



[2019] UKFTT 617 (TC)

**TC07401**

*Income Tax – penalties for late returns – reasonable excuse.*

**Appeal number: TC/2019/1793**

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**JUSTIN PHILIP SANDERCOCK**

**Appellant**

**- and -**

**THE COMMISSIONERS FOR HER  
MAJESTY'S  
REVENUE & CUSTOMS**

**Respondents**

**TRIBUNAL: JUDGE CHARLES HELLIER**

**Sitting in public at 5 Notte Street Plymouth on 1 August 2019**

B Marshall for the Respondents

The Appellant was neither present nor represented.

## DECISION

### IN RELATION TO THE APPEAL AGAINST 2014/15 PENALTIES

#### Background

1. Following a hearing on 1 August 2019 I gave a summary decision refusing Mr Sandercock's application to make a late appeal against penalties assessed in relation to the year 2013/14, and made directions in relation to his appeal in relation to the 2014/15 year which were released to the parties on 9 August 2019. This decision is made after the receipt of the parties' response to those directions. As regards matters relating to the hearing it is to be read together with paragraphs 1 to 10 and 24 to 26 of those directions which are set out in the appendix to this decision.

2. In response to the direction NJB Taxback made some comments relating to the decision in relation to 2013/14. This decision does not address those comments.

3. This decision therefore relates to Mr Sandercock's appeal against penalties totalling £1,600 assessed under schedule 55 FA 2009 for the late delivery of his tax returns for 2014/15. In his appeal to HMRC of 12 October 2018, Mr Sanderson says:

"... the grounds of my appeal are that I didn't receive notice that I was due to complete the tax returns nor did I receive notice of the penalties charged or time limits on making an appeal, this is why the appeal is past its due date ...".

4. He goes on to say that he moved in with his dying mother in 2013, that she died in May 2016 and that those years were good but hard. He explains that he employed the services of "highly recommended" accountants in 2016, and explains how they failed to perform.

5. He says that the penalties are excessive as all his tax was stopped at source under the Construction Industry Scheme ("CIS"). He says he has taken care to rectify matters and has filed outstanding returns.

6. NJB Taxback are Mr Sandercock's current accountants; they acted for him in making this appeal. They note in their letters of 20 November 2018 (asking for a review) and 26 March 2019 (making the appeal to this tribunal) four points relevant to the submission of the return for the 2014/15 year:

- (1) Mr Sandercock was caring for his mother and grieving for her loss;
- (2) Mr Sandercock employed a recommended accountant who made errors and did not inform him of the late penalties;
- (3) Mr Sandercock is a CIS subcontractor whose tax is deducted at source;
- (4) for the years in question Mr Sandercock overpaid tax because the subcontractor deductions were greater than the income tax which he was due to pay because of the effect of his personal allowance; and

(5) Mr Sandercock's brother made a similar appeal which was allowed.

7. From this correspondence I conclude that the following grounds of appeal are advanced:

(1) Mr Sandercock did not receive notification that he had to complete a 2014/15 tax return. As a result he was not required to submit a return. So the return could not be late and the penalties were not due.

(2) Mr Sandercock had a reasonable excuse for any failure to submit a tax return on time as a result of:

(a) his absorption in caring for his dying mother and grieving after her death;

(b) the fact that he had reasonably entrusted his tax affairs to a recommended accountant;

(3) The penalty should be set aside because:

(a) Mr Sandercock had overpaid tax for 2014/15 since it had been deducted at source under the CIS scheme without the benefit of deduction for his personal allowance;

(b) the appeal of his brother had been allowed in similar circumstances;

(c) Mr Sandercock has now appointed diligent accountants who have performed properly and with whom he will cooperate in future to ensure prompt submission of his tax returns.

8. There was no contention that if the return was late and if Mr Sandercock had no reasonable excuse for the delay the penalties were not calculated in accordance with the statutory provisions.

9. I shall take each of these grounds in turn.

### **The Evidence.**

10. The evidence before me consisted of: (i) a bundle which contained copies of the Mr Sandercock's appeal to HMRC, a few other letters which passed between the parties, certain of HMRC's computer records and Mr Sandercock's tax return for 2014/15; (ii) the parties' replies to the direction of 9 August 2019 and (iii) oral evidence from Mr Marshall about the operation of HMRC's systems.

