



TC02900

Appeal number: TC/2013/00639

INCOME TAX – Penalty – late payment of PAYE and NICs – FA 2009, Schedule 56 – whether payments made in time – reasonable excuse for late payment – no – whether any special circumstances existed to justify a reduction in the penalty amount – no – appeal dismissed.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

EDIT 123 (TELEVISION FACILITIES) LIMITED

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE ANNE SCOTT, LLB, NP
HELEN M DUNN, LLB**

**Sitting in public at Wellington House, 134-136 Wellington Street, Glasgow on Friday
19 July 2013**

**Having heard Mr Colin Seeley for the Appellant and Ms Chris Cowan, Officer of
HMRC, for the Respondents**

DECISION

Introduction

1. This is an appeal against a penalty assessment (as amended) of £7,836.46, imposed under Schedule 56 of the Finance Act 2009 ("Schedule 56") in respect of the late payment by the appellant of monthly payments of PAYE and National Insurance contributions ("NICs") in respect of 11 months of the year ending 5 April 2012.
2. The dates and amounts of the PAYE payments due and made were not in dispute. The main issues in this appeal were whether the payments were late and if so whether the appellant had a "reasonable excuse" for the late payments.
3. In the Notice of Appeal the appellant argued that the payments were always sent by first class post (which should arrive at its destination the day after posting) in HMRC envelopes on the 18th of the month. They could not be held accountable for postal delays or failures in the administration of HMRC. The July 2011 payment cleared their bank account on 22 July 2011, which is the date for payment by direct debit, and the facility to pay by direct debit has taken the postal system out of the equation.

Background

4. With effect from 6 April 2010, a new penalty regime was introduced by Schedule 56 for late payment of monthly PAYE and NIC by employers. Previously, there was a mandatory electronic payment surcharge on large employers (those with over 250 employees). The surcharge ranged from 0% to 0.83% of the amount paid late and depended on the number of defaults in any one year. It was therefore possible for many employers to delay payments to HMRC without incurring any material penalty. Parliament decided that this could not continue.

The current legislation

5. Schedule 56 Finance Act 2009 changed the position by imposing penalties for late payment of PAYE. The detail of the legislation, so far as material, is annexed at Appendix 1.
6. The penalties under Schedule 56 are based on a sliding scale as shown in the table below. The penalty varies as provided by paragraph 6, subparagraphs (4) to (7). The first default in any year is disregarded altogether. The remaining defaults trigger a penalty of 1%, 2%, 3% or 4% depending on their number. A 4% penalty is payable if there are ten or more defaults during the tax year.

Number of failures.	Penalty
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1	no penalty providing the payment is less than six months late
2-3	1%
4-6	2%
7-9	3%
10 or more	4%

7. The penalty will not be levied if (a) a time to pay agreement has been agreed in advance of the due date(s), (b) there are "special circumstances" in terms of paragraph 9 Schedule 56 or (c) the Appellant can establish that there was a reasonable excuse for each or any default, and that each payment was made as soon as the reasonable excuse ended.

Burden of proof

8. HMRC rightly accepted that the burden of proof rests with it to satisfy the Tribunal that the appellant has failed to pay its taxes on time.

9. The burden of proof in regard to whether or not there was a reasonable excuse for late payment lies with the taxpayer.

HMRC's arguments

10. The new penalty regime was widely publicised both before and after it came into effect. The employer pack was mailed to all employers in February 2010 and details were placed on the HMRC website. The Employer Bulletin (Document 74 main bundle) issued in April 2010 explaining the new regime is quite explicit:- "If you prefer to send a cheque by post we recommend you post it at least three working days before the payment is due. We are not responsible for any delays caused by the postal system and a penalty may be due if your payment does not reach us in time."

11. HMRC relied on *Knowledge Limited v HMRC* TC/2012/06374 ("*Knowledge*") and *Rogers Concrete Limited v HMRC* TC/2010/01197 ("*Rogers*") which are First-tier Tribunal cases and therefore not binding but simply persuasive. In *Knowledge*, the Tribunal found that the belief that something posted by second class post on the 17th of the month was always going to arrive by the 19th of the month was not reasonably held. In the latter case the cheques were sent by first class post by the 17th or 18th of the month and the Tribunal found that although occasional delays in the post do occur, it seemed unlikely that the cheques would repeatedly be recorded by HMRC as being received late unless they were posted too late to be received by the 19th of the month.

