



TC07410

Appeal number: TC/2018/05124

INCOME TAX – self assessment – late filing penalties – extent of penalties before the Tribunal – one year only – whether penalties properly imposed – yes – whether reasonable excuse for the filing delay – no – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

DAVID CRONE

Appellant

- and -

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

TRIBUNAL: JUDGE JANE BAILEY

Sitting in public at Centre City Tower, Birmingham on 3 October 2019

The Appellant in person

Mr Arshad Khan, presenting officer, for the Respondents

DECISION

Introduction

1. This appeal, filed on 3 August 2018, is made against HMRC's refusal, in a review decision dated 5 July 2018, to cancel penalties in the sum of £1,600 issued for the late filing of the Appellant's tax return for 2013/14. These penalties were imposed under Paragraphs 3, 4, 5 and 6 of Schedule 55 to the Finance Act 2009.

2. The Notice of Appeal refers to penalties imposed of £3,400. This is because, at the date of the appeal, penalties had also been imposed in respect of the Appellant's late filing of his returns for 2014/15, 2015/16 and 2016/17. Although no copy of a decision for any other year was included with the Appellant's appeal (as is required for an appeal to be validly constituted), HMRC took the Appellant's appeal to be against late filing penalties imposed for 2013/14 – 2016/17 inclusive, and invited me to treat the appeal as being in respect of all four years.

3. I consider below the extent of what is under appeal, and what the Tribunal has jurisdiction to consider.

Postponement application

4. The hearing was listed for not before 2 p.m. on 3 October 2019. Two appeals, each with a time estimate of 90 minutes, were listed at that time to be heard one after the other. Understandably, the Appellant had not understood that this would be the case. Although the parties to this appeal were informed at 2 p.m. that the hearing would not begin for at least 30 minutes, possibly longer, the Appellant had not understood that this could mean that his appeal might not begin until after 3:30 p.m. The parties were called into the Tribunal room at approximately 3:40 p.m., and the hearing began with the Appellant making a postponement application.

5. In support of his postponement application, the Appellant stated that he had sent an email to the Tribunal two and a half days prior to the hearing. This email was subsequently sent on to me by the Tribunal staff. It was sent at 20:12 on 1 October 2019, so approximately one and a half days prior to the hearing. Although the Appellant had Mr Khan's email address, he had not copied that application to Mr Khan or to any other HMRC officer.

6. In his email seeking a postponement, the Appellant wrote:

I am writing to request a postponement to my tribunal date.

I have tried everything I can to get my paperwork in order, but due some very difficult circumstances I have not yet managed it.

After a very long and difficult time my mum, who lives with me, had to go into rehabilitation a few weeks ago and has just returned home and currently require constant supervision.

In addition my accountant has only just returned to work after a serious illness and we have not yet been able to meet up in order to finalise the accounts.

This situation caused me great distress so I am writing in order to try and get time to get all my affairs in order so that I am properly prepared for the hearing and also take care of my mother at this difficult time, and not suffer further with the anxiety I have been experiencing related to my delay in late filing.

I realise that this is very late notice, I have been burning the midnight oil and praying for a miracle that has not materialised.

I have arranged cover on Thursday for my mother to be looked after if I am still required to attend the hearing in order to make this appeal for postponement, however it would be very helpful if we arrange it before.

Please could you advise as soon as possible as I am desperate to get my affairs up to date and the past few years of extreme difficulty and hardships behind me.

7. The Appellant's reference to getting his paperwork and his affairs in order is a reference to the fact that his returns for 2014/15, 2015/16, 2016/17 and 2017/18 have yet to be filed. The Appellant said that his painter and decorator was supervising his mother to ensure that she did not gain access to alcohol after five weeks without alcohol since leaving rehabilitation.

8. Mr Khan opposed the postponement application, noting that there had been prior postponements, and that HMRC were present and ready to proceed. In respect of those prior postponements, it is useful to note the history of this appeal.

Previous postponement applications

9. The Appellant filed his appeal with the Tribunal on 3 August 2018. On 20 August 2018 the appeal was categorised as basic. The Appellant was directed that if there were any documents he wished to rely on at the hearing then he must send them to the Tribunal and HMRC within 14 days, i.e. by 3 September 2018. The parties were informed that the appeal had been listed for 10 December 2018. On 4 December 2018, the Appellant emailed the Tribunal with his first postponement application, as follows:

I have a Tribunal date to discuss my tax affairs next week. Unfortunately I am not able to attend at the moment and so am requesting a postponement until later on in January in order that I am able to address my current, and difficult situation.

My circumstances are that my mother has been taken very ill recently with DVT that is in her legs and lungs. She has been diagnosed with having less than 30% lung function, and is currently unable to care to herself. Her condition is so severe that she is unable to walk a few steps has had to move out of the family home and in with me, in order to not only be cared for but also taken to hospital, often on a daily basis for blood, O2, and other monitoring. She has been given warfarin, but reacted very badly to this so is now undergoing further and different treatment. It is hoped that in between 4 and 8 weeks that the new

medication should have began to work and so her levels of saturated oxygen should start to return to normal, as which point she should again be able to care for herself and not require daily, often hourly care.

I am desperate to get my tax affairs sorted, and so will make every effort to attend in the New Year, my accountant and I are working on it, but obviously with my unexpected circumstances this has been delayed. We are certain to have everything in order by the new years and only my mothers health will be of concern.

I have spoken to the litigation officer dealing with the case and he is happy to allow postponement in order for me to ensure my mother is not in any immediate danger and that my accounts and associated documentation can be finalised and submitted in full.

Please could you advise as soon as possible as this is obviously a very stressful time and I hope to avoid further pressure related to my tax affairs and appearance in court during this difficult period.

10. This application was forwarded to HMRC by the Tribunal. HMRC did not object. On 7 December 2018, the Tribunal postponed the hearing.

11. The Appellant's appeal was re-listed for 7 February 2019. On 18 January 2019, the Appellant emailed the Tribunal to apply for a second postponement of this appeal. He wrote:

Unfortunately I will not be able to attend on this date as my accountant has recently left the practice and I have not been able to make an appointment yet to see his replacement and get all the books in order (although it is not far away), due to having to care for my Mother who has recently had to move in with me due to severe DVT and alcoholism. She requires constant care that has prevented me from visiting the accountant. At last I have got her to agree to go into rehab, so I will over the next few weeks be able to go and see the accountant and get everything finalised.

Could I please request that the tribunal be postponed until March or April so that I am able, at last, to get everything in order?

12. On 30 January 2019, HMRC indicated that they did not object to this postponement application. On 31 January 2019, the parties were informed that the hearing on 7 February 2019 was cancelled. The parties were asked to inform the Tribunal of any dates in April that they would not be available. Neither party responded to that request.

13. The Tribunal re-listed the hearing for 15 May 2019. On 7 May 2019, the Appellant emailed the Tribunal to request a third postponement. The Appellant wrote:

Despite my absolute best effort to make it to the tribunal I will not be able to attend on this date. I have not yet been able to complete my tax returns as since my accountant left and his replacement (Shirley Corbett of Eden Currie Ltd) has been taken ill so has not yet been able to meet with me. Her colleague told me that she should be able to return to work in around 3 weeks but it may be a couple of weeks longer. They are happy to confirm this is writing if required.

Her colleague assures me that I will need to speak with Shirley in order to get my accounts finalised so we are able to bring to the tribunal the information that has been requested.

Many apologies for the further delay but coupled with caring for my mother and son it has been a very difficult time, and I do not wish to compound the impact on my family of my late filings.

Could I please ask that we reschedule the tribunal (for the final time hopefully) in late July or August, in order to have time for Shirley to return to work and for us to finalise all accounts, including the most recent period.

Many thanks for your help, I look forward to this case being resolved as soon as possible, once we have the information in place to bring to the tribunal.

14. I note that it is not necessary for the Appellant to have filed his outstanding tax returns for 2014/15 onwards in order to explain the basis on which he considered he had a reasonable excuse for his delay in filing his return for 2013/14. Nevertheless, HMRC did not object to this postponement, and the Tribunal agreed to postpone the hearing again. The Tribunal asked both parties to inform the Tribunal of any dates when they would not be available in the period August to October. The Appellant emailed on 13 May to state that the only dates that he could not attend were 18-22 August 2018 as those were the dates for his mother's divorce hearing.

