



Neutral Citation: [2022] UKFTT 368 (TC)

Case Number: TC08618

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Taylor House, London

Appeal reference: TC/2019/00961

Application to strike out appeals against self assessment tax returns, closure notice and statutory interest for want of jurisdiction under rule 8(2)(a) FTT Rules – whether to admit late appeals against late filing penalties under Schedule 55 FA 2009

Heard on: 28 June 2022

Judgment date: 05 October 2022

Before

**TRIBUNAL JUDGE GREG SINFIELD
TRIBUNAL MEMBER JOHN AGBOOLA**

Between

IRENE CLARISCIA GILL

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Edrick Dublin and Dianne Dublin of Allegna Partnership

For the Respondents: Paul Davison, litigator of HM Revenue and Customs’ Solicitor’s Office

DECISION

INTRODUCTION AND SUMMARY

1. The Appellant, Ms Gill, seeks to appeal in relation to her self assessment tax returns for years 2008-09 to 2011-2012 and 2013-14 and against statutory interest charged to her by the Respondents ('HMRC') under section 101 Finance Act 2009 ('FA 2009'). Ms Gill also appeals against late filing penalties charged under Schedule 55 FA 2009 for the late filing of her self assessment tax returns for the years 2014-15, 2015-16 and 2016-17.

2. Having considered the evidence and heard the submissions on behalf of Ms Gill and HMRC, we decided that:

- (1) the appeals in relation to tax and statutory interest for tax years 2008-09 to 2011-12 and 2013-14 are struck out; and
- (2) the appeals against the late filing penalties for the tax years 2014-15, 2015-16 and 2016-17 are not admitted on the ground that they were late.

EVIDENCE AND BURDEN OF PROOF

3. The evidence in this appeal consisted of a bundle of documents, principally correspondence between the parties with relevant legislation and case law, in both electronic and physical form. The bundles were unsatisfactory in several respects. First, the paper bundle used by Mr Edrick Dublin, who appeared for Ms Gill, and the electronic bundle used by the tribunal panel did not contain the same documents: the electronic bundle was 794 pages; the paper bundle was 513 pages. Secondly, the pagination of the bundles was not the same (even for the first 513 pages). Finally, the Appellant's documents and HMRC's documents were included in separate sections which meant that the correspondence was not in chronological order and there was some unnecessary duplication. When preparing electronic bundles, parties should follow the Tax Chamber General Guidance on PDF Bundles dated 7 June 2021. Failure to do so can lead to, at best, confusion and, at worst, an unnecessary adjournment and re-listing of the hearing to allow the bundles to be put into good order.

4. It was also less than satisfactory that there were no witness statements in this case. Both parties seemed to be content to rely on the correspondence between the parties and some other documents in the bundle as the evidence in the case. That may be sufficient where the facts are agreed and the only issue is one of law. Where matters are not agreed, the party who bears the burden of proving a disputed fact on the balance of probabilities must fail if there is no positive evidence. In this case, HMRC must prove that the penalties were correctly imposed but Ms Gill has the burden of proof in relation to all other issues. The statements of representatives are not evidence. In our view, Ms Gill faced an impossible task in trying to discharge the burden of proof because she did not provide a witness statement or attend the hearing so that she could, with permission, give oral evidence and be asked questions.

FACTUAL AND PROCEDURAL BACKGROUND TO THE APPEAL

5. On the basis of the documents provided, we find the material facts to be as set out below.

6. Ms Gill is a designer of couture fashion garments, bridal and other clothing, and home accessories. During most of the period under consideration in this decision, Ms Gill carried on business as a sole trader under the name CG Couture. The business operated from Ms Gill's home and a rented Mayfair salon. On 5 April 2016, Ms Gill ceased trading as a sole trader but nothing turns on that.

7. On 12 October 2014, Ms Gill filed her self-assessment tax return online for the 2013-14 tax year which showed that the total tax to pay was £1,834.52. The Respondents received payment on 30 January 2015.

8. On 2 November 2014, Ms Gill made an appeal ('the 2014 Appeal') to the First-tier Tribunal ('FTT'). That is not the appeal with which this decision is concerned but it is relevant to it. The 2014 Appeal concerned three discovery assessments and a closure notice relating to the 2008-09, 2009-10, 2010-11 and 2011-12 tax years which together charged additional tax of £5,418.34 and an assessment for penalties of £1,056.55 in respect of careless inaccuracies in her self assessment tax returns.

9. The 2014 Appeal was heard by the FTT (Judge Robin Vos and Tribunal Member Charles Baker) on 23 October 2015. The FTT issued a summary (and therefore unpublished) decision allowing the appeal in part on 27 November 2015 ('the 2015 Decision'). In the 2015 decision, the FTT held that:

- (1) the enquiry notice was valid;
- (2) Ms Gill was entitled to further deductions totalling £636.01 for staff costs, food and beverages in the tax year 2010-11;
- (3) corresponding additional deductions, adjusted in accordance with RPI, should be allowed for the 2008-09, 2009-10 and 2011-12 tax years and the assessments reduced accordingly; and
- (4) the penalty rate was correct but the penalty amount should be reduced in line with the reduction in the amount of additional tax due.

Further, and without offering any view on the appropriate outcome, the FTT encouraged HMRC to reconsider their decision not to suspend the penalties.

10. On 24 December 2015, having considered the 2015 Decision, HMRC wrote to Ms Gill confirming the adjustments to the amounts of tax due for 2008-09, 2009-10, 2010-11 and 2011-12 and the suspension of the penalties, subject to conditions. Ms Gill accepted the penalty suspension conditions within the time stipulated for doing so, ie before 14 January 2016.

11. On 26 January 2016, HMRC sent Ms Gill a Notice to Pay penalties of £1,056.55. The following day, HMRC sent Ms Gill confirmation that the penalties had been suspended.

12. At around 10:00 pm on 31 January 2016, Ms Gill tried to access her HMRC online services account to amend her self assessment tax return for 2013-14 and complete and file her return for 2014-15. Ms Gill was unable to obtain access. The documents submitted with the notice of appeal for this appeal include a transcript of an exchange between Ms Gill and HMRC webchat at 11:43 pm on 31 January. It shows that Ms Gill said that she had been trying to submit her return for the past hour but her User ID had been repeatedly blocked. She was advised that if she had been blocked then she would have to wait two hours to be let back in and that she would be given an extension to submit her return.

13. In later correspondence and in the notice of appeal, Ms Gill alleged that HMRC had deliberately blocked her User ID to prevent her from using the online system to amend her self assessment tax return for 2013-14 and submit her self assessment tax return for 2014-15 within the relevant time limits. HMRC do not dispute that Ms Gill attempted to access her online account on 31 January 2016 but deny the allegation that they had deliberately prevented access to her online account. HMRC maintain that the reason for the difficulty experienced by Ms Gill in accessing her account was that it was locked due to an incorrect password being entered three times at 10:08 pm on 31 January 2016. HMRC confirmed that they did not change Ms Gill's online access and there were no known system issues at the time. HMRC's was that

submission of returns online is one of the options available but that Ms Gill could have submitted a paper return as an alternative but has never done so.

