



Neutral Citation: [2023] UKFTT 870 (TC)

Case Number: TC08947

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

Hybrid Hearing using the Tribunal's CVP video  
platform at the Glasgow Tribunal Centre

Appeal reference: **TC/2021/11366**

*INCOME TAX – HIGH INCOME CHILD BENEFIT CHARGE – discovery assessments in  
respect of HICBC liability – whether liable – yes – penalties for failure to notify liability –  
whether reasonable excuse – yes – appeal of assessments dismissed in part – appeal of  
penalties dismissed*

**Heard on:** 8 June 2023

**Judgment date:** 29 September 2023

**Before**

**TRIBUNAL JUDGE ANNE SCOTT**

**Between**

**ROBERT BIRD**

**Appellant**

**and**

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

**Respondents**

**Representation:**

For the Appellant: Mr Robert Bird

For the Respondents: Ms Anika Aziz, litigator of HM Revenue and Customs' Solicitor's  
Office.

## DECISION

### INTRODUCTION

1. This is an appeal against discovery assessments made under section 29 Taxes Management Act 1970 (“TMA”) amounting to £14,540 for the tax years 2012/13 to 2018/19 (inclusive). In addition, the appellant appeals penalties in a total sum of £1,245 chargeable under Schedule 41 Finance Act 2008 (“FA 08”) raised for the tax years 2012/13 to 2018/19 (inclusive).

2. The penalties were charged as a result of the appellant’s failure to notify liability to the High Income Child Benefit Charge (“HICBC”). The assessments were notified to the appellant on 29 June 2020 and the penalties on 14 July 2020.

### Procedural Issues

3. I had a hearing bundle extending to 181 pages together with a generic bundle relating to HICBC extending to 808 pages.

4. Following the hearing, on 13 June 2023, I issued Directions which narrated the following issues:-

“1. Mr Bird had consistently argued that the figures used by HMRC had changed and it was less than clear precisely how and why. An example is the letter of 4 February 2021, where, having reviewed the payslips produced by the appellant, HMRC wrote to the appellant confirming the level of the assessments and penalties set out in their letter of 11 December 2020.

2. The February letter stated:

“We have checked the information you have supplied and can confirm that the payslips you have provided for the 2017-2018 tax year from Wood Group and 2018-2019 tax year for Petrofac show that your Pension contributions were deducted before Tax and National Insurance contributions were calculated. There is no further relief due on these incomes.”

3. Those payslips were not in the Bundle.

4. In the course of the hearing Mr Bird produced:-

(a) Copies of the payslips that he had produced to HMRC, and

(b) Copies of the details of his income provided to him by HMRC in the course of a Subject Access Request (“SAR”).

5. Mr Bird could not reconcile HMRC’s figures with the SAR figures.

6. From the available information, I was unable to identify how it could be said that the pension contributions had been deducted before tax and NICs. We also looked at a payslip where a mobilisation payment (Tax Period 3), which is not taxable, was included and it was not apparent how that was treated.

7. Officer Thomas and Ms Aziz were unable to assist. Officer Gallacher, who very probably could have assisted, had been unable to attend the hearing due to a family emergency.

8. I had regard to Rule 2 of the Tribunal Rules and decided that it was in the interests of justice to permit HMRC to lodge written submissions, in agreed terms. Mr Bird consented.”

5. I therefore directed that HMRC should lodge submissions:-
  - (1) Reconciling the figures in Mr Bird's productions with those found in the Bundle and in particular in the letter of 11 December 2020. (Note: Ms Aziz conceded that the figure of £77,390.80 at paragraph 92 in HMRC's Statement of Case was inaccurate),  
and
  - (2) Explaining where and how the pension contributions can be seen to have been deducted before tax and NICs were calculated.
6. They duly produced those submissions and on 6 July 2023, Mr Bird produced a very detailed response and he challenged HMRC's figures and raised a number of issues.
7. I therefore issued further Directions on 20 July 2023 to the effect that HMRC should lodge a detailed reply. I also confirmed the oral intimation at the hearing that given the complexity and difficulty in ascertaining whether or not Mr Bird had a liability to HICBC the penalties would not be upheld so the submissions should address only the substantive issues.
8. HMRC responded on 25 July 2023 with submissions and copy documentation.
9. On 22 August 2023, Mr Bird replied with his submissions and further copy documentation.

