



Neutral Citation: [2025] UKFTT 00303(TC)

Case number: TC09453

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

By remote video hearing

Appeal reference: TC/2023/16838

INCOME TAX – appeal against penalties for failure to file a self-assessment tax return – failure to attend – hearing in the absence of the Appellant – Appeal dismissed

Heard on: 06 February 2025

Judgment date: 26 February 2025

Before

**TRIBUNAL JUDGE MATHEU SMITH
LESLIE HOWARD**

Between

SAAJID COCKAR

Appellant

-and-

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

Respondents

Representation:

For the Appellant: Mr Cockar did not attend the hearing and was not represented.

For the Respondent’s: Ms Black, Litigator of HM Revenue and Customs’ Solicitor’s Office.

DECISION

Introduction

1. The form of the hearing was a video hearing with all participants and the Tribunal Panel attending remotely via Microsoft Teams.
2. The documents to which we were referred were contained in a 68 page bundle prepared by the Respondents, The Commissioners for His Majesty's Revenue and Customs ("HMRC"). This included the Notice of Appeal made by the Appellant, Saajid Cockar, on 07 December 2023 and his initial appeal to HMRC made on 20 October 2023. We also had before us HMRC's 'Statement of Reasons' dated 27 September 2024 and a bundle of authorities produced by HMRC.
3. Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.
4. The matter before us was an appeal against penalties charged under Schedule 55 to the Finance Act 2009 in respect of the late filing of a self-assessment tax return.

The absence of Mr Cockar

5. The hearing began at 10.00am as a video hearing via Microsoft Teams, as it had been listed. 1 hour 30 minutes had been allocated for the hearing.
6. Mr Cockar did not join the video hearing. We waited until 10.05am, but Mr Cockar had still not joined the video hearing.
7. We checked to see if there had been any notification of contact from Mr Cockar regarding his non-attendance, but nothing had been received.
8. HMRC confirmed it had received no contact from Mr Cockar regarding his non-attendance.
9. We considered the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009.
10. Rule 33 is headed "Hearings in a party's absence", and it reads:

"If a party fails to attend a hearing the Tribunal may proceed with the hearing if the Tribunal -

 - (a) is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and
 - (b) considers that it is in the interests of justice to proceed with the hearing."
11. We were satisfied that reasonable steps had been taken to notify Mr Cockar of the hearing. We considered whether it was in the interests of justice to proceed. Rule 2(2) says:

"Dealing with a case fairly and justly includes-

 - (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;
 - (b) avoiding unnecessary formality and seeking flexibility in the proceedings;
 - (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
 - (d) using any special expertise of the Tribunal effectively; and
 - (e) avoiding delay, so far as compatible with proper consideration of the issues."
12. The relevant factors here are (a), (c) and (e).

13. In relation to factor (a):

(1) This appeal was a basic category appeal concerning late filing penalties amounting to £1,300 arising from the late filing of a self-assessment tax return for the tax year ended 05 April 2022. It did not raise any complex issues of fact or novel points of law.

(2) Adjournment of this appeal would have an adverse effect on HMRC's resources having expended some preparing for and attended this hearing.

(3) Adjournment of this appeal would have an adverse effect on the resources of the Tribunal, including that we had prepared for and were ready to hear this appeal in the time allocated for it.

(4) Adjournment of this appeal would have an adverse effect on the resources of Mr Cockar insofar as he decided to further participate in the appeal process.

(5) Adjournment would cause delay to other Tribunal users who are waiting for their appeals to be heard.

14. In relation to factor (c):

(1) Proceeding with the hearing in Mr Cockar's absence would mean that he would be unable to make oral submissions in relation to his grounds of appeal or give oral testimony, if he wished to do so. However, the various written submissions made by Mr Cockar in the form of the Notice of Appeal to the Tribunal and the initial notices of appeal sent to HMRC were before us, as was a copy of the contemporaneous notes HMRC had made of Mr Cockar's telephone calls to it in the relevant period of time the "SA Notes".

(2) For the reasons set out below in the section of the decision dealing with 'reasonable excuse', Mr Cockar's various written submissions did not appear to set out any facts or matters that amounted to a reasonable excuse for the late filing of the relevant tax return. Taking the most favourable view of Mr Cockar's written submissions, it could be said that they cast doubt on whether HMRC had sent Mr Cockar a notice to file the relevant tax return, raising the issue of whether HMRC could discharge the burden of establishing that events had occurred as a result of which the penalties, are on the face of it, due. That was an issue which HMRC could be asked to address despite the absence of Mr Cockar.