14. On 26 February 2016, Ms Gill wrote to HMRC to complain that, in the Notice to Pay of 26 January, they had wrongly demanded payment of the penalties which they had suspended and that “access to my User ID on 31 January 2016 was deliberately blocked by HMRC.” Ms Gill said that she would have no alternative but to apply for judicial review if the complaint was not resolved favourably.

15. HMRC responded to Ms Gill’s complaint on 15 April 2016. HMRC pointed out that, following the 2015 Decision, Ms Gill owed tax of £5,471.95 plus interest for tax years 2008-09 to 2011-12 which remained unpaid. In relation to the demand of 26 January for payment of penalties that had been suspended, the letter stated:

“I apologise for any confusion or upset caused by the demand issued after we agreed to suspend the penalty. Mr Blackman [the officer who had agreed to suspend the penalties] accepts full responsibility for the oversight and I am pleased to tell you that in view of your attempts to file your 2014-15 return, he has agreed to cancel the penalty. Mr Blackman will make the necessary arrangements shortly.”

16. In relation to Ms Gill’s complaint that HMRC had blocked her access to her HMRC online services account, HMRC stated:

“I am sorry that you experienced so much difficulty with your online tax account. You say that you have documentary evidence that we changed the online access facility. A colleague in our Digital Services team has looked at your online records which broadly tie in with your own version of events. We cannot trace any calls from you to our Online Services helpdesk but there is nothing to suggest there was any other problem except that incorrect passwords were entered. We are not aware of issues with passwords and User IDs as you describe but if you do have any further information I will be happy to look at it.

You should now be able to use the online facility as normal but notwithstanding that I see no reason why in the meantime you could not have sent us paper returns to update your tax affairs. As your 2014-15 return remains outstanding and you have now incurred a filing penalty, you may wish to consider this option.”

17. Mr Blackman sent Ms Gill a further letter on 20 April 2016 which stated:

“Further to my colleague’s letter of the 15 April 2016, I am writing to advise you that penalty charge under Schedule 24 Finance Act 2007 for the submission of incorrect returns for the years 2008-09 to 2011-12 has been withdrawn. I apologise for the oversight in issuing the demand.”

18. On 12 May 2016, Ms Gill wrote to HMRC and stated that she remained dissatisfied with HMRC’s response and intended to seek judicial review and asking HMRC to provide a ‘yes’ or ‘no’ answer to the following questions:

“Did Ron Blackman issue the Penalty Notice dated 26 January 2016

Did HMRC change the online access to my SA prior to 01 February 2016”

19. On 29 June, Ms Gill wrote again to HMRC and asked that all interest, surcharges and penalties should be suspended until the complaint was satisfactorily and fully resolved. Ms Gill also requested details of the new person investigating her complaints.

20. On 22 July, Ms Gill wrote to HMRC again chasing a response to her complaint and asking that all action be suspended until the complaint was satisfactorily and fully resolved.

21. On 17 August 2016, HMRC replied to Ms Gill's letters of 12 May, 29 June and 22 July. HMRC answered the two questions in the letter of 12 May as follows:

“1. Did we issue the Penalty Notice dated 26 January 2016?

As explained in Mr Preston's reply we made a mistake by sending you the penalty notice of 26 January 2016. We made Mr Blackman aware of this error and he wrote to you and apologised for the oversight on 20 April 2016, he withdrew the penalty on the same day.

2. Did we change the online access to your SA account prior to 1 February 2016?

Mr Preston has apologised for the difficulty you experienced in accessing your online account. Our digital services team have confirmed that your online account was locked due to an incorrect password being entered three times at 22:08 on 31 January 2016. We did not change the online access and there were no known issues at the time.

As you are aware, when an incorrect password is entered, for security reasons we lock users out of the system for 2 hours.”

22. In relation to the amounts of tax and statutory interest still due for tax years 2008-09 to 2011-12, HMRC also stated:

“We have acted on the recommendations determined by the Tribunal and sent you revised assessments for the tax years 2008-09, 2009-10 and 2010-11 and a revised amendment for the 2011-12 tax year.

In law, tax as determined by the Tribunal is due and payable. Interest will continue to accrue until the debt is settled. I have no facility to suspend this debt despite the fact you may be seeking a judicial review.”

23. On 7 November 2016, Ms Gill wrote to HMRC to formally advise them of her decision to proceed with an application for judicial review

24. On 28 March 2017, Ms Gill made an application for judicial review on the following grounds:

“The decision of the Defendant [HMRC] to stop the Claimant [Appellant] from amending SA tax return online for years 2009-12 inclusively 2014-2016 inclusively, after deliberately blocking the Claimant's access to her User ID account on 31 January 2016.”

Ms Gill gave the date of HMRC's decision as “[on] or around 2nd December 2016” but that must be wrong as it was some ten months after the date on which she alleged HMRC blocked her from accessing her HMRC online services account.

25. On 1 June 2017, Mrs Justice Whipple refused Ms Gill's application for permission to apply for judicial review on several grounds. Relevant to this appeal, Whipple J held:

“The Claimant complains that HMRC deliberately locked her out of her online account, which caused her to suffer ‘malicious harm, personal abuse, harassment and distress’. These are very serious allegations against HMRC. They have been debated extensively in correspondence between the Claimant and HMRC, some of which is attached to the Claim Form. HMRC's letter dated 17 August 2016 records that the Claimant's online account was locked ‘due to an incorrect password being entered three times at 22.08 on 31 January 2016. We did not change the online access and there were no known issues

at the time.’ This appears to be the explanation for what happened (it is entirely credible, despite the Claimant’s case to the contrary). There is no apparent merit in her challenge, even if had been brought in time. Permission is refused for that further reason.”

26. On 25 October 2017, Ms Gill wrote to HMRC with amended figures for the 2008-09, 2009-10, 2010-11, 2011-12 and 2013-14 tax years and income figures for 2014-15 and 2015-16. In the letter, Ms Gill stated that:

“For tax years 2009 to 2012, inclusive, the amendments are due because of legal and professional costs incurred from 2013 to 2017 that relate to Tribunal Appeal and Judicial Review, none of which were ever previously included in my on (sic) online submissions.

For tax year 2014, rent of £7,200 was never included in the return submitted on 12 October 2015. I had planned to make this amendment online on or before 31 January 2016, but HMRC deny (sic) me full access for reasons which have previously been well documented.

For tax year 2015, although I have previously stated a paper submission would follow, there is no need because my total income for the year is below the Personal Allowance of £10,000.

For tax year 2016, I repeat, there is no return due because my income is well below the Personal Allowance of £10,600, and I have no intentions (sic) of using on line Self-Assessment in near (sic) foreseeable future.”

27. On 7 December 2017, Ms Gill wrote to HMRC rejecting their latest request for payment and asking that the letter be treated as a formal appeal and complaint.

