



TC03054

Appeal number: TC/2012/08864 & TC/2012/08866

*Income Tax – late appeals – application for extension of time limit –
application refused*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MARK PATERSON MANDAGIE

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE ANNE SCOTT, LLB, NP
HELEN M DUNN, LLB**

**Sitting in George House, 126 George Street, Edinburgh on Thursday
14 November 2013**

**Having heard Philip Simpson, Counsel for the Appellant and Chris Cowan,
Officer of HMRC, for Respondents**

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The Appeals

1. Appeal TC/2012/08864 (“the postponement application”) is an appeal lodged by the representative, Mr Moughal, in regard to the decision dated 16 February 2012 postponing none of the tax assessed or the penalties and that for the years 2004-05 to 2007-08 inclusive. The total amount, which has not been postponed, is £350,754.08.

2. Appeal TC/2012/08866 (“the substantive appeal”) is an appeal submitted by the appellant relating to the Closure Notice and Assessments. Although the Notice of Appeal states that the relevant date is 16 February 2012, Mr Simpson stated, and Ms Cowan, agreed that the relevant date was 14 December 2011. The original Closure Notice and Assessments were dated 21 February 2012.

3. Since both Notices of Appeal were dated 27 September 2012, the appeals were late.

The issue

4. The only issue considered by the Tribunal at this hearing, and therefore the subject matter of this decision, was the application for extension of the time limits for lodging Notices of Appeal, that is to say to allow admission of the late appeals.

Background

5. The first hearing in this matter was on 1 November 2013. At that hearing the appellant was represented by Mr Moughal as he had been at all times up until that date. The appellant gave evidence at some length.

6. That hearing was adjourned, after the evidence had been heard, in the face of vigorous opposition from HMRC. The background was not uncomplicated. On 16 October 2013, Mr Moughal had sought an adjournment on the basis that he had misunderstood the communications from the Tribunal and had a diary conflict. That was rigorously opposed by HMRC. The Tribunal was not persuaded by the arguments advanced by the appellant and the Directions issued in regard thereto are self-explanatory and are annexed at Appendix A.

7. Four days before the Hearing listed for 1 November 2013, Mr Moughal requested yet another adjournment. The Clerk told him, on the instruction of the Judge, that that would be considered as a preliminary matter at the hearing. Both he, and the appellant attended. At the outset of the hearing, the Tribunal intimated that such a late application was unlikely to be successful on the stated grounds and that was why they had both been required to attend. The appellant intervened and stated he had always wished to progress matters as fast as possible and he did not wish a postponement. Mr Moughal withdrew that application.

8. However, we noted that, notwithstanding the appellant’s stance at the hearing, he had submitted a letter dated 22 October 2013 to Mr Moughal (who submitted it to the Tribunal) and HMRC stating that he had a prior engagement in Swansea and wished a postponement. That does not sit well with his repeated statements to the

Tribunal that he had always been very anxious to progress matters with both HMRC and the Tribunal.

Issues arising from the First Hearing (not addressed elsewhere)

9. As the Tribunal explained at this Hearing, long before the conclusion of the first Hearing, because the appellant had been contradicting and interrupting Mr Moughal and, given the allegation, in the Notice of Appeal for the substantive appeal, relating to the alleged incompetence of Mr Moughal, the Tribunal had taken the very unusual step of treating the appellant as being effectively unrepresented and had assisted him to participate very fully and in an informal fashion.

10. The Tribunal had explained the law, the jurisdiction of the Tribunal and the issues to be addressed and that in layman's terms addressed to the appellant rather than Mr Moughal. We answered the appellant's questions on that. (The appellant had told the Tribunal that Mr Moughal had told him that the Tribunal dealt with accountants so he had not needed a lawyer.)

11. The appellant gave lengthy and explicit evidence at the first hearing. On more than one occasion Mr Moughal tried to get him to deny what he had previously said and he declined. An example is that the appellant had confirmed to the Tribunal that he had received the letter from HMRC dated 14 December 2011 and he had telephoned Mr Moughal about it at the time. Mr Moughal tried to get him to say that he had not received that letter or any other mail after 16 August 2011. The appellant made it explicit that until he went to Swansea in January 2012, he had received mail and he had contacted Mr Moughal when he received it.

