



TC06847

**Appeal numbers: TC/ 2018/01271
TC/2018/01275
TC/2018/01285
TC/2018/01287**

***INCOME TAX & CORPORATION TAX – information notices – penalties -
late appeals – valid notices of appeal – appeals dismissed***

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Denise Arthur **Appellants**
Martyn F Arthur Limited
Martyn Arthur
Martyn F Arthur Forensic Accountant Limited

- and -

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

**TRIBUNAL: JUDGE Rachel Short
Simon Bird**

**Sitting in public at Eastgate House, Newport Street, Cardiff on 11 June 2018 and
13 November 2018**

Mr Martyn Arthur for himself and the other three Appellants

**Mr Joshua Carey, instructed by the General Counsel and Solicitor to HM
Revenue and Customs, for the Respondents**

DECISION

1. Each of the four Appellants is appealing against (i) an Information Notice served under Schedule 36 of Finance Act 2008 on 29 March 2017 (ii) a £300 Penalty Notice issued on 25 September 2017 for failure to provide the information requested under paragraph 39 of Schedule 36 (iii) a Penalty Notice issued on 13 December 2017 under paragraph 40 of Schedule 36 for daily penalties of £760 and (iv) a Penalty Notice issued on 7 February 2018 under paragraph 40 of Schedule 36 imposing further daily penalties of £1,140.

2. Although the details of the information requested in each of the Information Notices differed between the Appellants, it was agreed that the matters in dispute were the same for each of them.

Preliminary issues

3. These appeals were originally listed to be heard on 11 June 2018. On the day of that hearing Mr Arthur did not attend. The Tribunal was provided with a medical certificate dated 30 April 2018 referring to Mr Arthur's mental health issues. The Tribunal adjourned the hearing on 11 June 2018 and issued Directions referring to the need to for Mr Arthur to provide specific medical evidence if he could not attend any future hearings. The hearing was re-listed for 13 November 2018.

4. At the hearing on 13 November 2018 Mr Arthur represented himself and each of the three other Appellants. With the agreement of the parties the Tribunal focussed on the facts and evidence provided for the first Appellant, Denise Arthur.

5. As requested in the Tribunal's letter of 23 May 2018 Mr Arthur produced a form dated 12 November 2018 authorising him to act on behalf of Denise Arthur at the Tribunal hearing.

6. Mr Arthur was present at the start of the hearing, gave his submissions and witness evidence and was cross-examined by Mr Carey. Mr Arthur stated that he did not wish to challenge the evidence provided by HMRC or respond to HMRC's submissions and therefore he asked that he should not be required to attend the afternoon session of the Tribunal, to which HMRC agreed.

7. HMRC provided witness evidence from Mr Mark Lamb, Officer of HMRC, in the form of three witness statements for each Appellant (twelve in all). Mr Lamb was not cross-examined by Mr Arthur but was admitted as a witness in order to allow the Tribunal to raise certain matters with him.

Background facts

8. Mr Arthur was arrested on 19 August 2015 by HMRC on suspicion of cheating the public revenue. His wife and son were also arrested. HMRC seized historical documents from him at the time of his arrest.

9. Mr Arthur was arrested again in mid-2016 on suspicion of breaching the Official Secrets Act.

10. As a result of these two arrests Mr Arthur made criminal complaints against HMRC, which were not upheld.

5 11. The four Appellants were each served with Information Notices on 29 March 2017 requesting information relating to the tax year 2015-16 (“the Information Notices”).

10 12. In May 2017 HMRC confirmed to Mr Arthur (as representative of each of the Appellants) that the period which was being investigated by their fraud team (to which Mr Arthur’s arrest in August 2015 was related) did not overlap with the tax year (2015-16) in respect of which the Information Notices were issued.

13. At Mr Arthur’s request HMRC undertook a review of the issue of the Information Notices in July 2017. The deadline to appeal against those reviews was 28 August 2017.