28. On 23 January 2018, HMRC wrote to Ms Gill in relation to her comments about her tax liability for 2008-09 to 2011-12 and complaint in the letter of 7 December. In relation to the former, HMRC said that the income and expenses had been determined by the 2015 Decision which was given effect by the amended assessments issued on 24 December 2015. In the absence of any appeal, the amounts shown on the amended assessments remained due and payable. In relation to the return for 2013-14, HMRC stated that no amendment could be made because the time limit for doing so had now expired. In relation to 2014-15 and 2015-16, HMRC stated that that fact that Ms Gill’s income was below the personal allowance did not excuse her from having to file a self assessment tax return because a return was required even though no tax was due.

29. On 29 January 2018, Ms Gill wrote to HMRC in response to their letter of 23 January. The letter made a number of points of complaint which are irrelevant to the liability issue, eg that HMRC’s letter was unsigned, that they had taken more than 30 days to respond and that the 2014 Appeal had been allowed in part. The letter also made a point that had been made in other correspondence, namely that the FTT that heard the 2014 Appeal had “made it perfectly clear that all cost pre, during and post the Tribunal are allowable expenses for tax years 2009, 2010, 2011 and 2012.” HMRC rejected the complaint in a letter dated 22 February but nothing in that letter is relevant to this appeal.

30. Following a further exchange of correspondence which largely repeated points already made and added nothing of relevance to this appeal, on 14 January 2019, Ms Gill wrote to HMRC maintaining that she was not liable to pay tax and penalties £10,651.79 and stating that she intended to appeal to the FTT.

31. On 14 February 2019, Allegna Partnership, acting as the representative of Ms Gill, submitted an online notice of appeal to the FTT. The online form stated that the appeal concerned a penalty of £10,661.06 for the late filing of a self assessment tax return. On another

part of the form, however, Allegna Partnership stated that the desired outcome of the appeal was for HMRC to:

- “Withdraw their tax and penalty demands
- Accept the taxpayers’ (sic) adjustments
- Refund tax due to taxpayer
- Pay compensation under their Redress Policy
- Close the matter”

32. The letter from Allegna Partnership which accompanied the notice of appeal stated that Ms Gill appealed “against HMRC for tax years 2009 to 2012, and 2014 to 2017”.

33. Allegna Partnership had not uploaded any letter or other communication from HMRC setting out the decision appealed against and the reasons for it which an appellant must provide with the notice of appeal as required by rule 20(3) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (‘FTT Rules’). On 21 February, the FTT emailed Allegna Partnership to ask for the missing decision letter. On the following day, Allegna Partnership sent the FTT a letter dated 7 January 2019 from HMRC to Ms Gill. In fact, that letter is not the decision letter. It is a demand for payment sent by HMRC Debt Management. In the letter, HMRC asked Ms Gill to pay £10,661.06 being the total of a number of separate items set out in a statement of liabilities as follows:

Period ended	Description	Unpaid amount (£)
05 04 2009	SA 1 st Late payment Surcharge Tax Interest To 07 01 2019	53.01 3.95
05 04 2009	SA 2 nd Late payment Surcharge Tax Interest To 07 01 2019	53.01 3.32
05 04 2009	SA Assessment Tax Interest To 07 01 2019	1060.32 281.86
05 04 2010	SA 1 st Late payment Surcharge Tax Interest To 07 01 2019	56.03 4.18
05 04 2010	SA 2 nd Late payment Surcharge Tax Interest To 07 01 2019	56.03 3.51
05 04 2010	SA Assessment Tax Interest To 07 01 2019	1120.60 264.26
05 04 2011	SA Assessment Tax Interest To 07 01 2019	1225.56 252.27
05 04 2012	SA Assessment Tax Interest To 07 01 2019	1313.12 230.91
05 04 2015	SA Late Filing Penalty Tax Interest To 07 01 2019	100.00 8.12
05 04 2015	SA Daily Penalty	

	Tax	900.00
	Interest To 07 01 2019	60.38
05 04 2015	SA 6 Month Late Filing Penalty	
	Tax	300.00
	Interest To 07 01 2019	20.12
05 04 2015	SA 12 Month Late Filing Penalty	
	Tax	300.00
	Interest To 07 01 2019	15.27
05 04 2016	SA Late Filing Penalty	
	Tax	100.00
	Interest To 07 01 2019	5.29
05 04 2016	SA Daily Penalty	
	Tax	900.00
	Interest To 07 01 2019	35.72
05 04 2016	SA 6 Month Late Filing Penalty	
	Tax	300.00
	Interest To 07 01 2019	11.90
05 04 2016	SA 12 Month Late Filing Penalty	
	Tax	300.00
	Interest To 07 01 2019	7.28
05 04 2017	SA Late Filing Penalty	
	Tax	100.00
	Interest To 07 01 2019	2.47
05 04 2017	SA Daily Penalty	
	Tax	900.00
	Interest To 07 01 2019	9.05
05 04 2017	SA 6 Month Late Filing Penalty	
	Tax	300.00
	Interest To 07 01 2019	3.01
Total unpaid amount		10661.06

34. There was a hearing of the appeal in London on 27 January 2020 which was adjourned to allow the parties an opportunity to discuss the matters under appeal and the scope of the proceedings. I do not know the outcome of the discussions but HMRC filed their statement of case on 8 April 2021 and Allegna Partnership submitted amended grounds of appeal on 24 May 2021. The FTT gave HMRC an opportunity to apply for permission to file a revised statement of case to address further points raised in the grounds of appeal of 24 May. HMRC availed themselves of the opportunity and submitted an amended statement of case on 2 July 2021.

PLEADINGS

Appellant's grounds of appeal

35. Ms Gill's amended grounds of appeal of 24 May 2021 extended over eight pages but helpfully began with a summary of three issues. Slightly amended for clarity, the three issues in the appeal were as follows:

- (1) In relation to tax years 2009 to 2012:
 - (a) the FTT has jurisdiction;
 - (b) existing tax years are neither true nor fair; and.

- (c) professional costs are an allowable expense and must be charged against the income of each tax year in full compliance with generally accepted accounting practices to ensure correct and complete accounts and professional costs should be allowed to give a true and fair position for each tax year.
- (2) In relation to tax year 2014:
 - (a) the FTT has jurisdiction;
 - (b) the figures for the year are incorrect and incomplete;
 - (c) the cost of premises, including rent, is an allowable expense and must be charged to income of the relevant tax year in compliance with generally accepted accounting practices to ensure correct and complete accounts; and
 - (d) HMRC committed a criminal offence by causing a restriction to the Appellant's submission of her 2014 tax return.
 - (3) In relation to penalties of £4,500 charged for tax years 2015 to 2017:
 - (a) HMRC have the discretion to reduce and suspend penalties;
 - (b) in a previous case (the 2014 Appeal), HMRC suspended all penalties; and
 - (c) HMRC committed a criminal offence by causing a restriction to the Appellant's submission of her 2015 tax return.

36. It is regrettable that Ms Gill and her advisers have never identified precisely the decisions that they challenge. It is important to establish which decision is being appealed not only because time limits run from the date of that decision but also, more fundamentally, it defines what is and what is not in dispute. I identify what I believe to be the relevant decisions in the discussion of the grounds below.

