



**TC06419**

**Appeal number: TC/2017/03542**

*PROCEDURE – application for permission to notify a late appeal —  
application refused*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**MRS GILLIAN REID**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE JONATHAN CANNAN**

**Sitting in public in Birmingham on 12 February 2018**

**Mrs Reid appeared in person with assistance from Mrs V Thomas**

**Mrs Elizabeth Edler of HM Revenue & Customs appeared for the Respondents**

## DECISION

### *Background*

- 5 1. The appellant seeks to appeal assessments to income tax and penalties for late payment of tax. The hearing before me was to consider whether the appellant should be granted permission to notify a late appeal. The sums which the appellant seeks to appeal appear to be as follows:

	<b>2008-09</b>	<b>2009-10</b>	<b>2010-11</b>
	<b>£</b>	<b>£</b>	<b>£</b>
Tax Assessed	2,408	2,464	2,520
Penalties for Late Payment	240	246	678

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2. The assessments to tax for each tax year were notified to the appellant on 14 November 2012. The time for appealing those assessments was 30 days from that date, namely 14 November 2012. It is not clear when the penalties were imposed. |

15 3. An appeal was notified by the appellant to HMRC and to the Tribunal by letters dated 17 April 2017. At first sight those letters appeared to be appealing penalties, but in the light of what the appellant told me at the hearing I am satisfied that she intended to appeal both the tax assessments and the penalties and I shall treat her appeal accordingly.

20 4. I heard evidence from the appellant and I was also provided with a bundle of documents by the respondents. I make the following findings of fact based on the evidence before me.

### *Findings of Fact*

25 5. Prior to 2008-09, the appellant had been employed for some 15 years as a receptionist at a hotel in Coventry. She was a team leader in that role. In tax year 2008-09, following the birth of her son the appellant became a self-employed delivery driver, working for Hermes Parcelnet. With a young family she considered this would provide more flexibility. She had never previously been self-employed. The appellant's estimate, assisted by a review of her bank statements, is that she received a gross income  
30 of approximately £7,000 and that she worked as a courier for about a year in 2008-09. She has not considered what expenses she incurred. During that time she had no income from other sources. If the appellant is right about her level of income and the period over which she was self-employed then she would have no liability to tax on her income from self-employment in the tax years covered by the assessments.

6. In 2009-10 the appellant returned to employment, as a carer with a business known as Warwickshire Home Care. This involved working most evenings and weekends, up to 30 hours per week. She worked there until 2012 when she joined the Heart of England Co-operative Society working part time, firstly on the tills and then  
5 as a supervisor. At this stage the appellant had two children, and she worked evenings and weekends around her family commitments. Her husband worked full time.

7. On 2 May 2012 Ms Elizabeth Surman, an officer of HMRC, wrote to the appellant stating that she had information that the appellant was a self-employed courier. At that time the appellant was an employee with the Heart of England Co-op. The appellant  
10 was asked to complete a form with details of her self-employment so that a self-assessment record could be set up and returns issued. The appellant was invited to contact the writer if she wanted help or wanted to discuss her tax affairs.

8. The appellant did not respond to that letter, indeed the appellant accepts that the way in which she dealt with this and subsequent HMRC correspondence amounted to  
15 “putting her head in the sand”. The appellant told me that she returned a lot of correspondence to HMRC informing them that she was not self-employed. There is no reference to that in any of the letters from HMRC and I am unable to accept that the appellant did inform HMRC at this stage in 2012 that she was not self-employed. More likely, which the appellant accepted as such, was that she did not take time to read the  
20 correspondence properly and therefore she did not understand the importance of responding to HMRC.

9. In the absence of a response, on 29 May 2012 Ms Surman issued an information notice to the appellant requesting information to enable her to check the appellant’s tax position. The information was required by 27 June 2012. The notice informed the  
25 appellant that there would be penalties for non-compliance.

10. Again, there was no response from the appellant and Ms Surman sent a penalty warning letter, giving the appellant until 18 July 2012 to provide the information. There was no response and a penalty of £300 was notified to the appellant on 26 July 2012.

11. As stated above, assessments to tax for each tax year were notified to the appellant  
30 on 14 November 2012. It appears that the assessments were based on information from Hermes Parcelnet, although with the passage of time HMRC no longer has the underlying evidence. The time for appealing those assessments was 30 days from the date of issue, namely 14 December 2012. The appellant told me that at the time she thought the assessments had been issued by mistake, and she continued to bury her head  
35 in the sand without appealing the assessments.