(3) No application to adjourn the hearing or other communication regarding Mr Cockar's absence had been received by the Tribunal or HMRC. As such, there was no indication that Mr Cockar wished to participate in the proceedings by actually attending the hearing, though he had given no prior indication that he did not wish to attend the hearing.

(4) In listing this hearing as a video hearing it had been made as simple as possible for Mr Cockar to participate in the hearing. He was not required to attend an in-person hearing, avoiding the need to spend any time or money doing so and any risk of difficulties with his journey which might have prevented him from attending the hearing. There is no indication that Mr Cockar was unable to participate in a video hearing.

15. In relation to factor (e):

(1) Adjournment of the hearing would inevitably cause delay. The appeal concerned the late filing of a return due by 31 January 2023 i.e. 2 years ago. Relisting the hearing

would further lengthen the gap between the dates on which the events occurred, and the eventual hearing of the appeal.

(2) In assessing whether we were properly able to consider the issues, we took into account the matters described in 14.1 and 14.2 above and that we also had the rest of the contents of the document bundle, HMRC's Statement of Reasons, the bundle of authorities containing extracts from the legislation and various relevant tribunal judgments and the presence of HMRC's representative.

16. Taking into account all the foregoing, we decided to proceed with the hearing, despite Mr Cockar's absence.

17. It was also recognised that should Mr Cockar join the hearing at any time before it concluded he could participate in it, including explaining the reasons for his delay in joining the hearing and, if he wished, he could ask us to consider adjourning the hearing. Likewise, any other form of communication received from Mr Cockar during the course of the hearing would be given due to consideration. In the event, Mr Cockar did not join the hearing before it concluded, nor did we become aware of any other form of communication received from him during the course of the hearing.

Late appeal

18. The initial appeal to HMRC had been rejected as it had been filed late. However, following notification of the Appeal to the Tribunal, HMRC decided not to object to the late appeal. Having taken account of that and the reasons given for making a late appeal in initial appeal to the Respondents and what is in the Notice of Appeal, we decided we would grant Mr Cockar permission to pursue a late appeal.

Had events occurred as a result of which the penalties, are on the face of it, due?

19. The various written submissions made by Mr Cockar in his Notice of Appeal and the initial notices of appeal sent to HMRC were not entirely clear, but read in the most favourable way they could be taken to say that he did not receive a notice to file a tax return for the year ended 05 April 2022. If that were to be the case then HMRC would have failed to establish that events had occurred as a result of which the penalties under appeal are, on the face of it, due and the penalties would have to be cancelled as per *Christine Perrin v HMRC* [2018] UKUT 0156 (TCC) at paragraph 69.

20. HMRC submitted that was not how Mr Cockar's written submissions should be read and was not the case they had sought to meet with the evidence they had produced. However, they took us to the available evidence which they said showed a notice to file the relevant return had been sent to Mr Cockar. Specifically, HMRC pointed to the document entitled 'Return Summary' at page 24 of the Documents Bundle as that evidence.

21. This appeared to be essentially same form of evidence:

(1) Produced to the First-tier Tribunal in *Qureshi v HMRC* [2018] UKFTT 0115 (TC) which it held to be not "...anywhere near sufficient to prove, on the balance of probabilities, that in respect of each relevant tax year the respondents sent the appellant a notice to file...". The FTT held that a "Return Summary" showing a "Return Issue date" with the date appearing alongside was not adequate to allow it to infer that any notice to file was in fact put in the post by HMRC in an envelope with postage prepaid, properly addressed to the taxpayer - paragraph [17] of that decision.

(2) Produced to the Upper Tribunal in *Barry Edwards v HMRC* [2019] UKUT 131 (TCC) which it too considered was insufficient on its own to draw the necessary inference that notices to file had been sent to the taxpayer.

22. We take the same view and, if that had been the only evidence available to us, we would have cancelled the penalties that are the subject of this appeal. However, it was not the only evidence available to us.

23. From Mr Cockar's Notice of Appeal, his appeal against a late filing penalty in respect of his tax return for the year ended 05 April 2021 (the "Previous Appeal") and the SA Notes it was apparent that:

(1) Mr Cockar had been required to file a tax return for the previous tax year which ended 05 April 2021.

(2) Whilst the Previous Appeal cast doubt on whether Mr Cockar had received a notice to file a return in respect of that previous tax year, he had plainly received the penalty notification which he had appealed.