37. The first issue or ground was that Ms Gill should be allowed to amend her accounts and self assessment tax returns for the tax years 2009 to 2012 to reflect professional fees incurred by her in:

- (1) 2014 and 2015 in relation to the 2014 Appeal;
- (2) 2016 in relation to HMRC's mistaken notice of 26 January 2016 asking Ms Gill to pay penalties of £1,056.55 which had been suspended; and
- (3) 2019 in relation to this appeal.

38. In relation to the first ground, it seems to me that the relevant decision must be HMRC's letter of 23 January 2018 in which they confirmed the amounts of tax due for the tax years 2008-09 to 2011-12 were those set out in HMRC's letter of 24 December 2015. The figures had been amended in accordance with the 2015 Decision. HMRC stated that, in the absence of any appeal, the 2015 Decision was binding and the amended amount was payable by Ms Gill.

39. In the grounds of appeal, Ms Gill stated that the self assessment tax returns for 2009 to 2012 did not reflect the true position because they did not include the expenses incurred in later years. The grounds did not contain any explanation of how such an amendment to her self assessment for 2009 to 2012 could be made but merely stated that HMRC's refusal to allow the costs to be allocated to those years was contrary to generally accepted accounting principles ('GAAP'). At no point in the grounds or at the hearing did Mr Dublin identify the particular GAAP on which he relied.

40. The second issue or ground arose because Ms Gill had failed to include rent for her business premises of £7,200 as an expense in her 2013-14 self assessment tax return. Ms Gill stated that HMRC had wrongly refused to allow the rent as an expense. The grounds of appeal stated that Appellant had tried to amend her 2013-14 tax return on 31 January 2016 but was blocked from doing so by “a senior staff member of the Respondents [who] wilfully used his or hers’ (sic) authority and access privileges to modify the access and security settings of Ms Gill’s SA online account”. The grounds refer to the fact that, in 2017, Ms Gill applied for judicial review in relation to the allegation that HMRC blocked Ms Gill from accessing her online account in order to amend her tax return for 2013-14.

41. HMRC’s letter of 23 January 2018 is also the relevant decision in relation to the second ground. HMRC said that Ms Gill could have submitted a paper return to amend her tax return for 2014 but did not do so and was now outside the time limit for making any amendment to her 2013-14 return.

42. The third ground related to penalties imposed by HMRC in relation to tax years 2014-15, 2015-16 and 2016-17. In relation to 2014-15, Ms Gill contended that, on 15 April 2016, HMRC had said “I am pleased to tell you that in view of your attempts to file your 2014-15 return, [the officer] has agreed to cancel the penalty” and therefore no late filing penalties of £1,600 are due or payable for the 2014-15 tax year. In relation to the 2015-16 tax year, Ms Gill argued that she had income of less than the personal allowance at the time of £10,600 and, therefore, she should not be required to file a self assessment tax return and HMRC should withdraw the penalties of £1,600 as a matter of good faith. In relation to 2016-17, Ms Gill argued that, as she had ceased trading as a sole trader on 5 April 2016 and applied for “deregistration” (ie to be excused from filing a self assessment tax return) on 25 October 2017, she should not have been required to file a self assessment tax return for that year. Ms Gill stated that HMRC “granted deregistration for tax year 2018” and should withdraw the penalties of £1,300 for 2016-17.

43. There are many relevant decisions in relation to this ground as each penalty is an appealable decision. The details of each penalty are as follows:

Tax Year	Notice to File Issued	Deadline to file returns	Date Return Received	Penalty type	Penalty Notice Date	Penalty Amount (£)
2014-15	06/04/15	31/01/16	N/A	Late filing	17/02/16	100
				Daily	12/08/16	900
				6 months	12/08/16	300
				12 months	21/02/17	300
2015-16	06/04/16	31/01/17	N/A	Late filing	07/02/17	100
				Daily	11/08/17	900
				6 months	11/08/17	300
				12 months	20/02/18	300
2016-17	06/04/17	31/01/18	N/A	Late filing	13/02/18	100
				Daily	31/07/18	900
				6 months	10/08/18	300
Total						4500

HMRC’s amended statement of case

44. The amended statement of case dated 2 July 2021 was 22 pages long. In the statement of case, HMRC applied for a direction that Ms Gill’s appeal against her self-assessment tax

returns for 2008/09 to 2011/12 and 2013/14 and related statutory interest be struck out and the late filing penalties for 2014/15, 2015/16 and 2016/17 be confirmed as charged. The submissions in support of the strike out application and in opposition to the appeal against the penalties are discussed below.

Appellant's skeleton argument

45. At 17:11 on 27 June 2022 (the day before the hearing), Ms Gill's representative, Allegna Partnership, submitted a 35 page skeleton argument with six new documents and two authorities running to 72 pages in total. This was, of course, far too late to allow HMRC time to consider it or to be of any help to the tribunal panel. The contents of the skeleton were as follows:

(1) Paragraphs 1 to 26 are irrelevant to the appeal, consisting of a brief history of the Inland Revenue and HMRC and general (and unevicenced) assertions of unfair treatment, targeted abuse, unreasonable behaviour, computer misuse towards Ms Gill and cover up by HMRC.

(2) Paragraphs 27 to 34 are headed Scope of Proceedings. Paragraphs 27 to 31 contain submissions about HMRC's duty to act fairly under the Commissioners for Revenue and Customs Act 2005 and Equality Act 2010 as well as an offence under the Computer Misuse Act 1990. Paragraphs 32 and 33 contain an allegation that, on or around 31 January 2016, HMRC blocked Ms Gill from accessing the online self assessment system and that gave rise to the proceedings.

(3) Paragraph 34 states that the proceedings are:

“(1) For tax year 2009 to 2012, the Respondents are claiming in excess of £6,380.46 for taxes, interest and surcharges. This remains in dispute because the Appellant is claiming a refund of taxes paid for the sum of £390.72 plus interest to date.

(2) For tax year 2014, the Appellant is claiming a refund of taxes paid for the sum of £1,834.52 plus interest to date. The Respondents have refused the Appellant's claim for being outside the twelve months period for amendments.

(3) Tax year 2015, the Appellant is claiming a refund of advance taxes of £100.00 plus interest. The Respondents have not offered a comment.

(4) Tax years 2015 to 2017, the Respondents are claiming penalties and interest in excess of £5,364.39. The Appellant disputes all liabilities.”

(4) Paragraphs 35 to 41 are headed “Matters Under Appeal (Summary)”.

(5) Under “Computer misuse”, para 36 alleges that

“... due entirely to a wilful and deliberate block imposed by the Respondents on her unique twelve digit numeric User ID, which prevented her from using the online system to submit her tax returns in a timely manner. The Appellant says the Respondents motive was to maximise the collection of tax liabilities they calculated, while ignoring her evidence and calculations to date. The Respondents say they did not restrict the Appellant's access to their online system. This remains disputed.”

(6) Under the heading “Disallowed expenses”, paragraphs 37 to 40 claims tax refunds of £390.72 for tax years 2009 to 2012, £1,834.52 for tax year 2014 and £100 for tax year 2015, all plus interest.

(7) Paragraph 41 is headed “Penalties” and argues that for tax years 2015 to 2017 Ms Gill had no liability to tax and so the late filing penalties plus interest in excess of £5,364.39 should be withdrawn.