15. On 4 June 2019, the parties were informed that the hearing as listed to be heard as soon as possible after 2:00 P.M. on 3 October 2019. The current postponement application is the Appellant's fourth application for postponement.

The current postponement application

16. Although the Appellant's email of 1 October 2019 referred to his continuing failure to file his tax returns and his mother's health as the reasons for seeking a postponement, at the hearing before me the Appellant explained that the reason he did not want the hearing to continue on the afternoon of 3 October was because on 2 October, the day before the hearing, he had been asked to film a TV commercial on 4 October. The Appellant considered this work offer to be too good to refuse, and so, despite his mother's health and knowing that he had the prior commitment of this Tribunal hearing, the Appellant had accepted this further commitment. Therefore, the postponement application made before me was on the basis that the Appellant wished to travel on the afternoon of 3 October so he could set up for filming on 4 October. The Appellant suggested that if no postponement was granted then he might die through driving to the venue when too tired to safely travel. I enquired of the Appellant if he would be willing, provided HMRC would also consent, for this appeal

to be heard on the papers without either party being required to attend. The Appellant did not wish to proceed in this way.

17. In deciding whether to grant the application for postponement, I took into account that

- although the postponement was originally sought so that the Appellant could supervise his mother, it was now sought so the Appellant could fulfil a work commitment accepted one day before the hearing and at a time when the Appellant was aware that he had the prior commitment of a Tribunal hearing;
- the Appellant had already arranged supervision for his mother on the afternoon of 3 October and, given his desire to travel in order to film the TV commercial on 4 October, he would not himself supervise her, whether or not a postponement application was granted;
- three earlier applications for postponement had been granted, and it was now more than a year since the Appellant had filed his appeal;
- the Appellant had not prepared for the hearing but the parties had been correctly notified of the hearing, and that notification gave the parties sufficient notice of when the hearing would take place;
- the Appellant had not read all of the bundle of documents for his appeal but the bundle had been sent to the Appellant in sufficient time for him to have read the whole bundle;
- the Appellant was present and apparently able to present his appeal;
- it was likely that the Appellant's suggestion that if no postponement was granted then he might drive in an unfit state, and so present a danger to himself and others on the road, was hyperbole; and
- HMRC objected to the application and were ready to proceed.

18. Bearing in mind the over-riding objective (set out in Rule 2 of Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 Tribunal Rules (the "Tribunal Rules")) to deal with cases fairly and justly, including avoiding delay so far as compatible with proper consideration of the issues, I decided to refuse the postponement application. The parties were informed accordingly. Therefore, the hearing proceeded on 3 October 2019.

The Tribunal's jurisdiction

19. As noted above, the first point I must consider is the extent of what is before the Tribunal. Rule 20 of the Tribunal Rules sets out what is required to be provided to the Tribunal when notifying an appeal. Paragraph 20(3) provides:

The appellant must provide with the notice of appeal a copy of any written record of any decision appealed against, and any statement of reasons for that decision, that the appellant has or can reasonably obtain.

20. With his notice of appeal, the Appellant provided a copy of a letter from HMRC dated 5 July 2018. That letter contains HMRC's review decision, refusing to cancel late filing penalties imposed because of the late filing of the Appellant's personal tax return for 2013/14. The Appellant also provided a statement by way of grounds of appeal but no other decision letter from HMRC was provided.

21. The Appellant stated (in the relevant section of the Notice of Appeal form) that the amount under appeal was £3,400. There is no reference in HMRC's letter to the amount of the penalties which have been upheld, and so it was not possible for the Tribunal staff to know whether the Appellant wished to appeal against any additional decisions. HMRC were aware of the penalties which had been imposed, and so took the Appellant's appeal to be against the late filing penalties imposed for 2013/14 – 2016/17 inclusive.

22. At the beginning of his submissions on behalf of HMRC, Mr Khan asked that all four years be considered in this appeal. Given the length of the period over which penalties have been imposed, I agree with HMRC that it would be in the best interests of both parties if the Tribunal could make a decision in respect of all four years. However, the Tribunal cannot simply assume jurisdiction, even when it would save all concerned time and resources. For the Tribunal to have jurisdiction in respect of penalties imposed in 2014/15, 2015/16 and 2016/17, I must be satisfied there is an extant appeal for each year and that that appeal has been notified to the Tribunal in accordance with the procedural rules. Unfortunately, I am not satisfied that is the case.

23. In the bundle of documents prepared by HMRC there is a copy correspondence between the parties prior to the appeal to the Tribunal. If that is the entirety of the correspondence then the Appellant has yet to appeal to HMRC against the penalty imposed for 2016/17.

24. Within the bundle there is a copy of a letter from HMRC to the Appellant's agent dated 18 April 2017, in which HMRC state:

To make a decision on the filing of the returns we will need the returns to [be] completed and sent in. Then we'd be more than happy to consider the appeal.

25. A letter in similar terms was sent in 2016. That letter of 18 April 2017 was sent in response to an appeal by the Appellant's agent against a 12-months delay late filing penalty for 2014/15 and an initial late filing penalty for 2015/16. HMRC often take the position that they cannot consider an appeal against a late filing penalty until the relevant return has been submitted. The Appellant's agent does not seem to have objected to this approach as they wrote to HMRC on 24 January 2018:

With apologies for the delay, we enclose our client's Tax Return for the year 5th April 2014.

Could you please review the appeals that have been made against various penalty charges for 2013/14 year in accordance with your letter of 18th April 2017.

26. There was no request in that letter for the appeals made for 2014/15 or 2015/16 to be considered. On 23 April 2018, HMRC issued a decision to the Appellant in respect of the penalties for 2013/14. There was no reference in that letter to penalties issued in respect of any other year. On 16 May 2018, the Appellant's agent sought a review. This resulted in HMRC's review decision of 5 July 2018. I am satisfied the Tribunal has jurisdiction in respect of the 2013/14 penalties.

27. The Appellant has yet to submit his tax returns for 2014/15, 2015/16 or 2016/17. In the bundle there is no copy of any decision by HMRC in respect of 2014/15, 2015/16, or 2016/17. Given the correspondence detailed above and the absence thus far of filed returns for 2014/15, 2015/16 or 2016/17, I am not satisfied that HMRC have yet issued a decision to the Appellant in respect of these years. That position seems to be confirmed by HMRC's speaking notes where it is noted that HMRC has so far only considered the appeal for 2013/14. If no decision has been issued by HMRC for 2014/15, 2015/16 or 2016/17, there cannot be an appeal to the Tribunal.

28. Even if decisions have been issued by HMRC to the Appellant, no copy of those decisions have been provided to the Tribunal (by either party). Therefore, there is no appeal against a decision by HMRC in respect of 2014/15, 2015/16, or 2016/17 which meets the requirement of Rule 20(3).

29. Therefore, I have concluded, that I do not have jurisdiction to consider an appeal against the late filing penalties imposed for 2014/15, 2015/16, or 2016/17.

30. This decision relates only to the penalties imposed for 2013/14.

The evidence before me

31. The evidence before me consisted of the papers on the Tribunal file, the bundle prepared for the hearing by HMRC, and the oral evidence of the Appellant, given as part of his submissions.

32. In approaching this evidence, I bear in mind the guidance at paragraphs 34 – 37 of *Piper v Hales* [2013] All ER (D) 257 (Jan), which begin with an extract from The Judge as Juror: The Judicial Determination of Factual Issues, an article by the late Lord Bingham of Cornhill, and also cites guidance from Lord Goff in *Grace Shipping v Sharp & Co.* [1987] 1 Lloyd's law Rep 2017, and Lady Justice Arden in *Wetton (as liquidator of Mumtaz Properties) v Ahmed and others* [2011] EWCA Civ 610.

33. In accordance with that guidance my starting point is to understand what is common ground between the parties and the "facts which are shown to be incontrovertible" (per Lord Bingham). Contemporaneous documentation is vital in this regard as, to quote Lord Bingham again, "In many cases, letters or minutes written well before there was any breath of dispute between the parties may throw a very clear light on their knowledge and intentions at a particular time".

