



[2019] UKFTT 0595 (TC)

**TC07378**

*PROCEDURE – whether to give permission for late appeal against late filing penalties to be made to HMRC – HMRC had informed one of the taxpayers that no appeal could be made until returns filed – permission given*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**Appeal number: TC/2019/01771  
TC/2019/01775  
TC/2019/01777**

**BETWEEN**

**CLARE SHENSTONE** **Appellant**

**-and-**

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

**GEORGINA WHITE** **Appellant**

**-and-**

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

**HENRY WHITE** **Appellant**

**-and-**

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

**TRIBUNAL: JUDGE JEANETTE ZAMAN**

**Sitting in public at Taylor House, 88 Rosebery Avenue, London EC1R 4QU on 13  
September 2019**

**The Appellants did not attend**

**Miss Alfair Mackoon, litigator of HM Revenue and Customs’ Solicitor’s Office, for the  
Respondents**

## DECISION

### INTRODUCTION

1. Ms Clare Shenstone, Miss Georgina White and Mr Henry White applied for permission to make late appeals to HMRC against late filing penalties. They are partners in Shenstone Art Partnership, and are also mother and her two (adult) children.
2. Their accountants, Valentine Ellis & Co (“Valentine”) wrote to HMRC on 7 January 2019 to appeal against the following penalties (the amounts stated below being those set out in Valentine’s letter, albeit, as noted later, some of these are incorrect):

Clare Shenstone	2015-2016	£1,600
	2016-2017	£2,600
Henry White	2013-2014	£1,300
	2014-2015	£1,300
	2015-2016	£1,600
	2016-2017	£2,600
Georgina White	2013-2014	£1,300
	2014-2015	£1,300
	2015-2016	£1,600
	2016-2017	£2,600

3. By letter dated 15 February 2019 HMRC rejected these appeals as late.
4. On 7 May 2019 the Tribunal directed that the applications for permission to make late appeals by the taxpayers should proceed together and be heard together by the same Tribunal.

### NON-ATTENDANCE BY APPELLANTS

5. The notice of hearing sent by the Tribunal to the parties stated that the hearing was to be heard at 10.30am on Friday 13 September 2019 at Taylor House. At that time I attended the allocated court room and, as I had just been informed by the clerk, only Miss Mackoon was present. Miss Mackoon informed me that a few minutes previously, and being aware that none of the Appellants nor their representative, Ms Styrnau of Valentine, were present at the Tribunal, Miss Mackoon had called Ms Styrnau to find out who was expected to attend and when they would be arriving. Ms Styrnau had said she had thought the hearing was scheduled for 2pm that day, and this is what she had told her clients. Accordingly, at that time, “they” (and it was not clear to me who this would include) were expecting to be leaving at 12.10 to be here for 2pm. Ms Styrnau had said she would be calling Miss Mackoon again shortly once she had spoken to her clients and found out where they were and if they could come to the Tribunal earlier.

6. I had to consider, having regard to the overriding objective in Rule 2 of the Tribunal Rules and the need to deal with matters fairly and justly, and Rule 33, which provides that the Tribunal may proceed with the hearing in the absence of one of the parties if the Tribunal is satisfied that the party has been notified of the hearing and that it is in the interests of justice to proceed with the hearing, whether to proceed with the hearing or postpone. At this stage no message had been sent to the Tribunal to explain any problem with attendance. Being aware that the correspondence addresses on the Notice of appeal indicated that the Appellants lived in London, I informed Miss Mackoon that I proposed to postpone the hearing for 30 minutes so that she could await an update from Ms Styrnau but that I was still expecting that the hearing would proceed that day.

7. Upon reconvening at 11.10, Miss Mackoon informed me that Ms Styrnau had told her that Mr White, who lives in West London, was “on his way”. She did not confirm when she herself was expecting to arrive. As I was scheduled to hear another case at 2pm that day in which Miss Mackoon would again be representing HMRC, ie we were both expecting to remain at Taylor House throughout the day and were prepared for the hearing, I decided we should give Mr White and Ms Styrnau a reasonable opportunity to arrive before commencing proceedings.

8. Just before 11.30am we reconvened at Miss Mackoon’s request (with no-one else yet having arrived). She explained to me that she had reviewed the file again and realised that she had made a mistake which had probably led to the confusion. Whilst the notice of hearing was clear that the hearing was to start at 10.30am, Miss Mackoon’s (subsequent) letter of 29 August 2019 to Valentine (which had enclosed the bundle for the hearing) had referred to the hearing being at 2pm.