Arguments for the Appellant

12. It was argued for the appellant that 93% of first class mail traffic arrives the following day. The appellant relied on *CED Limited v HMRC* TC/2012/00982 (“*CED*”) where the Tribunal found that unless there were exceptional circumstances an appellant would have a reasonable excuse if the mail did not arrive the next day.

13. Mr Docherty produced copy press reports from the Bradford Telegraph and Argus highlighting strike action in tax offices on 8 and 9 March 2010, 8 June 2011 and 26 June 2012 and argued that therefore the mail might not be opened promptly. Further, he suggested that cuts in staffing levels meant that cheques were not processed when received. He also suggested that cheques might have been posted earlier than the 18th of each month, or the date on the cheque might not be the date on which it was posted.

14. In a letter dated 18 June 2013 to HMRC it was argued that HMRC had not acted fairly in only sending the Penalty Notice to the appellant in November so they had been unaware that the penalty was accumulating.

Findings in Fact and Reasons for Decision

15. The appellant has been in business for some 28 years and had accumulated a large number of pre-paid HMRC envelopes, which were utilised to remit payments issued on the 18th of every month.

16. HMRC found that the appellant was late in paying its monthly PAYE and NICs to HMRC in every month of the 2011-12 tax year except for the last. The first default month is disregarded in accordance with the rules set out in Schedule 56. Therefore, there were ten defaults for which penalties were calculated and a Penalty Notice was issued on 6 November 2012.

17. It was common ground that the due date for payment of the PAYE and NIC was the 19th day of each month and the appellant did not dispute the amounts. The dispute was entirely about the date of payment. HMRC produced a table setting out the date and day of the week for each cheque and the dates and days of the week that the cheques were “processed” and received. The appellant had produced a record of the dates that the cheques cleared his bank. The following Table is a collation of that information for all of the tax periods in dispute.

Tax month	Cheque dated	Day of week	Cheque processed	Day of week	Date of receipt	Day of week	Cheque cleared
1	18/05/11	Wed	23/05/11	Mon	21/05/11	Sat	25/05/11
2	18/06/11	Sat	23/06/11	Thurs	23/06/11	Thurs	27/06/11
3	18/07/11	Mon	20/07/11	Wed	20/07/11	Wed	22/07/11

4	18/08/11	Thurs	23/08/11	Tuesday	23/08/11	Tues	25/08/11
5 *	17/09/11	Sat	26/09/11	Mon	24/09/11	Sat	28/09/11
6	18/10/11	Tues	20/10/11	Thurs	20/10/11	Thurs	24/10/11
7	18/11/11	Fri	22/11/11	Tues	22/11/11	Tues	24/11/11
8	16/12/11	Fri	22/12/11	Thur	22/12/11	Thur	28/12/11
9	18/01/12	Wed	23/01/12	Mon	21/01/12	Sat	25/01/12
10	18/02/12	Sat	23/02/12	Thur	23/02/12	Thur	27/02/12
11	17/03/12	Sat	21/03/12	Wed	21/03/12	Wed	23/02/12

* payslip dated 18 September 2011

Were the payments late?

18. Ms Cowan for HMRC made it quite explicit in the course of the hearing, that Mr Seeley had demonstrated integrity throughout all of his dealings with HMRC. We found him to be a credible and articulate witness. At the outset of the proceedings Mr Seeley confirmed that the letter that he had written on 28 November 2012 to HMRC was entirely correct. That letter stated “All our payments were sent to HMRC on the 18th of each month as we have done for many years”. He was explicitly asked whether or not he always posted the cheques on the 18th of the month, even if that fell on a Sunday. He said that he could not say that he would have posted the cheque on, say, the preceding Friday and that he would have to say that, in general, his letter was correct. He said that all cheques were put in pre-paid HMRC envelopes.

19. In his oral evidence Mr Seeley confirmed that in the case of month 12, although the cheque was dated 18 April 2012 and was recorded as received by HMRC on 18 April 2012, he had in fact posted it early because his mother had been very unwell.