### **Background facts**

10. Mr Bird had been registered in the self-assessment regime on 29 January 2010 but as he ceased to meet the criteria to submit self-assessment returns in 2011 his self-assessment record was closed.
11. On 5 June 2013, Mr Bird telephoned HMRC to claim higher rate pension relief and he was asked to submit the claim in writing which he did on 12 June 2013. HMRC's records state that he stated that he made £618.64 of gross monthly payments so the PAYE pension relief would be £7,420 per annum. In response to a query from HMRC Mr Bird telephoned them on 14 August 2013 confirming that pension payments were deducted after tax. His Notice of Coding was altered to reflect that and that remained constant for all of the years with which I am concerned. No Notice of Coding has been appealed.
12. Mr Bird has been in receipt of Child Benefit since 22 April 2002. There is no longer any dispute about the quantum of those payments.
13. At or about the end of December 2013 or the beginning of 2014, Mr Bird received a generic letter about HICBC. He called HMRC on 6 January 2014 and although exact figures for his income and pension were not discussed he came to the view that he would have no liability for HICBC.
14. On 18 December 2019, HMRC issued a letter to Mr Bird advising him to check whether or not he was liable to the HICBC. It explained that liability arises where a taxpayer's adjusted net income ("ANI") exceeds £50,000 within a tax year and either the taxpayer or the taxpayer's partner receives child benefit.
15. On 20 December 2019, Mr Bird called HMRC asking for advice on how to check the figures for HICBC. He called again on 10 January 2020 to request archive records for the tax year 2012/13. He called again on 4 February 2020 to advise that he was still waiting for information but he was about to work offshore and would return on 27 February 2020.
16. On 28 February 2020, Mr Bird called HMRC and confirmed that it appeared that he was not liable for the HICBC in any of the years because of his pension contributions.

Officer Tinkler explained that the disclosure would be checked and, if correct, the case would be closed.

17. On 13 March 2020, Officer Gallagher checked HMRC's records and came to the view that there was a liability for HICBC.

18. On 16 March 2020, HMRC wrote to Mr Bird stating that they believed that there was a liability in each of the years from 2012/13 to 2018/19. They asked him to provide further information and to revert to them by 30 March 2020.

19. On 11 April 2020, Mr Bird wrote to HMRC pointing out that he had been working offshore until 9 April 2020. He stated that the information that he had given to HMRC had been based on information given to him by the Subject Access Requests ("SARs") team at HMRC and he had deducted his pension contribution and the expenses listed in his P60 for each of the years. He pointed out that he had telephoned HMRC when the HICBC had been introduced and was assured that after deducting his pensions and expenses, he would not have any liability. He stated that he had telephoned on the "final allowable day" but cannot remember the time of the call. He had heard nothing in the intervening time.

20. He stated that he would telephone HMRC on 14 April 2020. There is no note of that telephone call in the bundle, other than the fact that it happened, but Officer Gallagher states that he had said that he would send evidence by email.

21. On 6 May 2020, as a result of Covid-19, the case was put on hold.

22. On 29 June 2020, assessments totalling £14,539 were issued and Mr Bird was advised that penalties would be raised (two of the figures in the Statement of Case at paragraph 13 are inaccurate but ultimately the difference is only £1).

23. On 2 July 2020, Mr Bird telephoned HMRC and apologised for not sending the evidence by email but explained that that was because he had been unable to get to the library due to Covid-19. He was advised that, because of Covid time limits had been extended so he had three months and 30 days to appeal the figures and that appeal information would be detailed in the letters.

24. On 14 July 2020, HMRC issued penalties totalling £1,244.90.

25. On 23 July 2020, Mr Bird telephoned HMRC intimating that he wished to appeal. He was told that he would have to do so in writing.

26. On 25 July 2020, he emailed his appeal.

27. On 30 July 2020, HMRC wrote to Mr Bird stating that they noted that he intended to send in documentation regarding his personal pension contributions and gave him an extension of time until 1 September 2020 to provide that information.

28. On 1 September 2020, Mr Bird contacted HMRC asking for an update stating that he had sent an email to HMRC with the information on 24 August 2020. Officer Hemmingway stated that there was no evidence on the file. Mr Bird duly forwarded that email to HMRC and telephoned HMRC on 4 September 2020 to check that it had been received. HMRC confirmed that it had been received and that the Appeals Team would contact him.

29. On 8 September 2020, Mr Bird telephoned HMRC arguing that he was not liable for the HICBC as his personal allowance and pension contributions meant that his net income was below £50,000 in all of the years. He was informed that the personal allowance was not deductible and the pension contributions had already been included in the calculations. He said that he had used the information on IABD (Incomes, Allowances, Benefits and Deductions

Details) in relation to his pension contributions to calculate the charges. Those figures were much higher than the figures that HMRC held on Real Time Information (“RTI”).