34. When assessing the witness evidence, I should weigh this with the objective facts. Lord Goff, in *Grace Shipping*, stated:

And it is not to be forgotten that, in the present case, the Judge was faced with the task of assessing the evidence of witnesses about telephone conversations which had taken place over five years before. In such a case, memories may well be unreliable; and it is of crucial importance for the Judge to have regard to the contemporary documents and to the overall probabilities. In this connection their Lordships wish to endorse a passage from a judgment of one of their number in *Armagas Ltd v Mundogas SA (The Ocean Frost)* [1985] 1 Lloyd's Rep 1, when he said at p. 57:

Speaking from my own experience, I have found it essential, in cases of fraud, when considering the credibility of witnesses, always to test their veracity by reference to the objective facts proved independently of their testimony, in particular by reference to the documents in the case, and also to pay particular regard to their motives and to the overall probabilities. It is frequently very difficult to tell whether a witness is telling the truth or not; and where there is a conflict of evidence such as there was in the present case, reference to the objective facts and documents, to the witnesses' motives, and to the overall probabilities, can be of very great assistance to a Judge in ascertaining the truth.

That observation is, in their Lordships opinion, equally apposite in a case where the evidence of the witnesses is likely to be unreliable; and it is to be remembered that in commercial cases, such as the present, there is usually a substantial body of contemporary documentary evidence.

35. Although the passages set out above primarily deal with conflicting accounts, it is equally the case that the contemporary documentation and other incontrovertible facts can support or undermine a witness' account of events, even when there are no other witnesses to offer a conflicting version of events.

36. Lord Goff referred to witness evidence becoming unreliable due to the passage of time. I also bear in mind paragraphs 15 – 22 in *Gestmin SGPS S.A. v. Credit Suisse (UK) Limited and another* [2013] EWHC 3560 (Comm), which helpfully set out in some detail the results of psychological research into the nature of memory and some of the issues arising. To quote two sentences from those paragraphs:

Underlying both these errors is a faulty model of memory as a mental record which is fixed at the time of experience of an event and then fades (more or less slowly) over time. In fact psychological research has demonstrated that memories are fluid and malleable, being constantly re-written whenever they are retrieved... (paragraph 17)

and

The process of civil litigation itself subjects the memories of witness to powerful biases. The nature of litigation is such that witnesses often have a stake in a particular version of events... (paragraph 19)

37. So, my starting point is the contemporaneous documentation. That is then supplemented by the oral evidence of the Appellant which is less likely to be reliable than contemporaneous documents because people are less able to precisely recall the timing of events from many years ago and because the Appellant has “re-written” his memories at least twice (in 2015 and 2018). It is understandable that the Appellant should make mistakes about the timing of events from many years ago. However, even when events were very recent – such as when he made his most recent postponement application – the Appellant’s recollection as to timing proved to be flawed. Therefore, although I found the Appellant had endeavoured to be honest in his oral evidence, when it came to the timing, sequence or length of events, I concluded that the Appellant was not wholly reliable and/or was prone to exaggeration.

Facts found

38. On the basis of the documents before me and the oral evidence of the Appellant, I find as follows:

- a. In 2001 the Appellant broke his back and spent a period of time in hospital.
- b. On 9 February 2004, the Appellant registered for self assessment with a trade start date of 1 December 2001. The Appellant’s trade description was property developer. HMRC began to issue tax returns to the Appellant which the Appellant did not complete by the due date. On 10 August 2005, the Appellant corrected his trade start date to 1 March 2004.
- c. The Appellant was late in filing his tax returns for all years from 2002/03 until 2012/13, and incurred late filing penalties in respect of each of these eleven years.
- d. Between 2007 and 2009, the Appellant and his then partner bought an unknown number of houses to be refurbished, in accordance with his trade of property development. These houses were then let, and the Appellant took on the responsibilities of being a landlord.
- e. In 2008 the Appellant’s then partner gave birth to twins. They already had a son. The Appellant had primary care of his three children once his partner returned to work, and he continued to meet his landlord responsibilities and work on refurbishment projects.
- f. In April 2008, the General Commissioners authorised HMRC to issue daily penalties to the Appellant in respect of his outstanding tax returns for 2004/05. On 16 May 2008, the Appellant telephoned HMRC to state that he was shocked to receive the daily penalties which had been authorised by the General Commissioners, and that he was still collating the information required for his outstanding returns. On 23 May 2008, at a meeting with HMRC, the Appellant handed in his tax returns for 2004/05, 2005/06 and 2006/07.

g. On 10 June 2008, HMRC received an agent authorisation form notifying HMRC that the Appellant had authorised Eden Currie to act on his behalf in his tax affairs. As at 3 October 2019, Eden Currie remain instructed by the Appellant.

h. On 9 December 2008, the Appellant telephoned HMRC to discuss the late submission of a CIS return for 2006/07. The Appellant telephoned again on 29 January 2009 to say that he did not have the relevant software to file his income tax return electronically but that he would ask his agent to file for him.

i. Between 2009-2016 and in 2018, the Appellant ran his refurbishment business through three limited companies. The Appellant told the Tribunal that the first two companies ran in succession. These two companies covered the period of about 2009 to 2016. The Appellant told the Tribunal that completing the CIS returns, VAT returns and Corporation tax returns “kept him going full time”. Given his other commitments over this period (including his landlord responsibilities and the primary care of three young children up to 2011, and his landlord responsibilities, exploitation of his invention and the shared care of four young children from 2011), I find this statement to be an exaggeration, and that completing the various company returns was not a full time role. The third company was set up and operated during 2018 (and is noted further below).

j. On 27 October 2010, the Appellant telephoned HMRC to inform them that he had not been able to complete his personal tax returns on time as he had just had two large operations and had been advised not to do anything for a few months while he recovered. HMRC’s note records that the Appellant was advised to write to HMRC to explain when the return would be filed.

k. On 14 September 2011, the Appellant notified HMRC of a change of address. On the balance of probabilities, I find that this followed the breakdown of his relationship with his then partner. The Appellant continued to act as landlord for the properties which he and his partner had together bought and refurbished, and he continued to run the refurbishment company. Following their separation, the Appellant and his former partner shared equally the care of their three children.

l. On 17 April 2012, the Appellant telephoned HMRC to inform them that he had been unable to file his returns as he had been hospitalised due to a bad back but that he would now be getting all of his returns in. I find that this hospitalisation was that which took place in 2010.

m. Also, on 17 April 2012, the Appellant became a shareholder in a company called Cr-one Limited. On the balance of probabilities, I find that Cr-one Limited was the second of the companies through which the Appellant ran his refurbishment business.

n. In 2013, the Appellant’s new partner gave birth to a child but, unfortunately, subsequently suffered from post-natal depression. The Appellant looked after this partner and their child until this relationship also broke down. Following this

relationship breakdown, the Appellant and his former partner shared equally the care of their child.

o. In October 2013, the Appellant invented a new camera system. From this date onwards he had been working on developing and exploiting his invention.

p. On 17 December 2013, the Appellant telephoned HMRC to tell them he and his accountant were in the process of completing all the outstanding information and that he would have the outstanding returns submitted by 31 January 2014.

q. During the tax year 2013/14, the Appellant continued as director of Cr-one Limited. The Appellant did not receive an income from the company but, as a shareholder, received £36,000 net in dividends. The Appellant also received an interest free loan from Cr-one Limited. In 2013/14, the Appellant also received £64,255 in rental income from three properties. Set against this income were expenses totalling £64,875, including £23,176 in finance charges and £15,966 in “services and wages”.

r. On an unknown date in 2014, the Appellant applied for the UK patent for his device.

s. On or about 6 April 2014, HMRC issued the Appellant with a Notice to File a tax return for 2013/14. The filing deadline for a paper return was 31 October 2014; the filing deadline for an electronic return was 31 January 2015.

t. Between about February and August 2014, the Appellant spent time working on the paperwork required to complete his tax returns for 2007/08 to 2012/13.

u. From an unknown date the Appellant had been suffering from depression. In about August 2014, the Appellant began receiving treatment for this depression.