20. He also conceded that the cheque for month 5 had been issued on 19th September and that the notes of telephone calls (Documents 28 and 32 main bundle) were probably accurate although he did not recall the detail.

21. HMRC had produced a note of a telephone call dated 23 September 2011 at document 28 and that read “TPU rang Mr Seeley 23 September 2011 who advised payment of £17974.53 had been sent by cheque 19 September 2011. Mr Seeley believed that as he was posting the cheque on the 19th then this would be OK. TPU explained the latest due date by cheque is the 19th and payment has to be on the account by this date. TPU confirmed that payments on months 1 to 4 had all been made late and educated on penalties.”

22. We are wholly unpersuaded by Mr Docherty’s argument that some of the cheques might have been posted before the date on the cheque. His argument was predicated

on the fact that in month 12 the cheque was recorded as received on the day it was issued. Firstly, and obviously, we believed Mr Seeley and his evidence on this point was very clear. Secondly, in fact, the reverse position is what actually happened in at least one month. In tax month 5 although the cheque was dated 17 September 2011, the payslip with it was dated 18 September 2011 and Mr Seeley conceded that the envelope was posted on 19 September 2011. The note of telephone call confirms that.

23. Ms Cowan gave a very clear account of how HMRC deal with the cheques that they receive. It was entirely consistent not only with the dates recorded in the tables produced but also with the appellant's own records. Where a cheque is received on a Monday, then the taxpayer is given the benefit of the doubt and the cheque is recorded as having been received on the preceding Saturday, which is not a working day, and that happened in months 1, 5 and 9. However, in each case that was still after the due date so the cheques were still late.

24. The cheques were processed by HMRC on the Monday in those months and cleared by the appellant's bank on the Wednesday, which is the expected three working days later. In fact, in every month the date for the cleared funds was precisely three working days from the date HMRC record that the cheque was processed. As in the case of *Rogers* at paragraph 53, the Tribunal finds that the HMRC records as to the dates for the 11 late payments is consistent with the evidence for the appellant as to the dates on which the funds cleared the bank account, assuming the usual clearing period of three days.

25. The Tribunal finds it inherently unlikely that, with the exception of month 12, the cheques would have been issued earlier than the date on the cheque. It seems very unlikely that all of these payments would have been recorded as being late if they had been posted earlier than the 18th of the month. In any event Mr Seeley was clear that he stood by his letter saying payments were posted on the 18th of the month. Mr Seeley was also very clear that the only month in which he made a payment early was in month 12 because of his mother's illness. It was his policy not to pay early.

26. We accepted Mr Seeley's evidence and therefore, even if it were assumed that first class delivery would ensure that the cheque would be received by HMRC the day following posting, it is abundantly clear that in months 2, 5, 10 and 11 the following day was a Sunday and there is no postal delivery on a Sunday. Those payments must have been late on any analysis.

27. What about the other months? The only record in regard to posting the cheques is Mr Seeley's evidence. It is obvious that Mr Seeley was aware of the significance of the 19th of the month. He had been very clear that the appellant had no cash flow problems and the money was there to make the payments. He was equally clear that "No-one pays early" which is a perfectly reasonable stance. We accept that because he did not wish to pay earlier than necessary, he intended to send the cheques on the 18th of the month. However, it is clear that that slipped on at least one occasion in month 5, where the cheque was issued on Wednesday 19th September. Further the record of telephone call indicates that, at least as at that date, he thought that he would be in time if he sent the cheque on the 19th. That month also makes it clear that the

date on the cheque is not necessarily an accurate record of the date on which the cheques were posted. We find that with the exception of month 12 the cheques were not issued earlier than the 18th of the month. It was the clear policy of the appellant to aim to pay by the 19th of the month and not a day earlier.

5 28. Occasional significant delays in the post do occur but it is very unlikely that it would have happened every month. We did consider the copies of press reports highlighting strike action in tax offices on 8 and 9 March 2010 and 8 and 25 June 2012, which were tabled by Mr Docherty for the appellant, in apparent support of the proposition that mail might not be opened promptly. We are dealing with the tax year
10 starting on 6 April 2011 and ending on 5 April 2012 so only the strike action on 8 June 2011 could possibly be relevant. That is month 2 and since the cheque was posted on Saturday 18 the cheque would have been late regardless.

