



**TC06587**

**Appeal number: TC/2018/01747**

***PENALTIES – whether proved that various letters were posted by HMRC –  
no – appeal allowed***

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**HANAA CHATTUN**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE BARBARA MOSEDALE**

**Sitting in public at Taylor House, Rosebery Avenue, London on 17 May 2018,  
both parties appearing by video link.**

**Mr R Ahmad, of BizNav Chartered Accountants, for the Appellant**

**Ms P O'Reilly, HMRC officer, for the Respondents**

## DECISION

- 5 1. The appellant lodged a late appeal against:

<b>Tax Return 2013/14</b>	<b>Penalty in £</b>
Late filing penalty	100
Daily penalties	900
6 month late filing penalty	300
<b>Tax Return 2014/15</b>	
Late filing penalty	100
Daily penalties	900
6 month late filing penalty	300
<b>TOTAL</b>	<b>2,600</b>

### **Late appeal**

- 10 2. HMRC refused to accept the appeals out of time. The hearing was therefore a hearing of the appellant's application for permission to lodge the appeals out of time, and if that was successful, then a hearing of the appeal.

- 15 3. At the outset of the hearing, Ms O'Reilly said that HMRC no longer objected to the appeals against the daily penalties and 6 months' late filing penalties being lodged late because they were only lodged a few weeks' late. All the appeals were in fact lodged on 12 January 2018. The appeals against the two initial late filing penalties (total of £200) of April 2017 were therefore lodged over 6 months' late and HMRC did maintain their opposition to those appeals being heard.

4. It seemed to me that the question of whether to admit the appeals late and whether to allow the appeals if admitted turned on identical questions of fact: if I admitted the appeals, I must allow them.

- 20 5. And that question of fact was whether Ms Chattun had received the penalty notices. If she had not received them, she had an excellent explanation of why her appeals were late: if she had not received them, she had a cast iron defence to liability (as penalty notices must be served to be valid). But if she had received them, she had no explanation as to why the appeal was lodged late, and her defence to her liability  
25 (that she had not received them) disappeared; and so the appeals should not be admitted.

6. So I go on to consider the facts.

## The facts

7. Both parties agree that there was a telephone conversation between Ms Chattun, her agent and an HMRC officer on 12 January 2017. HMRC rely on the notes of that conversation made in the appellant's 'SA notes' which is HMRC's internal computer system in which HMRC officers can make notes of interactions about a taxpayer's self-assessment record.

8. The note on 12 January 2017 is the first note for Ms Chattun. It records (a) that the SA record was set up; (b) notices to file issued; (c) her address updated and (d) a UTR letter sent; (e) and authority to speak to her agent was given.

9. The appellant's and her agent's recollection of the phone conversation is largely consistent with the gist of this.

10. Ms Chattun explained that she had used another accountant when she set up her company a few years earlier. She changed accountants early 2017 who told her she should have registered for self-assessment when she set up her company, even though, so far, she had received no income from the company. So together Ms Chattun and Mr Ahmed, her new accountant, had rung up HMRC on 12 January 2017 to sort out the matter. They were advised that a UTR (unique taxpayer reference number) and a deadline for submission of tax returns would be sent to her. They both recall that the HMRC officer would not give them the UTR over the telephone. They recalled being asked for Ms Chattun's address.

11. A computer printout of HMRC's address records shows that an entry was created on 12 January 2017. It recorded Ms Chattun's address: I will refer to it as the 'SW6' address. The appellant agrees that the address and postcode was correct. She has not moved residence at any time relevant to this appeal.

12. HMRC's printed records also note that on 12 January 2017 blank tax returns were issued to Ms Chattun in respect of tax year 2013/14 and 2014/15. I find the blank tax return was a notice to file as it required the taxpayer to make a tax return by a stated date.

13. The same entries record receipt by HMRC of the two tax returns on 12 December 2017. The appellant accepts that that is correct: she does not accept she received the blank tax returns (in other words, the notices to file) recorded as posted to her on 12 January 2017.

14. Another entry records that a blank tax return was sent to Ms Chattun on the same date (12 January 2017) for tax year 2015/16. It records a date of receipt of 31 January 2017 by online submission. Ms Chattun does not accept she received this tax return either; the submission of a completed return on 31 January 2017 does not prove this either way as it was submitted online.

15. In the hearing, Mr Ahmed was unable to recall when Ms Chattun's return for 15/16 was submitted, but a letter he wrote on 12 December 2017 clearly states it was filed on 31 January 2017. This is consistent with HMRC's records; the exchange

indicated that Mr Ahmed's recollection of events was, by the time of the hearing at least, somewhat hazy.

