



[2020] UKFTT 0050 (TC)

TC07546

LATE APPEAL – Martland considered – length of delay is serious and significant – no good reason for delay - in all the circumstances fairness and justice do not support an extension of time – application refused

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2019/01396

BETWEEN

JAMES SWALLOW

Appellant

-and-

**THE COMMISSIONERS FOR
HER MAJESTY’S REVENUE AND CUSTOMS**

Respondents

**TRIBUNAL: JUDGE DAVID BEDENHAM
DUNCAN MCBRIDE**

Sitting in public at Taylor House, London on 9 December 2019

The Appellant did not appear and was not represented

Jennifer Southern, litigator of HM Revenue and Customs’ Solicitor’s Office, for the Respondents

DECISION

INTRODUCTION

1. This is an application by the Appellant for permission to appeal out of time against penalties arising from a failure to comply with an information notice issued pursuant to paragraph 1 of Schedule 36 to the Finance Act 2008 (“FA 2008”).
2. The Appellant did not attend the hearing, and made no contact with the Tribunal service to request an adjournment. Tribunal staff attempted to telephone the Appellant on the telephone number provided on the notice of appeal. It was not possible to get through to him on that number.
3. We are satisfied that the Appellant had been notified of the hearing. A listing notice was sent to him by email on 10 September 2019.
4. We are also satisfied that it is in the interests of justice to proceed with the hearing. This is the Appellant’s application and it was incumbent on the Appellant to attend and seek to make out his case. HMRC was here and ready to proceed.

BACKGROUND

5. The Appellant is an accountant
6. On 15 December 2015, HMRC notified the Appellant by letter that it had opened a check into his 2014/15 tax return.
7. On 20 January 2017, HMRC issued the Appellant with an information notice pursuant to paragraph 1 of Schedule 36 FA 2008. This required the Appellant to provide certain information and documentation by 24 February 2017. The notice warned that failure to comply could lead to the imposition of penalties without further warning.
8. During early March 2017, HMRC contacted the Appellant to enquire whether he intended to comply with the information notice, and to warn him that arrangements were being made to raise a penalty for non-compliance.
9. On 11 March 2017, the Appellant stated that he would get a reply to HMRC “next week”.
10. On 14 March 2017, the required documentation and information not having been provided, HMRC issued the Appellant with a penalty in the sum of £300 pursuant to paragraph 39 of Schedule 36 FA 2008.
11. On 25 March 2017, the Appellant provided a response to the information notice. Further correspondence then passed between HMRC and the Appellant, and the Appellant provided further documentation and information. However, HMRC remained of the view that the Appellant had not fully complied with the information notice, and accordingly issued him with the following further penalties pursuant to paragraph 40 of Schedule 36 FA 2008:
 - (1) £1,290 on 28 April 2017 (for the period 15 March 2017 – 26 April 2017);
 - (2) £2,160 on 21 June 2017 (for the period 27 April 2017 – 19 June 2017); and
 - (3) £2,320 on 18 August 2017 (for the period 20 June 2017 – 16 August 2017).
12. Each of the penalties was notified by letter that stated:

“If you disagree with our decision, you can appeal. You need to write to us within 30 days of the date of this notice, telling us why you think our decision was wrong. We will then contact you to try to settle the matter.”

13. Further information notices were issued to the Appellant on 17 August 2017 and 22 December 2017. However, none of the penalties that the Appellant seeks to appeal relate to those further information notices.

14. In October 2017, HMRC and the Appellant corresponded in relation to the ongoing check into the Appellant's tax return. A meeting between HMRC and the Appellant was arranged for November 2017.

15. On 28 October 2017, the Appellant wrote to HMRC in the following terms:

“Thank you for your letter dd 27th October, RECEIVED 4 November.

Are you bastards saying you have put £7,000 of penalties on my account???What the fuck for??

Please accept this letter as my appeal, and request for some sensible engagement instead of bollocks.”

16. On 14 November 2017, the parties met to discuss the ongoing check into the Appellant's tax return. During that meeting the Appellant stated he wished to appeal against the penalties. The Appellant was then informed that as he was outside the 30 day deadline he would need to explain why his appeal was late and should also provide grounds of appeal.

17. On 5 January 2018, the Appellant wrote to HMRC stating:

“I refer to my letter of appeal...Please accept this as my appeal against the penalties raised. I consider I replied fully to your detailed questions utilizing the limited resources at my disposal to find all the information requested. The penalties raised are grossly disproportionate to any perceived offence committed by myself.”

18. Further correspondence passed between the Appellant and HMRC, ultimately leading HMRC to write to the Appellant on 16 March 2018 stating:

“The law says that when you appeal to HMRC you must do so within [30 days of the date the decision was sent to you]. We may accept a late appeal if:

You had a reasonable excuse for not appealing within the time limit, and you appealed as soon as you could after the excuse ended.

...

The reasons you have given do not appear to me to satisfy these requirements because you have not provided any information to suggest that you could not have adhered to the 30 day time limit...Simply being too busy is not a reasonable excuse.

...

You have the right to ask an independent tribunal to rule that HMRC must accept your late appeal. To do this, you should write to the Tribunals Service. You can find out more about tribunals, including the appeal form, on the Tribunals service website www.justice.gov.uk/tribunals/tax or you can phone them on 0300 123 1024...”