15 29. We did not accept Mr Docherty's argument that cuts in staffing levels might mean that cheques were not processed when received. As we indicate in paragraph 23 above, we accepted Ms Cowan's evidence that where a cheque was not processed (banked), it was the date of receipt that was recorded and the taxpayer was given the benefit of the doubt in regard to non-working days and bank holidays.

20 30. Looking at all of the evidence, the most likely explanation, quite simply, is that with one exception, the cheques were certainly not posted before the 18th of the month and that they were in fact posted too late to be received by the 19th of the month. On the balance of probability, we find that the cheques reached HMRC on the dates recorded as date of receipt. For that reason we consider that the deeming provision of section 7 Interpretation Act 1978 does not apply as we find that HMRC have established that the payments were made late.

25 **Was there a reasonable excuse?**

30 31. It was argued for the appellant that Royal Mail's stated aim is to deliver 93% of 1st Class mail on the next working day after posting and therefore it was reasonable to expect that the cheques would arrive the next day. HMRC pointed out that on the same page on the website it states clearly "1st Class is not a guaranteed next day service".

35 32. The appellant relied on *CED Limited v HMRC TC/2012/00982* ("CED") where the Tribunal found that unless there were exceptional circumstances an appellant would have a reasonable excuse if the mail did not arrive the next day. We are not bound by that case, although it is persuasive, but it can be clearly distinguished from
40 this Appeal on the facts. In that case the Tribunal found as a fact that the witness was aware of the impact of weekends and bank holidays and that allowance had to be made therefor. In particular he was aware that if the 19th of the month fell on a weekend or bank holiday then the payment had to reach HMRC on the last bank working day before the 19th so he would issue the cheque two or three days before the 19th. He had a system. By contrast, it was quite clear that Mr Seeley had not appreciated the impact of non-banking days or weekends.

33. A crucial differentiating factor is that by no later than the telephone call in month 5, Mr Seeley had been made aware that all of the payments for the preceding four months had been late, the payment for September was late, that payments had to be received by the 19th of each month and that he would incur penalties for the late payments. There is no definition of “reasonable excuse” but to paraphrase Lord Donaldson MR in *HMRC v Steptoe* [1992] STC 757 AT 770, there can only be a reasonable excuse where the taxpayer exercises reasonable foresight, due diligence and a proper regard for the fact that tax will become due and payable.

34. The Revenue guidance, which is widely available, is clear that three working days would be appropriate if paying by cheque. That is not binding in any way. It is simply an indication of the steps that should be taken by a prudent taxpayer. However, it is also clear that Mr Seeley may have thought that by adhering to the practice of paying on the 18th that had worked in previous years, he would not have a problem. However, the fact is that, unlike in *CED* which was the primary plank of the argument for the Appellant, there was not a system in place to ensure that payments were made timeously having due regard to weekends and bank holidays. No provision was made for Christmas post. The Appellant’s practice was not based on an assumption that first class post would arrive on the next working day. It was that it would arrive the next day or that payment on the 19th would suffice.

35. Given the frequent complaints online and in the media about the sometimes lamentable performance of Royal Mail, the contents of their own website and the fact that at best the aspiration was that only 93% of mail would arrive the next day, we find that it is unreasonable for a taxpayer to assume that it would not be in the 7% which failed, if that goal was achieved. There was no evidence that even the 93% was achieved. Further, the telephone call should have alerted the appellant to the fact that there was a problem, yet there was no change in the appellant’s practice for payment of the PAYE and NIC.

36. Clearly, Mr Seeley did not appreciate the implications of the payment being received after the 19th, or indeed the impact of non-banking days, but as is clearly explained at paragraph 24 of *Knowledge*, ignorance of the law is no excuse. We too find that no reasonable employer acting prudently could have failed to have seen or taken note of at least some of the information published by HMRC. In any event he was educated about penalties in month 5 but the defaults continued until month 11.

37. For completeness, it is recorded that we noted that the July 2011 (month 3) payment was cleared by 22 July 2011. Any argument on that point is irrelevant because the extension to the 22nd of the month only relates to payments by direct debit. At that time the appellant did not pay by direct debit.

