at the end of each relevant day. The Appellant's evidence was that the door-to-door one way journey was approximately three hours and that obtaining a landing slot and a parking place for the aircraft at Dublin airport was not guaranteed (Weston airport not being capable of handling night-time flights). It seems to us that to expect the Appellant to do this journey on a daily basis at a time when she was attempting to care for her twin sister and her children would, whilst theoretically possible, be impracticable.

161. In short, the Appellant's evidence was that on the occasion of each visit she spent her time looking after her twin sister and her twin sister's children. She could not, however, describe what activities she undertook on each day that she was present in the UK.

162. Even allowing for the understandable reticence of a witness under cross-examination, it seemed to us that the Appellant was defensive and vague in her replies. We recognise, of course, that the events in question took place approximately six years ago, although HMRC commenced its enquiry into her self-assessment return in January 2018, two years after the events in question when one might have expected matters to have been rather fresher in her memory. It appears that the Appellant did not attempt, after her visits in December 2015 and February 2016, to record, even in outline, what she had done on each day and why she had concluded at the end of the day that her sister's condition was such that she was prevented from leaving the UK.

163. Her husband was unable to give any detail as to what the Appellant did during her visits to the UK in December 2015 and February 2016. On his own evidence, he was focused on defending himself against the prosecution wrongfully brought against him for tax evasion.

164. The Appellant's evidence was, as we have said, vague in relation to details and in many instances said that she was simply unable to remember details of her activities during her two visits. For example, she had no recollection of visiting Manchester Children's Hospital on 17 February 2016 when she withdrew cash from a cash machine. Similarly, she had no recollection of having lunch or buying lunch at Gusto's restaurant (or with whom she had lunch) or why she spent money at Vision Express on 15 February 2016 – the day of her arrival in the UK from Rome.

165. In that context, we considered it strange that on 15 February 2016 the Appellant arrived at Manchester airport at 12:56 p.m. (UK time) but then paid a restaurant bill at Gusto's restaurant, spending £68 at 14:53 p.m. and, presumably later, paid a bill at a local optician, Vision Express, for £239.

166. The Appellant's evidence was that whilst she and her husband were staying in Rome in February 2016, she had been telephoned by her brother who said that the twin sister was threatening suicide and that he feared the worst (see paragraph 56 above). She described this as a "crisis point".

167. The Appellant's witness statement recorded what she found when she visited her sister in February 2016 as follows:

> "In the few days that I was with her I was shocked by her obvious decline. The house was neglected and in a disgusting state, to the extent that it needed professional cleaners to sanitise the interior and make it habitable. [The twin sister's children] were in a dreadful state and crawling with nits. I now had 2 priorities, my sister and her children. [The twin sister] was drinking excessive quantities of neat vodka and the children, then aged 11 and 13, were clearly not being cared for. As was the case in December, I knew I could not return to Dublin until matters were stabilised and the risks sufficiently mitigated. Once again it took me a few days to reach a point in time where I was satisfied that [the twin sister] was no longer at risk of taking her own life. I returned to Dublin at the first opportunity."

168. If that was the background and if, according to the Appellant, her twin sister was threatening suicide, it seems odd and frankly implausible that the Appellant would have landed at Manchester airport and then first to have visited a restaurant (whether by herself, with her daughter or with her twin sister) and then, secondly, concern herself with a nearby optician on the afternoon of her arrival. On the contrary, the restaurant visit and the visit to the optician suggest a leisurely approach and one inconsistent with a picture of the desperate straits of a suicidal twin sister which the Appellant sought to paint and which she said her brother had described. The Appellant's account of her visit in February 2016, therefore, did not ring true.

169. Furthermore, in her oral evidence the Appellant indicated that she changed her plans and that instead of flying to Manchester to drop off her husband and then to return to Dublin, she flew to Manchester to see her sister. In fact, however, it appears that it was always her plan to visit her sister on her way back to Dublin. There was no change of plans.

170. In addition, we also consider it strange and implausible, if there was a genuine suicide risk, that the Appellant did not seek medical psychiatric assistance for her twin sister in December 2015 and February 2016 if the twin sister was threatening suicide on both occasions. That is an extreme situation. The Appellant and her husband were clearly

individuals of considerable means and could have afforded private medical care (indeed, they paid for the twin sister's care at The Priory in April and May 2016) but in any event could have sought urgent care from the NHS. The Appellant did not do so.

171. We readily accept that the twin sister had severe problems with alcoholism. The medical evidence from The Priory indicated that this problem went back to 2009. The consultant psychiatrist's report of 21 June 2016 is clear that the twin sister was suffering from alcoholism and associated depression.