30. On 9 September 2020, HMRC wrote to Mr Bird responding to his email of 24 August 2020 revising some of their figures in light of the information provided by him and explaining their calculations. They asked him to provide further information by 9 October 2020.

31. On 25 September 2020, Mr Bird telephoned HMRC arguing that he did not agree with HMRC’s calculation but that he was waiting for evidence from his pension provider. Officer Binns agreed an extension for a further two weeks.

32. On 4 November 2020, Mr Bird emailed HMRC providing information about his pension payments and requesting clarification of his salary details for each of the tax years in question. He stated that he did so because he was relying on the information received from the SARs team at HMRC which he understood to include all the P60 information.

33. Internally, HMRC sought technical advice in relation to the pension contributions.

34. On 23 November 2020, Mr Bird contacted HMRC and pointed out that he was due to be working offshore, returning on 17 December 2020.

35. On 11 December 2020, the HICBC team wrote to Mr Bird referring to his letter of 4 November 2020. They stated that they had recalculated the ANI for the relevant years and they explained the calculations. They requested further information by 17 January 2021. What they did not do was to explain that the P60 information was not included in the IABD. Furthermore they made a mistake in the information about salary for 2012/13 overstating it by £19,123. Lastly, they stated that the IABD information “...takes into account all of your tax coding information in order to calculate your estimated pay figure”. They offered no explanation as to how or why that was the case.

36. On 13 January 2021, Mr Bird emailed HMRC enclosing payslips for the tax year 2017/18 and the month 12 payslip for the tax year 2018/19. He again asked HMRC to correspond with him by email in order to expedite matters.

37. On 14 January 2021, having not received confirmation of receipt he telephoned HMRC and was told that HMRC did not have the email; he was told to resend it.

38. On 15 January 2021, he resent it and said that he would telephone on Monday 18 January 2021 to ensure that it had been received. He duly did so and it was confirmed that the emails had been received.

39. On 4 February 2021, HMRC wrote to Mr Bird pointing out that the payslips showed that the pension contributions were deducted before tax and National Insurance Contributions were calculated. Accordingly there would be no further relief due. HMRC confirmed that the amended calculations therefore remained as specified in the letter dated 11 December 2020. He was asked to contact HMRC by 18 February 2021 to confirm whether or not he agreed those figures.

40. On 8 February 2021, Mr Bird telephoned HMRC. He again explained that he had contacted HMRC in 2013/14 when he had been told that he should deduct his pension contributions from his income. On that basis he was not liable for the HICBC.

41. On 11 February 2021, HMRC issued a Notice of amended penalty assessment. The net effect of amending the penalties for 2012/13 and 2013/14 was to increase the total of the penalties from £1,244.90 to £1,245.

42. On 12 February 2021, HMRC wrote to the appellant confirming the level of the assessments and penalties. They confirmed that the penalties had been levied on the basis that his behaviour was perceived non-deliberate and the disclosure was unprompted so the penalties were at the minimum level.

43. On 9 March 2021, Mr Bird appealed. He pointed out that in the telephone conversation with HMRC on 6 January 2014, he had stated his estimated income and pension contributions and he was informed that he did not have to pay the charge. He stated explicitly that **he** had not confirmed that he did not have to pay the charge; HMRC had suggested that he had stated that he did not have to pay the HICBC. His income was always estimated because as he worked on an offshore oil platform the number of days each year can vary as do overtime and nightshift. At no time had he been aware that he would have any liability to the HICBC and HMRC have never contacted him.

44. On 23 March 2021, HMRC issued their View of the Matter letter confirming the revised assessments and failure to notify penalties.

45. On 10 May 2021, Mr Bird requested that that decision be reviewed.

46. On 6 October 2021, the Review Conclusion letter was issued upholding the assessments and penalties.

47. On 5 November 2021, Mr Bird appealed to the Tribunal. He acknowledged that the appeal was late but he explained that he had been working offshore, as HMRC well knew, and due to Covid he had been unable to access facilities to scan and file information. HMRC did not object to the late appeal and it was duly admitted.

## **Discussion**

48. Firstly, I point out that I find that at every stage Mr Bird has done his utmost to engage with HMRC and to try and understand and meet his tax obligations.