15 14. In August 2017 Mr Arthur confirmed (by letter of 17 August) that he would provide the information which HMRC were seeking to obtain under the Information Notices.

15. In October 2017 Mr Arthur informed HMRC that he had changed his mind and would not provide the information requested voluntarily.

20 16. In December 2017 HMRC clarified to Mr Arthur the precise periods to which their fraud investigation applied for each of the Appellants.

17. On 6 February 2018 Mr Arthur appealed against the Information Notices and the Penalty Notices issued on 25 September 2017 (“the Fixed Penalty Notices”) and 13 December 2017 (“the Daily Penalty Notices”).

25 18. Mr Arthur obtained a medical certificate relating to his mental health issues in April 2018.

19. The Crown Prosecution Service requisitions providing details of the fraud allegations against the Appellants were provided to Mr Arthur in April 2018.

30 20. An email in respect of the penalty notices issued on 7 February 2018 (“the Second Daily Penalty Notices”) was submitted by Mr Arthur to the Tribunals Service on 10 May 2018.

Matters in dispute

21. As set out in HMRC’s skeleton argument the matters in dispute are:

35 (1) Should the appeals against the Information Notices and each of the three penalty notices served on each of the Appellants be allowed as late appeals?

(2) If the Tribunal allows the appeals to be considered late, are the materials requested in each of the Information Notices “statutory records” so that no appeal can be made against the Information Notices under paragraph 29(2) Schedule 36 Finance Act 2008?

5 (3) Was the information requested by HMRC in the Information Notices reasonably required by HMRC?

(4) Are the appeals made against the penalties issued on 7 February 2018 (the Second Daily Penalty Notices) valid appeals under Rule 20 of the Tribunal Procedure (First-tier Tribunal)(Tax Chamber) Rules 2009 (“the Tribunal Rules”)?

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The law

22. Schedule 36 Finance Act 2008 – Powers to obtain information and documents

1 “(1) An officer of Revenue and Customs may by notice in writing require a person (“the taxpayer”) –

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(a) to provide information, or

(b) to produce a document

if the information or document is reasonably required by the officer for the purpose of checking the taxpayer’s tax position”.

20 “Appeal against information notices –

29 (1) Where a taxpayer is given a taxpayer notice, the taxpayer may appeal..... against the notice or any requirement of the notice.

(2) Sub- paragraph (1) does not apply to a requirement in a taxpayer notice to provide any information, or produce any document that forms part of the taxpayer’s statutory records”

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“Penalties

39 (1) This paragraph applies to a person who –

(a) fails to comply with an information notices, or

(b)

30 (2) The person is liable to a penalty of £300.”

“Daily default penalties

40 (1) This paragraph applies if the failure or obstruction mentioned in paragraph 39(1) continues after the date on which a penalty is imposed under that paragraph in respect of the failure or obstruction.

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(2) The person is liable to a further penalty not exceeding £60 for each subsequent day on which the failure or obstruction continues”

“Procedure on appeal against penalties

- 5 48 (1) Notice of appeal under paragraph 47 must be given
- (a) in writing
 - (b) before the end of the period of 30 days beginning with the date on which the notification under paragraph 46 was issued, and
 - (c) to HMRC
- 10 (2) Notice of appeal under paragraph 47 must state the grounds of appeal.”

“Statutory documents

- 15 62 (1) For the purposes of this Schedule, information or a document forms part of a person’s statutory records if it is information or a document which the person is required to keep and preserve under or by virtue of:
- (a) the Taxes Acts, or
 - (b) any other enactment relating to tax.....”

20 23. Rule 20 of the Tribunal Rules:

“20(1) Where an enactment provides for a person to make or notify an appeal to the Tribunal, the appellant must start proceedings by sending or delivering a notice of appeal to the Tribunal within any time limit imposed by that enactment.

- 25 (2) The notice of appeal must include –
- (a) ..
 - (b) ...
 - (c) ...
 - (d) ...

30 (e) ...

