

[2019] UKFTT 521 (TC)



TC07317

Appeal number:TC/2017/06305

Procedure – application for extension of time for requesting full findings of fact and reasons for decision -application granted

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MRS CHRISTINE NORRIS

Appellant

- and -

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

Respondent

**TRIBUNAL JUDGE DR KAMEEL KHAN
Mohammad Farooq, Member**

Sitting in public at Ashford House, Ashford on 21 June 2019

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DECISION

1. Application under Rule 35 (4) of the Tribunal Procedure (Tax Chamber) (First -
Tier Tribunal) Rules 2009 for full written findings in a respect of a decision on 7th
5 June 2018. The matter concerned penalties imposed under Schedule 55 of the Finance
Act 2009.

2. The question for the tribunal is whether the late application for full findings of
facts and reasons should be allowed.
10

THE LAW

3. The application is the appellant's application for an extension of time for
15 requesting full findings of fact and reasons for the summary decision issued on 7 June
2018.

4. Effectively, if I refuse this application the appeal will be at an end and the
appellant will have lost the chance of contesting the penalties.
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5. When a party disagrees with a summary decision issued by the tribunal, the
tribunal's procedure rules require them to obtain full findings of fact and reasons for
that decision as a first step in any appeal. This is because a party cannot properly
formulate an appeal without having those full findings and reasons.
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6. Tribunal Procedure Rule 35 includes the following paragraphs:

*“(3) Unless each party agrees that it is unnecessary, the decision notice must –
30 (a) include a summary of the findings of fact and reasons for the decision; or
(b) be accompanied by full written findings of fact and reasons for the
decision.”*

*(4) If the Tribunal provides no findings and reasons, or summary findings and
35 reasons only, in or with the decision notice, a party to the proceedings may
apply for full written findings and reasons, and must do so before making an
application for permission to appeal under rule 39 (application for permission
to appeal).*

*(5) An application under paragraph (4) must be made in writing and be sent or
40 delivered to the Tribunal so that it is received within 28 days after the date that
the Tribunal sent or otherwise provided the decision notice under paragraph
(2) to the party making the application.”*

7. The tribunal has power to extend time limits, pursuant to paragraph 5(3)(a) of
45 its Procedure Rules, which provide that “the tribunal may, by direction extend or
shorten the time for complying with any rule...”

8. The overriding objective of the tribunal's procedure rules are set out in Rule 2

of those rules as follows:

“The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.”

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9. There has been a great deal of case law dealing with the criteria to be applied by the tribunal when considering applications for extension of time.

10. The Upper Tribunal case of *William Martland v HMRC [2018] UKUT 0178 (TCC)* (“*Martland*”) has considered what the approach of this tribunal should be to the exercise of this statutory discretion.

Having analysed the relevant case law, the Upper Tribunal held at [43] and [44] that:

15 *“43. [...] The clear message emerging from the cases - particularised in Denton and similar cases and implicitly endorsed in BPP - is that in exercising judicial discretions generally, particular importance is to be given to the need for*
20 *“litigation to be conducted efficiently and at proportionate cost”, and “to enforce compliance with rules, practice directions and orders”. We see no reason why the principles embodied in this message should not apply to*
25 *applications to admit late appeals just as much as to applications for relief from sanctions, though of course this does not detract from the general injunction which continues to appear in CPR rule 3.9 to “consider all the circumstances of the case”.*

25 *44. When the FTT is considering applications for permission to appeal out of time, therefore, it must be remembered that the starting point is that permission should not be granted unless the FTT is satisfied on balance that it should be. In considering that question, we consider the FTT can usefully follow the three-*
30 *stage process set out in Denton: (1) Establish the length of the delay. If it was very short (which would, in the absence of unusual circumstances, equate to the breach being “neither serious nor significant”), then the FTT “is unlikely to need to spend much time on the second and third stages” - though this should not be taken to mean that applications can be granted for very short delays*
35 *without even moving on to a consideration of those stages. (2) The reason (or reasons) why the default occurred should be established. (3) The FTT can then move onto its evaluation of “all the circumstances of the case”. This will involve a balancing exercise which will essentially assess the merits of the reason(s) given for the delay and the prejudice which would be caused to both parties by*
40 *granting or refusing permission.”*

11. As a general rule, when a court or tribunal is asked to extend a relevant time limit, the court or tribunal asks itself the following questions:

- 45
- (1) what is the purpose of the time limit?
 - (2) how long was the delay?
 - (3) is there a good explanation for the delay?
 - (4) what will be the consequences for the parties of an extension of time?
 - (5) what will be the consequences for the parties of a refusal to extend time.