49. Given the complexity of the documentation in this case where even the HICBC team have had to seek specialist advice I would not have upheld the penalties. Further, as I did during the hearing, I draw HMRC's attention to the decision of the Tribunal in *Hextall v HMRC* [2023] UKFTT 390 (TCC) and in particular paragraph 78. I find that Mr Bird has been both prudent and reasonable at every stage in this matter.

50. Accordingly, with no hesitation, I uphold the appeal against the penalties.

51. As I told Mr Bird at the hearing, the Tribunal is a specialist Tribunal and in terms of Rule 2 of the Rules I require to ensure that an unrepresented litigant can participate fully. I have therefore meticulously checked all of HMRC's calculations and arguments to ensure that any argument that he may have wished to raise, had he been aware of it, has been addressed.

52. Although I could write this decision without explaining how I understand HMRC to work, Mr Bird deserves a better explanation. Other taxpayers may require that also!

53. Overall, it has been a frustrating experience for Mr Bird which has not been assisted by some errors on the part of HMRC and a repeated failure to explain in plain English what the internally held HMRC information meant or how HMRC processes work(ed).

54. It was all very well to tell Mr Bird to contact the SARs Team but it has never been clear to him from whence that information was actually derived and what weight could be attached to it. I am not surprised that, as he said in his second response, he still found it all "conflicting and confusing".

55. I find that the information provided by the SARs team and thereafter by HMRC generally could not be described as readily accessible. That is unfortunate and has extended the process. Examples that I would point to can be seen at paragraph 37 above.

56. In his second response Mr Bird asked whether he, or the Tribunal, could rely on HMRC's figures where the figure of £77,390.80 that was used by HMRC for the ANI calculation for 2012/13 in the letter of 11 December 2021 was now conceded to be wrong.

57. It seems to me that that was quite simply human error. As can be seen from paragraph 17 of her witness statement, Officer Gallagher had identified Mr Bird's income as being £59,662.57. That is the figure which has been used by Ms Aziz, and rightly so. It was also used in the letter from HMRC dated 9 November 2020. For reasons that are unknown, when the HICBC Team were writing to Mr Bird on 11 December 2020, they double counted when computing his income. The £59,662.57 in the second screenshot includes the £19,123.92 from his previous employment but in the letter they added it again to the £59,662.57. The error does not affect the HICBC assessment although I understand why it has caused stress to Mr Bird.

58. Regrettably the Statement of Case perpetuated the error albeit to her credit Ms Aziz had noticed and pointed it out at the hearing, although the reason for it was not explained.

59. Regrettably there has been a lot of confusion about the SARs information. I am not an expert on HMRC's internal systems but from time to time I get a glimpse of how parts of that work. By contacting the SARs team, as recommended by HMRC, Mr Bird was able to access some of the information that HMRC held for him. He has produced the IABD data that HMRC held for him for the years in question. Mr Bird has questioned why there were numerous estimates in that data.

60. Understandably, for example, he did not understand why for 2017/18 HMRC had stated that his income was £65,071.59 and yet the IABD information released by the SARs team indicated that it was £59,739.01.

61. HMRC's submissions simply identified that there were three estimates of Mr Bird's pay in that information and one of them appeared to be a duplicate. There was no explanation as to why there were estimates. The submission went on to refer to and rely on the form P14 which is the end of year summary produced by the employer(s).

62. No-one referred Mr Bird to it but I understand that HMRC's PAYE Manual at PAYE130010 states that IABD "is used to record the receipt of information from an individual or agent such as forms, letters, email or telephone calls". Crucially, the manual states that it cannot record information from forms P14 or forms P60. As can be seen at paragraph 37 above, HMRC did not explain that in the letter of 11 December 2020 and, in my view, they should have done so.

63. To be fair to HMRC, in their letter of 11 December 2020, HMRC did explain that the information provided by the SARs team takes into account all of the information in the Notices of Coding and that that therefore allows an estimate of pay to be calculated.

64. In my experience it is only a very tiny minority of PAYE taxpayers who even begin to understand Notices of Coding and the importance of checking that they are correct.

65. In layman's language a Notice of Coding is a tool for HMRC. A PAYE code is issued to employers to tell them what HMRC estimate to be the tax-free earnings the employees are entitled to at any particular point. The employer does not know how that is calculated; they simply know the code. In every payroll run the employer deducts tax on the basis of that code and they report that to HMRC in the RTI data. That code may or may not be correct.