### **Discussion**

11. I shall deal with each of the grounds of appeal in turn.

*(1) Was Mr Sandercock given notice requiring him to submit tax return to 2014/15?*

12. HMRC's computer record records that a notice to file a tax return was sent to Mr Sandercock on 6 April 2015. Mr Marshall told me that that meant that it would in fact have been sent within a few days of that date since notices were sent out in batches after 6 April 2015.

13. If notice was given to Mr Sandercock on or shortly after that date then a return, if in electronic form, was required to be submitted by 31 January 2016 (see section 8 Taxes Management Act 1970). Mr Sandercock's return was made in electronic form.

14. HMRC's record of sending the return does not record the address to which the notice was sent. Mr Marshall told me it would have been sent to the address on HMRC's address system. The print out of HMRC's record of Mr Sandercock's address history indicates that Mr Sandercock's address was changed a number of times between 2010 and 2019. His address is recorded as:

- (1) 85 Pasley street from 29 October 2010 to 24 May 2012
- (2) 1 Tees Close from 24 May 2012 to 4 March 2013
- (3) Flat 49 from 4 March 2013 to 15 March 2017 and
- (4) from 16 March 2017 onwards Flat 7.

15. These changes of address are, within a day or so consistent with entries in HMRC's SA Notes log of changes to Mr Sandercock's address.

16. Mr Sandercock's 2014/15 tax return of 12 October 2018 shows his address as Flat 7 which is consistent with the last of the above records. I conclude that HMRC's records showed that in April 2016 Mr Sandercock's address was recorded as Flat 49.

17. This was the address to which Mr Sandercock was recorded as having changed to on 4 March 2013. Mr Sandercock's evidence was that he moved in with his mother in 2013. I conclude that it is likely that Flat 49 was his mother's address and accordingly that is likely that if HMRC sent him a notice to file it was sent to that address.

18. I note that in his appeal to HMRC Mr Sandercock says that when he engaged an accountant in 2016 he provided the firm with "all the information including updating my address". That indicated to me that, consistently with HMRC's record, he moved from his mother's house (Flat 49) to his address at Flat 7 at some time after his mother's death, and that the record was updated in 2017..

19. Mr Marshall told me that if post was returned to HMRC it would be noted in the Returned Letter System ("RLS") and noted on SA Notes. Those notes contained no RLS entry after 5 March 2013.

20. Mr Marshall drew my attention to the fact that SA Notes recorded the issue of penalty reminders to Mr Sandercock on: 2 June 2015, 30 June 2015, 31 May 2016, and 5 July 2016 with no RLS indicator. In addition the system recorded the issue of penalty notices on 18 February 2015, 14 August 2015, 17 February 2016 23 February 2016, 12 August 2016 and 21 February 2017 with no RLS indicator. All of these date fell within his period at Flat 49. This, he submitted, indicated that the notice to file addressed to Mr Sandercock at Flat 49 and had reached its destination.

21. Against this I had Mr Sandercock's statement that he had not received a notice to file. He did not attend the hearing and I was not able to ask: whether he had received the other letters, about the state of postal deliveries in his area or about the extent to which looking after his mother in 2015 may have meant that post was overlooked or forgotten.

22. It seems to me that Mr Sandercock must have received the penalty notices since he appealed against them. There is no indication in SA Notes that he sought copies of them from HMRC. That indicates that they were sent to the correct address.

23. I take into consideration that Mr Marshall's evidence of how HMRC's systems works was second hand and generic rather than specific to the situation of Mr X, that he did not profess to be an expert in the working of the computer system and that he did not speak to the connection between the actual dispatch of a letter and the making of an entry on HMRC's records that it had been sent. Nevertheless it seems to me that, on balance, the notice to file was posted on or around 6 April 2016 to Mr Sandercock's address - to Flat 49 - where he was living at the time and that the letter was duly stamped.

24. Section 7 Interpretation Act 1978 provides that if a letter is posted pre-stamped and properly addressed it is deemed to be delivered at the time it would be delivered in the ordinary course of post unless the contrary is proved. Thus unless Mr Sandercock's statement proves that the notice to file was not received, I must take it as received. I was not able to question Mr Sandercock about this and noted that the issue of lack of receipt of the notice to file was not repeated in NJB Taxback's representations. I concluded that it was not proved that he did not receive the notice. I conclude that the notice was received although his circumstances may have meant that it was not given anxious scrutiny.