v. On 7 August 2014, the Appellant telephoned HMRC to say that he had been working on all of the paperwork for his outstanding tax returns for the last six months, that all of the necessary papers were with his accountant and that the agent should have submitted them. In referring to the outstanding returns, I find that this referred to returns for 2007/08 to 2012/13 inclusive. HMRC’s note of that call continued:

Cust had an accident which left him paralysed for a while, cust has depression, breakdown of household, had to move property... partner was also business partner is having to sell 3 properties, one in neg equity, another, £100k to ex partner and 3rd he will get £25k, which will cover CT, appeal to be submitted for all pens, and also special relief for 07/08. this year will show 14k loss. Cust is to contact acct office now re when rtns will be submitted, adv cust has til 18/0 deadline re TCoG.

w. I find that the accident referred to is the back injuries which the Appellant suffered in 2001 and 2010. It is unclear whether the relationship breakdown is the 2011 split from the mother of his first three children, or the subsequent (undated) split from the mother of his fourth child.

x. Following receipt of the Appellant's tax returns for 2007/08 to 2011/12, HMRC cancelled the late filing penalties for 2007/08, 2008/09 and 2009/10, as the returns showed that the Appellant did not owe any tax for these years. On 1 October 2014, the Appellant's agent appealed against late filing penalties imposed for 2011/12 (£645) and 2012/13 (£1,200). The agent argued that the Appellant had a reasonable excuse for his delay, including the break-up of his family, his serious illness and a flood at the house that the Appellant rented. The agent indicated that further details would be provided as soon as possible.

y. On 20 October 2014, HMRC wrote to the Appellant asking him to pay the tax he owed for 2011/12 before they would consider his appeal against the late filing penalties imposed for that year.

z. On 5 November 2014, the Appellant's agent wrote again to HMRC to seek more time for the Appellant to seek medical evidence to support his argument that he had a reasonable excuse for the delay in filing his returns for 2011/12 and 2012/13. The agent indicated that the Appellant would shortly file his tax return for 2012/13.

aa. On 28 November 2014, the agent wrote to HMRC to state that the Appellant had applied for his medical records. On 26 January 2015, HMRC replied to the agent to extend the deadline for receipt of the Appellant's medical records until 12 March 2015.

bb. On an unknown date in 2015, the Appellant applied for an extension of his UK patent to cover countries in the EU.

cc. On 18 February 2015, as no return for 2013/14 had been received by the filing date, HMRC issued the Appellant with a penalty of £100. This penalty notification was posted to the Appellant at his then home address and I am satisfied that it was received. There is no evidence (either in the correspondence I have seen or on HMRC's SA Notes) that this penalty was ever appealed.

dd. On 11 March 2015, the Appellant's agent telephoned HMRC. HMRC's note of that call is as follows:

Agent, Shirley Colbert of Eden Currie, phoned re deadline. She has not been able to get TP to provide evidence yet. She intends to visit TP. I advised needed dates, extent to which TP's illness, problems affect him, agent gave some further dets, which are noted in note of interview in papers. Agreed to extend deadline again to 27/3/15. Written confirmation to agent.

ee. The Appellant told the Tribunal that, in 2015, the Appellant's mother had moved in with him but that this had been only on a temporary basis and she returned to her home shortly afterwards. The Appellant's mother was, at that time, in an abusive relationship and was suffering from alcohol addiction.

ff. On 24 March 2015, the Appellant sent a statement to HMRC's Appeals & Review Unit in support of his appeal against late filing penalties imposed in respect of 2011/12 and 2012/13. It is worth setting out that statement in full:

Dear Shirley, and whom it may concern

Reasons for delays in submitting tax returns 2007 till present [i.e. March 2015]

I have had a very difficult few years, to best explain I have broken this into categories so that each aspect can be explored and discussed. I have suffered a number of serious medical conditions, had significant family difficulties, work has been all encompassing, and ultimately I do not believe I will have any significant tax liability for the above periods.

Work related difficulties:

My ex-partner and I bought a number of houses between 2007 and 2009 that I required full refurbishment (her money – my effort) in order to service this agreement I needed to work very long hours, with no income (she supported me at that time)

Subsequently as a landlord of between 16 and 28 tenants I have had a huge commitment to service the houses and fulfil my landlord responsibilities

As my building business began to grow I was required to register a limited company, this was a lot of work, including monthly CIS returns, Vat registration, and all the admin associated with running a company – all the returns for this have been submitted on time, all my own work as I did not have the investment available to employ anyone. There was an overlap where I had to do this for my self-employed business and the company.

I have invented a unique camera system that I hope will be very successful, this has taken a lot of time, but will probably mean that I will be making a lot of money soon, and so be paying a lot of tax in the future.

Due to the multiple business stream, disorganised piles of expenses had accrued, it took me nearly 6 months last year to get everything in order, but when I did, it adds up to the penny.

Financial aspects

The assets of the first building company I set up (Wylam ltd.) were ceased by the treasury (£11,500) as I was in hospital when the letters from companies' house were delivered to my ex-partner's address and she had not brought them into hospital for me to action.

My ex-partner invested over £400,000 in the houses that we bought together, she now wants this back, therefore any profits that I have made are going to have to go back into repaying at least a significant part of this amount

Any profits that I received, before this demand for repayment, were used to invest in my invention on prototyping and development

Medical

My pre-existing back injury made it very difficult for me to do paperwork, for a number of years I was able to stand or lie down but not sit comfortably, I chose my health and recuperation over paperwork and tax affairs

I suffered another two back injuries, requiring two stays in hospital, two operations and a significant amount of horizontal rest and physio therapy. During this time I tried to catch up with my affairs, but typing lying down was causing serious numbness and pain, and I was not able to afford to outsource this.

I suffered a serious infection in my throat that also required time in hospital and a period of recuperation

Due to the pressures of the above work and financial commitments I became very depressed, and have remained so for a number of years, particularly in 2012 and 2013. I began treatment for this 8 months ago, and cannot believe the difference in myself. I am able to concentrate again, I was able to work more efficiently and I made it my number one mission in life to get my tax affairs in order

Personal aspects

In 2008, my ex-partner gave birth to twin boys, in addition to our elder son. This was extremely time consuming and a difficult time for me. She went back to work full time, and I was left responsible for the majority of the child care, as well as looking after the building business, tenants and development of my invention

In 2013 my new partner had my fourth child, and unfortunately suffered a post-natal depressive breakdown. I had to look after her, and the new baby, until the point that we had no option but to go our separate ways.

Throughout this period I have had a significant responsibility for my mother. She has been trapped in an abusive relationship with my step father, who has not only made threats against her life, but mine and my children too. She was so affected by this that she became a serious alcoholic, and I was left to deal with the consequences of this. She is now living with me on a temporary basis and undergoing treatment.

I am still waiting for my medical records from the GP, I should have them this week and will be happy to provide them as evidence.

gg. I find that this statement was addressed to Shirley Corbett of Eden Currie, who (despite the Appellant's third postponement application) appears to have had some responsibility for the Appellant's tax affairs since (at least) March 2015. In respect of the last sentence in March 2015 statement, the Appellant told the Tribunal that he had subsequently sent his medical records to his agent. Mr Khan submitted that no

records had ever been received. I find that the Appellant's medical records were not provided to HMRC at any stage. I also find that the Appellant (who has acted on his own behalf in his Tribunal appeal) has not provided any medical records to the Tribunal, despite being directed to provide the Tribunal and HMRC with any documents he wished to rely upon at a hearing by 3 September 2018. I comment below on the difficulties presented by the absence of any medical evidence.

hh. Upon receipt of the Appellant's March 2015 Statement, HMRC decided to cancel the late filing penalties for 2011/12 and 2012/13. HMRC's note records that the Appellant had not provided any dates for the events referred to but that the Appellant's agent "confirms mental health issues existed April 2013 to date, s/e income dropped significantly 12/13."

ii. On 2 June 2015, HMRC issued a 30 penalty warning letter to the Appellant, notifying him that 30 days' worth of daily penalties had accrued and more would accrue if his tax return for 2013/14 was not filed very soon. A 60 days penalty warning letter was sent to the Appellant by HMRC on 30 June 2015.

jj. On 14 August 2015, as the Appellant's return for 2013/14 had been outstanding for more than six months, HMRC issued the Appellant with a six months' delay penalty of £300 and (as the return had been outstanding for 90 days after it was three months late) HMRC also issued 90 daily penalties of £10 each. I am satisfied that this penalty notification was sent to the Appellant's home address and was received.

kk. On 1 October 2015, the Appellant's agent wrote to HMRC to appeal against the penalties imposed on 14 August 2015. The agent stated:

We believe that our client has a reasonable excuse for the late submission of his tax returns and he is currently caring for four children whilst suffering from mental health issues and also looking after his mother who is seriously ill. We enclose a copy of a letter from our client submitted to the Appeals and Review Unit on 24 March 2015 in relation to an appeal against penalties for 2012/13, following which it was agreed that our client has a reasonable excuse for the late submission of his tax returns.