16. HMRC had a copy of a letter dated 13 January 2017 sent to the appellant at her SW6 address; it notified her of her UTR.

5 17. What is not apparent from the SA notes for 12 January, but both Mr Ahmed and Ms Chattun recollected, was that the HMRC officer was not certain when he spoke to them whether and when Ms Chattun would be required to file returns for 13/14 and 14/15 because they were nil returns. It was left to HMRC to inform her of this. This recollection is neither consistent nor inconsistent with the SA notes as the notes  
10 simply record that unspecified notices to file were issued. And while it is clear from HMRC's other records that the notices to file were to be issued to her for all three years, it is not clear whether the officer decided to do this during the phone conversation or only after the phone conversation.

15 18. The SA notes go on to record that on 29 August 2017, two thirty-day daily penalty reminders were sent to Ms Chattun (one each for 13/14 and 14/15); and on 19 September 2017 two 60 day daily penalties reminder letters were sent (one each for 13/14 and 14/15). These were all stated to be 'auto' which I take to mean that the system issued them automatically without any instructions to do so being given by an HMRC officer.

20 19. It is Ms Chattun's case that she received nothing from HMRC until a statement of account in late 2017. Her evidence is that that was the first she knew of any penalties. In the hearing she was clear that the letter she received was a statement of account dated in October but she did not have a copy of it with her; nothing produced by HMRC indicated when statements of account were sent to Ms Chattun. The  
25 parties do agree that a letter was sent to HMRC by Mr Ahmed on 12 December 2017. That letter accurately recorded the submission of Ms Chattun's 15/16 tax return as 31 January 2017 and referred to a statement of account dated 23 November 2017 as the only thing received by Ms Chattun from HMRC.

30 20. The returns for 13/14 and 14/15 were submitted 12 December 2017 on the same day as Mr Ahmed sent his letter. Appeals against the penalties were submitted not long afterwards (see §3).

### **The central issue in the appeal**

35 21. As I have said, there was one central question which was whether Ms Chattun received the penalty notices and/or the blank tax returns. Blank tax returns are notices to file tax returns within s 8 Taxes Management Act. If the taxpayer does not receive a notice to file for a particular tax year, the taxpayer is not liable to return it and cannot be penalised for not doing so; if the taxpayer does not receive the penalty notices, they are invalid. And she is not liable for the daily penalties unless in addition she received the daily penalties warning letters.

22. Ms Chattun's case is that she did not receive anything from HMRC until the statement of account in late 2017; it is her case she did not receive the notices to file, the daily penalties warning letters nor the penalty notices.

23. The appellant has therefore put in contention the question of whether she is liable to the penalties. And it is for HMRC to prove that a taxpayer is liable to the penalties and so it is for HMRC to prove that she received the notices to file, the daily penalties warning letters and the penalty notices.

24. However, the effect of s 7 Interpretation Act 1978 is that anything that is proved to have been posted is deemed to have arrived in the ordinary course of post unless it is proved otherwise. This switches the burden of proof from HMRC to an extent. It means that *if* HMRC can prove that the notices to file, the warning letters, and the penalty notices were posted to Ms Chattun, it is then for Ms Chattun to prove that they did not arrive.

25. So the one central issue breaks down into two questions:

- 15 (a) Can HMRC prove that they sent to the appellant (i) the notices to file for tax years 13/14 and 14/15; (ii) the various penalty notices and (iii) the daily penalties warning notices?
- (b) And if so, can the appellant prove that she did not receive them?

**Has HMRC proved that the relevant letters sent to the appellant?**

20 26. As a matter of law, in order to 'prove' that the relevant letters were sent, HMRC must show that it is more likely than not that the letters were sent to the correct address.

27. There is no dispute over address: the appellant accepted that the address held by HMRC since the phone conversation on 12 January 2017 was her correct address and she accepts she received at that address, since late 2017, all the communications which HMRC say they sent to her since then.

*HMRC's evidence*

28. HMRC is obviously not in a position to produce direct evidence that the letters were actually posted: HMRC must use automated systems and there could be no one with any recollection of actually posting these letters. Neither did I have any evidence about HMRC's systems for ensuring that letters which their computers recorded as being posted were actually posted. Nevertheless, I can not help but be aware (sitting as a judge in the FTT tax chamber) that HMRC send out a great deal of post and many appellants accept they receive it. The appellant accepts she received post in and after late 2017. HMRC's system, at least in general, appears to work. But I had no evidence on how robust it was.

29. Nevertheless, my view is that the evidence comprising HMRC's computer records is sufficient to raise a 'prima facie' case proving that a letter were sent. A

'prima facie' case is one that, in the absence of rebuttal evidence, proves what is sought to be proved.