 - (f) the grounds for making the appeal”

Authorities:

(1) *Christine Perrin v Commissioners for HM Revenue & Customs* [2018] UKUT 0156(TCC)

(2) *Martland v Commissioners for HM Revenue & Customs* [2018] UKUT 178(TCC)

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Evidence seen

24. We saw three witness statements from Mr Lamb on behalf of each of the four Appellants, a first witness statement dated 10 May 2018, a second witness statement
10 dated 24 May 2018 and a third witness statement dated 30 October 2018. These statements explained for each Appellant why it had been considered necessary to issue the Information Notices, the procedure which had been followed and the correspondence which had been exchanged between the parties from March 2017 to date.

15 25. Schedule 36 Information Notices for each of the Appellants issued on 29 March 2017. Mrs Denise Arthur's Schedule 36 Notice asked for:

“For the year to 5 April 2016

(1) Capital Gains computation

(2) Actual figures for dividends, taxed interest, pay and pension along with;

20 (3) A breakdown of the dividends showing each source; the amount for each and the date paid/ credited

(4) A breakdown of interest showing each source and the amount for each

(5) P60 for your pension

(6) P60 for your employment

25 (7) A copy of any loan account held with either Martyn F Arthur Ltd or Martyn F Arthur Forensic Accountant Ltd or your confirmation that none is held. They should disclose the date, amount and nature of each transaction.”

26. Penalty Notices for each of the Appellants issued on 25 September 2017

27. Daily Penalty Notices for each of the Appellants issued on 13 December 2017

30 28. Daily Penalty Notices for each of the Appellants issued on 7 February 2018

29. Correspondence between the parties from 29 March 2017 to 24 October 2018 including:

35 (1) HMRC's review conclusion letters of 28 July 2017 (Information Notices); 12 October 2017 (Fixed Penalty Notices); 13 December 2017 (Daily Penalty Notices).

(2) Mr Lamb's letter to Mr Arthur of 30 May 2017:

"I would repeat, and seek to reassure you despite your assertions to the contrary, that my enquiry and the Criminal Investigation do not cover the same periods"

5 (3) Mr Arthur's letter to HMRC of 15 June 2017

"This is an appeal against the four penalty notices on the grounds that they are inappropriately and dishonestly issued. This is a further allegation of criminal conduct on your part"

(4) Mr Arthur's letter to HMRC of 12 August 2017:

10 "Supply of data: I will be supplying electronic copies of accounts shortly. The written material will be made available for collection"

(5) Mr Arthur's letter to HMRC of 6 October 2017:

15 "I undertook to provide the data voluntarily as a goodwill gesture in order to avoid yet another tranche of correspondence. As you are not prepared to collect the data that offer is withdrawn and we will pursue the formal route"

(6) Mr Arthur's letter to HMRC of 15 November 2017:

20 "I will address the information notices when the criminal investigation is concluded. I have not at this stage appealed to the tribunal because you have not shown me that the documents are legally valid"

(7) HMRC's letter of 13 December 2017 to Mr Arthur;

25 "[Mr Arthur] advanced the explanation that the information and documents had been seized by my colleagues in the Fraud Investigation Service visit in August 2015; this despite the fact that the year had not even been completed and all the indications have been that you had the information to enable you to provide accurate figures..... I believe the documents and information are within your possession or power to obtain..... If you doubted the validity of my notice then you had the opportunity to take the matter before the Tribunal who are independent of
30 HMRC, so that they could decide the matter"

(8) Notices of Appeal for each Appellant against the Information Notices and associated penalties dated 6 February 2018, giving grounds of appeal as:

35 "HMRC cannot reasonably seek data in respect of a period covered by the criminal investigation, until that investigation, along with any subsequent court or other procedures have been completed" and the reasons for late submission of the appeal as "I shall evidence that the conduct of the case was such that it was appropriate for me to withhold payment of penalties. The impropriety of the situation coupled with the suspension of the penalty caused me to believe that HMRC had decided not to pursue
40 matters. I believed, clearly naively assumed that the extremity of the situation was such that HMRC would simply let matters rest and then cancel the penalty".