Our client continues to struggle with dealing with his tax affairs but we are assisting him as far as possible and we hope to be in a position to submit the outstanding tax return in the near future.

ll. A further copy of the Appellant's statement from March 2015 (set out above) was enclosed with the agent's letter.

mm. On 3 December 2015, the Appellant became the director of a new company, Motion Pixels Limited, set up to exploit his camera invention.

nn. On an unknown date in 2016, the Appellant applied for an extension of his device patent to cover all countries. The Appellant told the Tribunal that he had had to choose the non-EU countries in which he wished to apply for patents, and that he had chosen 28 countries and had then begun to make his application in each of these

28 countries. Under cross-examination the Appellant described this process as “tortuous”, which he later clarified as being painful because the process took so long.

oo. On 23 February 2016, as the Appellant’s return had been outstanding for more than 12 months, HMRC issued the Appellant with a 12 months’ delay penalty of £300. I am satisfied that this was sent to the Appellant’s home address and was received.

pp. On 9 March 2016, the Appellant’s agent appealed against the £300 penalty (and also against an initial late filing penalty imposed due to the Appellant’s failure to file his tax return for 2014/15). In this letter of appeal the agent stated:

We believe that our client has a reasonable excuse for the late submission of his tax returns and he is currently caring for four children whilst suffering from mental health issues and also looking after his mother who is seriously ill. It has already been accepted by the Appeals and Review Unit that our client has a reasonable excuse for the late submission of his tax returns for the two previous years.

Our client continues to struggle with dealing with his tax affairs but we are assisting him as far as possible. A meeting with our client has been arranged for 8 April and we hope to be in a position to submit the outstanding tax returns shortly thereafter.

qq. On 12 April 2016, HMRC replied to the agent’s letter of appeal. HMRC refused to consider the Appellant’s appeal against the penalties imposed for 2013/14 as the Appellant had yet to file his tax return for 2013/14.

rr. From about the middle of 2016, the Appellant commenced employment, managing projects and equipment. The Appellant remained in this employment until the end of 2017. The Appellant told the Tribunal that he worked 80-120 hours a week, spread over seven days, and that he was “literally, sleeping in the office”. The Appellant told the Tribunal that when in this employment, he sat on a kneeling chair because it was easier for his back. When asked why he continued in this employment if it was so demanding, the Appellant said that he was paid £120,000 p.a. and that he would have faced bankruptcy if he had not taken this employment.

ss. I accept that the Appellant worked more than the 40 hours per week in this employment that he had anticipated, and I so find, but I do not accept that he worked the hours he claimed or that he slept in the office. Such statements are inconsistent with his claims that he was, at the same time, looking after his four children on an equal basis with the children’s mothers, progressing the exploitation of his invention, continuing to act as a landlord for an unknown number of rental properties, and managing Cr-one Limited and meeting all of its filing commitments.

tt. On 27 June 2016, the Appellant advised HMRC that he had changed address. On 15 September 2016, the Appellant telephoned HMRC to advise them of a further change of address (to his current address).

uu. On 21 September 2016, the Appellant's agent appealed to HMRC against penalties which had been imposed on the Appellant in August 2016 in respect of the late filing of his 2014/15 tax return. The main part of the agent's letter was identical to the letter sent on 9 March 2016. The agent concluded:

We understand that our client's records are virtually ready to be hand-over to us and we therefore hope to be in a position to submit the outstanding tax returns for 2013/14 and 2014/15 in the not too distant future.

vv. On 24 October 2016, the Appellant was appointed as a director of a company called Something Smart Limited. The Appellant was appointed as a director of another company, Inno Technologies Limited, on 27 October 2016.

ww. From an unknown date in 2016, the Appellant began to suffer from depression again. The Appellant told the Tribunal that he took anti-depressants for eight months in 2017.

xx. At some point in 2017, the Appellant and his former partner sold the last of the rental properties, and the Appellant ceased to have landlord responsibilities. From the beginning of 2017, the Appellant worked on progressing his invention. The Appellant told the Tribunal that he "worked himself to the bone" and that he had continued to work at that intensity to the present day. I accept that the Appellant the time he had to progressing his invention but, given the other commitments which the Appellant states he had from 2017, I do not accept that this was more than part time. In particular, it is not possible for the Appellant to have devoted much time to his invention in 2017 because he was, on his account, employed full time and working long hours until the end of 2017, and throughout the period he also shared equally the care of his four young children.

yy. On 3 April 2017, the Appellant's agent appealed to HMRC against penalties which had been imposed on the Appellant in February 2017 in respect of the late filing of his tax returns for 2014/15 and 2015/16. The remainder of the agent's letter was identical to that sent on 21 September 2016 save that the final line now referred to the tax returns for 2013/14, 2014/15 and 2015/16.

zz. On 18 April 2017, HMRC replied to the Appellant's agent, stating that the appeals against late filing penalties would be considered once the relevant returns had been filed.

aaa. In November 2017, one of the Appellant's twin sons suffered a seizure at school and was taken to hospital. He was later diagnosed with a brain tumour which the Appellant described as being the "size of a golf ball" and he underwent an operation in May 2018. The Appellant described his son as being "very needy" between November 2017 and May 2018, and said that he was unable to undertake any other activities during this period due to caring for his son.

bbb. In early 2018, the Appellant took on a further property refurbishment project. A further company was set up for this project. The Appellant clarified his evidence to tell the Tribunal that, because of his son's illness, much of the work on this project

was undertaken by sub-contractors with whom he had previously worked and that he had limited involvement.

ccc. From an unknown date in 2018, the Appellant's mother returned to live with the Appellant.

ddd. On 26 January 2018, HMRC received the Appellant's paper tax return for 2013/14. This was received under cover of a letter from the Appellant's agent dated 24 January 2018. The agent requested HMRC review the appeals which had been submitted against the late filing penalties imposed for 2013/14.

eee. HMRC treated the Appellant as having appealed against all of the late filing penalties imposed for 2013/14 and, on 23 April 2018, HMRC dismissed the Appellant's appeal. This dismissal was on the basis that the Appellant, as a company director and recipient of income from property, should have known that a tax return was required.

fff. On 16 May 2018, the Appellant's agent sought a review of this decision. The agent enclosed a further copy of the March 2015 statement made by the Appellant (set out above) and noted that this has been accepted as a reasonable excuse in the Appellant's appeals against his late filing of his 2011/12 and 2012/13 tax returns. The agent continued:

Since March 2015, there has been a further deterioration in our client's physical and mental health and he has also had some very serious personal issues to deal with. We have enclosed a copy of a recent email from our client which sets out the position in some detail. The email was sent to HRMC in respect of our client's limited company but we believe it is also relevant to his personal tax affairs.

ggg. The email enclosed was an email sent by the Appellant to officers in HMRC on 17 April 2018 in response to a warning that HMRC intended to wind up Cr-one Limited. That email largely repeated the statement of March 2015, but included some additional points. Those additional aspects are as follows:

Recently one of my sons suffered a very serious seizure at school, which required immediate hospitalisation. After months of hospital visits, tests and scans he was diagnosed with a brain tumour which was truly shattering news.

My son's condition has since deteriorated and he is having increasing numbers of seizures, it has been decided that this now requires an operation, and will almost certainly result in some degree of sight loss.

I hope you can appreciate that this has not only been very time consuming but has also contributed to my inability to function and cope with day-to-day life.