12. Mr Moughal had also tried to argue that the first time that either of them had known about the decisions, which are the subject matter of these appeals, was on 27 September 2012. At the outset of the first hearing, the appellant flatly contradicted that and said that he had known that there were problems in July 2012 when he was visited by Sheriff Officers. He also said that he had spoken to Mr Moughal about that although he could not recall whether or not they had discussed appeals at that stage. We immediately granted a recess, at our initiative, to enable them to decide what evidence should be led.

13. In the course of the first hearing, in order to bolster his assertion that he had not received any of the extensive correspondence from HMRC, Mr Moughal advanced an argument that he always responded by return to correspondence and as evidence of that he stated that he had always responded immediately to the Tribunal and he had co-operated fully with the Tribunal. That was simply untrue and that was put to Mr Moughal in those terms. In particular, he was asked to explain precisely how and when he had complied with (a) the requirement to produce a List of Documents in terms of Rule 27 of The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (the "Rules") which should have been lodged with the Tribunal no later than 14 January 2013 and (b) the Directions issued on 29 April 2013. When he said that he had done so by letter dated 16 October 2013, he was taken through that letter, line by line. He was wholly unable to explain himself since it was entirely clear that he had not complied with these at any stage, let alone in that letter.

14. At the end of the first hearing, the appellant decided to dispense with the services of Mr Moughal. He then indicated that he had nothing further to add, he simply wanted to argue the merits of his case with HMRC, whether at a Tribunal or elsewhere, and he did not think that Mr Moughal was assisting him with the Hearing. However, he also intimated that copies of all relevant information from both HMRC and the Tribunal should still be sent to Mr Moughal since it was only in regard to the Tribunal Hearing that he no longer wished representation.

15. Of course, we could have decided the matter then as Mr Moughal had nothing to add and the appellant said that he had explained everything from his point of view. Although, HMRC argued that no adjournment should be granted since the factual basis for the application for the late appeals had been established, we took the view that in the interests of justice and in the unusual circumstances of this case, the appellant should have the opportunity to seek legal representation although he had initially expressed no wish to do so (see paragraph 10 above). We had due regard to Rule 2 of the Rules.

16. The adjournment was to allow the appellant to seek legal representation **and** to comply with the outstanding Directions of the Tribunal. The Directions thereanent, which are explicit, are annexed at Appendix B.

17. In compliance with those Directions, the appellant has timeously lodged his witness statement and a list of Documents. The documents numbered 1 and 7 were lodged at the Hearing, notwithstanding the terms of the Directions. There was no response of any sort to Direction 5. Accordingly there is still not complete compliance. We comment further on this point at para 49 *et seq.* The adjournment was in relation to the application for admission of the late appeals and the postponement application. The substantive appeal has not been listed for hearing.

The arguments relating to the late appeals

18. Mr Simpson argued that (a) the appellant had been suffering from stress and depression and was therefore unable to deal with everyday life let alone his tax affairs, (b) he had relied on Mr Moughal, and if Mr Moughal had not been accurate in his statements to the Tribunal there might be other more grave issues, (c) the appellant had not understood the gravity of the position until the middle of September 2012 and as soon as he did understand he had acted with alacrity, (d) the appellant had a *prima facie* case so the appeals should succeed, (e) this was not a case where loss of evidence was an issue, (f) HMRC's right to certainty was outweighed by the very substantial sums of tax (and penalties) at stake in this case.

19. Mr Simpson advanced those arguments ably and persuasively however, he laboured under the very significant disadvantage that although the appellant and his instructing agent had apparently given detailed instructions, in that a full witness statement and detailed submissions had been lodged, in some very material aspects those did not appear to be wholly consistent with the evidence given by the appellant at the previous hearing. We pointed that out, without specifying detail, and granted Mr Simpson a recess to allow him to take further instructions, at the same juncture drawing to his attention our reservations about the letter from Dr Moughal (see paragraph 26 below).

20. Ms Cowan argued that (a) it was only at the appeal stage that ill health was raised as an issue (and until the date of this hearing no evidence had been produced and the Tribunal had commented on the quality of that evidence), (b) the appellant had continued to instruct Mr Moughal notwithstanding the terms of the Notice of Appeal and he had had another agent acting concurrently, (c) previous decisions in February 2011 had been appealed late, albeit accepted by HMRC and postponements of tax allowed at that stage, (d) the delays were far from minimal and the appeals had only been lodged when a bankruptcy hearing date had been set, (e) the co-operation with HMRC and the Tribunal before the appeals were lodged and thereafter had been minimal, (f) reliance on Mr Moughal could not be a reasonable excuse since the appellant had repeatedly been put on notice that no replies had been received from Mr Moughal, (g) time limits imposed by Parliament as a matter of public policy should be respected.