9. In the light of this, and although Valentine had not identified that this conflicted with the notice of hearing from the Tribunal, I concluded that it would not be fair or just for me to proceed with a hearing before 2pm in the absence of the Appellants. Miss Mackoon acknowledged this. I stated that I expected we would still be able to complete the hearing that day, and noted that no application for postponement had been made. The clerk would let me know as soon as the Appellants in this appeal or the second (unrelated) hearing arrived at Taylor House and I would decide in the light of that which hearing would proceed first. Miss Mackoon agreed that she would also stay in the building and be able to accommodate a flexible start time.

10. By 1.20pm the parties for the second hearing had arrived and confirmed they were ready for the hearing of their appeal. There was still no sign of the Appellants or Ms Styrnau and so we proceeded with that other hearing. I instructed the clerk that as soon as anyone arrived they were to be informed that the hearing would be taking place that afternoon, although it would be later than the 2pm start that they had been expecting.

11. Once that hearing completed, which was shortly before 3pm, the clerk informed me that no-one else had arrived, and no message had been received from the Tribunal Service as to where the Appellants were and why they had not arrived. I reconvened with Miss Mackoon, who explained that she had sought an update from Ms Styrnau at about 1pm, who had said that she would be seeking a postponement. I was not aware of any such application at that time. No explanation had been provided as to the whereabouts of Mr White who had apparently been “on his way” several hours previously. Given that the reason given earlier that day for non-attendance for the 10.30am start time was that Ms Styrnau had been told that the hearing would be at 2pm, and it was now an hour after that time, I decided that we should proceed in the Appellants’ absence.

12. At 3.35pm, the clerk interrupted the hearing to inform me that the Tribunal Service in Birmingham had received a request for a postponement. By this stage, HMRC had nearly finished setting out their position and drawing to my attention points which the taxpayers might be expected to have raised. I considered that at this stage it was too late for a postponement application to be made. There could be no doubt that Ms Styrnau knew of the hearing, and had been chased by Miss Mackoon for attendance, and there was no good reason before me as to why they were not present for a hearing by 2pm at the latest. Furthermore, and importantly for the purpose of my decision to refuse to postpone, one of the points to which Miss Mackoon had drawn to my attention in Mr White’s SA Notes was a point that I had identified before the hearing as supporting the taxpayers’ application for permission. Having considered this further and I concluded that I should give both Miss White and Mr White permission to make late

appeals. In the light of all the circumstances, I concluded that the fairest outcome and that which was in the interests of justice was to proceed to complete the hearing. I would not necessarily have reached this same conclusion if by this stage of the hearing I had been minded to refuse permission for the late appeals or if I was expecting to reserve my decision in order that I could consider it further.

13. As a postscript to all of the above, I note for completeness that when (after the hearing) I checked my emails I saw that at 2.54pm the Tribunal Service had forwarded to me an email from Ms Styrnau, which she had sent to the Tribunal at 1pm that day. That email included an application for postponement. Thus whilst the application for postponement was very late, it was sent to the Tribunal Service before the start time which she had been expecting.

#### **UPDATE ON HMRC'S POSITION ON PENALTIES**

14. At the hearing Miss Mackoon informed me that HMRC have agreed to accept late notice of appeal against some of the penalties and, furthermore, have accepted the substantive appeal against those penalties on the basis that there was a reasonable excuse for the late filing of the self-assessment returns. This had apparently been communicated to the taxpayers (which I was not able to confirm).

15. Miss Mackoon stated that HMRC has agreed to accept the late appeals and agreed that there was a reasonable excuse for the underlying late filing for:

- (1) all of the late filing penalties imposed on Ms Shenstone (namely the late filing penalties imposed in respect of the tax years 2015-2016 and 2016-2017); and
- (2) the late filing penalties imposed on Miss White and Mr White for the late filing of self-assessment returns for the tax years 2013-2014, 2014-2015 and 2015-2016.

16. The question which remained to be addressed at the hearing was whether I should give Miss White and Mr White permission to appeal late to HMRC against the penalties imposed for late filing of self-assessment returns for the tax year 2016-2017. The total amount of those penalties for each taxpayer (as set out further below) is £1,300 (not £2,600 as set out in the letter from Valentine and outlined at [2] above).