25. I therefore reject this ground of appeal.

*(2) (i) Reasonable excuse: caring for his mother and her death.*

26. I find that Mr Sandercock moved in with his mother in 2013 to care for her in the last years of her life. She died in May 2016 and her death affected Mr Sandercock for some time afterwards;

27. I accept that caring for a sick and dying relative is an onerous task, and that grief may make it difficult or impossible to get to grips with administrative tasks such as tax returns.

28. Mr Sandercock's 2014/15 tax return was due on 31 January 2016. I accept that for the period from then up to May 2016 - in which it is likely that his mother's needs were greatest - even a conscientious taxpayer could reasonably fail to give full attention to his tax returns. I also accept that coping with the death of his mother could have driven tax returns from the mind of a reasonable taxpayer for the remainder of 2016 (although I note that, to his credit, Mr Sandercock began to take steps to put things right in 2016). I find that for the whole of 2016 therefore that he had a reasonable excuse for his failure in that year to deliver a tax return for 2014/15.

29. But thereafter - for 2017 and up to the date of delivery his return on 12 October 2018 I do not consider that the effect of his mother's illness and death provided a reasonable excuse. But is possible that other events did: I now turn to those.

*(2) (ii) reasonable excuse: reliance on accountants.*

30. From the written evidence of NJB Taxback I find that Mr Sandercock's appointed accountants were:

- (1) From 24 March 2016 to 16 March 2017: Sheppards Accountants Limited
- (2) from 16 March 2000 and 10:43 July 2018: DC Revell;
- (3) from 11 July 2080 onwards: NJB Taxback.

31. These dates are broadly consistent with the dates appearing in HMRC's SA Notes for the updating of agents details..

32. In Mr Sandercock's notice of appeal to HMRC he says that:

"I employed the services of a highly recommended accountant in 2016 ... they took an upfront payment to file all my outstanding returns ... and I was assured they would complete things properly and on time ... unfortunately it now seems I was mistaken ... all the returns they submitted were incorrect and have now had to be amended ...".

33. This is consistent with the appointment of Sheppards on 24 March 2016 but makes no mention of the appointment of DC Revell.

34. I am also not wholly sure how to reconcile Mr Sandercock's statement that "the returns they submitted were incorrect" with HMRC's record that the 2014/15 return was submitted on 12 October 2018 - after Sheppards' tenure, and the lack of any representation from Mr Sandercock or NJB Taxback that the return was in fact submitted before that date. That latter difficulty is compounded by the statement NJB Taxback's letter of 26 March 2019 in relation to the appeals, where they say that "the accountant made several errors in the submission". These statements may however relate to returns for years other than 2014/15..

35. I conclude that it is likely that Sheppards did not submit a 2014/15 return and that this failure to do so was a contributing factor to their replacement by DC Revell.

36. On 31 October 2017 - midway through DC Revell's tenure - SA Notes records a telephone call from Mr Sandercock to HMRC about overpayment of tax for 2015/16 and 2016/17 (because CIS deductions exceeded his tax liability once computed after personal allowances). The note records that he was told that most of his refunds had been set against penalties, and he was advised "to submit 13/14 and 14/15 asap".

37. NJB Taxback suggest that this shows that the relationship between DC Revell and Mr Sandercock had broken down by the date of the call because it was Mr Sandercock rather than DC Revell contacting HMRC for help. I agree.

38. Paragraph 23 schedule 56 FA 2009 provides that there is no liability to a penalty for a failure if a taxpayer had a reasonable excuse for the failure. Subparagraph 2)) (b) provides:

"where P relies on any other person to do anything, that is not a reasonable excuse unless P took a reasonable care to avoid the failure,"

39. It seems to me that if a taxpayer appointed a well-regarded professional firm to act for him in submitting returns, co-operated promptly in requests from that firm for information, and quickly followed up what might reasonably appear to be delays in the firm's actions, he can be said to have been taking reasonable care to avoid failure to deliver his returns.

40. Mr Sandercock's appeal to HMRC speaks of a "highly regarded" firm and of the information he gave them. Given that he says that the appointment was in 2016 this statement must refer to them rather than DC Revell.

41. Although I had no evidence as to whether this high regard was expressed by a reliable source, I conclude on balance that from 24 March 2016 to 16 March 2017 Mr Sandercock did take reasonable care to avoid continuing failure and he did so by appointing Sheppards.