38. We do not accept the argument that the penalties should not be confirmed because HMRC acted unfairly in not informing the Appellant that penalties were accumulating. The Upper Tribunal in *HMRC v Hok Ltd* [2012] UKUT 363 (TCC) re-affirmed the First-tier Tribunal’s limited jurisdiction in respect of penalty appeals, and in particular emphasised that it had no statutory power to adjust a penalty on the grounds of fairness.

39. Lastly, we have noted that HMRC’s decision does not indicate that they had considered whether or not there were special circumstances in this appeal that would justify a reduction in the penalty. For the reasons set out in *Algarve Granite Ltd v Revenue and Customs* [2012] UKFTT 463, with which we agree, we find that the assessment was flawed because of that failure and that it falls to us to consider whether there are any special circumstances. We find that there was nothing in the appellant’s circumstances that was uncommon or out of the ordinary. As the numerous cases on the subject demonstrate there are many taxpayers who were unaware of the rigours of the new penalty regime, who considered it unfair and who did not appreciate that the cheque in payment had to be received by HMRC by the last working day before the 19th of the month if that fell on a weekend or bank holiday.

Conclusions

41. We find that, for the reasons given, 11 payments were late in the tax year 2011-2012.

42. We have decided that there was no reasonable excuse for the failure by the appellant to make its PAYE payments on time for the year 2011–2012.

43. In addition, although HMRC's penalty decision was flawed because it failed to consider whether "special circumstances" existed, we have concluded that there were no "special circumstances" within the meaning of paragraph 9 of Schedule 56.

44. The Appeal is dismissed and therefore the penalty determination issued by HMRC under Schedule 56 Finance Act 2009 for late payment of PAYE for the tax year 2011-2012 is confirmed.

45. 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.

**ANNE SCOTT
TRIBUNAL JUDGE**

RELEASE DATE: 24 September 2013

The Legislation

5 1. The new penalty code for late payments of tax was introduced by Schedule 56 to
the Finance Act 2009. The relevant paragraph of the Schedule, applying to late
payments of PAYE, was paragraph 6, which came into force on 6 April 2010 (SI
2010/466 art 3). Although newly enacted, paragraph 6 was amended with effect from
10 25 January 2010 (SI2011/132 art 2(b)) by paragraphs 1 and 6 of Schedule 11 Finance
(No2) Act 2010.

2. The amended paragraph 6, in force from 25 January 2011 to the end of that tax
year, read as follows:

“(1) P[the taxpayer] is liable to a penalty, in relation to each tax, of an amount
determined by reference to—

15 (a) the number of defaults that P has made during the tax year (see sub-
paragraphs (2) and (3)), and

(b) the amount of that tax comprised in the total of those defaults (see sub-
paragraphs (4) to (7)).

20 (2) For the purposes of this paragraph, P makes a default when P fails to make
one of the following payments (or to pay an amount comprising two or more of
those payments) in full on or before the date on which it becomes due and
payable—

(a) a payment under PAYE regulations;

25 (b) a payment of earnings-related contributions within the meaning of the
Social Security (Contributions) Regulations 2001 (SI 2001/1004);

(c) a payment due under the Income Tax (Construction Industry Scheme)
Regulations 2005 (SI 2005/2045);

30 (d) a repayment in respect of a student loan due under the Education (Student
Loans) (Repayments) Regulations 2009 (SI 2009/470) or the Education
(Student Loans) (Repayments) Regulations (Northern Ireland) 2000 (SR 2000
No 121).

(3) But the first failure during a tax year to make one of those payments (or to
pay an amount comprising two or more of those payments) does not count as a
default for that tax year.

35 (4) If P makes 1, 2 or 3 defaults during the tax year, the amount of the penalty is
1% of the amount of the tax comprised in the total of those defaults.

(5) If P makes 4, 5 or 6 defaults during the tax year, the amount of the penalty is
2% of the amount of the tax comprised in the total of those defaults.

(6) If P makes 7, 8 or 9 defaults during the tax year, the amount of the penalty is

3% of the amount of the tax comprised in the total of those defaults.

(7) If P makes 10 or more defaults during the tax year, the amount of the penalty is 4% of the amount of the tax comprised in the total of those defaults.