#### **RELEVANT FACTS**

17. I had before me a bundle prepared by HMRC for the hearing and various medical records of Ms Shenstone. On the basis of that information, I have made the following findings. I have made additional findings in the Discussion. These findings are made for the purpose of this application only.

18. The "Return Summary" for both Miss White and Mr White shows that their self-assessment returns for 2016-2017 were due to be submitted (if online) by 31 January 2018. They were not filed until 18 December 2018. The grounds for appeal had not disputed the fact of this late filing.

19. I did not have a copy of the relevant penalty assessments, but the papers included HMRC's "View/Cancel Penalties" record showing that the following penalties were imposed on Miss White and Mr White for late filing of self-assessment returns for the tax year 2016-2017:

- (1) Late filing penalty of £100 on 13 February 2018;
- (2) Daily penalty of £900 on 30 October 2018; and
- (3) 6 month late penalty of £300 on 30 October 2018.

20. HMRC's Address History indicated that since 1 August 2013 Mr White's address had been what I shall refer to as "147 T".

21. Miss White’s address as at 29 August 2019 is also shown on the Individual Designatory Details as 147 T. Her Address History looks more complicated, but in part this is due to the fact that for some entries the first line of the address is expressed differently for what was in fact the same address as 147 T. With that established, HMRC held the following addresses on record, which I find would have been used for sending penalty assessments:

- (1) from 5 May 2009 to 6 September 2017, 147 T;
- (2) from 6 September 2017 to 5 March 2018, an address which I shall refer to as “25 E”, which is then repeated as the address from 5 March 2018 to 29 October 2018; and
- (3) from 29 October 2018 to 4 November 2018, 147 T.

22. I was provided with a substantial amount of material in relation to Ms Shenstone’s medical condition. This comprised a variety of notes from consultants detailing the difficulties she was experiencing and her admission to hospital for various periods of time as well as details of out-patient appointments. It is not necessary for me to make detailed findings in relation to this condition. Suffice to say for present purposes, Ms Shenstone had been admitted to hospital in late December 2014 with pneumonia and a serious drug-resistant infection (on top of other medical conditions for which she had been treated since 2000). She spent two months in hospital, and after that had to be re-admitted to hospital every four to six weeks for around two weeks each time for further treatment. This continued for about two years, after which time she participated in a new drug trial for several months. Ms Shenstone’s condition did stabilise during 2017, but she still had to attend various appointments with consultants at the hospital, and, most recently, had to be admitted again to hospital on 20 August 2019. HMRC did not seek to challenge any of this medical evidence which had been carefully assembled on behalf of the Appellants and put before me.

23. With the self-assessment returns having been filed on 18 December 2018, Valentine appealed to HMRC on behalf of Miss White and Mr White (as well as their mother) on 7 January 2019. This appeal was rejected by HMRC as late.

24. Notice of appeal was given to the Tribunal on 14 March 2019 applying for permission to make a late appeal to HMRC.

#### **RELEVANT LEGISLATION**

25. Section 31A TMA 1970 requires that notice of an appeal is given in writing to the relevant officer of the Board within 30 days of the date of the assessment.

26. Section 49 TMA 1970 then applies where a notice of appeal is given late. This provides:

#### **“49 Late notice of appeal**

- (1) This section applies in a case where—
  - (a) notice of appeal may be given to HMRC, but
  - (b) no notice is given before the relevant time limit.
- (2) Notice may be given after the relevant time limit if—
  - (a) HMRC agree, or
  - (b) where HMRC do not agree, the tribunal gives permission.
- (3) If the following conditions are met, HMRC shall agree to notice being given after the relevant time limit.
- (4) Condition A is that the appellant has made a request in writing to HMRC to agree to the notice being given.
- (5) Condition B is that HMRC are satisfied that there was reasonable excuse for not giving the notice before the relevant time limit.
- (6) Condition C is that HMRC are satisfied that request under subsection (4) was made without unreasonable delay after the reasonable excuse ceased.

(7) If a request of the kind referred to in subsection (4) is made, HMRC must notify the appellant whether or not HMRC agree to the appellant giving notice of appeal after the relevant time limit.

(8) In this section “relevant time limit”, in relation to notice of appeal, means the time before which the notice is to be given (but for this section).”

#### **APPELLANTS’ GROUNDS SEEKING PERMISSION**

27. The grounds for appeal, as expanded upon in various correspondence, include:

(1) Mr White had telephoned HMRC within the 30 day time limit to appeal against the penalties but had been informed by HMRC that nothing could be done until the tax returns had been completed. This ground was also relied upon by Miss White.