172. There is, however, apart from the evidence of the Appellant and her husband, no evidence that the twin sister was threatening to commit suicide or that there was a real prospect that she would commit suicide. Indeed, the consultant psychiatrist's report of 21 June 2016, written after the twin sister had been under observation in The Priory for a month, specifically refers to the fact that there was no "suicidal ideation". The Appellant, as we have said, did not seek professional help or guidance during her visits in December 2015 and February 2016 to set her mind at rest that, when she left to return to Ireland at the end of those visits, her twin sister would not be at risk of self-harm.

173. There was, therefore, no corroborative evidence to substantiate the Appellant's and her husband's assertion that the twin sister was suicidal. Indeed, as we have said, the only independent evidence (from a few months after the visits in question) in relation to the threat of suicide – the consultant psychiatrist's report – clearly stands in contrast to this assertion. We recognise, of course, that the consultant psychiatrist's report was dated June 2016 – over four months after the last visit in February 2016. The twin sister, however, had been under that consultant's care since 16 April 2016 and there is no indication in the medical records that between April 2016 and June 2016 that the Appellant's twin sister was threatening suicide.

174. In the electronic bundle with which we were provided, there is correspondence from the Appellant's husband suggesting that one of the Appellant, her husband or the twin sister may have concealed such suicidal threats in order to be admitted to The Priory i.e. that had she revealed a suicidal inclination she would not have been admitted to The Priory. This suggestion, which appeared to be speculation at best, did not appear in the husband's witness statement or oral evidence. On balance, we think that it is unlikely that the suggestion was correct. We think it is improbable that, when being admitted to The Priory to deal with the twin sister's alcoholism and depression that such a serious aspect of her condition (i.e. suicide threats) would be concealed. This is particularly so because the twin sister was apparently very frank about the extent of her drinking problem (which she said dated back to 2009) and which was, according to the Appellant and her husband, the first time that they were aware of the full extent of her alcoholism. It appears from the medical records that the Appellant accompanied her twin sister and on the Appellant's evidence was made aware of the extent of her alcoholism. If the twin sister had been exhibiting suicidal tendencies we would have expected the Appellant to have mentioned this to the medical staff – but there is no indication that she did so. Moreover, the form of the Observation and Engagement Reports, referred to in paragraphs 96-99 above, clearly contemplates suicide as a risk in relation to patients admitted to The Priory generally, but not in relation to the twin sister. Suicidal tendencies might, therefore, be a condition from which some patients at The Priory could suffer.

175. Moreover, according to the Appellant's evidence and the medical records, her twin sister's children had been removed from her at the time of admission to The Priory in April 2016. There would, therefore, be no reluctance to tell the medical professionals at The Priory about any suicidal tendencies for fear of losing custody of her children – that had already happened.

176. There is no evidence from the brother – he was not called to give evidence because the Appellant considered him to be a vulnerable personality. We accept the Appellant's evidence that because of her twin sister's fragile mental state, she did not wish to make her aware of this appeal and, therefore, did not wish to call her as a witness or seek her medical records for the periods in question. Mr X, the twin sister's partner at the time, was also not called to give evidence. We understood that he was only a short-term partner of the twin sister. We draw no adverse inferences from the failure to call any witnesses. Nonetheless, the result is that the only evidence in relation to the severity of the twin sister's illness comes from the Appellant herself, her husband and the medical reports in April, May and June 2016.

177. The Appellant did refer to the fact that her twin sister had attempted suicide when she wrote to the Dublin Institute of Design on 3 October 2016. However, this was several months after the event and the Appellant's own evidence was that her twin sister had attempted suicide on four occasions after her visit to The Priory in April 2016.

178. Drawing these threads together, the Appellant has not satisfied us that, on the balance of probabilities, she came to and remained in the UK in December 2015 and February 2016 because her twin sister had threatened to commit suicide.

179. We consider that, to the extent that the Appellant's visits to the UK in December 2015 and February 2016 were occasioned by the need to care for the consequences of her twin sister's alcoholism and depression, this does not, of itself, constitute exceptional circumstances for the purposes of paragraph 22(4). Alcoholism and depression are not in themselves uncommon or unusual illnesses. It is true that both conditions cause much suffering and distress both for the individual concerned and for that individual's family. We do not, however, consider that they are exceptional circumstances.

180. We have also considered whether the fact that the twin sister had minor children, for whom the Appellant also cared, alters the position. We consider this a more difficult and finely balanced question, but in our view it does change the position.

181. It is clear that the Appellant was under no legal obligation to care for her twin sister's minor children. As we have concluded earlier, however, we do not consider it necessary for there to be a legal obligation in order for there to be an exceptional circumstance or one which prevents a taxpayer leaving the UK. Moral obligations and obligations of conscience – including those arising by virtue of a close family relationship – can qualify as exceptional circumstances and those obligations may be strong enough to prevent a taxpayer leaving the UK.