(8) Paragraphs 42 to 73 deal with the alleged computer misuse by HMRC. The skeleton argument contains many statements of fact and refers to the Appellant’s evidence but, as stated above, there is no witness statement from the Appellant and, accordingly, all factual assertions must be disregarded as completely unsupported.

(9) Paragraphs 74 to 187 deal with the tax years 2009 to 2017 claims (see (3) above). In these paragraphs, the Appellant repeats the allegations about computer misuse although they have nothing to do with whether the amounts are refundable/deductible.

46. Mr Dublin’s submissions in support of the grounds of appeal and as set out in the skeleton argument are discussed further below where relevant.

47. For completeness, we mention now that the issue of the claim for a refund of £100 in relation to the tax year 2015 referred to above was raised for first time in the Appellant’s skeleton and in submissions at the hearing by Mr Dublin. There was nothing in the notice of appeal which is unsurprising as there was no decision or determination by HMRC in relation to the claim for a refund against which Ms Gill could appeal. As we stated at the hearing, in the absence of any appealable decision and appeal to the FTT, we could not deal with the matter of the claim for a refund. Mr Dublin appeared to accept this and did not pursue the matter and we make no further mention of it in this decision.

APPELLANT’S APPLICATION FOR WITNESS SUMMONSES

48. In an email of 15 June 2022, Allegna Partnership wrote to HMRC, copying in the FTT, to apologise for not being able to provide documents for the hearing bundle until the following afternoon and attaching a list “with reference to our hearing witnesses”. The list was headed “Appellant’s Witness List” and was as follows:

HMRC Personnel	Last Known Job Title / Position	Last Known Location
Ron Blackman	Tax Inspector	Croydon office
Mr S D Goulding	Technical Caseworker	Unknown
Mr D Preston	Complaints Officer	White Rose, Leeds
Alan Armstrong	Debt Management Officer	Unknown
Mrs Amy Biney	Litigator	Bush House, London
Other Witnesses		
Dominic Norton	IT Security Consultant	London

49. In an email to Allegna Partnership on 17 June 2022, HMRC set out their understanding of the position as follows:

“With reference to the Appellant’s attached ‘Witness List’, the Respondents proceed on the basis that this is a request for attendance, rather than an application for a summons under rule 16 First-tier Tribunal (Tax Chamber) Rules. Please confirm if this is not correct, particularly in the light of the Tribunal’s Practice Statement (“Practice Statement”) on ‘Witness Summonses and Orders to Produce Documents’ (14 June 2022) which states that, ‘4. *In a normal case no application for a witness summons should be made by a party unless that party has first requested the witness to attend...*’ and one of the criteria at (1) – (4) apply’.

The Respondents will summarise the background to the issue of witnesses as follows:

- The Tribunal issued Directions on 24 June 2019, requiring that listing information be provided by 9 August 2019 detailing whether or not witnesses are to be called and if so their names.
- On 9 August 2019, you responded to the Directions which stated, ‘The Claimant will not be calling any witnesses’.
- On 7 September 2021, you stated that ‘...the Claimant...Intends to call a minimum of three witnesses...’.
- In your letter to the Tribunal (dated 22 September 2021), you stated that, ‘The Claimant intends to call a minimum of three witnesses, some of whom may still be or may not be employed by HMRC. To facilitate this, the June 2022 timeline is seen as reasonable to secure their attendance at the hearing’. However, the Respondents did not receive a witness request following this letter asking that anyone on it still employed by them be produced to give evidence.
- On 11 October 2021, the Respondents sent an e-mail to the Tribunal and the Appellant (at info@allegnapartnership.org). Amongst other things, that email requested that the Appellant be directed to provide full details of the witnesses she intended to call and how their evidence related to her contentions. However, following this the Appellant made no witness request to the Respondents nor did she make an application to the Tribunal for any witness summonses.
- The Notice of Hearing was issued to the parties by the Tribunal on 3 March 2022.

From the above, it is clear that the Appellant has had sufficient time in which to send a witness request to the Respondents, setting out what employees of the latter she wished to give evidence and their relevance to the issues in the appeal.

In the event that the ‘Witness List’ is the Appellant’s application for summonses under rule 16, the Respondents submit that the provisions at 16(2) cannot be satisfied. Any summons would be required to give the person sought to be summonsed 14 days’ notice of a hearing. It plain (sic) given the proximity to the hearing on 28 June 2022 that this cannot be met. Although a shorter period may be directed by the Tribunal, it would be the Respondents’ view that this would be unreasonable in all of the circumstances.

The Practice Statement also lists the procedure on application at paragraphs 7-9 with paragraph 8 specifying what the application must include, such as:

(3) the nature and relevance of the evidence which the proposed witness is expected to be able to give. Relevance must be shown by reference to the stated cases of the parties;

(4) the reasons why the Tribunal should consider that there is a real likelihood that the evidence will materially assist the Tribunal in its determination of an issue or issues in the proceedings;

As above, no information has been provided to explain the nature and relevance of the evidence which the HMRC witnesses you have proposed are expected to be able to give, as required by paragraph 6 of the Practice Statement. This cannot be seen from the Appellant’s Notice of Appeal (dated 14 February 2019) nor from the supplementary ‘Grounds of Appeal and Requested Resolution’ document (dated 24 May 2021). The Appellant has

also failed to show the reasons why the Tribunal should consider that there is a real likelihood that the evidence will materially assist it in the determination of any of the issues.

Further, within the Appellant's 'Witness List,' an IT Security Consultant has been included. Their name is Dominic Norton. Mr Norton has similarly never been intimated as a proposed witness by the Appellant in compliance with the Tribunal's prior directions. It is entirely unclear to the Respondents what the nature and content of his evidence will be and in particular whether you propose to lead expert evidence from him of some kind (because otherwise the relevance of his evidence is not obvious).

Should it be the case that the purpose of his evidence is to give expert evidence of some kind to the Tribunal, it is not clear to the Respondents how the formal requirements of expert evidence can be satisfied without them first having supplied a report to the Tribunal or the parties. For example, expert evidence should normally include details of the expert's qualifications, what material they have relied on to give their evidence, what the nature of the instructions to them were, a statement that the expert understands that his or her duty is to the Tribunal (not your client) and that they have otherwise complied with that duty. The preceding is by no means an exhaustive attempt to set out what formalities are required in expert/opinion evidence.

Accordingly, should the intention be that Mr Norton will give expert evidence of some kind, and in the absence of a report from him which complies with the usual requirements expected of an expert report, the Respondents would intend to oppose you leading evidence from him.

However, should Mr Norton not intend to give expert evidence, then the Respondents would be grateful for an urgent explanation of the nature of what his evidence will be in order for them to properly consider their position with respect to it."

50. Following a telephone call to the FTT on 20 June 2022, Allegra Partnership emailed the FTT, copying in HMRC, stating:

"We seek summons, if necessary, all five witnesses who were or are still employed by the Respondents to give evidence at the forthcoming hearing.

Given their roles, responsibilities and personal involvement in the case from the outset to the present, we believe these witnesses are material in determining the accuracy of the Respondents tax liabilities calculations for tax years 2009 to 2012, and 2014 to 2015, as well as the validity of the Respondents penalty charges for tax years 2015 to 2017.