(2) The reason for the late filing of the self-assessment returns was based on the medical condition of Ms Shenstone (details of which had been provided to HMRC). Ms Shenstone is the senior partner in the partnership and had most of the information which was needed to prepare and file the partnership accounts. Her medical condition (which involved repeated admissions to hospital) meant that it had taken a long time to put this information together and this had led to the delays in filing the returns for all three of the partners.

(3) They (which I took to mean all three partners) had been informed by their previous accountant before he died (in 2016) that he had filed returns up to and including the tax year 2014-2015. Ms Shenstone had paid for this work.

#### **HMRC’S SUBMISSIONS**

28. Miss Mackoon referred to the three-stage approach set out by the Upper Tribunal in *Martland* and explained that HMRC’s position was that the reasons given by Miss White and Mr White did not amount to a good reason for being so late to make their appeals. In particular:

(1) HMRC did not challenge the severity of the medical condition from which Ms Shenstone was suffering. However, given that this was a long-term illness (with the medical records showing that she had been dealing with this since at least 2014), Miss White and Mr White should, by the time that the penalties were imposed for the tax year 2016-2017, have had alternative arrangements in place to deal with the need to prepare returns, and also to appeal on time against penalties; and

(2) Miss White and Mr White had appointed a new accountant in March 2017. Therefore, notwithstanding the failures they had previously experienced with their former accountant, they had had plenty of time during which the new accountant could have got up-to-date.

29. Miss Mackoon also drew my attention to two aspects of HMRC’s SA Notes which were particularly relevant to the grounds for appeal. These are:

(1) for Miss White, the entry indicating that a letter had been returned to HMRC as undelivered in March 2018; and

(2) for Mr White, a reference to his having called HMRC in January 2018.

30. She had no further information on these entries other than that which was in the papers before me and I consider them in the Discussion below.

#### **DISCUSSION**

31. As HMRC have now cancelled all late filing penalties which had been imposed on Ms Shenstone, I only need to consider whether to give permission for Miss White and/or Mr White to appeal to HMRC against the penalties imposed on them for late filing of their self-assessment returns for the tax year 2016-2017. Whist their grounds for appeal are expressed similarly

(which was no doubt the reason that their applications had been directed to be heard together) their obligations are their own and I need to make a decision for each taxpayer.

32. In *Martland v HMRC* [2018] UKUT 178 (TCC) the Upper Tribunal gave guidance as to how this Tribunal should approach an application to allow the notification of a late appeal. It said:

“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-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 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 granting or refusing permission.

45. That balancing exercise should take into account the particular importance of the need for litigation to be conducted efficiently and at proportionate cost, and for statutory time limits to be respected. By approaching matters in this way, it can readily be seen that, to the extent they are relevant in the circumstances of the particular case, all the factors raised in *Aberdeen and Data Select* will be covered, without the need to refer back explicitly to those cases and attempt to structure the FTT's deliberations artificially by reference to those factors. The FTT's role is to exercise judicial discretion taking account of all relevant factors, not to follow a checklist.

46. In doing so, the FTT can have regard to any obvious strength or weakness of the applicant's case; this goes to the question of prejudice – there is obviously much greater prejudice for an applicant to lose the opportunity of putting forward a really strong case than a very weak one. It is important however that this should not descend into a detailed analysis of the underlying merits of the appeal.”

33. In addition, the Upper Tribunal in *HMRC v Katib* [2019] UKUT 0189 (TCC), which concerned an appeal by HMRC against a decision of the Tribunal to give permission for the taxpayer to make late appeals, emphasised the importance of adhering to statutory time limits at [17]:

“We have, however, concluded that the FTT did make an error of law in failing to acknowledge or give proper force to the position that, as a matter of principle, the need for statutory time limits to be respected was a matter of particular importance to the exercise of its discretion. We accept Mr Magee's point that the FTT referred to both *BPP Holdings* and *McCarthy & Stone* in the Decision. Paragraph 27 (1) of the decision (cited above) shows that the FTT seemed to have the point in mind. However, instead of acknowledging the position, the tribunal went on to distinguish the *BPP Holdings* case on its facts. Differences in fact do not negate the principle, and it is not possible to

detect that the tribunal thereafter gave proper weight to it in parts of the decision which followed.”