The court or tribunal then makes its decision in the light of the answers to those questions.

- 5 12. The exercise of the discretion to extend the time limit for making an appeal is an important exercise for the tribunal. It ordinarily would not have such powers given the deadline for appealing has passed.

10 The granting of a discretion gives a special jurisdiction to the court which must be exercised with consideration of all facts and circumstances in the interest of justice and fairness.

15 **THE FACTS**

I find the following facts based on the tribunal's correspondence file.

- 20 13. The appellant (Mrs Christine Norris) appealed against penalties imposed by HMRC under schedule 55 of the Finance Act 2009 "(Schedule 55)" for a failure to submit a self-assessment return for the tax year 2013-14 on time.

14. Judge Mckeever issued a decision on 7 June 2018 dismissing the appeal since there was no reasonable excuse.

- 25 15. The tribunal wrote to the appellant (who was represented by her husband Peter Norris) explaining that the appellant had 28 days to request full written reasons and findings which would give the appellant the opportunity to appeal the decision.

30 16. The tribunal received a letter from the appellant's husband on 10 August 2018 requesting copies of the decision letter since they wished to appeal.

35 17. On 10 September 2018 the tribunal wrote to the appellant's husband, stating "that the letter of the 10 August 2018 would be treated as a late application for full facts and findings". HMRC objected to the late application on 17 October 2018.

18. In a telephone call on the 10 September 2018 to the tribunal by Mr Norris, he explained that he had written twice to request a copy of the decision and seeking to appeal. The tribunal said that only one of the letters of 10 August was received.

40 19. The (sitting) tribunal found a letter in the correspondence file stamped (by the tribunal) 4 July 2018 which had handwriting notes, which were confirmed to be those of Mr Norris and which notes stated "form T247" together with information on the tribunal's address, the case reference number, the court's website address and "copy decision letter" written on it.

45 20. It was clear that the appellant had contacted HMRC (not the tribunal) to discuss the matter and to request the decision letter in order to do an appeal. All of this was done before 5 July 2018 being the deadline for making an appeal and so before the

28-day deadline for making an appeal on the decision of 7 June 2018. The letter was passed to the tribunal.

21. In a note in the correspondence file of a telephone call between Peter Norris and the tribunal on the 10 September 2018, the appellant stated that they had provided **two** correspondences to HMRC requesting a copy of the decision and seeking to appeal.

22. It is clear Mr Norris did send an earlier letter, before the 4 July 2018, to HMRC where he requested the decision letter.

23. Around the 10 February 2019, Mr Norris wrote to HMRC stating that he did not fully understand tax and had a poor memory but also stating that he definitely sent two letters where he requested an appeal. The latter letter was simply requesting a reply to an earlier letter on which he had not had a reply.

24. There is no doubt that there were two letters sent and one letter was definitely within the deadline for requesting an appeal. The handwritten notes as explained above spoke of T247 application form which is the form used to make an appeal.

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DISCUSSION

25. The tribunal is, in deciding to extend the time for requesting full findings of fact and reasons, effectively seeking to extend the time for bringing an appeal.

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26. The purpose of Rule 35 is to allow the parties to know if there is an appeal. The time limit is short, 28 days, after the issue of the summary decision.

27. Once the tribunal knows if there is to be an appeal it informs all parties. This includes the Judge who issued the decision, who would be required to provide full findings of fact and reasons. If the Judge is made aware of an appeal quickly, their memory would be fresh which would help with recall of relevant details to prepare the findings of facts and reasons.

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28. The summary decision was issued on 7 June 2018. The time limit for requesting full findings and reasons therefore would have expired on 5 July 2018. The Respondents contend that the application for full findings of facts and reason was made on 10 August 2018 and was therefore 36 days late.

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They draw reference to the *Martland Case* where the court said that in considering appeals out of time, the starting point is that permission should not be granted unless on balance it should be.

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29. We must look to balance and conduct a balancing exercise in deciding this matter.