30. In this case, however, there is rebuttal evidence. That is Ms Chattun's evidence that she never received the letters. While the failure of letters to arrive does not conclusively prove that they were not sent, it can cast doubt on whether they were sent. So it is rebuttal evidence which I must consider when considering the question of whether the letters were sent. Put another way, the relevance of Ms Chattun's evidence she did not receive the letters is not restricted to the second question (did she receive them?) but is also relevant to the first question (did HMRC post them?). This is because a reason a letter is not received can be because it was not posted.

31. So I move on to consider Ms Chattun's evidence.

*Ms Chattun's rebuttal evidence*

32. Her evidence was, as I have said, that she did not receive any letters from HMRC until she received the statement of account in late 2017. She accepted she received all letters after that date, which mostly comprised chasing letters from HMRC's debt collection department.

33. This evidence might be described as 'convenient' in that she denied receiving the letters that gave her liability to substantial penalties, but accepted she received the later chasing letters which triggered her appeal. Her evidence must be tested carefully.

34. It is also surprising evidence as it means that, without any change of address, no letters said to be posted before a particular date reached her, while all the letters said to be posted after that date reached her. No one was able to offer any explanation for this.

35. Mr Ahmed was not really able to corroborate the evidence. His evidence was that he had not received anything forwarded from his client until late 2017. But this evidence was very weak. It was inherently weak in that he could not know whether or not she had actually received the letters; it was further weakened by the fact that his memory was demonstrably poor (see §15 and 14 where he could not remember when and who filed his client's 15/16 return). I put almost no weight on his evidence.

36. Ms Chattun herself made a good witness. She appeared to have a reasonably good recollection of events; she came across as a business-like person. What she said was internally consistent. She also accepted that she was to some extent to blame for the situation because, having understood from the conversation on 12 January 2017 that the HMRC officer had promised to let her know what to do about tax years 13/14 and 14/15 (§17), she failed to chase it up when (on her account) she heard nothing. Moreover, when I asked whether she had had problems in general with receiving post at the relevant period, she did not take what would have been the easy option of suggesting that she had had any such problems.

37. I accept her case that it would have been quite unlikely that she would have ignored the letters had she received them. While (sitting in the FTT tax chamber) I cannot but be aware that some taxpayers bury their heads in the sand when it comes to compliance obligations, the evidence in this case was that Ms Chattun was not such a person. She had clearly intended to regularise her tax affairs; that was why she initiated the phone conversation on 12 January 2017 having discovered her previous accountants had let her down. She instructed her new accountant to file her 15/16 tax return and that was done promptly after speaking to HMRC. Moreover, she knew that the cost to her of filing the two earlier returns would simply be the cost of her accountant's time because they would be nil returns. (They have since been filed and HMRC have accepted the nil returns).

38. If I accept her evidence at §17, it also made sense that, having spoken to HMRC in January 2017, she would wait to receive the blank 13/14 and 14/15 tax returns as neither she nor her accountant were certain if and when these would be required. And I do accept that evidence as it was not challenged by Ms O'Reilly and not contradicted by anything in the documents and both witnesses appeared credible.

39. Moreover, if Ms Chattun received the penalty warning letters which HMRC say they sent, she would have known the size of the penalties she risked if the returns were not completed: failing to file nil returns at the cost of such substantial penalties made no sense.

40. I am aware that there is a slight discrepancy in the appellant's evidence over the date that she first became aware of the penalties: see §19. In the hearing, she stated the letter was received in October, but without the benefit of having the letter in front of her; the contemporaneous letter from her accountant to HMRC stated it was dated 23 November 2017. If I accept Ms Chattun as a credible and generally reliable witness, as I do, I think that the contemporary letter is more likely to be right about a date than a recollection in a hearing many months later. But does the date discrepancy suggest she might be wrong about whether or not she received the earlier letters? I do not think so. Whether or not a letter is received is very easy to remember; but any person is likely to be very vague in their recollection of its date, particular many months later.

41. In conclusion, her actions were therefore completely consistent with her story, which was that she had received nothing from HMRC until late 2017, and had then swiftly got her accountant to take up the matter with HMRC and to file the outstanding tax returns. Moreover, if she had received the letters HMRC said they sent, ignoring them would have been irrational and inconsistent with her clear desire to regularise her tax return position in circumstances where she had no tax to pay.