42. I was given no evidence as to how well-regarded was DC Revell, or what other steps Mr Sandercock took to ensure they submitted his 2014/15 return on time. I am therefore unable to conclude that he took reasonable care to avoid delay during their tenure.

43. But even if he did take such care in appointing and relying upon them in the period immediately following the appointment, it seems to me that after the telephone call to HMRC on 31 October 2017 Mr Sandercock must have known that DC Revell were failing to deliver. Without more, continued reliance on them after that was no longer taking reasonable care. There was no evidence of what steps Mr Sandercock took after 31 October 2017 before his appointment of NJB Taxback.

44. NJB Taxback criticise HMRC for saying in the 31 October telephone call that the returns for 13/14 and 14/15 should be delivered "ASAP". They say that "ASAP" is a nebulous term. They suggest that it may have suggested to Mr Sandercock that he had more time to deliver the returns. They also ask why HMRC did not follow up the phone call by sending Mr Sandercock the relevant forms

45. I do not agree with this "ASAP" means as soon as possible. It imports a degree of urgency, not latitude. And if Mr Sandercock did not have the relevant forms, it would have been reasonable for him to ask for them.

46. They also argue that the fact that the penalties had been paid meant that it was reasonable for Mr Sandercock to think that there was less urgency. Again I do not agree. That is the case if he was willing to accept that he was liable to a penalty, but plainly he was not.

47. They also suggest that Mr Sandercock could reasonably have preferred the advice of his advisers over that of HMRC. I accept that that could in some circumstances be a reasonable course of action, but only if what HMRC said was put to a reputable advisor and a cogent answer obtained from that adviser. There was no evidence that such was the case.

48. Paragraph 23(2)(b) Schedule 55 provides that:

"where P had a reasonable excuse for the failure but the excuse ceased, P is to be treated as having continued to have the excuse if the failure is remedied within without unreasonable delay after the excuse ceased."

49. It seems to me that, at the latest, the excuse of reliance on DC Revell ceased on 31 October 2017. A reasonable time thereafter might take one to early 2018 but after that the excuse must be treated as ceased.

50. As a result I find that any reasonable excuse for the late delivery of the returns which arises in relation to the difficulties or underperformance of the accountants ceased in early 2018 and thereafter there was no excuse for the failure.

*(3) (i) Overpaid Tax*

51. To my mind it is not relevant that Mr Sandercock may have had tax deducted under the CIS scheme which he could set against tax due. The issue before me is not what tax was payable, but why he was late with his tax return.

(3) (ii) Mr Sandercock's brother's appeal

52. NJB Taxback argued that HMRC allowed the appeal of Mr Sandercock's brother in similar circumstances. I do not consider that relevant to the resolution of this appeal, which must be made in the light of Mr Sandercock's actions and circumstances only.

*(3) (iii) Mr Sandercock now appointed good accountants and put matters on a good footing.*

53. NJB Taxback acted with expedition after they were appointed. Within three months they had prepared and submitted the returns and put Mr Sandercock's affairs on a regular basis. I accept that three months was a reasonable time for doing that (although I found that in relation to the application to make an appeal against the 2013/14 penalties that the delay in the making of the appeal of three months was not a good reason: there is a difference between gathering the information to make a return and writing a letter making an appeal).

54. The legislation provides relief for the penalty only if there is a reasonable excuse for delay. Putting things right for the future avoids future penalties, but is no help in avoiding past ones.

55. I should note that paragraph 16 schedule 55 provides for a reduction of a penalty in special circumstances. I saw no circumstances which warranted such a deduction.

## **Conclusion**

56. I conclude that from 31 January 2016, when the returns were due, until at the latest 31 October 2017 Mr Sandercock had a reasonable excuse for his failure to deliver his return (being first his mother's care and death and then his accountants' failures), but that thereafter, until the appointment of NJB Taxback, he did not, and that after 31 October 2017 he did not act without unreasonable delay. I therefore find that paragraph 23 affords no relief.

57. I dismiss the appeal

## **Rights of Appeal**

58. 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.



**CHARLES HELLIER**

**TRIBUNAL JUDGE**

**RELEASE DATE: 8 October 2019**

**APPENDIX**

**Parts of the 9 August 2019 Decision and Direction.**

**The absence of the Appellant**

1. At 2pm, the time fixed for the start of the hearing, Mr Marshall was present but Mr Sandercock was neither present nor represented.