(9) Mr Arthur's letter to Mr Lamb of 12 February 2018:

5 "This is an appeal against the penalty notices issued on 7 February 2018 and an application to postpone collection of duties charged on the grounds that it is not reasonable to set a deadline for the presentation of the data in respect of clearly overlapping times"

(10) HMRC's letter to Mr Arthur of 9 April 2018 providing Mr Lamb's view of Mr Arthur's appeals against the Second Daily Penalty Notices issued on 7 February 2018 explaining Mr Arthur's options, including notifying the appeals to the Tribunal Service and stating that he would have no objection to the appeals being joined to the other existing appeals.

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30. Other correspondence seen:

(1) Crown Prosecution Service requisitions sent on 25 April 2018 to Mrs Denise Arthur and Mr Martyn Arthur in respect of offences under the Proceeds of Crime act 2002 and (in respect of Mr Arthur) cheating the public revenue.

15 (2) Email from Mr Arthur to the Tribunal Service of 10 May 2018 asking that the Second Daily Penalty Notices issued on 7 February 2018 should be conjoined with existing appeals.

(3) Letter from Tribunal Service of 23 May 2018 pointing out that the appeals against the Second Daily Penalty Notices issued on 7 February 2018 cannot be joined with the existing appeals unless notices of appeal are filed with the Tribunal.

Mr Arthur's evidence

25 31. We also heard oral evidence from Mr Arthur who explained that documents had been seized by HMRC at the time of his arrest in August 2015 and that he believed, until December 2017, that there was an over-lap between the period which was under criminal investigation and the period to which the Information Notices applied.

30 32. His solicitor had advised him in December 2015 not to voluntarily provide any further information to HMRC and he had relied on this advice. Mr Arthur referred to his right not to provide evidence which might incriminate him in any criminal trial under the Criminal Evidence Act 1968.

35 33. Mr Arthur told us that he had made two official complaints to the Independent Police Complaints Commission about the way in which he had been treated by HMRC and the court cases against him had pre-occupied him at the time when the Information Notices were issued.

34. Mr Arthur explained that he had been suffering from stress, mental health issues and alcohol dependency since the time of his arrest in August 2015 and particularly after March 2017. He had appointed a manager to look after his business because he could not function properly, although he had been able to attend Tribunal hearings on

behalf of his clients. He had only sought medical help in April 2018 for his mental health issues because he had been in denial about his situation until then.

35. We saw the medical certificate provided by Mr Arthur's GP dated 30 April 2018 referring to Mr Arthur's "anxiety and depression".

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Findings of fact

36. Mr Arthur had suffered from mental health issues for the previous ten years but had only sought medical help in April 2018.

10 37. During the periods after the Information Notices were served Mr Arthur was able to write letters to HMRC and attended Tribunal hearings on behalf of his clients.

38. Mr Arthur agreed to provide the information required by HMRC set out in their Information Notices in August 2017 but to date has provided little of the information requested by HMRC.

15 39. Mr Arthur did not provide the Tribunal Service with appeal notices in respect of the appeals against the Second Daily Penalty Notices issued on 7 February 2018.

The late appeals

Appellants' arguments

20 40. On behalf of the Appellants, Mr Arthur did not dispute that each of the appeals were made late, but suggested that they were made late because:

(i) He was suffering from mental health issues and so not dealing with issues as he usually would.

25 (ii) He believed that the Information Notices were ultra-vires because the information requested was potentially also relevant to the on-going criminal investigations and providing it might have incriminated him. He was protected from providing incriminating information by the Criminal Evidence Act 1968. Mr Arthur's solicitor had advised him not to hand over any further information to HMRC in December 2015 and he had relied on that advice.

30 (iii) It was only in December 2017 that HMRC explained to Mr Arthur that there was no overlap between the period to which the Information Notices applied and the criminal investigations.