12. On 23 January 2013 another officer of HMRC, Mrs Foster wrote to the appellant stating that she had information that the appellant had worked as a self-employed courier since 5 April 2009. It was explained that in the absence of a response from the  
40 appellant to previous correspondence the assessments had been made, based on details of gross income provided by Hermes Parcelnet without any reduction for expenses. The officer noted that the assessments had not been appealed but informed the appellant that it was possible to make a late appeal. There was also a warning that penalties might be

payable and the appellant was invited to explain why she had not declared her income from self-employment. The appellant was invited to contact Mrs Foster if she needed any help.

13. The appellant did at this stage contact HMRC. Unfortunately she did not contact  
5 either of the officers in the correspondence, but she did contact the HMRC Helpline on  
1 February 2013. The note of that telephone conversation records that the appellant told  
HMRC that she had only worked as a courier for a few months in 2008-09 and had  
since been an employee. It was left to the appellant to “arrange an irec visit to try and  
10 sort it out”. I understand that “irec” refers to Inland Revenue Enquiry Centres which  
were operated by HMRC until 2014. I am satisfied therefore that it was being left to the  
appellant to arrange a visit to an Enquiry Centre to deal with the assessments.

14. On 25 April 2013 Mrs Foster wrote to the appellant acknowledging that she had  
15 contacted the HMRC Helpline. Mrs Foster informed the appellant that it was only she  
who could now sort the matter out, and she invited the appellant to contact her either  
by letter or by telephone. Again, she explained that it would be necessary for the  
appellant to appeal the assessments out of time. She also invited the appellant to provide  
20 details of her expenses which could be set off against the gross income which had been  
assessed. The letter made plain that if the appellant did not contact her and appeal the  
assessments then procedures to collect the outstanding amount would be put into  
operation.

15. There was no direct evidence before me of any further dealings between HMRC  
and the appellant until 2016, although as appears below there is a suggestion that the  
appellant did challenge at least the penalty imposed for 2010-11. It seems likely that  
statements of account would have been sent to the appellant during this period. A  
25 statement dated 10 March 2016 was sent to the appellant and is identified as statement  
number 14. By this stage the amount outstanding was £14,564. It is not clear how that  
amount was arrived at, but it included a late filing penalty for 2013/14. I infer that other  
penalties for the earlier periods were included as set out above. Given the passage of  
time HMRC are not able to provide copies of the penalty notices or evidence that they  
30 were sent to the appellant.

16. The appellant told me that during the period between 2013 and 2016 she thought  
that HMRC had taken on board that she had only been self-employed for a short period  
and was no longer self-employed. She said that she returned any correspondence from  
HMRC, writing on the envelope that she was not self-employed. I consider that the  
35 appellant was frank and honest in the evidence she gave and HMRC did not challenge  
her evidence. I consider it likely that during this period she had genuinely convinced  
herself that the issues had gone away.

17. In or about May 2016 the bailiffs called at the appellant’s home seeking to enforce  
40 payment of the sums due to HMRC. At that stage the appellant panicked and she  
obtained assistance from Mrs Thomas, who helpfully appeared with the appellant at the  
hearing. The appellant then finally wrote to HMRC (letter undated) seeking to appeal  
what she described as the “penalty charges”. In doing so I am satisfied that the appellant

was intending to appeal the tax assessments as well as the penalties. The appellant told HMRC that:

(1) She had been self-employed in 2008-09 and her total earnings were £7,282.75.

5 (2) She believed she would have no tax to pay because of the low level of her earnings.

(3) She rang the tax office and wrote a letter and believed that subsequent correspondence from HMRC was being sent in error.

18. At or about the same time, on 7 May 2016 the appellant completed self-  
10 assessment tax returns for 2008-09, 2009-10 and 2010-11 and sent them to HMRC. The  
2008-09 return identified her gross income as £7,282 whilst the other returns identified  
no income from self-employment. In order to obtain details of her income in 2008-09  
the appellant contacted Hermes Parcelnet in 2016 but by that stage they did not have  
15 figures going back to 2008. As a result, the appellant looked at her own bank statements  
to obtain a figure for her gross income.