2. The tribunal's clerk rang Mr Sandercock and spoke to him. Mr Sandercock confirmed he was resident at the address on the tribunal's file but he told the clerk that he had had no notification of the hearing. He knew that the penalties were being appealed but he did not realise that he would have to turn up to the hearing. He said that he would be content for the tribunal hearing to go ahead in his absence.

3. Mr Marshall told me that in the previous week he had discussed the appeal with Mr Brown (the agent specified on Mr Sandercock's notice of appeal to the tribunal) who had said that he had received the bundle for the hearing and was going to attend. In the bundle before me there was a copy of an attendance note of an earlier call between Mr Marshall and Mr Brown in which Mr Marshall records that he explained the tribunal process and date and that the bundle would be "sent out this week".

4. At 2.30pm the tribunal's clerk managed (after an earlier unsuccessful attempt) to speak to Mr Brown on the phone. Mr Brown said that he knew that there was to be a hearing but he had not been notified that he was to attend. He acknowledged that he had been sent the bundles on 11 July but he was unaware, and had had no correspondence from the tribunal indicating, that he had to attend. He would have attended if he had been told.

5. The tribunal's file shows that two letters had been sent to Mr Sandercock on 2 April 2019, one acknowledging his notice of appeal and the other noting that his notice of appeal had been filed by Mr Brown's firm but that Mr Sandercock had not provided an authority for the tribunal to deal with that firm; that letter enclosed a form of authorisation which Mr Sandercock was asked to complete and return. The tribunal's file contained no response to those letters. The fact that that form had not been returned to the tribunal explains why Mr Brown had heard nothing from the tribunal about the hearing. The file also showed that a letter advertising the date and time of the hearing had been sent to Mr Sandercock on 8 May 2019. All the letters were sent to the address on Mr Sandercock's notice of appeal.

6. It seemed to me to be unlikely that all three of these letters had not been received by Mr Sandercock, given in particular that fact that Mr Brown knew a hearing was to take place. It may have been that Mr Sandercock misunderstood them and failed to pass

them on to Mr Brown. I concluded that notice of the appeal had been properly served on Mr Sandercock.

7. Having considered the grounds in the notice of appeal and the evidence in the bundles I considered that it was just to continue with the hearing, but, as will become apparent in relation to the issues surrounding 2014/15, on the basis that Mr Sandercock be given the opportunity to provide further evidence in writing in relation to aspects of the appeal where, had he been present, his evidence would have been key to the resolution of the appeal in relation to that year.

8. This document takes the form of a Decision in relation to Mr Sandercock's application to appeal out of time in relation to 2013/14 and a Direction requiring Mr Sandercock to provide further evidence, in relation to 2014/15. After considering the evidence provided in response to the Direction I shall provide a Decision in relation to 2014/15. That decision may incorporate some of the material in this document.

### **The Matters before the tribunal**

9. Mr Sandercock seeks to appeal against penalties assessed under Sch 55 Finance Act 2009 for the late delivery of his tax returns for the years 2013/14 and 2014/15. In relation to both years the penalties comprise: a £100 late filing penalty, ninety £10 penalties (one for each day's lateness after the first 3 months), a £300 penalty for being more than 3 months late, and a £300 penalty for being more than a year late. That is to say £1,600 in respect of each year and £3,200 in total.

10. Mr Sandercock made his appeal to HMRC in respect of both years on 18 September 2018.

...

### **2014/15**

24. Mr Sandercock wrote to HMRC about the penalties for this and other years on 18 September 2018 and sent a formal appeal form to HMRC (completed I believe with Mr Brown's firm's help) dated 12 October 2018. HMRC wrote back on 9 November 2018 saying that they had considered his appeal for 2014/15 but did not consider that he had a reasonable excuse for the whole period of his delay in submitting his return. Mr Brown's firm sought a review and HMRC provide one on 17 December 2018, confirming the earlier decision. The review letter indicated that if Mr Sandercock disagreed he could appeal to the tribunal.

25. Mr Sandercock's first intimation of his appeal in relation to 2014/15 was made more than 1 ½ years after the last of the penalties was assessed and was therefore late. But it seemed to me, and Mr Marshall did not dissent from the proposition, that the letters from HMRC indicated that HMRC had agreed to the late appeal.

26. As a result the issue before me in relation to 2014/15 is not whether to give permission for a late appeal but whether his appeal against those penalties should be allowed in whole or part.