(vi) The explanation for the lateness of the appeals given in each Appellant's Notice of Appeal was:

5 “I shall evidence that the conduct of the case was such that it was appropriate for me to withhold payment of the penalties. The impropriety of the situation coupled with the suspension of the penalty caused me to believe that HMRC had decided not to pursue matters. I believed, clearly naively assumed that the extremity of the situation was such that HMRC would simply let matters rest and then cancel the penalty”

HMRC’s arguments

10 41. HMRC referred to the criteria recently set out by the UTT in *Martland* suggesting that in the normal course the Tribunal should not extend the time limits for the making of an appeal and pointed out that on any basis, all of the appeals other than the appeals against the Second Daily Penalty Notices issued on 7 February 2018 were made significantly after the deadline for making those appeals had passed.

15 42. Depending on what is treated as being appealed (the Information Notices and penalties or HMRC’s later reviews of the same) the appeals are at best 161 days late (the Information Notices), 103 days (the Fixed Penalty Notices), 22 days (the Daily Penalty Notices) and 1 day (the Second Daily Penalty Notices).

20 43. HMRC pointed out that Mr Arthur had not provided any medical evidence to support his contention that he was not able to deal with these appeals properly at the time. The only medical evidence which had been provided was the medical certificate dated 30 April 2018. In any event Mr Arthur’s health issues could not provide an explanation for the delay by the other Appellants (Mrs Arthur and the two corporate entities).

44. Any suggestion that Mr Arthur believed that the penalties were no longer being pursued by HMRC was not supported by the evidence.

25 45. The Appellants have not provided any real explanation for the delay in making their appeals and have not engaged with the appeal process, including Mr Arthur’s failure to attend the appeal hearing on 11 June 2018.

Discussion and decision

30 46. The onus is on the Appellants to demonstrate that there is a good reason why these appeals were made late and that we should extend the time limits within which the appeals can be made.

35 47. We agree with HMRC, taking account of the approach set out in *Martland* that, other than for the Second Daily Penalty Notices, the appeals were made so late as to need strong justification for extending the deadlines for making the appeals.

48. The UTT in *Martland* said that

(1) The starting point is that permission to appeal out of time should not be granted unless the FTT consider that it should be.

(2) To decide whether permission should be granted the length of the delay should be considered; is the delay “serious and significant”?

5 (3) If the delay is serious and significant, what is the explanation for the delay?

(4) Finally, all the circumstances of the case should be considered, including the prejudice to the parties if permission is denied or allowed.

10 49. In our view the delay in making these appeals by each of the Appellants is significant and serious, save for the one day delay in the case of the appeals against the Second Daily Penalty Notices issued on 7 February 2018, which is dealt with separately below.

15 50. As for the explanation for the delay, Mr Arthur referred us to his medical issues and his belief that the Information Notices were ultra-vires because they asked for information for periods which over lapped with the periods under criminal investigation.

Medical issues

20 51. Mr Arthur has not provided any evidence to support his argument that his mental ill-health explains his failure to properly engage with the appeals process and the delay in making these appeals. In fact, he told us that he was able to attend the Tribunal on behalf of clients and we know that he was writing to HMRC during the period when the appeals could and should have been made. If he did have medical issues, he has not provided evidence of that or of how those issues impacted his ability to manage these appeals.

25 52. Mr Arthur did produce a medical certificate dated April 2018, but this applied for a period after the date when appeals against the Information Notices, Fixed Penalty Notices, Daily Penalty Notices and Second Daily Penalty Notices should have been made and so cannot be an explanation for that delay.