19. On 13 June 2016 the appellant wrote to HMRC as follows:

“After informing you several years ago that I am no longer self-employed, I am currently  
appealing penalties charges regards this due to my lack of understanding your system.  
Therefore I am confirming in writing that I am no longer self-employed and have not  
20 been since April 2009.”

20. The appellant told me that she could recall writing a letter to HMRC “early on”  
prior to her letter in May 2016. She was unable to say when the letter was sent. No such  
letter was available in evidence. However, the appellant also wrote to a Mr Rhinds of  
HMRC Appeals & Reviews on 13 June 2016. In her letter she stated as follows:

25 “ I have received your letter dated 25 May 2016 stating that on the 28 October 2013 you  
wrote to me informing me that my appeal was denied regarding the tax year 5<sup>th</sup> April  
2011.

After a telephone conversation I had with HMRC prior to this letter [I assume this refers  
to the letter dated 28 October 2013] I informed them that I was no longer self employed,  
30 naively assumed that this was enough. However ... I was still receiving letters thinking  
that they were sent in error ...”

21. It is not clear why a copy of Mr Rhinds letter dated 25 May 2016 was not in  
evidence. It seems that Mr Rhinds informed the appellant that because her appeal was  
refused in October 2013, and she had not requested a review of that decision, her appeal  
35 had been determined and she was not entitled to make a second appeal. The appellant  
in her letter dated 13 June 2016 asked Mr Rhinds to treat her May 2016 letter as her  
first appeal.

22. The appellant stated in her letter dated 13 June 2016 that she had copied it to the  
Tribunal. If it was, there is no record of how the letter was dealt with by the Tribunal.  
40 In any event it is clear that by May 2016 at the latest, the appellant was being proactive

in seeking to appeal the assessments and penalties, even though she did not understand the procedure involved and found it confusing.

23. I am satisfied that some time prior to 28 October 2013 the appellant had lodged an appeal, but the appeal was refused by HMRC in a letter dated 28 October 2013. On the material before me I cannot say precisely what the appeal related to or what happened after HMRC refused the appeal. It would seem odd if the appellant intended only to appeal penalties imposed for 2010-11, if she was aware that the assessments and penalties still stood for 2008-09, 2009-10 and 2010-11.

24. I am satisfied that the appellant's dealings with HMRC were coloured by her lack of experience in relation to self-employment and self-assessment, her naivety and her acknowledged tendency to bury her head in the sand. Based on the evidence as a whole, incomplete as it is, I am satisfied that the appellant was consciously seeking to challenge the assessments and the penalties in the period between January 2013 and October 2013. There was contact between the appellant and HMRC between April 2013 and October 2013 but there is no detailed evidence about that contact. I am satisfied from what the appellant told me that she genuinely believed from October 2013 onwards that she had no liability to HMRC and that there was no need for her to lodge an appeal against the assessments or the penalties. She only became aware that the liabilities had not been dealt with when bailiffs called in May 2016.

25. There was no contact between the appellant and HMRC between June 2016 and 23 March 2017, at which stage HMRC sent a letter before action and a statement indicating the amount outstanding as £10,108. This appears to be the tax and penalties identified above plus some interest. It was this letter which prompted the appellant to notify the present appeal to the tribunal.

26. The appellant told me and I accept that she could not afford to pay a sum of £10,000 by way of tax, interest and penalties. She and her family are just about managing financially. If it were payable over instalments then she would need 10-20 years before it could be paid.

#### *Application for Permission to Notify Late Appeals*

27. The Appellant's grounds of appeal are contained in a letter to the tribunal dated 17 April 2017. Essentially the appellant contends in the circumstances set out above that no tax is due, that she had appealed in June 2016 and been told that no tax was due for the years when she was not self-employed and that she had informed HMRC many years previously that she was no longer self-employed.

28. In determining an application for permission to notify a late appeal it is appropriate to have regard to the 3 stage test set out in *Denton v TH White Limited [2014] EWCA Civ 906* concerning relief from sanctions:

- Stage 1 is to assess the seriousness or significance of the breach.

- Stage 2 is to consider why the breach occurred.
- Stage 3 is to consider all the circumstances so as to deal justly with the application.