(3) The SA Notes show that Mr Cockar had called HMRC on 04 April 2022 because he had received a late filing penalty and was told of the need to file the missing return. Mr Cockar called again on 08 April 2022 about the penalty and there seems to have been a further discussion about the need to file the missing return.

(4) Mr Cockar gave his address as 248 The Glade, Croydon, CR0 7UJ in the Previous Appeal which he submitted to HMRC on 08 April 2022.

(5) The SA Notes show that on 02 December 2022 Mr Cockar notified HMRC that his address had changed from 248 The Glade, CR0 7UJ. No other change of address is shown in those notes which contain entries through the period from 18 August 2021 to 20 October 2023.

(6) In the Previous Appeal Mr Cockar stated that the missing return for the year ended 05 April 2021 was filed on 08 April 2022.

(7) These interactions between Mr Cockar and HMRC were occurring at the time HMRC say they sent Mr Cockar a notice to file a tax return for the year ended 05 April 2022.

24. Considering that evidence together with what is shown on the Return Summary we find that HMRC did send Mr Cockar a notice to file a tax return for the year ended 05 April 2022 on or about 06 April 2022 and that would have been sent to the correspondence address given by Mr Cockar at that time in the Previous Appeal. Further, Mr Cockar did not inform HMRC that his address had changed until 02 December 2022.

25. Regarding the issue of whether HMRC sent Mr Cockar a notice to file a tax return for the year ended 05 April 2022, we were not assisted by HMRC's evidence of the documentation which had been sent to Mr Cockar electronically. It was HMRC's case that the relevant notice to file had been sent to Mr Cockar on 06 April 2022, but Mr Cockar did not opt in to receiving paperless communications until 01 September 2022. However, we are satisfied that evidence shows Mr Cockar was notified of all of the penalties that are the subject of this appeal. The correspondence sent electronically to Mr Cockar after 01 September 2022, which includes the penalty notifications and related warnings, was sent to the e-mail address he had instructed HMRC to use. Furthermore, it appears Mr Cockar continued to use that e-mail address as he gave the same e-mail address in his Notice of Appeal submitted to the Tribunal on 07 December 2023.

26. We are also satisfied that the penalties which are the subject of this appeal have been correctly calculated in accordance with the relevant legislative provisions.

27. Accordingly, we find that events have occurred as a result of which the penalties under appeal are, on the face of it, due.

Is there a reasonable excuse for the late filing?

28. Having found that the penalties are, on the face it due, it is necessary to consider whether Mr Cockar had a reasonable excuse for filing the return late. Mr Cockar bears the burden of proof in this regard.

29. We considered the guidance on how to approach this issue given by the Upper Tribunal in paragraph 81 of its decision in the *Perrin* case. The first stage is to establish what facts the taxpayer asserts give rise to a reasonable excuse. The second stage is to decide which of those facts are proven. The third stage is to decide whether the proven facts amount to a reasonable excuse and, if so, when it ceased. The fourth stage is to decide whether the taxpayer remedied the failure without unreasonable delay if the reasonable excuse ceased before the failure was remedied. What is ‘reasonable’ is to be determined objectively, taking into account the experience and other relevant attributes of the taxpayer and the situation in which the taxpayer found himself at the relevant time or times.

30. Within the Notice of Appeal Mr Cockar makes various factual assertions about not receiving the penalty notices, warning letters, e-mails and other correspondence from HMRC before 03 October 2023. These factual assertions generally seemed to concern why Mr Cockar was late in submitting his initial appeal to HMRC on 23 October 2023 and not why he filed the relevant tax return late. Even if any of those factual assertions were capable of giving rise to a reasonable excuse for the late filing of the relevant tax return, for the reasons already given above, we are satisfied that HMRC had sent the notice to file the relevant return to the correspondence address used by Mr Cockar at that time and the penalty notices were sent to the e-mail address he had instructed HMRC to use. Accordingly, we find that Mr Cockar has not proven these factual assertions and so they cannot amount to a reasonable excuse for the late filing of the tax return.

