



**TC06154**

**Appeal number: TC/2017/04298**

***INFORMATION NOTICE – appeal against fixed penalty for failure to  
comply – penalty upheld***

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**PAUL WHEELER**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE CHRISTOPHER STAKER**

**Sitting in public at Hull on 3 October 2017**

**No appearance by or on behalf of the Appellant**

**Ms Barton for the Respondents**

## DECISION

1. The Appellant appeals against a £300 fixed penalty imposed under paragraph 39  
5 of Schedule 36 to the Finance Act 2008 for non-compliance with an information  
notice issued under paragraph 1(1) of Schedule 36.

2. At the hearing of this appeal, there was no appearance by or on behalf of the  
Appellant. In the papers was a copy of a letter from HMCTS to the Appellant dated 1  
August 2017, advising him of the date, time and place of the hearing. That letter is  
10 marked as having been sent by post, and is addressed to the address for the Appellant  
as stated on his notice of appeal. The notice of appeal gives no telephone number for  
the Appellant, so that it was not possible to contact the Appellant on the day of the  
hearing to check whether he intended to attend. Ms Barton submitted for the  
Respondents that the Tribunal should in the circumstances proceed with the hearing in  
15 the absence of the Appellant.

3. The Tribunal was satisfied that it should do so. It considered that reasonable  
steps had been taken to notify the Appellant of the hearing. The Tribunal was  
satisfied that the requirement of Rule 33(a) of the Tribunal's Rules was met. For  
purposes of Rule 33(b), the Tribunal was also satisfied that it was in the interests of  
20 justice to proceed with the hearing, having regard to the following. The Appellant  
had not given any indication that he did not intend to attend the hearing and had not  
sought any adjournment or postponement. The Appellant therefore might not attend  
the hearing even if the matter were adjourned or postponed. Ms Barton was present  
and had prepared for the hearing, and a witness for HMRC was in attendance.  
25 Unnecessary adjournments or postponements on the day of hearing are inconsistent  
with the public interest in judicial efficiency. Rule 38 of the Rules makes provision  
for a decision of the Tribunal to be set aside in circumstances where the Appellant or  
his or her representative were not present at the hearing, if it is in the interests of  
justice to do so (rule 38(2)(d)). The Tribunal accordingly proceeded with the hearing.

4. Evidence under oath was given at the hearing by HMRC Officer Steven Burns,  
30 who adopted his witness statement dated 18 September 2017.

5. Officer Burns issued the information notice to the Appellant, which is dated 30  
November 2016. The information notice stated that "This notice means that by law  
you must let me have the information and documents I have asked for by 9 January  
35 2017". The notice stated that if the Appellant failed to comply with the notice, he  
may be required to pay a £300 penalty without further warning, and that if inaccurate  
information was provided carelessly or deliberately in response to the notice a penalty  
of up to £3,000 may be charged in respect of each inaccuracy. The information notice  
also advised the Appellant that he had the right to appeal against the information  
40 notice within 30 days from the date that he received it.

6. The Appellant did not appeal against the information notice.

7. On 20 January 2017, Officer Burns issued the £300 penalty notice to the Appellant for failing to comply with the information notice. The penalty notice advised the Appellant that if he did not comply with the information notice by 19 February 2017, further penalties of up to £60 per day could be charged.
- 5 8. In a letter dated 7 March 2017, the Appellant requested an independent review of the £300 penalty. In a review decision dated 27 April 2017, HMRC upheld the penalty. The Appellant now appeals to the Tribunal against that penalty.
9. Subsequently, on 29 June 2017, HMRC imposed daily penalties under paragraphs 40 and 46 of Schedule 36 to the Finance Act 2008. However, the daily penalties are not part of the subject of the present Tribunal appeal proceedings. The Tribunal understands that they are still the subject of an internal HMRC review.
- 10 10. In his oral evidence, Officer Burns stated that after the information notice was issued, no communication at all was received from the Appellant until the £300 penalty was issued.
- 15 11. The Appellant's grounds of appeal are as follows:
- The information asked for by HMRC has either been answered or they are personal and not relevant to HMRC or are over 6 years old and not in my possession or memory. I have always maintained that if HMRC can show me that I owe any tax I would pay it.
- 20 12. The first sentence of these grounds of appeal might be read as a challenge to the validity of the information notice itself. The Tribunal finds that the Appellant is not entitled in the present appeal to bring such a challenge. The Appellant had the right to appeal against the information notice itself within 30 days of receipt thereof, and he was advised of this right in the information notice itself. He did not exercise that
- 25 right. Nor has he made any application for permission to bring a late appeal against the information notice, nor given any grounds why any such late appeal should be granted. In the circumstances, the Tribunal proceeds on the basis that the information notice was correctly issued, and that the Appellant was required to comply with it.
- 30 13. For completeness, it is noted that even if the Appellant had been entitled to challenge the information notice itself, the Tribunal would be satisfied on the basis of the material before it, and in particular the evidence of Officer Burns, that the information required by the information notice is reasonably required by the officer for the purposes of checking the Appellant's tax position (see paragraph 1(1) of Schedule 36).
- 35 14. The Appellant contends that some of the information sought by the information notice had already been answered. However, the Appellant does not contend that he had previously provided *all* of the information contained in the information notice. The fact that the Appellant did not comply with the information notice in full would mean that he would still be liable to the £300 penalty under paragraph 39, even if he
- 40 had complied in part.