29. It is also appropriate to have regard to the factors set out by the Upper Tribunal in *Data Select Limited v Commissioners for HM Revenue & Customs [2012] UKUT 187 (TCC)*. In particular I have regard to the purpose of the time limit, the length of the delay, whether there is a good explanation for the delay, the consequences for the parties if time is extended and the consequences for the parties if the extension of time is refused.

30. The purpose of the time limit of 30 days in which to appeal is clearly to promote finality. Morgan J in *Data Select* stressed the desirability of not re-opening matters after a lengthy interval where one or both parties were entitled to assume that matters had been finally fixed and settled. The difficulties HMRC have had in identifying correspondence and material relevant to this appeal serve to emphasise why it is not desirable to re-open matters.

31. The time for appealing the assessments expired on 14 December 2012. I have found above that the appellant sought to challenge the assessments and the penalties between January 2013 and October 2013. The appellant did not understand the appeal procedures, but she genuinely believed that matters had been dealt with, until the bailiffs called in May 2016.

32. Mrs Edler submitted that the appeal was exceptionally late. I accept that submission. The period of delay in making the appeal was between December 2012 and April 2017. That period can be considered as follows:

(1) Between December 2012 and October 2013 where the appellant was actively challenging the assessments and the penalties, albeit not in the way contemplated by the relevant statutory provisions and HMRC's expectations.

(2) Between October 2013 and May 2016 when a formal appeal was first intimated. During this period the appellant genuinely believed that matters had been resolved. She believed any correspondence she received from HMRC was sent in error and was returned to HMRC.

(3) Between June 2016 and April 2017 when the appeal was first lodged with the Tribunal.

33. The overall period of delay is over 4 years. That is plainly a serious and significant delay. Indeed, the Upper Tribunal in *Romasave (Property Services) Limited v Commissioners for HM Revenue & Customs [2015] UKUT 254 (TCC)* referred to a delay of 3 months as serious and significant.

34. I must consider whether there is a good reason for the delay. Objectively, I cannot say that there is a good reason. However, when I take into account the characteristics of the appellant described above the period of delay is to some extent explicable if not excusable. She was consciously challenging the decisions between December 2012 and

October 2013. For a large part of the delay she genuinely believed that matters had been resolved and that correspondence she received was sent by HMRC in error. Between June 2016 and April 2017 the appellant believed that she had lodged the necessary appeal.

5 35. I am satisfied that HMRC will be prejudiced if the time for appealing is extended. They will lose the finality they were entitled to expect since at least November 2013. If an appeal had been properly lodged at that time then all material relevant to the appeal would still have been available. In particular the evidence from Hermes Parcelnet that HMRC relied upon to make the assessments to establish the period during which the  
10 appellant worked as a courier and the sums paid to the appellant.

36. I accept that the Appellant herself will be prejudiced if she is not permitted to appeal out of time. She will lose her opportunity to pursue an appeal on its merits and to convince a Tribunal that she was self-employed only during 2008-09 and only received a gross income of £7,282 during that period. For present purposes I shall  
15 assume that the appellant would have a reasonable prospect of establishing those matters.

37. I must balance all these factors and decide whether the time for appealing should be extended. I consider that it would be unfair on HMRC if time for appealing were to be extended. In particular, it seems to me that HMRC did all they could in 2012 and  
20 2013 to give the appellant an opportunity to challenge the assessments and penalties. There is no reasonable explanation or excuse as to why the appellant did not lodge an appeal in the period October 2013 to May 2016. By then, the evidence from Hermes Parcelnet as to the appellant's income as a courier was no longer available. The absence of such evidence would clearly prejudice HMRC if permission to notify a late appeal were granted. In all the circumstances the appellant's application to extend the time for  
25 appealing is therefore refused and the appeal must be dismissed.

38. The appellant expressed her concern that she could not afford to pay the tax, penalties and interest. The Tribunal does not have jurisdiction to determine the period over which those sums should be paid by the appellant. Mrs Edler helpfully indicated  
30 that she would provide information as to the appellant's circumstances to those persons in HMRC with responsibility for agreeing payments by instalments. This decision also contains some material relevant to that decision and I trust that all the appellant's circumstances will be taken into account.

35 *Conclusion*

39. In the circumstances and for the reasons given above I refuse permission to notify a late appeal.

40. 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  
40 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.

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**TRIBUNAL JUDGE CANNAN**

**RELEASE DATE: 6 April 2018**