In the interest of justice, we respectfully request the Tribunal to issue summons for each individual in the list attached."

51. The FTT responded on 24 June stating

"Your email of 20 June asking for five witness summonses requiring HMRC personnel to attend to give evidence at the hearing of the above appeal next Tuesday has been passed to Judge Sinfield. He has said that your application was made too late to allow time for it to be considered and for summonses to be issued in time for next Tuesday's hearing and for that reason the application is refused. If you still wish to apply for those witnesses to attend, you may make a further application at the beginning of the hearing on Tuesday."

52. At the hearing, Mr Dublin said that he was mindful of the delay that had already occurred in bringing the appeal to a hearing and that the witness summons application had been made

late in the day. Accordingly, he was willing to proceed with the hearing without pressing the application.

APPLICATION TO STRIKE OUT PART OF THE PROCEEDINGS FOR WANT OF JURISDICTION

53. In their statement of case and at the hearing, HMRC applied for the FTT to strike out parts of the proceedings on the grounds that the FTT did not have jurisdiction (see rule 8(2)(a) FTT Rules) to consider the following matters included in Ms Gill's grounds of appeal:

- (1) Ms Gill's self-assessment returns for 2008-09, 2009-10 and 2011-12 and the closure notice relating to 2010-11;
- (2) Ms Gill's self-assessment for 2013-14; and
- (3) statutory interest charged in accordance with section 101 FA 2009.

54. We can deal with the applications to strike out Ms Gill's appeals in relation to the tax years 2008-09 to 2013-14 and against statutory interest quite shortly. Essentially, HMRC's submissions are correct for the reasons they give.

Jurisdiction - Self-assessment tax returns – 2008-09 to 2011-12

55. Ms Gill sought to appeal against HMRC's refusal to allow Ms Gill to amend her self-assessment returns for 2008-09, 2009-10 and 2011-12 and the closure notice relating to 2010-11 to include professional fees incurred by her between 2013 and 2017 in relation to the 2014 Appeal and the application for judicial review in 2017 as expenses.

56. HMRC submitted that Ms Gill's appeal in relation to the tax years 2008-09 to 2011-12 should be struck out because those years had been the subject of the 2014 Appeal and Ms Gill's tax position for those years had been determined by the FTT in the 2015 Decision. HMRC contended that there had never been any application to appeal to the Upper Tribunal against the 2015 Decision and, therefore, that decision was binding on the parties and any attempt to re-litigate those years is an abuse of process.

57. Mr Dublin contended that this refusal amounts to an abuse of power. It is entirely unclear, however, on what basis Mr Dublin considered that expenses incurred later should be retrospectively allocated to the earlier years. Mr Dublin sought to argue that the services related to the earlier years which in a sense they did as the earlier years were the subsequent litigation. Nevertheless, the expenses of the 2014 Appeal and 2017 judicial review were incurred after the tax years for which Ms Gill sought deductions and did not relate to the trade carried on in those years but to the litigation.

58. We consider that Ms Gill is trying to re-litigate the 2014 Appeal long after the 2015 Decision was issued and the time limit for appealing against it had expired. That is clearly an abuse of process and should not be permitted. The 2015 Decision dealt with Ms Gill's tax position in the years 2008-09 to 2011-12 and was never appealed. Any attempt to bring another appeal to the FTT in relation to those years is an abuse of process and should not be allowed. In *Henderson v Henderson* (1843) 3 Hare 100, 67 ER 313, Wigram V-C stated at [105] that:

“In trying this question I believe I state the rule of the Court correctly when I say that, where a given matter becomes the subject of litigation in, and of adjudication by, a Court of competent jurisdiction, the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of *res judicata* applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an

opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time.”

59. The rule in *Henderson v Henderson* was discussed by Lord Bingham in *Johnson v Gore Wood & Co (a firm)* [2001] 1 All ER 481, where he said at [498-499]:

“... *Henderson v Henderson* abuse of process, as now understood, although separate and distinct from cause of action estoppel and issue estoppel, has much in common with them. The underlying public interest is the same: that there should be finality in litigation and that a party should not be twice vexed in the same matter. This public interest is reinforced by the current emphasis on efficiency and economy in the conduct of litigation, in the interests of the parties and the public as a whole. The bringing of a claim or the raising of a defence in later proceedings may, without more, amount to abuse if the court is satisfied (the onus being on the party alleging abuse) that the claim or defence should have been raised in the earlier proceedings if it was to be raised at all. I would not accept that it is necessary, before abuse may be found, to identify any additional element such as a collateral attack on a previous decision or some dishonesty, but where those elements are present the later proceedings will be much more obviously abusive, and there will rarely be a finding of abuse unless the later proceeding involves what the court regards as unjust harassment of a party. It is, however, wrong to hold that because a matter could have been raised in early proceedings it should have been, so as to render the raising of it in later proceedings necessarily abusive. That is to adopt too dogmatic an approach to what should in my opinion be a broad, merits based judgment which takes account of the public and private interests involved and also takes account of all the facts of the case, focusing attention on the crucial question whether, in all the circumstances, a party is misusing or abusing the process of the court by seeking to raise before it the issue which could have been raised before.”

60. Accordingly, we strike out Ms Gill’s appeals against HMRC’s refusal to allow Ms Gill to amend her self-assessment returns for 2008-09, 2009-10 and 2011-12 and the closure notice relating to 2010-11 on the ground that the FTT does not have jurisdiction to deal with the appeals because they are an abuse of process.

61. An alternative approach is to strike out an appeal that seeks to re-litigate matters that have already been decided against Ms Gill in earlier proceedings under rule 8(3)(c) FTT Rules on the ground that there is no reasonable prospect of Ms Gill’s case, or part of it, succeeding. The Court of Appeal in *Shiner & Anor v HMRC* [2018] EWCA Civ 31 at [19] confirmed that

“... the power in rule 8(3)(c) is wide enough in its terms to include a strike out application based on ... grounds [of abuse of process]. Such an application, if successful, would result in the First-tier Tribunal concluding that the relevant part of the appellant’s case could not succeed.”

62. If we are wrong in holding that Ms Gill’s appeals in relation to the tax years 2008-09 to 2011-12 are an abuse of process then we would have decided that that part of Ms Gill’s case should be struck out on the ground that it does not have a reasonable prospect of success. We take that view not only because Ms Gill’s tax liability for those years had been conclusively determined by the FTT in the 2015 Decision, there was no appeal against that decision and it is too late to amend the self-assessment tax returns for those years but also because professional fees incurred in bringing the 2014 appeal and Judicial Review would not have been deductible expenses in any event. Only expenses incurred wholly and exclusively for the purposes of the trade are deductible when calculating the profits of a trade for tax purposes (see section 34 Income Tax (Trading and Other Income) Act 2005). Costs incurred in conducting tax litigation

are not deductible they are not incurred wholly and exclusively for the purposes of earning the profits of the trade but for determining the extent of the government's share in them (see *Smith's Potato Estates Ltd v Bolland* (1948) 30 TC 267 HL).

