



**TC07853**

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**Appeal number: TC/2020/01526P**

*PAYE - late payment penalties under Schedule 56 Finance Act 2009 - whether reasonable excuse*

**BETWEEN**

**BEST SOLICITORS**

**Appellant**

**-and-**

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

**Respondents**

**TRIBUNAL: JUDGE MARILYN MCKEEVER**

The Tribunal determined the appeal on 23 August 2020 without a hearing under the provisions of Rule 26 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (default paper cases) having first read the Notice of Appeal dated 16 April 2020 (with enclosures), HMRC's Statement of Case acknowledged by the Tribunal on 29 June 2020 and the Appellant's Reply dated 17 August 2020. I also considered the Document Bundle of 37 pages and the Legislation and Authorities Bundle of 82 pages, both prepared by HMRC.

## DECISION

### Introduction

1. This case concerns an in time appeal by the appellant against a penalty charged under Schedule 56 Finance Act 2009 (Schedule 56) for the late payment of tax under PAYE for the tax month ending 5 November 2019.
2. The penalty charged is £416.09 being 2% of the total income tax and National Insurance Contributions due of £20,804.73.
3. The obligation to make payments under the PAYE regime is set out in the Income Tax (Pay As You Earn) Regulations 2003 (the “Regulations” and references to a “Regulation” are to one of the Regulations).
4. Regulation 69 requires an employer to pay the amounts due within 17 days of the end of the tax period where payment is made by electronic means and within 14 days of the end of the tax period in other cases. In the present case, the tax period is the tax month ie from the 6th of one month to the 5th of the next. This means that payment must be made by the 22nd of the month by electronic means or by the 19th of the month if paying by another method.
5. Paragraph 6 of Schedule 56 provides that a penalty is due if a PAYE payment is not made on or before the due date. The amount depends on the number of defaults in the tax year. The first default is not treated as a default. The penalty on the first three defaults after that (ie defaults 2, 3 and 4) is 1% of the amount due. The penalty on the next three defaults (defaults 5-7) is 2% of the amounts due and there are further increases for further defaults.
6. HMRC contend that the payment for the tax month ending 5 November 2019 was paid late and that this was the appellants’ seventh default in the tax year. Accordingly, the penalty charged, on 10 March 2020 was 2% of the amount due.
7. The appellant’s grounds of appeal may be summarised as follows:
  - (1) The appellants contend that they made payment “in accordance with the time frame given”. The appellants paid by cheque.
  - (2) HMRC failed to present the cheque in a timely manner.
  - (3) HMRC initially denied receiving the cheque and the appellants paid again, electronically.
  - (4) The cheque was cashed the following day, so they paid twice in the same month for the PAYE and have had no recompense.
  - (5) The problem arose through HMRC’s poor practices.

### FINDINGS OF FACT

8. The Appellants paid their PAYE by cheque. Under Regulation 69, payment must be made within 14 days of the end of the tax period ie, in this case, by 19 November 2019. HMRC recommend that where an employer pays by cheque they allow at least three days for it to be delivered in the post.
9. HMRC’s computer records show that the appellants’ cheque for November was received on 11 December 2019. This is regarded as the “effective date of payment” although there was a substantial delay in banking the cheque and it was not cleared until 12 February 2020.

10. The appellants have not provided any information as to when they posted the cheque, other than saying that payment was made “in accordance with the time frame given”. They do not say what time frame they were working to.
11. The appellants say they made contact with HMRC and were told the cheque had not been received, were advised to pay electronically and did so. They also say that the cheque was cleared the next day. They do not give the date when they made contact.
12. HMRC’s records indicate that the appellant contacted HMRC’s Debt Management office on 17 December 2019. As the cheque had not been processed and banked, it did not show up on HMRC’s system. I find that the date of contact was 17 December 2019.
13. The cheque did not clear the “next day”. It was processed and cleared on 12 February 2020, but the effective date of payment, for penalty purposes was when it had, in fact, been received on 11 December 2019.
14. The cleared funds were allocated against the November 2019 payment. The second payment, which was made on 17 December 2019 was allocated partly against the January 2020 payment due with the balance being allocated to the February 2020 payment.
15. In the absence of any information about timing from the appellant, I find, on the balance of probabilities that the cheque for the November PAYE payment, due by 19 November 2019 was received by HMRC on 11 December 2019. Payment was therefore 22 days late. Payment by electronic means could be made up to 22 November. The second payment was made, electronically on 17 December and so was not in time.
16. The appellants did not pay the November PAYE twice, but the second payment was used to make advance payments of their January and February liabilities.

