



Neutral Citation: [2022] UKFTT 00426 (TC)

Case Number: TC08644

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

[By remote video hearing]

Appeal reference: TC/2022/04624

*Late appeal – late filing and payment penalties - Martland*

**Heard on:** 01 November 2022  
**Judgment date:** 09 November 2022

**Before**

**TRIBUNAL JUDGE HOWARD WATKINSON  
MEMBER MOHAMMED FAROOQ**

**Between**

**MICHAEL OLABOYEJI AKINBAMI**

**Appellant**

**and**

**THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS**  
**Respondents**

**Representation:**

For the Appellant: No appearance

For the Respondents: Liam Ellis, of counsel, Presenting Officer of HM Revenue and Customs' Solicitor's Office

## DECISION

### INTRODUCTION

1. With the consent of the parties, the form of the hearing was video. Mr. Ellis for the Respondent attended remotely over the Tribunal video hearing system/etc. A face to face hearing was not held because the nature of the case did not require it. The documents to which we were referred are: the HMRC's Statement of Reasons running to 32pps., a hearing bundle of 82 pps. and a Legislation and Authorities Bundle of 216 pps.

2. Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.

3. The Appellant failed to attend the hearing but the Tribunal was satisfied that reasonable steps had been taken to notify the Appellant of the hearing and that it was in the interests of justice to proceed with the hearing. On the day of the hearing the Tribunal telephoned the Appellant and was told that he was no longer attending the hearing and had sent an email confirming this. Further attempts at contact went only the Appellant's voicemail.

4. The Tribunal decided that it would not permit the Appellant to appeal out of time.

### Summary findings of fact and reasons for the Decision

5. The Appellant appealed against the following late filing and late payment penalties under Schedule 55 and 56 Finance Act 2009 ("FA09") in respect of his Self Assessment return for the tax years ending 5.4.11, 5.4.12, 5.4.13 and 5.4.15.

Tax Year ending 5 April	Date of Penalty	Legislation	Description	Amount (£)
2011	8.1.13	Para.3 Sch.55	Initial late filing penalty	£100
	9.7.13	Para.4 Sch.55	Daily late filing penalty	£900
	9.7.13	Para.5 Sch.55	6-Month late filing penalty	£300
	7.1.14	Para.6 Sch.55	12-Month late filing penalty	£300
2012	12.2.13	Para.3 Sch.55	Initial late filing penalty	£100
	14.8.13	Para.4 Sch.55	Daily late filing penalty	£900
	14.8.13	Para.5 Sch.55	6-Month late filing penalty	£300
	25.2.14	Para.6 Sch.55	12-Month late filing penalty	£300

2013	18.2.14	Para.3 Sch.55	Initial late filing penalty	£100
2015	28.2.17	Para.3(2) Sch.56 FA09	30-day late payment penalty	£66
	11.8.17	Para.3(3) Sch.56 FA09	6-Month late payment penalty	£66
	30.1.18	Para.3(4) Sch.56 FA09	12-Month late filing penalty	£66

6. HMRC had made plain in advance that it did not present any case for the daily penalties of £900 charged for the tax year ending 5.4.11. HMRC also did not present a case for the 2014-2015 late payment penalties because these have been reduced to 0.00 following a re-allocation of payments.

7. HMRC's decision letters for the remaining penalties against which the Appellant appeals were dated 15.2.17 and 24.7.17. The Appellant had 30 days to appeal them to the Tribunal. The Notice of Appeal against them was received by the Tribunal on 7.2.22, years out of time. Whilst the Appellant noted in his Notice of Appeal that he was applying to make a late appeal to HMRC, there was no application by the Appellant to appeal to the Tribunal out of time. Nonetheless, we considered the matter for ourselves.

8. We applied the three-stage approach in *Martland v HMRC* [2018] UKUT 178 (TCC), and *Denton and Ors v TH White Limited and Ors* [2014] EWCA Civ 90. The delay is measured in years and is serious and significant. No reason has been provided for it. Considering all the circumstances of the case so as to deal with the issue fairly and justly we consider that the appeal should not be permitted to be made out of time.

9. Save for those penalties that have already been withdrawn by HMRC the following penalties are upheld.

<b>Tax Year ending 5 April</b>	<b>Date of Penalty</b>	<b>Legislation</b>	<b>Description</b>	<b>Amount (£)</b>
2011	8.1.13	Para.3 Sch.55	Initial late filing penalty	£100
	9.7.13	Para.5 Sch.55	6-Month late filing penalty	£300
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	25.2.14	Para.6 Sch.55	12-Month late filing penalty	£300
2013	18.2.14	Para.3 Sch.55	Initial late filing penalty	£100

10. This document contains a summary of the findings of fact and reasons for the decision. A party wishing to appeal against this decision must apply within 28 days of the date of release of this decision to the Tribunal for full written findings and reasons. When these have been prepared, the Tribunal will send them to the parties and may publish them on its website and either party will have 56 days in which to appeal. 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.

**RIGHT TO APPLY FOR FULL WRITTEN REASONS**

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**JUDGE’S HOWARD WATKINSON  
TRIBUNAL JUDGE**

**Release date: 09<sup>th</sup> NOVEMBER 2022**