19. Any appeal to the Tribunal should have been made within 30 days of the 16 March 2018 decision. Whilst we note that the deadline for appealing to the Tribunal was not stated in the 16 March 2018 letter, this information is readily available on the Tribunal's website to which the Appellant was referred.

20. In late 2017 and early 2018, the Appellant provided further information in relation to his tax affairs. On 4 May 2018, HMRC completed its check into the Appellant's 2014/15 return. HMRC did not seek to amend the Appellant's tax return in any way.

21. On 6 March 2019, the Appellant filed with the Tribunal an appeal against the penalties and an application for an extension of time in which to bring that appeal.

APPELLANT'S SUBMISSIONS

22. In his notice of appeal, in the section headed "reason for late appeal", the Appellant stated:

"My SA Return for 15/16 was examined by your Officer Wedgwood. She was unhappy that I was slow in replying to her very detailed questions, so she imposed penalties of £6,070 per attached.

The outcome of the investigation was that my return was correct. I then requested that she cancel the penalties but she refused over the telephone, and also after writing. I recently telephoned the tax office, and was instructed to appeal this way.

In addition, the penalties have been backdated to 5 April 2015, not the date they were raised which seems incorrect.

The amount of the penalties is disproportionate to any possible offence I may have committed."

23. The Appellant repeated the same text in the "grounds of appeal" section of the notice of appeal.

24. In a document submitted to the Tribunal, the Appellant stated that the penalties were unfair because he was not given adequate time to comply with the information notice. He also stated:

"...I run a marginally profitable accounting practice, and...have to always clear work first, in order to keep my clients compliant. As I work long hours this meant I was having trouble getting time to respond.

After the imposition of such unfair penalties, I agree I felt overwhelmed and that it was all pointless anyway. HMRC's attitude throughout was that I should cease my day job, and work full time extracting all the information demanded. I agree my affairs may not look simple, but I did my best in extremely stressful personal circumstances as I explained to HMRC.

I would also ask you to bear in mind that the outcome of the entire investigation was that there were no errors at all in my tax returns..."

25. In a further document submitted to the Tribunal, the Appellant stated:

"The reason this late appeal was launched was because I received a legacy, so I can now settle the outstanding liability against me. I spoke to the call centre and requested reconsideration of the penalties on my account, but was told this could not be entertained as I had not appealed in the correct manner against them. A colleague then explained to me that she had recently discovered that appeals now had to be submitted through an online system, and explained to me how to do it, and indeed encouraged me to request my appeal be heard."

26. Because the Appellant did not attend, we did not have the opportunity of exploring with him further the reasons for his delay in appealing to the Tribunal.

HMRC'S SUBMISSIONS

27. HMRC's submissions were as follows:

- (1) the delay in appealing to the Tribunal was over 10 months. This is significant and serious;
- (2) no good reason has been advanced for the delay;
- (3) taking into account all the circumstances, the application to admit the late appeal should be refused. There needs to be finality to this matter; and
- (4) the merits of an appeal should only be taken into account if they are clear cut. In the present case, the Appellant's case is unmeritorious.

RELEVANT LAW

28. In *Martland v HMRC* [2018] UKUT 178 (TCC), the Upper Tribunal held at paragraph 44 that when considering applications for permission to appeal out of time, the Tribunal can usefully follow the three-stage process set out in *Denton and Ors v TH White Limited and Ors* [2014] EWCA Civ 90.

DISCUSSION AND DECISION

29. The first stage of the *Denton/Martland* process requires us to identify the breach and assess its seriousness. The breach in question is the failure to file an appeal within the statutory deadline. The Appellant should have filed his appeal with the Tribunal by 16 April 2018. He did not file it until 6 March 2019. We consider a delay of this length to be significant and serious.

30. The second stage of the *Denton/Martland* process requires us to consider the reasons why the default occurred.

31. Beyond asserting that he worked long hours, thought the penalties unfair and was "overwhelmed", the Appellant has not put forward any reason for the significant delay in filing his appeal with the Tribunal. On the facts of this appeal, we are not satisfied that working long hours or feeling "overwhelmed" constitute good reasons for the late appeal. The Appellant has not satisfied us that he was in such a state of emotional or other distress that he was unable to engage and comply with the statutory time limit for over 10 months. To the extent that the Appellant submits that he did not (until provided with information by a colleague) know how to commence an appeal, we do not accept this is a good reason. The decision letter of 16 March 2018 referred the Appellant to the Tribunal's website. That website clearly explains how to commence an appeal (and the deadline within which appeals need to be filed).

32. The third stage of the *Denton/Martland* process requires us to consider all the circumstances of the case so as to ensure that the application is dealt with fairly and justly. In addition to the seriousness of the breach and the absence of a good reason for it, we also consider that the need for finality of litigation points towards refusing the application.

33. We acknowledge that refusing this application means that the Appellant will be unable to proceed with his appeal. But this cannot, in and of itself, justify admitting a late appeal. This is not a case where the merits of the Appellant's appeal are so clear cut that it would be appropriate to factor in those merits when deciding whether to extend time. We note here that the Appellant's submission that the penalties have been backdated to 5 December 2015 appears to us to be misguided given that the earliest dates that daily penalties were imposed for were 15 March 2017 – 26 April 2017.

34. For all the reasons above, the Appellant's application is refused.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

35. 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.

**DAVID BEDENHAM
TRIBUNAL JUDGE**

RELEASE DATE: 23 JANUARY 2020