Ultra-vires requests

30 53. What Mr Arthur thought about the legality or otherwise of the Information Notices cannot be treated as a reason for failing to appeal against them or the related penalties. While we accept that Mr Arthur might have genuinely believed that there was an overlap in the information which was relevant to the criminal proceedings and that requested by HMRC under the Information Notices, if Mr Arthur considered that
35 the Information Notices were illegal or that providing the information was problematic for other reasons, the correct way of dealing with that was to appeal against them, as was made clear to him in numerous letters from HMRC. Instead of making what would have been a relatively straightforward appeal, Mr Arthur concentrated his efforts on making complaints against HMRC and entering into
40 lengthy correspondence with them about why the requests for information were illegal.

54. Looking at all the circumstances of these appeals, we have considered the likely impact on Mr Arthur and the other Appellants of refusing to grant permission to appeal; that result is that each of them will be obliged to produce documents in respect of which it has now been made clear there is no risk of incrimination as result
5 of an overlap between this tax enquiry and on-going criminal investigations and which Mr Arthur (on behalf of each Appellant) has already agreed to provide (in August 2017).

55. From HMRC's perspective, they will obtain information which they consider they need in order to make accurate assessments of the Appellants' tax positions for
10 the 2015-16 tax year, although given Mr Arthur's current position and the pending criminal action against him, there is a question about how much tax HMRC are realistically likely to obtain from him, if not from the other Appellants.

56. As to the merits of the Appellants' appeals, we do not consider that they are particularly strong, especially bearing in mind the lack of a right to appeal against a
15 request for the production of "statutory documents" at paragraph 29(2) of Schedule 36 Finance Act 2008.

57. For these reasons we do not consider that there are any wider circumstances related to the Appellants' appeals which suggest that we should grant permission to appeal out of time.

20 58. For these reasons we have decided that permission to appeal late should not be given for any of the Appellants' appeals against (i) the Information Notices (ii) the Fixed Penalty Notices (iii) the Daily Penalty Notices.

Is there a valid appeal in respect of the Second Daily Penalty Notices issued on 7 February 2018?

25 59. The appeals against these penalties were made only one day late, which we do not consider to be a "serious delay". However HMRC argue that no valid appeals were made by Mr Arthur on behalf of the Appellants against these penalty notices.

60. HMRC rely on Rule 20 of the Tribunal Rules which stipulates at 20(2) that an appeal must include specific information including the grounds of appeal (reflecting
30 paragraph 48 of Schedule 36 Finance Act 2008).

61. We saw no appeal notices for any of the Appellants against these penalties, but the appeal was made in the form of an email from Mr Arthur dated 10 May 2018 stating that "each Appellant has received further penalty notices dated 7 February
35 2018 which we ask please to be conjoined with the existing appeals". Despite a letter from the Tribunal Service of 23 May 2018 pointing out that completed Notices of Appeal should be provided, this was not done.

62. Mr Arthur had previously written to HMRC giving his grounds of appeal against those penalty notices (by letter of 12 February 2018), being similar to the grounds given in respect of the other matters under appeal, "it is not reasonable to set
40 a deadline for the presentation of the data in respect of clearly overlapping times"

63. In our view the stipulation in Rule 20 concerning the contents of a valid appeal are mandatory. While it may be possible in some cases to extrapolate the grounds of appeal from the reasons provided in correspondence, we do not think that this can be sufficient in a case such as this where no appeal notices and no grounds of appeal have been provided and the Appellants have been made aware of the need to provide the same.

Conclusion

64. For this reason we agree with HMRC that the Appellants’ appeals in respect of the Second Daily Penalty Notices issued on 7 February 2018 are not valid appeals and cannot be considered by this Tribunal.

Costs

65. At the hearing on 11 June 2018, which was postponed due to Mr Arthur’s absence, HMRC made a cost application which the Tribunal agreed to consider on the final hearing date. At the hearing on 13 November 2018, Mr Carey confirmed that taking account of Mr Arthur’s attendance at that hearing and his attempts to co-operate since the hearing on 11 June 2018, HMRC were withdrawing their costs application.

66. 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.

**RACHEL SHORT
TRIBUNAL JUDGE**

RELEASE DATE: 04 DECEMBER 2018