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30. First the length of the delay is not long. It was not long after that the appellant informed the HMRC (not the tribunal) that they were dissatisfied. Let us look at when this was done.

31. The appellant stated that he had written two letters, requesting copies of the decision letter since he, on behalf of his wife, intended to appeal the decision.

5 32. The tribunal wrote to the appellant stating that only one letter, dated 10 August 2018, was received and they were prepared to treat that letter as a late application for full facts and reasons, which they objected to on 17 October 2018.

10 33. The tribunal finds that the appellant had written to either HMRC or the tribunal (it is not clear on the face of the letter) before 4 July and had attached handwritten notes, perhaps of a telephone conversation giving a clear indication of his intention to appeal the decision of 7 June 2018.

15 34. The letter was stamped as received by the tribunal on 4 July 2018, which is within the time limit for appealing and certainly the 28-day limit under Rule 35(4).

This is a compelling reason for accepting the appellant's reason for the delay which is that his letter was not treated by the tribunal as a request for full facts and reasons. In effect, there was no delay.

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35. It is certainly a short-written request for full findings of facts and reasons and it was on time.

25 36. In court, Mr Gyasi for HMRC acknowledged that this letter, which was on time, was not probably picked up on time or may have been misdirected.

37. The tribunal must consider fairness in the exercise of its discretion and in balancing all of the facts. It must come over as even handed and understanding.

30 38. The appellant's husband, who acts for his wife, is not trained in tax, has a poor memory and does not understand court procedure. These are his own admissions.

35 39. A litigant in person, now very prevalent in the tribunal, could face many problems in court. They may not understand the evidence, how it can be used, may find completing forms difficult and may not be familiar with the law. This can lead to confusion.

40 40. In this case, while the appellant has many hurdles to overcome, but by the standards of a reasonable person, he acted reasonably and to the best of his ability. Given that the overriding objective is fairness, then we must allow extra time for making the appeal since this would allow access to the appellate jurisdiction. The appellant did make a within time application for full findings of facts and reasons.

45 41. The appellant may not have completed the correct forms but had a clear intention to appeal and communicated that intention by phone and followed up by letter. It appears that he communicated with HMRC but they sent on his correspondence to the tribunal since there is a stamped receipt at the tribunal of his correspondence which is dated 4 July 2018. This shows a clear intention within time to appeal.

42. Given that the tribunal were willing to accept a letter 36 days late and an application for full facts and reason , it is clear that they did not think a wait of that period (36 days) would prejudice the matter in that significant time and resources would have to further added to deal with the case.

43. The tribunal does not know the strength of the appellant’s case and does not wish to prejudge the matter. We have no grounds of appeal for review.

44. After considering all the circumstances of the case and exercising a discretion to act fairly, the tribunal grants an extension of time for full findings of fact and reasons in respect of the decision of 7 June 2018 of Judge Mckeever. If this extension of time was refused, the appellant, who conducted themselves in a diligent and reasonable manner, would be unable to contest the penalties. This would not be fair.

45. The application for the extension of time for full findings of facts and reasons is granted.

CONCLUSION

46. The application for the extension of time for full findings of facts and reasons is granted.

APPEAL

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.

TRIBUNAL JUDGE
DR KAMEEL KHAN
RELEASE DATE: 7 August 2019

APPENDIX – RELEVANT STATUTORY PROVISIONS

1. The penalties at issue in this appeal are imposed by Schedule 55. The starting point is paragraph 3 of Schedule 55 which imposes a fixed £100 penalty if a self-assessment return is submitted late.

2. Paragraph 4 of Schedule 55 provides for daily penalties to accrue where a return is more than three months late as follows:

4—

(1) P is liable to a penalty under this paragraph if (and only if)—

- 10 (a) P's failure continues after the end of the period of 3 months beginning with the penalty date,
- (b) HMRC decide that such a penalty should be payable, and
- (c) HMRC give notice to P specifying the date from which the penalty is payable.

15 (2) The penalty under this paragraph is £10 for each day that the failure continues during the period of 90 days beginning with the date specified in the notice given under sub-paragraph (1)(c).

(3) The date specified in the notice under sub-paragraph (1)(c)—

- 20 (a) may be earlier than the date on which the notice is given, but
- (b) may not be earlier than the end of the period mentioned in sub-paragraph (1)(a).