We hope that my son's operation will happen in the next couple of months which will result in my son being off school for 8 weeks while he recuperates and receives care at home.

Therefore, over recent years, an enormous proportion of my time has been absorbed by caring for my close family members, most significantly and importantly, my very poorly son, which has also hindered my ability to maintain a regular income.

[After noting that he had been successfully treatment for his depression from 2014]: However, due to the continued pressures of work and personal life I became depressed again in 2016, and have had to recommence treatment. As yet I have not experienced the same improvement as previously and continue to feel depressed, anxious and unable to cope properly with many aspects of my life.

Therefore, my depression and chronic back injuries have hampered my ability to work, not only impacting on my ability to keep on top of my business administration but also generate regular income for myself and my family.

[In respect of his partner's post-natal depression in 2013]: This impacted enormously upon my ability to run my business, in particular Cr-one Limited where I was forced to utilise sub-contractors in order to service the existing work commitments (see below).

[Under financial aspects] In recent times as I have had no income for nearly twelve months, I have started to get heavily into debt. I have had to take out a £25,000 Sainsbury's loan just to cover my bills and food and allow me to care for my children whom I still take care of approximately 50% of the time.

I had to move into the last rental house that is in a state of significant disrepair – no fitted kitchen, no flooring in the bathroom and is in need of significant renovation.

I also had a fire in the hallway in December 2016 which resulted in the property requiring even more repair works.

The property's poor state of repair has had an obvious negative impact on its value, resulting in there currently being very little, to no, equity in the property.

Therefore, I am currently heavily in debt with minimal assets to my name and no regular income.

[Under work related difficulties] After identifying a new emerging market of virtual reality and struggling with the building business due to my spinal injuries, I used my previous experience as a hobbyist drone camera man and invented a unique camera system. This has taken a lot of time, and cost a lot of money in order to obtain the UK patent (now granted).

Over the last two years I have been working for a new company that I formed called Motion Pixels Ltd. making use of the camera stabiliser invention. All of the financial and tax affairs are totally up to date and I intend to file the next set

of accounts early I order to prove my commitment to timely book keeping going forward.

My new partner now helps me with all the paperwork, as well as the complicated personal aspects of my life and so I should never get behind again, particularly having experienced the stress of not being up-to-date.

[Specifically in relation to Cr-one Limited]: As the filing of accounts was late for Cr-one Limited, coupled with everything else going on, compulsory strike off action commenced. Companies House struck off the company resulting in £4,800 being seized from the Company's bank account by the treasury, which I consider to be the Company's only recoverable asset.

Immediately before the Company was struck off the register, compulsory strike off action was paused, which I presume was instigated by HMRC whilst they pursued outstanding VAT. During this process, I had agreed with HMRC that I would pay off all the spare money I had against any liabilities that the company had.

I paid £15,000 which was all of the money I could obtain.

After this payment was made compulsory strike off action resumed and the Company was struck off the Register.

However, I have since received correspondence and spoken to [an HMRC officer], that stated that there is still an outstanding debt and that the company could be reinstated so that the debts can be recovered, which has had a devastating effect on my mental health.

I have slipped back into finding it difficult to function or concentrate, which, when combined with everything else that is going on, is impacting my ability to try and build my new life and business.

hhh. On 5 July 2018, HMRC issued their review decision, rejecting the Appellant's appeal. The reviewing officer noted that the reasons provided in March 2015 had been accepted as providing a reasonable excuse for the late filing of the 2011/12 and 2012/13 returns but that the Appellant was expected to put measures in place if the circumstances cited continued. The reviewing officer also noted that the Appellant had an agent in place throughout the period, and that the Appellant could have asked that agent for assistance. The officer further noted that the Appellant had been late in filing every tax return since 2002/03, and that his tax returns for 2014/15 and 2015/16 were still outstanding. The officer concluded that there was no reasonable excuse for the delay. The reviewing officer also considered whether special reduction should be granted and concluded that there were no special circumstances which made it appropriate to reduce the penalties imposed.

iii. On 2 August 2018, the Appellant's agent rang HMRC to seek an extension of time in which to appeal against the review decision.

jjj. On 3 August 2018, the Appellant filed a notice of appeal with the Tribunal. With this appeal the Appellant attached a copy of his March 2015 statement as his grounds of appeal, and stated the following as his desired outcome:

For all outstanding penalties to be cancelled or suspended on the understanding that all outstanding tax returns will be submitted shortly and that the 2017/18 SAITR will be submitted in advance of the filing deadline.

kkk. As at 3 October 2019, the Appellant's tax returns for 2014/15, 2015/16, and 2016/17 remain outstanding. The Appellant did not file his tax return for 2017/18 in advance of the filing deadline, and that tax return also remains outstanding.

The burden of proof

39. In an appeal against the imposition of one or more penalties, the onus of proof is first upon HMRC to satisfy the Tribunal that those penalties have been imposed in accordance with Schedule 55. If I am satisfied that has occurred then the onus switches to the Appellant to demonstrate that he has a reasonable excuse for his delay, or that there is another reason why the penalties should not be imposed. The standard of proof in both cases is the civil standard of the balance of probabilities.

Have the penalties been properly imposed

40. All penalty notifications must be served on the relevant taxpayer. I have found that the notification in this case were correctly served on the Appellant at his then home address.

Initial late filing penalty

41. The relevant parts of Paragraphs 1 and 3 of Schedule 55 provide as follows:

1. (1) A penalty is payable by a person ("P") where P fails to make or deliver a return ... on or before the filing date.

(2) Paragraphs 2 to 13 set out—

(a) the circumstances in which a penalty is payable, and

(b) subject to paragraphs 14 to 17, the amount of the penalty.

...

3. P is liable to a penalty under this paragraph of £100.

42. I am satisfied that the Appellant did not file his tax return for 2013/14 on or before the filing date. It follows that I am satisfied that HMRC have satisfied the conditions of Paragraph 3 and that the Appellant is liable to the initial penalty of £100.

Daily penalties

43. Paragraph 4 of Schedule 55 provides as follows:

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

(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.

(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)—

(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).

44. The "penalty date" is the day after the filing deadline and so, in this case, the penalty date is 1 November 2014 because the Appellant filed a paper return. Sub-paragraph 4(1)(a) requires me to consider the period three months after the penalty date, i.e. at 1 February 2015, and to consider whether the Appellant's tax return was outstanding at that date. As I have found that the Appellant's tax return was filed on 26 January 2018, it follows that I am satisfied that the return was outstanding on 1 February 2015.

45. Sub-paragraphs 4(1)(b) and (c) require a decision to have been taken to impose penalties, and for notice to have been given. The Court of Appeal in *Donaldson v HMRC* [2016] EWCA Civ 761 held that a policy decision to impose penalties in such circumstances was sufficient, and that the warning set out on the £100 penalty notification was acceptable notice. Therefore, I am satisfied that HMRC have met all the conditions of Paragraph 4.

46. A penalty is due for each day that the failure continues. I calculate the failure to have continued from 1 February 2015 to 26 January 2018. That is in excess of 90 days but the number of daily penalties is capped at 90. I am satisfied that the Appellant is liable to 90 daily penalties of £10 each.

Six months delay penalty

47. The six months delay late filing penalty of £300 was imposed under Paragraph 5 of Schedule 55 to the Finance Act 2009. Paragraph 5 provides:

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

48. Therefore, if a tax return is still outstanding 6 months after the penalty date, a penalty of £300 is due. The penalty date is 1 November 2014, and the period six months later is 1 May 2015. As the Appellant filed his tax return for 2013/14 on 26 January 2018, I am satisfied that he is liable to a six months' delay late filing penalty.

12 months delay penalty

49. The 12 months delay late filing penalty of £300 was imposed under Paragraph 6 of Schedule 55. Paragraph 6 provides:

6. (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.

...

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

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

50. Sub-paragraph 6(2) relates to the deliberate withholding of information and is not relevant to this appeal.

51. If a tax return is still outstanding 12 months after the penalty date, a penalty of £300 is due. The penalty date is 1 November 2014, and the period 12 months later is 1 November 2015. As the Appellant filed his tax return for 2013/14 on 26 January 2018, I am satisfied that he is liable to a 12 months' delay late filing penalty.