15. In any event, the Appellant does not identify specifically which information requested in the information notice he claims already to have answered. The Appellant may be referring to the fact that in several places the information notice notes that the Appellant has previously provided certain information, and then asks the Appellant to confirm whether that information is complete. For instance, the information notice observes that the Appellant had previously provided a statement of assets, and then states: “Please confirm that you have disclosed all assets at that date or advise accordingly”. Similarly, the information notice observes that the Appellant previously provided a certificate of credit cards, and then states: “Please advise me of any additional credit card accounts either in your name or in joint names or any other accounts you had either control or interest in since 6 April 2005”. The Appellant may be suggesting that he should not be liable to a penalty for failing to respond to those requests if the information previously provided was already complete.

16. The Tribunal does not accept that argument. First, apart from anything else, the Appellant has not established that the information previously provided *was* in fact complete. He did not attend the hearing, and has not given evidence to that effect. The Tribunal cannot proceed on the basis that the information previously provided was complete on the strength of a mere statement to that effect in the Appellant’s grounds of appeal.

17. Secondly, the Tribunal does not accept that the Appellant was not required to respond to those requests for information. The Tribunal finds as a matter of law that an information notice can ask a taxpayer to confirm whether information previously provided is accurate and complete, and that the taxpayer is in that event required to respond to that request. Confirmation that previously provided information is accurate and complete is something additional to the previously provided information itself. The Appellant has not established any reasonable excuse for not complying with that obligation.

18. The Appellant then argues that some of the information requested in the information notice is personal. The Appellant does not identify exactly which information is objected to on this ground. Almost all of the information requested relates to the Appellant’s financial affairs, such as property and other assets, bank accounts, property letting, employment and self-employment, loans, gifts, inheritances, etc. The information that the Appellant considers to be personal may be the information listed in the information notice under “Personal lifestyle” (seeking details for instance of dates of marriage or co-habitation, and children) and it may be that the Appellant considers some of the other information to be personal (for instance, the request for information about his connection to Spain and the Caribbean).

19. As indicated in paragraphs 12-13 above, the Tribunal is satisfied that all this information was reasonably required by the officer for the purposes of checking the taxpayer’s tax position. The Appellant has not identified any legal provisions that would exempt him from the legal obligation to provide this information on the ground that it is personal. HMRC have drawn attention to the provisions of paragraph 19(2) of Schedule 36 and s 12 of the Police and Criminal Evidence Act 1984. The

Appellant has not established that any of the requested information would fall within any of those categories. Nor has he established that he has a reasonable excuse for not providing that information on any other basis due to what he perceives to be the personal nature of that information.

5 20. The Appellant then contends that the information requested is not in his possession or memory. Again, the Appellant has not established that this is the case. He has not attended the hearing to give evidence, and he does not establish facts through mere statements in his grounds of appeal. The Tribunal is not satisfied that  
10 the Tribunal considers it highly unlikely that all of the information requested could be outside his possession or memory. For instance, it is highly unlikely that he does not know the names and ages of his children, or his marital status from 2005 to date, or his employment/self-employment history.

15 21. Finally, the Appellant contends that some of the information is more than 6 years old. The Appellant does not identify any legal provision that exempts him from providing information if it is more than 6 years old. As HMRC point out, paragraph 18 of Schedule 36 states that he is not required to produce a document or provide information that is not within his power or possession. However, nothing has been  
20 drawn to the Tribunal's attention that states that if a document or information *is* in the Appellant's power or possession, he is not required to provide it if it is more than 6 years old.

22. The Appellant says in his grounds of appeal that "I have always maintained that if HMRC can show me that I owe any tax I would pay it". However, the purpose of an information notice is to assist HMRC to ascertain whether or not there is any tax  
25 owing. It is not the case that HMRC can only issue an information notice if it can already demonstrate that tax is owing, or that a taxpayer has a reasonable excuse for not complying with an information notice if HMRC cannot prove that tax is owing.

23. This appeal is therefore dismissed.

24. This document contains full findings of fact and reasons for the decision. Any  
30 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)"  
35 which accompanies and forms part of this decision notice.

**DR CHRISTOPHER STAKER**  
**TRIBUNAL JUDGE**

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**RELEASE DATE: 9 OCTOBER 2017**