3. Paragraph 5 of Schedule 55 provides for further penalties to accrue when a return is more than 6 months late as follows:

5—

25 (1) P is liable to a penalty under this paragraph if (and only if) P's failure continues after the end of the period of 6 months beginning with the penalty date.

(2) The penalty under this paragraph is the greater of—

- 30 (a) 5% of any liability to tax which would have been shown in the return in question, and
- (b) £300.

4. Paragraph 6 of Schedule 55 provides for further penalties to accrue when a return is more than 12 months late as follows:

6—

35 (1) P is liable to a penalty under this paragraph if (and only if) P's failure continues after the end of the period of 12 months beginning with the penalty date.

(2) Where, by failing to make the return, P deliberately withholds information which would enable or assist HMRC to assess P's liability

to tax, the penalty under this paragraph is determined in accordance with sub-paragraphs (3) and (4).

(3) If the withholding of the information is deliberate and concealed, the penalty is the greater of—

- 5 (a) the relevant percentage of any liability to tax which would have been shown in the return in question, and
- (b) £300.

(3A) For the purposes of sub-paragraph (3)(a), the relevant percentage is—

- 10 (a) for the withholding of category 1 information, 100%,
- (b) for the withholding of category 2 information, 150%, and
- (c) for the withholding of category 3 information, 200%.

(4) If the withholding of the information is deliberate but not concealed, the penalty is the greater of—

- 15 (a) the relevant percentage of any liability to tax which would have been shown in the return in question, and
- (b) £300.

(4A) For the purposes of sub-paragraph (4)(a), the relevant percentage is—

- 20 (a) for the withholding of category 1 information, 70%,
- (b) for the withholding of category 2 information, 105%, and
- (c) for the withholding of category 3 information, 140%.

(5) In any case not falling within sub-paragraph (2), the penalty under this paragraph is the greater of—

- 25 (a) 5% of any liability to tax which would have been shown in the return in question, and
- (b) £300.

(6) Paragraph 6A explains the 3 categories of information.

5. Paragraph 23 of Schedule 55 contains a defence of “reasonable excuse” as follows:

23—

(1) Liability to a penalty under any paragraph of this Schedule does not arise in relation to a failure to make a return if P satisfies HMRC or (on appeal) the First-tier Tribunal or Upper Tribunal that there is a reasonable excuse for the failure.

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(2) For the purposes of sub-paragraph (1)—

- (a) an insufficiency of funds is not a reasonable excuse, unless attributable to events outside P's control,
- (b) where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the failure, and

40

(c) where P had a reasonable excuse for the failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

5 6. Paragraph 16 of Schedule 55 gives HMRC power to reduce penalties owing to the presence of “special circumstances” as follows:

16—

(1) If HMRC think it right because of special circumstances, they may reduce a penalty under any paragraph of this Schedule.

10 (2) In sub-paragraph (1) “special circumstances” does not include—

(a) ability to pay, or

(b) the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another.

15 (3) In sub-paragraph (1) the reference to reducing a penalty includes a reference to—

(a) staying a penalty, and

(b) agreeing a compromise in relation to proceedings for a penalty.

20 7. Paragraph 20 of Schedule 55 gives a taxpayer a right of appeal to the Tribunal and paragraph 22 of Schedule 55 sets out the scope of the Tribunal’s jurisdiction on such an appeal. In particular, the Tribunal has only a limited jurisdiction on the question of “special circumstances” as set out below:

22—

25 (1) On an appeal under paragraph 20(1) that is notified to the tribunal, the tribunal may affirm or cancel HMRC's decision.

(2) On an appeal under paragraph 20(2) that is notified to the tribunal, the tribunal may—

(a) affirm HMRC's decision, or

30 (b) substitute for HMRC's decision another decision that HMRC had power to make.

(3) If the tribunal substitutes its decision for HMRC's, the tribunal may rely on paragraph 16—

(a) to the same extent as HMRC (which may mean applying the same percentage reduction as HMRC to a different starting point), or

35 (b) to a different extent, but only if the tribunal thinks that HMRC's decision in respect of the application of paragraph 16 was flawed.

40 (4) In sub-paragraph (3)(b) “flawed” means flawed when considered in the light of the principles applicable in proceedings for judicial review.