Jurisdiction - Self-assessment tax return – 2013-14

63. In the grounds of appeal, Ms Gill seeks to appeal against HMRC's refusal to allow rent costs incurred in 2013-14 to be included in her self-assessment tax return for the year. The self-assessment tax return filed on 12 October 2014 did not include the rent as an expense. Section 9ZA TMA1970 permits a person to amend their self-assessment tax return provided such an amendment is made no more than twelve months after the filing date. Ms Gill tried to amend her self assessment tax return for 2013-14 on 31 January 2016 (the last date for doing so) but, as described above, could not obtain access to her HMRC online services account. On 25 October 2017, Ms Gill sent a letter purporting, among other things, to amend her self assessment tax return for 2013-14 but the amendments were one year nine months out of time and were not accepted by HMRC.

64. In relation to Ms Gill's appeal against her self-assessment for 2013-14, HMRC submitted that there is no statutory right of appeal under section 31(1) TMA 1970 against a self-assessment and so Ms Gill cannot appeal her own self-assessment of the tax due. We agree with HMRC and the FTT in *Volkwyn v HMRC* [2017] UKFTT 771 (TC) at [18] and [19]. Section 31(1) TMA 1970 sets out four matters against which a taxpayer may bring an appeal as follows:

- “(a) Any amendment of a self-assessment under section 9C of this Act (amendment by Revenue during enquiry to prevent loss of tax),
- (b) Any conclusion stated or amendment made by a closure notice under section 28A or 28B of this Act (amendment by Revenue on completion of enquiry into return),
- (c) Any amendment of a partnership return under section 30B(1) of this Act (amendment by Revenue where loss of tax discovered), or
- (d) Any assessment to tax which is not a self-assessment.”

65. It is clear from section 31(1) and, in particular, section 31(1)(d) that a taxpayer cannot appeal against their own assessment. Accordingly, we strike out Ms Gill's appeal against her self-assessment tax return for 2013-14 because there is no valid appeal for the FTT to determine or over which it has jurisdiction.

Jurisdiction – statutory interest

66. As to Ms Gill's appeal against statutory interest, HMRC state that there is no right of appeal against interest charged under section 101 FA 2009 (see *HMRC v Neill and Megan Gretton* [2012] UKUT 261 (TCC) at [13]).

67. In relation to Ms Gill's appeal against interest charged under section 101 FA 2009 for tax years 2008-09 to 2011-12 and 2013-14 to 2016-17, Mr Davison submitted that there is no right of appeal in the legislation. He referred us to the decision of the Upper Tribunal in *HMRC v Neill and Megan Gretton* [2012] UKUT 261 (TCC) in which the Upper Tribunal accepted HMRC's submissions that the FTT did not have the jurisdiction to decide that no interest was payable under section 86 Taxes Management Act 1970 because it provides that an amount of tax “shall carry interest”. The Upper Tribunal stated at [13]:

- “There is no discretion on the part of the First-tier Tribunal to determine that interest should not be payable and the First-tier Tribunal made a clear error of law in doing so.”

68. In similarly peremptory terms, section 101 FA 2009 provides that “An amount to which this section applies carries interest at the late payment interest rate from the late payment interest start date until the date of payment”. There is no right of appeal to the FTT against a charge to interest under the section.

69. We agree with HMRC that, in the absence of a right of appeal and any discretion, the FTT has no jurisdiction in relation to any purported appeal against interest charges. At the hearing, Mr Dublin seemed to accept this when he stated that if tax is applicable then the statutory interest will follow. Accordingly, we strike out Ms Gill’s appeals against HMRC’s decision to charge Ms Gill interest under section 101 FA 2009 on the ground that the FTT does not have jurisdiction to deal with the appeals.

Decision on HMRC’s strike out application

70. In conclusion and as we announced at the hearing, we grant HMRC’s application to strike out these parts of the proceedings.

LATE FILING PENALTIES 2014-15 TO 2016-17 – PROCEDURAL BACKGROUND

71. HMRC issued notices to file self assessment tax returns to Ms Gill under section 8 Taxes Management Act 1970 for the years 2014-15 to 2016-17. The notices specified the filing dates, determined by Section 8(1D) TMA 1970, for the returns for those years.

72. At the hearing, Mr Dublin submitted that HMRC had not provided any evidence that notices to file self assessment tax returns for 2014-15, 2015-16 and 2016-17 had been issued to Ms Gill. He further asserted that Ms Gill disputed that any notices to file had ever been received by her. These arguments had not been raised in the grounds of appeal and were mentioned in the skeleton argument only in relation to 2014-15.

73. Mr Davison for HMRC stated that Ms Gill had never previously said that she had not received the notices to file relating to the 2014-15 to 2016-17 tax years. He pointed to the microfiches and screen prints of Return Summaries included in the bundle of documents. The microfiches showed the date of issue of the notice to file, which was in all cases on 6 April of the relevant year, and the tax year to which it related as well as Ms Gill’s name, Unique Tax Reference and home address. The return summary for each of the three years also showed that a notice to file had been issued and the return due date, namely 31 October of the year for a paper return and 31 January of the following year for an online return.

74. Ms Gill has not produced any witness statement in this appeal and there is no other evidence to substantiate Mr Dublin’s submissions that she had never received any notice to file for 2014-15, 2015-16 and 2016-17. We reject Mr Dublin’s submissions and his assertions of fact which are unsupported by any evidence from Ms Gill. Had Ms Gill not received notices to file for the relevant years then we would have expected this to be raised in the correspondence between the parties but, while she made many points, Ms Gill was silent on this key fact. In the absence of any contrary evidence, we accept HMRC’s evidence and find that the notices to file for 2014-15, 2015-16 and 2016-17 were issued and received by Ms Gill.

75. As the returns were not received by the relevant filing dates or, indeed, 3, 6 and 12 months after those dates, HMRC issued notices of penalty assessment (‘penalty notices’), under Schedule 55 FA 2009, on the dates and in the amounts set out in [43] above.

Whether late appeals should be admitted

76. The time limit for appealing is 30 days from the date of the disputed decision, ie the penalty notice. The earliest penalty notice was issued in February 2016 and the latest was issued in August 2018. In each case, Ms Gill’s appeal against the late filing penalty was late. The appeal in relation to the earliest penalty was almost three years out of time and the appeal

against the most recent was six months late. In their statement of case, HMRC said that they did not object to the late appeal against the penalties.

77. Notwithstanding the fact that HMRC do not object to the late appeal against the penalties, we have concluded that Ms Gill's appeal should not be admitted. We considered the relevant case law, in particular *Martland v HMRC* [2018] UKUT 0178 (TCC) and applied the three stage approach set out in that case.

78. The first stage is to consider the length of the delay. There can be no doubt that, in the context of a 30 day time limit, the delays of between six months and three years in this case were serious and significant.