Does the Appellant have a reasonable excuse

52. As I am satisfied that all of the penalties have been correctly imposed, the onus is upon the Appellant to establish that he had a reasonable excuse for his delay. Paragraph 23 of Schedule 55 provides 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.

(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

(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.

53. Before I consider the reasons put forward by the Appellant, it is helpful to bear in mind the guidance given by the Upper Tribunal in *Perrin v HMRC* [2018] UKUT 156. In paragraphs 70-73, the Upper Tribunal stated:

[70] ... the task facing the FTT when considering a reasonable excuse defence is to determine whether facts exist which, when judged objectively, amount to a reasonable excuse for the default and accordingly give rise to a valid defence. The burden of establishing the existence of those facts, on a balance of probabilities, lies on the taxpayer....

[71] In deciding whether the excuse put forward is, viewed objectively, sufficient to amount to a reasonable excuse, the tribunal should bear in mind all relevant circumstances; because the issue is whether the particular taxpayer has a reasonable excuse, the experience, knowledge and other attributes of the particular taxpayer should be taken into account, as well as the situation in which that taxpayer was at the relevant time or times (in accordance with the decisions in *Clean Car Co* and *Coales*).

...

[73] Once it has made its findings of all the relevant facts, then the FTT must assess whether those facts (including, where relevant, the state of mind of any relevant witness) are sufficient to amount to a reasonable excuse, judged objectively.

54. In considering whether the Appellant has a reasonable excuse, I note that the obligation to file a tax return for 2013/14 arose on 6 April 2014, and the period of delay runs from 1 November 2014 until 26 January 2018. However, it seems to me appropriate that I should also take into account any earlier events which may be relevant to the Appellant's delay.

55. I begin by looking at the Appellant's health, as it seems to me that ill health could be considered to be an "attribute" to be borne in mind when considering whether the facts, viewed objectively, are sufficient to amount to a reasonable excuse.

56. As noted above, there is no medical evidence. The only evidence before me is the Appellant's March 2015 statement, his 2018 email and his oral evidence.

57. I start with consideration of the Appellant's physical health. The Appellant told the Tribunal that his original injury occurred in about 2001, when he was 25, and that the two subsequent operations occurred in 2014 or 2015. I accept that the original injury occurred in 2001 but (as set out above) I have found that the two subsequent injuries and two operations occurred in 2010, as the Appellant informed HMRC at the time. No date has been suggested for the throat infection (but it must be prior to March 2015 as it is noted in the Appellant's 2015 statement). There is no suggestion that the throat infection has subsequently caused the Appellant any difficulties.

58. Without medical evidence it is impossible for me to gauge the effect of the back injuries on the Appellant in the period with which the Tribunal is concerned. The Appellant wrote in his 2015 statement that he was unable to sit comfortably at any time. However, the Appellant wrote in his statement (and told the Tribunal) that in 2014 he spent six months focussing on his paperwork so he could complete outstanding tax returns, and he told the Tribunal that between the middle of 2016 and the end of 2017 he worked long hours sitting on a kneeling chair. These two statements are not completely incompatible with the Appellant being unable to sit comfortably at any time but they suggest that, by February 2014, the Appellant was able to overcome his discomfort (whether by use of a kneeling chair or otherwise) and the effect of the Appellant's back injuries was limited.

59. As Judge Mosedale noted in *Banerjee v HMRC* [2015] UKFTT 0085 (TC), medical evidence is required due to the difficulties for a non-medically trained person in appreciating the severity of his or her own illness and how this will affect his or her capacity. It is very unfortunate that no medical evidence has been provided which might have supported the Appellant's written assertion that there was still a lasting effect from back injuries sustained in 2001 and 2010.

60. HMRC referred to the Upper Tribunal decision in *Daniel Peters (known as Inkey Jones) v HMRC* [2019] UKUT 58. That involved a taxpayer who gave oral evidence that he was suffering from depression, supported by a letter from a walk-in doctor who had no access to the taxpayer's medical records or prior medical history. The First-tier Tribunal found that the taxpayer did suffer from depression and that this was a reason for his delay but, due to the limited evidence, did not conclude that his depression constituted a good reason for his delay.

61. I accept that the Appellant suffered back injuries, and that he spent time in hospital in 2001 and 2010 because of those injuries. However, there is no medical evidence that there is a lasting effect from those injuries or of the extent of any lasting effect. Given the periods in 2014 and 2016-2017 when the Appellant apparently was able to sit for long periods and to focus on paperwork, I am not persuaded that there is

sufficient lasting effect from those back injuries for his physical health to have affected his capacity to file his tax return for 2013/14. I do not consider the Appellant's physical health to be an attribute I should bear in mind when considering whether the Appellant has a reasonable excuse for his delay in filing his tax return for 2013/14.

62. Turning now to the Appellant's mental health, I note there is conflicting evidence as to when the Appellant has suffered from depression. The Appellant wrote that it began a number of years prior to receiving treatment, and that he first began to receive treatment in August 2014. The Appellant's agent suggested the Appellant suffered from depression from April 2013 and (illogically) that this was a cause of the drop in his self-employed income in 2012/13. Although the Appellant has proved unreliable in dating events, I consider he is more likely to know the dates from which he suffered depression than his agent. Therefore, I accept that the Appellant suffered from depression over a relatively long period of time prior to August 2014 and, in accordance with his March 2015 statement and his oral evidence, he was treated from August 2014, with an improvement in his mental health at that time. The Appellant's oral evidence was that he again suffered from depression in 2017, again received treatment (taking 240 anti-depressants across 2017), and that he had then felt well again. This evidence is not entirely congruent with the Appellant's email of April 2018 in which he told HMRC that he became depressed in 2016, that the treatment was less successful and that, as at April 2018, he was still depressed. I find the contemporaneous evidence is more likely to be accurate than a 2019 recollection, and that the Appellant suffered from depression from 2016 to (at least) April 2018.

63. Unfortunately, in the absence of medical evidence, I do not consider I am in a position to make a finding as to what effect, if any, the Appellant's depression had on his ability to file his 2013/14 tax return. The Appellant has written that when he was depressed he was unable to concentrate and less able to work efficiently. The Appellant told the Tribunal that the lack of focus was one of the things that had prevented him from addressing his paperwork when he was suffering from depression. However, during the first period when the Appellant was depressed and not receiving treatment (up until August 2014), he spent six months focussing on the paperwork to enable him to submit six outstanding tax returns, managed Cr-one Limited, successfully submitting CIS, VAT and CT returns on time, and also came up with his invention (in October 2013). During the second period when the Appellant was depressed (2016 to April 2018), including when he was receiving treatment which was not as successful as previously, the Appellant worked long hours as an employee, progressed the exploitation of his invention including running another company, set up and ran another building company, and addressed the paperwork which resulted in the filing of the 2013/14 tax return. From the evidence before me there is no discernible difference in what the Appellant was able to manage when he was depressed, and what he was able to manage when he was not depressed. Medical evidence might have shown that the Appellant appeared to manage but was actually struggling because of his depression, but there is no medical evidence. The onus is upon the Appellant. Given the absence of any medical evidence, I am not persuaded that the Appellant's depression significantly affected his capacity to file his tax return for 2013/14. I do not consider the Appellant's mental health to be an attribute I

should bear in mind when considering whether the Appellant has a reasonable excuse for his delay in filing his tax return for 2013/14.

64. Next I consider whether facts exist which, when judged objectively, amount to a reasonable excuse for the default. The Appellant relies on what he categorises as work related difficulties, financial aspects, medical aspects and personal aspects.

65. Looking at these aspects in that order, the Appellant has described his work commitments and the different areas in which he worked. The Appellant worked on house refurbishment (2007-2016 and across 2018), acted as a landlord (2007-2016), ran a series of property companies (2012-2016 and 2018), worked as an employee (2016-2017), and exploited his invention (2013-present). I accept that the Appellant's work commitments took much of his time (though not to the extent he suggested).