31. In the initial appeal notification to HMRC dated 20 October 2023 Mr Cockar stated as his reason for sending his tax return late: “initial notice to file may have previously gone to an old address, but i never received any penalties notices other then 3rd Oct. [sic]”. This factual assertion was not repeated in the Notice of Appeal when the appeal was notified to the Tribunal and so it was unclear whether Mr Cockar maintained it. Nevertheless, it was considered by us. As set out above, we have found that HMRC did send Mr Cockar a notice to file a tax return for the year ended 05 April 2022 on or about 06 April 2022 and that would have been sent to the correspondence address used by Mr Cockar at that time. Further, we have found that the penalty notices were sent electronically to Mr Cockar to the e-mail address he had instructed HMRC to use. Accordingly, these factual assertions have not been proven and so cannot amount to a reasonable excuse.

32. In the Notice of Appeal Mr Cockar makes the following factual assertions:

“The reason behind initially not submitting my tax returns was due to unintentionally mistaking the wrong year that required my tax submission. I was made redundant in late 2022 and did not earn more than £100k and thus assumed I wasn’t required to submit my tax returns. I am not disputing the tax returns as this was my mistake which I am accountable for. However, I cannot accept the large penalty fine without knowing the penalty warnings.”

33. As is described above, Mr Cockar had contacted HMRC by phone in April 2022 about his missing return for the tax year ended 05 April 2021 for which he had received a late filing

penalty and the need to file that return was explained to him. He filed that return on 08 April 2022 and on the same day, in his Previous Appeal, he wrote:

“this was sincerely a mistake, it is the first time i have earned over £100k and wasn’t aware that i needed to do a tax return. i wrongly assumed as i was PAYE i would pay through my company. going forward i am now aware i will need to submit. [sic]”

34. Accordingly, at least from early April 2022 Mr Cockar was aware that he needed to submit tax returns “going forward”.

35. Around that same time Mr Cockar received the notice to file his return for the tax year ended 05 April 2022.

36. In these circumstances we are not persuaded that Mr Cockar mistakenly believed that he did not need to file a tax return for the year ended 05 April 2022. We find that factual assertion is not proven and so cannot amount to a reasonable excuse.

37. Further, even if we had found that Mr Cockar was labouring under the mistaken belief that he did not need to file a tax return for the year ended 05 April 2022 and this was the reason he did not file that return, viewed objectively that would not amount to a reasonable excuse. A reasonable taxpayer with the same experience and attributes of Mr Cockar and in the same situation as Mr Cockar could not reasonably think that they need not file a tax return for the year ended 05 April 2022. That is especially so, given what Mr Cockar had learned from his contact with HMRC in April 2022.

38. We are reinforced by the decision of the Tribunal in *Garnmoss Ltd T/A Parnham Builders* [2012] UKFTT 315 (TC):

“12. What is clear is that there was a muddle and a bona fide mistake was made. We all make mistakes. This was not a blameworthy one. But the Act does not provide shelter for mistakes, only for reasonable excuses. We cannot say that this confusion was a reasonable excuse.”

39. As regards Mr Cockar’s assertion that: “I was made redundant in late 2022 and did not earn more than £100k and thus assumed I wasn’t required to submit my tax returns.”, absent any evidence to support that assertion, we are unable to find that it is proven. However, even if we were satisfied that had occurred, the bare fact that Mr Cockar was made redundant in “late 2022”, i.e. during the tax year ended 05 April 2023, could not cause a reasonable taxpayer to conclude that they did not need to submit a tax return for the tax year which had ended on 05 April 2022. Accordingly, this could not amount to a reasonable excuse.

40. Accordingly, we find that the Appellant did not have a reasonable excuse for the late filing of the relevant return.

41. For the avoidance of doubt, in reaching that conclusion we have given no weight to the sentence: “I am not disputing the tax returns as this was my mistake which I am accountable for.”. Though it could be argued that is an admission of some sort by Mr Cockar, it was not necessary for us to decide whether it was to determine this appeal.

Special Reduction

42. Paragraph 16 of Schedule 55 to the Finance Act 2009 gives HMRC the discretion to reduce a penalty because of “*special circumstances*”. In this case HMRC decided that there were no such special circumstances and so no reduction was made.

43. Where a taxpayer appeals against the amount of a penalty, paragraph 22 of Schedule 55 gives a tribunal the power to reduce a penalty to a different extent relying on paragraph 16,

but only if the tribunal thinks that HMRC's decision in respect of the application of paragraph 16 was flawed.

44. In light of the findings of fact made set out above we find that HMRC's decision not to make a special reduction of any of the penalties was not flawed.

Conclusion

45. For all the reasons given above this appeal is DISMISSED.

Right to apply for permission to appeal

46. 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 We 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.

Release date: 26th FEBRUARY 2025