34. I have applied this three-stage process.

#### ***Length of the delay***

35. The appeals against the late filing penalties (of £100 each) assessed on 13 February 2018 were nearly 10 months late. This delay was serious and significant.

36. The appeals against the daily penalties and six month late penalties assessed on 30 October 2018 were less than two months late. This length of delay, whilst not being serious and significant, is nevertheless long enough to be troubling. It cannot be said to be a “very short delay” which the Upper Tribunal contemplated in *Martland* might mean that little time needs to be spent on the second and third stages.

#### ***Reasons for the delay***

37. The reasons put forward in the grounds (understandably) cover matters relevant to both the permission to make a late appeal and the arguments which would be put forward as a reasonable excuse in the event that permission were given for an appeal to be made against the late filing penalties.

38. There are three reasons being put forward in the grounds, namely Mr White’s conversation with HMRC, Ms Shenstone’s illness and the previous accountant having told them that returns up to and including 2014-2015 had been filed. I also identified (with the assistance of Miss Mackoon) a potential fourth reason applicable to Miss White, namely a question as to whether she received the late filing penalty issued on 13 February 2018 – if she had not received it, this would be a very good reason for not having appealed against it on time. I deal with each of these below:

(1) Mr White’s conversation with HMRC – Mr White refers in his grounds to having been told by HMRC that nothing can be done until the tax returns had been filed. He could not be cross-examined on this conversation. However, HMRC’s SA Notes contain an entry dated 31 January 2018 as follows:

“TP tel in re pen ltrs. TP part of partnership w/ mother & sister. TP said had no access to accounts, accountant committed suicide last year & had not filed rtns for last 6 yrs. New accountant pulling together figures to submit the rtns. Accountant told TP to pay £300 LFP but rcvd more ltrs. Adv daily and potentially late payment pens would apply on the record backdated. Adv can appeal pens in writing but only once rtns are submitted 11.04”.

This entry confirms that Mr White did call HMRC and ask about appeals. Whilst this conversation had occurred before the penalties which are now in issue had been assessed, the proximity of this call to the assessment then being received the following month (in February 2018) and later that same year (in October 2018) leads me to conclude that this conversation, which was at some (unknown) time communicated to Miss White, would have been remembered by Mr White. As such, when he subsequently received those additional penalty assessments, given that at this time his accountant was still preparing the relevant returns, he did not take any action to appeal against those penalty assessments. He had been told by HMRC that he could not do so and relied on that advice (which HMRC’s notes also characterise as advice).

I’ve asked myself whether reliance on this statement (by either Mr White and/or Miss White) was reasonable and consider that it was. Mr White had received penalty assessments for prior tax years for which returns had not yet been submitted, had asked



a direct question of HMRC about appealing them and been told, according to HMRC's own records that he can appeal "only once rtns are submitted". He did at this point in time have an accountant preparing the returns for him. He could have sought to confirm this advice with the accountant - but why would he? He had asked the person who can be expected to know and received a clear answer.

It is notable that the returns were submitted on 18 December 2018 and the appeal was made to HMRC on 7 January 2019. Taking account of expected delays at this time of year, this is a fairly short gap between filing the returns and submitting the appeal, in line with what someone might be expected to do if they had been told that these events needed to occur sequentially.

I do regard this as a good reason for the delay for appealing against all of the penalties which are the subject of this application for permission.

(2) Ms Shenstone's illness - Whilst Ms Shenstone's illness may well be a key part of the explanation for why the self-assessment returns were filed late (possibly including not only the difficulty this caused with putting information together for the preparation of the accounts but also the impact on her children, noting that Mr White moved in to look after her) I do not consider this illness should have prevented Miss White or Mr White from notifying HMRC of their appeals against the penalties within the statutory time limits.

(3) Conduct of previous accountant - It was emphasised in *Katib* that taxpayers are generally responsible for the failures of their advisers. I do not need to consider this in any detail in the present instance as I am not satisfied that the difficulties with the previous accountant (who died in March 2016 and was replaced by Valentine in March 2017) can be of any relevance for a failure to submit timely appeals against penalty assessments which were made in February 2018 and October 2018 in respect of the late filing of returns for 2016-2017.