### **Discussion**

17. I have found that the November 2019 PAYE payment was made on 11 December 2019. It should have been made by 19 November 2019 as it was made by cheque. Payment was therefore late and subject to considerations of “reasonable excuse” and “special circumstances” the penalty is properly due.
18. Paragraph 16 of Schedule 56 provides that no penalty is due if the appellant has a reasonable excuse for the failure to make payment on time.
19. The Upper Tribunal in the case of *Perrin v HMRC* [2018] UKUT 156 (TCC) set out guidance for this Tribunal on the approach to “reasonable excuse”. The Upper Tribunal said:

“When considering a “reasonable excuse” defence, therefore, in our view the FTT can usefully approach matters in the following way:

(1) First, establish what facts the taxpayer asserts give rise to a reasonable excuse (this may include the belief, acts or omissions of the taxpayer or any other person, the taxpayer’s own experience or relevant attributes, the situation of the taxpayer at any relevant time and any other relevant external facts).

(2) Second, decide which of those facts are proven.

(3) Third, decide whether, viewed objectively, those proven facts do indeed amount to an objectively reasonable excuse for the default and the time when that objectively reasonable excuse ceased. In doing so, it should take into account the experience and other relevant attributes of the taxpayer and the situation in which the taxpayer found himself at the relevant time or times. It might assist the FTT, in this context, to ask itself the question “was

what the taxpayer did (or omitted to do or believed) objectively reasonable for this taxpayer in those circumstances?”

(4) Fourth, having decided when any reasonable excuse ceased, decide whether the taxpayer remedied the failure without unreasonable delay after that time (unless, exceptionally, the failure was remedied before the reasonable excuse ceased). In doing so, the FTT should again decide the matter objectively, but taking into account the experience and other relevant attributes of the taxpayer and the situation in which the taxpayer found himself at the relevant time or times.”

20. The appellants have not established any fact that might amount to a reasonable excuse. They have provided no indication of why payment was late. They have not said when they thought payment was due or when the cheque was posted. Their only submission, unsupported by any evidence, is that they “made payment in accordance with the time frame given”.
21. The remainder of their grounds of appeal focus on HMRC’s delays in processing the cheque and the issue of the second payment. Whilst any inefficiency on the part of HMRC is regrettable, it does not alter the fact that the November 2019 PAYE payment was already late when these things happened (or did not happen). These subsequent events cannot affect the validity of the penalty for late payment which was already due.
22. The appellants would appear to have had previous problems with payment by cheque. This was their seventh default in the tax year and penalties had previously been charged. A conscientious taxpayer would have made quite sure they posted their cheque in good time before the deadline, or would have made payment electronically which gives them extra time and is not susceptible to postal delays.
23. Having taken all the evidence into account, I am not satisfied that Best Solicitors has proved, on the balance of probabilities, that they had a reasonable excuse for their failure to pay their November 2019 PAYE liability on time.
24. HMRC considered whether there were any “special circumstances” which would permit them to reduce the penalties. They concluded that there were no special circumstances.
25. I can only interfere with that decision if it was “flawed” in the judicial review sense. I consider that HMRC’s decision on special circumstances was not flawed and, accordingly must stand.

### **Conclusion**

26. For the reasons set out above I have concluded that the appellant’s November 2019 PAYE payment was late and that they had no reasonable excuse for that lateness. Accordingly, the penalty is properly due.
27. I therefore dismiss the appeal.

### **RIGHT TO APPLY FOR PERMISSION TO APPEAL**

28. 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.

**MARILYN MCKEEVER**

**TRIBUNAL JUDGE**

**RELEASE DATE: 28 SEPTEMBER 2020**