(8) For the purposes of this paragraph—

5 (a) the amount of a tax comprised in a default is the amount of that tax comprised in the payment which P fails to make;

(b) a default counts for the purposes of sub-paragraphs (4) to (7) even if it is remedied before the end of the tax year.

10 (9) The Treasury may by order made by statutory instrument make such amendments to sub-paragraph (2) as they think fit in consequence of any amendment, revocation or re-enactment of the regulations mentioned in that sub-paragraph.”

15 3. Schedule 56 also contains provisions (paragraph 9) relating to a reduction in a penalty for "special circumstances" and (paragraph 16) removing liability for a penalty where there was a "reasonable excuse" for the failure. Paragraph 9 provides:

"(1) If HMRC think it right because of special circumstances, they may reduce a penalty under any paragraph of this Schedule.

(2) In sub-paragraph (1) "special circumstances" does not include—

20 (a) ability to pay, or

(b) the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another.

(3) In sub-paragraph (1) the reference to reducing a penalty includes a reference to—

25 (a) staying a penalty, and

(b) agreeing a compromise in relation to proceedings for a penalty."

30 4. Paragraph 16 contains the provisions relating to "reasonable excuse". As was the case with paragraph 6, paragraph 16 was amended as regards PAYE payments with effect from 25 January 2011 (SI 2011/132 art 3).

5. From 25 January 2011, paragraph 16 read as follows:

"(1) If P satisfies HMRC or (on appeal) the First-tier Tribunal or Upper Tribunal that there is a reasonable excuse for a failure to make a payment—

35 (a) liability to a penalty under any paragraph of this Schedule does not arise in relation to that failure, and

(b) the failure does not count as a default for the purposes of paragraphs 6, 8B, 8C, 8G and 8H.]

(2) For the purposes of sub-paragraph (1)—

(a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside P's control,

5 (b) where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the failure, and

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

10 6. Paragraph 13 of Schedule 56 introduces the provisions relating to appeals against penalties imposed under that Schedule. Paragraph 13 provides:

"(1) P may appeal against a decision of HMRC that a penalty is payable by P.

(2) P may appeal against a decision of HMRC as to the amount of a penalty payable by P."

15 7. An appeal in respect of the "reasonable excuse" provisions of paragraph 16 would fall under paragraph 13 (1) because if a reasonable excuse is found to exist no liability to a penalty arises. On the other hand, an appeal relating to "special circumstances" under paragraph 9 would fall under paragraph 13 (2) because it would relate to the amount of the penalty payable.

20 8. Paragraph 15 of Schedule 56 sets out this tribunal's jurisdiction in relation to such appeals. Paragraph 15 provides:

"(1) On an appeal under paragraph 13(1) that is notified to the tribunal, the tribunal may affirm or cancel HMRC's decision.

25 (2) On an appeal under paragraph 13(2) that is notified to the tribunal, the tribunal may—

(a) affirm HMRC's decision, or

(b) substitute for HMRC's decision another decision that HMRC had power to make.

30 (3) If the tribunal substitutes its decision for HMRC's, the tribunal may rely on paragraph 9—

(a) to the same extent as HMRC (which may mean applying the same percentage reduction as HMRC to a different starting point), or

(b) to a different extent, but only if the tribunal thinks that HMRC's decision in respect of the application of paragraph 9 was flawed.

35 (4) In sub-paragraph (3)(b) "flawed" means flawed when considered in the light of the principles applicable in proceedings for judicial review.

(5) In this paragraph "tribunal" means the First-tier Tribunal or Upper Tribunal (as appropriate by virtue of paragraph 14(1))."

9. Thus, in relation to an appeal involving "reasonable excuse" paragraph 15 (1) allows the tribunal either to affirm or cancel HMRC's decision. In relation to an appeal
5 involving the issue of "special circumstances", the tribunal may rely on paragraph 9 to a different extent from HMRC only if the tribunal considers HMRC's decision to be flawed in the judicial review sense of that expression.

10. Finally, section 7 Interpretation Act 1978 provides:

10 "Where an Act authorises or requires any document to be served by post (whether the expression "serve" or the expression "give" or "send" or any other expression is used) then, unless the contrary intention appears, the service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and, unless the contrary is proved, to have been
15 effected at the time at which the letter would be delivered in the ordinary course of post."