79. The second stage is to consider the reason for the failure to comply with the time limit. Ms Gill did not apply for permission to make a late appeal and gave no reason why the penalties had not been appealed in time. In fact, where the Notice of Appeal asked whether the appeal was in time, Ms Gill had answered 'yes'. It is clear from the way that question was answered and other correspondence that Allegna Partnership, who completed and submitted the Notice of Appeal, did not understand the appeals process and were not aware of the time limit for appealing. We considered whether Ms Gill's reliance on Allegna Partnership provided her with a good reason for the delay. However, as the Upper Tribunal said in and *Katib v HMRC* [2019] UKUT 189 (TCC) ('*Katib* ') at [49] (their emphasis):

"We accept HMRC's general point that, in most cases, when the FTT is considering an application for permission to make a late appeal, failings by a litigant's advisers should be regarded as failings of the litigant."

80. The UT returned to this issue at [54], saying:

"It is precisely because of the importance of complying with statutory time limits that, when considering applications for permission to make a late appeal, failures by a litigant's adviser should generally be treated as failures by the litigant."

81. The UT then cited the Court of Appeal's judgment in *Hytec Information Systems v Coventry City Council* [1997] 1 WLR 666 ("*Hytec*"). Ward LJ, giving the leading judgment, said at p 1675:

"Ordinarily this court should not distinguish between the litigant himself and his advisers. There are good reasons why the court should not: firstly, if anyone is to suffer for the failure of the solicitor it is better that it be the client than another party to the litigation; secondly, the disgruntled client may in appropriate cases have his remedies in damages or in respect of the wasted costs; thirdly, it seems to me that it would become a charter for the incompetent..."

82. We do not consider that there is anything in the procedural background to this case that takes it out of the ordinary or provides a satisfactory reason for the delay.

83. The third stage is to consider all the circumstances of the case, balancing the merits of the reason(s) given for the delay in making the appeal and the prejudice which would be caused to both parties by granting or refusing permission. In considering the prejudice to the parties, we take into account the fact that Ms Gill and HMRC have been corresponding about the tax issues since before the first penalty was issued and HMRC were aware that Ms Gill did not accept that she was liable to any tax or penalty and intended to appeal. We also take account of the fact that HMRC did not object to Ms Gill's late appeal and so, presumably, do not believe themselves to be unduly prejudiced by the delay. However, we have concluded that Ms Gill will not be prejudiced if we refuse to grant permission for a late appeal against the penalties so

that it cannot proceed. We take that view because Ms Gill, for reasons set out below, has no realistic prospect of succeeding on the grounds put forward. It follows that, even if we gave permission for Ms Gill to make a late appeal against the penalties, her appeal would be dismissed.

84. Having considered and weighed all relevant factors, including giving particular weight to the need for statutory time limits to be respected, we refuse to grant Ms Gill permission to make late appeals against the penalties late and those appeals are not admitted.

Why the penalties appeals would have been dismissed

85. Although we have decided not to admit Ms Gill's appeals against the penalties, we nevertheless indicate briefly why, if we had allowed them to proceed, we would have dismissed Ms Gill's appeals.

86. Neither Ms Gill's grounds of appeal nor the skeleton argument submitted by Allegna Partnership assert that Ms Gill had a reasonable excuse for not filing her self assessment tax returns for 2014-15, 2015-16 and 2016-17 on time or at all. Further, at the hearing, Mr Dublin did not make any submissions that Ms Gill was not liable to pay the penalties on grounds of reasonable excuse. In any event, such a submission would be unsustainable because, as has already been mentioned, Ms Gill has not produced any witness statement in this appeal to the effect that she had a reasonable excuse.

87. We also do not accept the argument in the grounds of appeal and at the hearing that the HMRC letter of 15 April 2016 was a withdrawal of all penalties relating to the failure to file a self assessment tax return for 2014-15. That submission could not be sustained because HMRC's letter pre-dated all but the £100 late filing penalty issued on 17 February 2016. Mr Dublin submitted that if it did not withdraw all the penalties then the letter must be taken as withdrawing the £100 penalty issued only two months before. Mr Davison contended at the hearing and in subsequent written representations that HMRC's letter of 15 April 2016 did not refer to the £100 late filing penalty issued on 17 February but instead referred to the cancellation of the penalty charged under Schedule 24 of Finance Act 2007 for the years 2008-09 to 2011-12. He submitted that this was clear from HMRC's subsequent letter of 20 April 2016 which confirmed that the "penalty charge under Schedule 24 Finance Act 2007 has been withdrawn". We accept Mr Davison's submissions. The £100 late filing penalty was charged under Schedule 55 FA 2009 and not Schedule 24 Finance Act 2007. Read in the light of the letter of 20 April, it is clear that the letter of 15 April was referring to the penalty charged under Schedule 24 of Finance Act 2007 for the years 2008-09 to 2011-12. It follows that the penalties for 2014-15 remained due and payable.

88. Mr Dublin also submitted that Ms Gill made a return for 2014-15 in the letter of 25 October 2017. We accept HMRC's submission that the letter was not a valid return as it was not in the form prescribed by HMRC under Section 113 TMA 1970 and did not contain the declaration required by Section 8(2) TMA 1970. Mr Davison said that HMRC did not accept the figures shown in the letter. In response to a question from the FTT at the hearing, Mr Davison later provided copies of the information on the Gov.uk website at the relevant filing dates which prescribed the SA100 as the paper form for a personal income self assessment tax return where a return is not made online. In any event, we note that the letter of 25 October 2017 post-dated all the late filing penalties relating to the 2014-15 tax year and so could not provide any reason why those penalties were not payable.

89. In relation to the 2016 and 2017 tax years, Ms Gill's position in the grounds of appeal was that she should not have been required to file a self assessment tax return and HMRC should withdraw the penalties because her income was below the personal allowance and, by 2016-17, she had ceased trading. As Mr Davison pointed out, the level of Ms Gill's income

was irrelevant to the requirement to file a tax return. Once HMRC have issued a notice to file under section 8(1)(a) TMA 1970, a taxpayer is required to complete and file the return by the due date and every such return is to include a self-assessment under section 9 TMA 1970. We agree.

90. The amount of the penalties charged is set by the legislation. Where a taxpayer is unable to establish that they have a reasonable excuse and they remain liable for one or more penalties, HMRC have the discretion under paragraph 16(1) of Schedule 56 FA 2009 to reduce those penalties if they consider there to be special circumstances. In this case Ms Gill has not put forward any circumstances that might justify a reduction of the penalty. Mr Davison told us that HMRC had considered whether Ms Gill's circumstances are special within the meaning of the legislation and concluded that they were not so that no reduction in the penalty could be justified. We cannot interfere with that decision unless we find that it was flawed. We do not consider that the decision was flawed and, in fact, consider that it was correct in all the circumstances of this case.

91. For the reasons given briefly above, if we had permitted Ms Gill to make late appeals against the penalties, we would have decided that those appeals must be dismissed.

DISPOSITION

92. For the reasons set out above:

- (1) Ms Gill's appeals in relation to tax and statutory interest for tax years 2008-09, 2009-10, 2010-11, 2011-12 and 2013-14 are struck out; and
- (2) Ms Gill's late appeals against the late filing penalties for the tax years 2014-15, 2015-16 and 2016-17 are not admitted.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

93. 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 FTT Rules. The application must be received by the FTT 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.

**JUDGE GREG SINFIELD
CHAMBER PRESIDENT**

Release date: 05th OCTOBER 2022