42. Ms O'Reilly challenged her evidence by pointing to what she considered to be an inconsistency. Ms Chattun denied receiving all letters from HMRC, but Ms O'Reilly's point was that she must have received the letter of 13 January 2017 (§16) notifying her of her unique taxpayer reference number ('UTR'). Ms O'Reilly said, and Mr Ahmed accepted, that tax returns cannot be filed without a UTR and Ms Chattun's 15/16 return was filed on 31 January 2017. Both Mr Ahmed and Ms

Chattun agreed that the HMRC officer in the phone conversation on 12 January had refused to give her a UTR over the phone and said that it would be posted to her. HMRC can produce a copy of the letter of 13 January but no evidence it was posted.

43. Mr Ahmed could not explain how his firm obtained the UTR in order to file the 15/16 tax return on 31 January 2017. Mr Ahmed was not even sure whether he had filed it himself or whether another employee of his firm had done so. Ms O'Reilly's explanation is that Ms Chattun did receive the letter of 13 January 2017 containing her UTR and had passed it to her accountant, implying therefore that Ms Chattun's evidence that she had received nothing from HMRC until late 2017 was not reliable. However, at least one other quite feasible explanation for the UTR was not ruled out and that was that someone in Mr Ahmed's firm had rung HMRC and been told the UTR; this is not recorded in the SA notes but the SA notes are demonstrably incomplete (eg there is no record of Mr Ahmed's letter of 12 December) and in any event the SA notes do record that on 12 January 2017 Ms Chattun authorised HMRC to speak to her agent (§8).

44. Ms O'Reilly also points out that on Ms Chattun's own evidence she was expecting a communication from HMRC and did not chase it up. However, what I accept (see §38) is that the conversation on 12 January had left Mr Ahmed and Ms Chattun uncertain whether HMRC would require returns – which would be late, albeit nil returns – to be filed for 13/14 and 14/15 and in those circumstances Ms Chattun's failure to pursue the matter is understandable. She had left it to HMRC to take action if they wanted the returns.

#### *Conclusion on the evidence*

45. I found this to be a case where the evidence was very finely balanced. On the one hand, HMRC's systems indicated all the letters had been sent and there was no explanation for how there could have a systems failure such that all letters before a certain date failed to be posted while all the letters after a certain date clearly were posted (as they were received).

46. On the other hand, I found Ms Chattun to be a credible witness and not the sort of person to act in the inconsistent and irrational manner she would have had to have acted in order to receive but ignore all the letters subsequent to the 12 January 2017 phone conversation despite her proved desire to regularise her tax position and the fact that she knew submitting the returns would not trigger any tax liability.

47. My conclusion is that this is a case where the outcome depends on the burden of proof. HMRC has to prove that the various letters were sent. I find they have not proved this in the face of the rebuttal evidence: the strength of each party's case is equal. It is not possible to say that it is more likely than not that the letters were posted.

48. So far as the second question at §25 is concerned, I do not have to consider this because HMRC have failed to prove the letters were sent. As HMRC have not proved the letters were sent, so Ms Chattun is not required to prove they did not arrive. If she



had had to do so, she could not for the reasons given above: each party's version of events is equally likely.

### **Decision**

49. In consequence of my finding that HMRC have not proved that the various  
5 letters which had to be sent for liability to arise were in fact sent, firstly the appeals  
against all of penalties are admitted out of time. HMRC did not object to the late  
admission save in respect of the two £100 penalties, but in any event, as HMRC  
cannot prove that the penalty notices were ever sent, that is an extremely good reason  
for lodging an appeal late; moreover, because HMRC cannot prove that the notices to  
10 file or penalty notices were ever sent, not to admit the appeal would be very unfair as  
it is bound to succeed.

50. Having admitted the appeal against all the penalties, I find that HMRC have not  
proved that the notices to file, daily penalty warning letters, or penalty notices were  
served. The appeal is therefore ALLOWED and the penalties discharged.

### **15 Submissions on the decision in *Karen Symes* [2018] UKFTT 42 (TCC).**

51. On 20 June 2018 the appellant's adviser asked the Tribunal to consider the  
decision in *Karen Symes*. I do not find the decision particularly easy to understand  
but it was on the basis that the appellant had a reasonable excuse for not filing her self  
assessment tax return in response to a notice to file. It seems the appellant's advisers  
20 have read it as suggesting HMRC are wrong to require a notice to file from a person  
merely because they are a director of a non-profit making body. However, it seems to  
me that the notices to file in this case were issued for their statutory purpose of  
establishing the appellant's liability to tax and therefore they were valid notice to file.

52. I have therefore not asked for HMRC's representations on this: their views are  
25 could not alter my decision as (a) I have allowed the appeal on another ground and (b)  
in any event, on this matter I would have decided the appeal in their favour.

53. 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  
30 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.

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**BARBARA MOSEDALE  
TRIBUNAL JUDGE**

**RELEASE DATE: 09 JULY 2018**