(4) Receipt by Miss White of the first late filing penalty – The grounds for appeal do not contain any statement that the penalties were not properly assessed. However, I note that HMRC's "SA Notes" for Miss White include an entry dated 6 March 2018 that reads "Base Address RLS set". Miss Mackoon explained that such an entry is made when HMRC receive a Returned Letter Sent, indicating that a particular item of correspondence sent by HMRC to a taxpayer has been returned to HMRC as undelivered.

There is no additional information as to which letter was returned as undelivered. From the Address History it is clear that Miss White's address which would have been used by HMRC at that time was 25 E (ie not the address which is now shared with her mother and brother). It is apparent from the SA Notes that HMRC had been sending automated reminders to Miss White about earlier penalties (those which have since been cancelled) during the period from December 2017 to January 2018. One of those reminder letters may have been returned. However, HMRC's "View/Cancel Penalties" record shows that the late filing penalty was issued on 13 February 2018. No reminder letters are stated to have been sent in February 2018. I infer that, on the balance of probabilities, it is more likely that the letter which was returned was the penalty assessment. This inference is made based on the evidence before me, not having had the benefit of any evidence from Miss White on the question of whether she received that assessment.

As I have inferred that the late filing penalty assessed on 13 February 2018 was returned to HMRC and thus not received by Miss White, this would be a very good reason for her not having appealed against that first penalty.

*All the circumstances*

39. The final stage in the process is to evaluate all the circumstances of the case, which includes weighing up the length of the delay, the reasons for the delay, the extent of the detriment to Miss White and Mr White which would be caused by my not giving permission and the extent of the detriment to HMRC which would be caused by my giving permission. I also note, as set out in the Upper Tribunal decision in *Martland*, that the starting point is that permission should not be granted unless this Tribunal is satisfied on balance that it should be.

40. In conducting that process, I am required:

(1) to take into account the particular importance of the need for litigation to be conducted efficiently and at a proportionate cost and for the statutory time limits to be respected; and

(2) without descending into a detailed examination of the case, to have regard to any obvious strength or weakness in that case because that is highly relevant in weighing up the potential prejudice to the parties of my decision.

41. I am very aware that giving permission would prejudice HMRC and the public interest - there is a public interest in ensuring that time limits set by Parliament in legislation are observed and are not extended without good reason. To allow a late appeal for no good reason might encourage others to regard time limits as optional.

42. Whilst I have concluded above that neither the difficulties with the previous accountant nor Ms Shenstone's illness constitute a good reason for giving permission, and the conclusion that the February 2018 penalty assessment was not received by Miss White is only relevant in respect of her appeal against the first penalty, I do consider that the statement by HMRC to Mr White in January 2018 that an appeal can only be made once returns are submitted is a very good reason for the delay. Whilst this statement was made only to Mr White, and there is no suggestion that Miss White called HMRC herself, it is clear that she had been informed of this message and had relied on it. I consider her reliance was completely reasonable.

43. In terms of the merits of the appeal, whilst I have concluded that Ms Shenstone's illness does not constitute a good reason for having failed to notify an appeal on time (given that this step would not have required the information which it is claimed that only she had at that time), I do recognise that this would be more relevant to a claim that there was a reasonable excuse for late filing. HMRC's position, namely that this was a long-term illness and Miss White and Mr White should have, by the time of the deadline for filing the return for 2016-2017, put in place arrangements to ensure they could fulfil their statutory obligations, also has some merit. I have not sought to consider in any detail the extent to which the medical records provided demonstrate that Ms Shenstone's condition had deteriorated at times that are particularly relevant to the filing deadline. I simply note that there are some merits to each party's position and accordingly I do not consider that the merits of the appeal weigh particularly in favour of either granting or refusing permission.

44. Taking all of this together, I have concluded that, whilst other factors are broadly neutral, the statement made by HMRC to Mr White that he can only appeal against the penalties once the returns are submitted outweighs the particular importance of adhering to statutory time limits and does cause me to move from my starting-position that permission should not be granted. It is a statement that was made on behalf of the party who would be prejudiced by my giving permission.

45. I therefore give permission for Miss White and Mr White to make a late appeal to HMRC against the penalties totalling £1,300 each in respect of the tax year 2016-2017.

**CONCLUSION**

46. For the reasons given above, I give permission for the appeals to be made late to HMRC by both Miss White and Mr White against the penalties.

**RIGHT TO APPLY FOR PERMISSION TO APPEAL**

47. 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.

**JEANETTE ZAMAN  
TRIBUNAL JUDGE**

**RELEASE DATE: 18 SEPTEMBER 2019**