182. In our view, the combination of the need for the Appellant to care for her twin sister and, particularly, for her minor children at a time of crisis caused by the twin sister's alcoholism does constitute exceptional circumstances for the purposes of paragraph 22(4).

183. As we have already observed, there were a number of flaws in the Appellant's evidence. For example, we did not find her evidence concerning the twin sister's threats to commit suicide credible. In addition, we were not convinced by her claim that she and her husband only discovered the extent of her twin sister's alcoholism when the twin sister was admitted to The Priory in April 2016 for the reasons put to her in cross-examination (summarised above at paragraph 84 above). We have also commented that in a number of respects the Appellant's evidence was vague in relation to details. Nonetheless, we do consider her evidence concerning the state of affairs which she found upon her arrival at her twin sister's house in December 2015 and February 2016 convincing.

184. The Appellant's evidence, which we accept, was that when she arrived at the twin sister's house in December 2015 and February 2016, she found a dysfunctional household in

which her twin sister was drunk and incapable of caring for herself or her children. When the taxpayer arrived at her twin sister's house, she found both her sister and her children were unkempt and in need of care. The house was filthy. There was nobody else who could provide the care needed. We do not think that it was realistic to expect the twin sister's two friends to devote the kind of care and attention which the children and the twin sister plainly needed. The role of the twin sister's friends was described as one of checking up on the twin sister several times a day. We do not consider that there was any evidence that their role extended beyond that or embraced the more hands-on care which the Appellant gave to her twin sister and her minor children.

185. We think it more probable than not that, when coming to the UK in December 2015 and February 2016, the Appellant did not appreciate the seriousness of the situation (i.e. the extent to which the twin sister was no longer able to cope with running her household and looking after her children), until she actually arrived. Although she was aware that her twin sister was an alcoholic, she did not appreciate the extent to which her twin sister was incapable of coping with the running of the household and the care of her minor children. The immediate need to seek to establish a stable household in which the minor children could be cared for does seem to us to be an exceptional circumstance outside the Appellant's control. We accept that the Appellant would not have been in the UK at the end of each day relevant to this appeal but for the fact that she needed to care for both her twin sister and her minor children. We further accept that this need prevented the Appellant from leaving the UK until such time as she had stabilised the situation and that she intended to leave the UK as soon as possible once those circumstances permitted.

186. In that context, we accept that the Appellant could not remember in any detail what she was doing on each day that she was present in the UK. Her evidence was that she spent her time keeping her sister occupied and looking after the children. We accept her evidence and do not consider that an itemised timeline for each day, as was suggested by HMRC, was necessary. Instead, we accept Mr Kessler QC's submission that if the reason for the Appellant remaining in the UK was the same each day and if that reason constituted exceptional circumstances, then that reason remained valid for each relevant day.

187. The Appellant accepted in cross-examination that, contrary to her witness statement, she had not researched obtaining private care, nursing care or assistance for someone with alcoholism. However, the Appellant's evidence was that she believed that she was the only person from whom her twin sister would accept help and guidance. We accept that evidence, which was based on the exceptionally close relationship between the twin sisters. We also anticipate that there may have been significant practical difficulties in obtaining outside household help in circumstances where the twin sister was an alcoholic with periods when she was non-functioning. In that respect, we consider that the circumstances were beyond the Appellant's control.

188. Accordingly, this appeal is allowed.

CONCLUDING OBSERVATIONS

189. It was clear that the unsuccessful prosecution of the Appellant's husband understandably caused considerable distress and resentment on the part of the Appellant and her husband towards HMRC. Indeed, at one point, whilst giving evidence, the Appellant's husband was sufficiently overwhelmed with emotion that the hearing had to be suspended in order that he could compose himself.

190. In addition, it was also apparent that recalling the circumstances of her twin sister's illness caused distress for the Appellant as she gave evidence.

191. The Appellant's husband, in cross-examination, objected to the manner in which Mr Stone had cross-examined his wife, the Appellant. Furthermore, in his written submissions on the evidence, Mr Kessler QC took exception to certain aspects of Mr Stone's written submissions on the evidence.

192. It is not necessary for us to go into detail on these points. We are fully alive to the fact that this appeal and the hearing of this appeal raised difficult and emotionally sensitive issues. We merely wish to record our view that the criticism of Mr Stone's conduct was unjustified and that Mr Stone discharged his responsibilities both to his client and to this Tribunal in an entirely professional manner.

193. Finally, we wish to express our gratitude to counsel and those instructing them for the efficient conduct of this appeal. We particularly wish to thank junior counsel (Ms Sheldon and Mr Way) for their helpful notes of the oral evidence which they prepared and submitted to the Tribunal.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

194. 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.

GUY BRANNAN
TRIBUNAL JUDGE

Release date: 21 APRIL 2022