66. For that reason, the employee is sent the Notice of Coding (Form P2) which shows the code but it should also show how and why it is calculated. In terms of the legislation it is for the taxpayer to check whether that is correct or not and appeal it as appropriate. There is a 30 day time limit for appeal.

67. As can be seen from paragraph 13 above, Mr Bird received a Notice of Coding in every year with which I am concerned and none were appealed. Those Notices of Coding meant that his employers calculated his gross pay but also calculated the taxable pay ie taking into account, for example, the tax relief on the pension payments.

68. I have checked the gross pay figures from the RTI and from the payslips and I have checked the other payslip information. My figures do not always precisely agree with those produced by HMRC but the differences are very marginal and do not make any difference to the outcome. I have not seen any of the Notices of Coding but I can see from the payslips that Mr Bird did have some non-taxable income so that may be the reason for some of the differences.

69. Broadly speaking, in relation to 2017/18, the £65,071.59 is the gross pay being approximately the sum of the gross monthly income amounts shown in the payslips and the RTI information. The taxable pay figure of £59,739.01 from the SAR is accurate (as at February 2018 but of course that increased in March 2018) and that can be identified in the February 2018 payslip. Why the difference? The Notice of Coding, which included the higher rate pension relief and other tax free earnings, meant that not the whole amount of his pay was taxable. Therefore HMRC are correct to say that Mr Bird had already received tax relief for the pension contributions. That is the case in every year. That relief was based on the level of pension contribution reflected in the Notice of Coding.

70. As Ms Aziz pointed out in her second submission, HMRC wrote to Mr Bird with P2 tax coding letters on 5 February 2017 and on 22 March 2018 in relation to the two last years with which this appeal is concerned stating that Mr Bird was in receipt (through the Notice of Coding) of 20% higher rate pension relief on the annual amount of £7,420 (grossed up).

71. I observe that the Payment summary for 2018/19 produced by Mr Bird in his response to that submission shows total payments in that year of £5,184.48 which would be £6,480.60 when grossed up. The Notice of Coding for that year was not appealed so it seems that Mr Bird may have received too much tax relief. Ms Aziz had previously pointed out that on the basis of the evidence previously provided by Mr Bird the pension payments actually made in 2013/14 were significantly lower than the level anticipated by the Notice of Coding. I had no information to enable me to check the position in the other years.

72. Mr Bird queried why HMRC had produced 14 screenshots for the RTI information for 2017/18 with what he perceived as “duplicates” for two of the months but which had different information. RTI is precisely what it is called. Therefore if an employer submits more than one piece of information in any month then there will be multiple screenshots but each will be identified as being eg month 6.

73. HICBC is a self-assessed tax charge. That means that the obligation is on the taxpayer to declare the details of his/her or their income and details of, for example pension payments. The reason that Mr Bird contacted the SARs team is because he did not have records because he had not realised that he might have had a liability. However, the basic point is that in terms of the legislation, the ultimate responsibility to report the correct figures is his.

74. I accept that he might well have thought that that was unfair, particularly where he had no knowledge of the legislation. However, the law on that is very clear. The Upper Tribunal in

*HMRC v HOK* [2012] UKUT 363 (TCC) made it explicit that the Tribunal has no jurisdiction to consider issues of fairness.

75. In conclusion, in summary, HMRC have established that the appellant's ANI in each of the relevant years was higher than the threshold for the HICBC and because he was in receipt of Child Benefit in each of those years he is liable for the HICBC.

76. Lastly, in her first submission Ms Aziz recalculated the HICBC for each of the years in question and there were two errors, namely:-

(a) In 2012/13 the correct figure should have been **£502** rather than £612.

(b) It is now accepted by both parties that HMRC had used the wrong figure for Child Benefit in 2018/19. It should have been £2,501.20 instead of £2,090. Therefore the HICBC should be **£2,500**.

77. Accordingly, in terms of section 50(7)(c) TMA the assessment for 2012/13 should be decreased to £502 and the assessment for 2018/19 should be increased to £2,500. Accordingly the revised total of the assessments is **£14,841**.

### **Decision**

78. The appeal is allowed in part in respect of the assessment for 2012/13 and dismissed in respect of the assessments for 2013/14 to 2018/19 inclusive. The assessments for 2012/13 and 2018/19 are varied as set out above.

79. The appeal is allowed in respect of the penalties and the penalties are not upheld.

### **RIGHT TO APPLY FOR PERMISSION TO APPEAL**

80. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

**ANNE SCOTT  
TRIBUNAL JUDGE**

**Release date: 29 September 2023**