66. However, the Appellant has chosen to take on all the work activities which he has described. They may have seemed necessary decisions to the Appellant at the time he made each choice but he could have made other decisions which would have imposed fewer obligations. I do not accept that a taxpayer who takes on a series of work commitments which are prioritised over the obligation to file a tax return can then rely on those work commitments as a reasonable excuse for the late filing of that tax return. In this regard it is instructive to view the Appellant's attitude to the filing of the company returns (CIS, VAT and CT). The Appellant told the Tribunal that those returns were all filed on time because the companies he ran involved other people besides himself. By contrast it seems that the Appellant does not recognise the importance of filing his personal tax returns on time. I conclude that this approach has resulted in the Appellant giving the filing of his 2013/14 tax return a lower priority than other matters which were competing for his time. I do not consider the Appellant's work activities constitute a reasonable excuse for the late filing of his 2013/14 tax return.

67. The next aspect mentioned by the Appellant is his financial difficulties. Paragraph 23(2)(a) provides that an insufficiency of funds is not a reasonable excuse, unless attributable to events outside the Appellant's control. The situations described by the Appellant mean that at some times he has had a regular income, and at other times he has not. I accept that this would be stressful but the Appellant has not argued that this was due to events outside his control. I conclude that it was due to the nature of his businesses. I do not consider that the irregularity in the Appellant's income affected the Appellant's capacity to file his 2013/14 tax return. The Appellant told the Tribunal that he did not pay his accountants for three years and that they were not acting for him in that three year period (though they remained on the record throughout). However, it is clear from HMRC's SA Notes that Eden Currie was acting for the Appellant throughout 2014 to 2018, so it was not the Appellant's failure to pay his accountant which resulted in the late filing of his tax return for 2013/14. The Appellant has argued that his default occurred largely because he could not address his paperwork due to other commitments. I do not consider the Appellant's finances constitute a reasonable excuse for the late filing of his tax return for 2013/14.

68. The next aspect put forward by the Appellant is medical. I have set out above why I have not been persuaded that the Appellant's previous back injuries and depression significantly affected his capacity to file his tax return for 2013/14. The Appellant described spending time in hospital for his back injuries but I have found that this was in 2001 and 2010, and so time in hospital did not affect the filing of the 2013/14 tax return. The Appellant also told the Tribunal that he had GP appointments and counselling in respect of his depression. There was no evidence as to the extent of the time taken by these appointments and counselling sessions, and no dates for when they occurred. Given the absence of evidence that they took such significant periods of time that all other aspects of his life were set aside, I do not consider that these appointments constitute a reasonable excuse for the late filing of the 2013/14 tax return.

69. Similarly, I have not been provided with the dates for when the Appellant was in hospital with his throat infection. I accept that the Appellant could not address his tax return while he was in hospital being treated but, in the absence of evidence that this hospitalisation occurred between April 2014 and March 2015 (and so could affect the filing of the 2013/14 return), I do not consider that the Appellant's throat infection contributes towards a reasonable excuse for the late filing of the 2013/14 tax return.

70. Finally, I consider personal matters. The Appellant relies upon the ill health of his mother and of his son. The Appellant's mother lived with him temporarily in 2015 and moved in again on an unknown date in 2018. The Appellant's son collapsed in November 2017. I remind myself that the return was filed on 26 January 2018.

71. There are many events in life which will rightly be seen as taking priority over all other matters, and the most obvious example of this is the sudden and serious illness of a taxpayer or a member of his or her immediate family. In the heat of such a crisis it is objectively reasonable that all energy and emotional resources should be devoted to the needs of the person who is ill. However, if the ill health continues, there comes a time when it is no longer a crisis and it is, sadly, ordinary life. At that time, it is reasonable to expect taxpayers to make adjustments so that they can meet the expectations of ordinary life and fulfil their commitments.

72. I look first at the Appellant's mother's ill health. When the Appellant's mother first moved in with the Appellant in 2015 and he was required to adjust to the extent of her alcohol addiction, I agree that was initially a shock. That was at some point prior to March 2015. The Appellant told the Tribunal that it is unbelievably difficult living with an alcoholic, and I have no doubt that is the case. The Appellant's mother lived with the Appellant temporarily in 2015 but there is no evidence of how long she stayed. It may be that the period was so short (perhaps up to about one month) that the Appellant did not reach the stage where the crisis stage had abated and he would be expected to make adjustments. If the Appellant's mother lived with the Appellant for more than about a month in 2015, then it is reasonable to expect him to have begun to make adjustments so that he could once again meet the obligations of ordinary life. Therefore, I accept that there is a short period in 2015 (of about a month) for which the Appellant has a reasonable excuse for not filing his tax return.

73. The Appellant's mother moved in with the Appellant again in 2018 but the Tribunal was not told the date. The burden is upon the Appellant to demonstrate events that might give him a reasonable excuse, and there is no evidence that the Appellant's mother moved in with the Appellant prior to 26 January 2018 (when the tax return was filed). If the Appellant's mother did move back in with the Appellant before his 2013/14 tax return was filed then, given his experience in 2015 and knowledge of what to expect, the Appellant would have been expected to make arrangements to deal with the difficulties of living with an alcoholic and the impact those difficulties have on his other commitments. Currently it seems that the Appellant is able to make the necessary adjustments when work opportunities arise: with only 24 hours' notice the Appellant was able to find someone to supervise his mother so that he could go away filming. If the Appellant's mother was living with the Appellant in January 2018, I would have expected him to be able to make similar arrangements. Therefore, I do not accept that having his mother living with him in January 2018 (if she was) constituted a reasonable excuse for the Appellant's late filing of his 2013/14 tax return.

74. The final matter is the most serious. That is the collapse at school of the Appellant's son in November 2017. The Appellant wrote, and spoke, of the all-consuming nature of worrying about his son's health. The Appellant's son's health was obviously a priority for the Appellant at that time, and I accept that the Appellant had a reasonable excuse for not addressing his 2013/14 tax return for the period immediately following that collapse and while the cause of his son's ill health was being investigated.

75. The Appellant's tax return was sent to HMRC on 24 January 2018. Therefore, it must be the case that the Appellant had sufficiently recovered from the shock and worry of his son's illness to manage other matters, including addressing his 2013/14 tax return, by 24 January 2018 at the latest. I consider that the Appellant had a reasonable excuse for his late filing of his 2013/14 in the period from the date in November 2017 when his son collapsed, until the filing of the return on 26 January 2018.

76. The conclusion I reach is that there have been two periods, covering up to about four months in total, when the Appellant has demonstrated that he has a reasonable excuse for the late filing of his 2013/14 tax return. For the remainder of the period between 6 April 2014 and 26 January 2018, the Appellant has not demonstrated that he was not able to file his 2013/14 tax return. The two periods of time for which the Appellant does have a reasonable excuse are not sufficient to affect his liability to any of the penalties which have been imposed. I conclude that the Appellant does not have a reasonable excuse which lasts throughout the period of his delay in filing his tax return for 2013/14.

Special reduction

77. In his Notice of Appeal of 3 August 2018, the Appellant asked that these penalties be suspended on the basis that he would file his remaining outstanding tax

returns shortly. Those returns have yet to be filed but, even if they had been filed as promised, Schedule 55 does not provide for the suspension of late filing penalties.

78. The effect of Paragraphs 16 and 22 of Schedule 55 are that the Tribunal does, in certain, very limited, circumstances, have the ability to reduce the penalties imposed. However, it can only exercise that ability if there are errors of law (as understood in a judicial review sense) in the way that HMRC have approached the question of whether there should be a reduction in the penalties imposed upon the Appellant because of special circumstances.

79. HMRC have addressed this issue in their review decision of 5 July 2018. I have concluded that there are no flaws in the way in which HMRC have approached the question of whether there are exceptional circumstances which would make it right for the penalties in this case to be reduced. Therefore, I do not have jurisdiction to re-make this decision. HMRC's decision (that there are no special circumstances to make it right to reduce the penalties) will remain.

Conclusion

80. For the reasons set out above, this appeal is dismissed. The penalties imposed for the late filing of the Appellant's tax return for 2013/14 are confirmed in the total sum of £1,600.

81. 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.

**JANE BAILEY
TRIBUNAL JUDGE**

RELEASE DATE: 17 OCTOBER 2019