Illness

21. At the original hearing, the Tribunal, mindful of the apparent mental health issues even if they might be historic, gave the appellant considerable latitude when explaining his position. His mental health issues were explored in some depth since he freely said that he had not sought help from a doctor since the festive season in 2010/11. In terms of Rule 2 of the Rules, the Tribunal must use its own expertise. As we explained, at both Hearings, we are both very experienced Judges in the Social Entitlement Chamber so assessing the functional impact of disability is integral to what we do there.

22. We took detailed oral evidence from the appellant about his health and functional abilities. We specifically enquired when he had become ill. That evidence did not sit well with either his witness statement or the medical certificate from Dr Moughal which was tabled at this hearing. We recounted that evidence to this Hearing, since neither Mr Simpson nor his instructing agent had had the benefit of hearing same and it was only fair and just that they should know exactly what evidence had previously been given. It should be noted, as indeed we articulated in the course of the hearing, that the appellant nodded throughout agreeing with what we said. HMRC confirmed that our report of the appellant's evidence matched their own record.

23. We prefer that evidence and find as facts the appellant's own original account of his illness and how it affected him at the end of 2011 and in 2012. He was clear that his problems started at Christmas 2011. He did not want to go back to work because he was felt very stressed about his work. In the first week of the New Year (2012) he saw his doctor who told him to take some time off work. The diagnosis was that he had a stress related illness. He was prescribed a very small amount of diazepam to be taken on an "as required" basis. He took the medication perhaps once a week, if that and that was only half a pill. He did not go back to that or any other doctor although he arranged some counselling whilst in Wales.

24. He has an office in Swansea and from the end of January 2012 until the first week in April 2012 he resumed work, handling correspondence etc. In his own words he was functioning during that period. He did not feel stressed or ill every day and on the rare occasions he took medication he might take half a pill at about 2 pm if he felt really stressed. He prefers not to take medication, if he can avoid it. In recent times

the only medication he had taken was a pill 4 days before the hearing because of the stress of that.

25. He had fallen out with his co-director. After the end of the first week in April 2012 (which coincided with the Easter bank holiday), he decided not to have further day-to-day involvement in the business and he decided to cut all ties with the business and concentrate on himself. He returned to Glasgow in June 2012. He said that although there was a large pile of mail in his house he was not “in a good place to deal with it” until August 2012.

26. Whilst no doubt on occasion, he was particularly stressed, we do not accept that most of the time he was suffering from “severe stress and depressive symptoms” as the letter from Dr Moughal states. Firstly, that does not fit with the appellant’s description of his functional abilities, and secondly, although patients can and do decline medication, if he had been that ill, in the absence of medication, we would have expected follow up, specialist review, intervention from the Community Mental Health Team and offers of therapeutic treatment. No doubt he was advised to minimise his stress levels and take some time off work however, from the end of January, most days and most of the time he could and did attend to his business and that for at least two months. He said that he functioned normally. We accepted that.

27. We do not find that his illness was an exceptional circumstance whereby the appeals should be admitted late. He confirmed that he had received the letter of 14 December 2011 and certainly by February 2012, if he was attending to his business he could, and should, have ensured that his tax affairs were up to date. He was dealing with his mail by August 2012 and that is clear from the Tribunal’s own records as set out in paragraph 2 of Appendix A.

Reliance on a third party and credibility

28. We find that these two issues are inextricably combined. Ms Cowan argued that the appellant and Mr Moughal might have been complicit.

29. Before we comment on Mr Moughal, it should be noted that throughout the enquiry HMRC corresponded with the appellant as well as Mr Moughal. This was not a situation where the appellant had no means of knowledge. As long ago as 29 September 2010, HMRC wrote to Mr Moughal stating that “I have been writing to your client since 24 August 2009 and so far have not received a single response from Mr Mandagie.” By that time three sets of Penalties (two of which were daily penalties) had been imposed. The appellant cannot have been unaware of the size of the problem he faced at any stage. The imposition of very substantial daily penalties should have alerted him; the letter sent to him by HMRC on 14 January 2011 quantified his potential liability at £390,442. There is a record of a phone call from HMRC to his mobile phone leaving a voicemail request to make contact and that was not answered.

30. Most unusually, in March 2010, HMRC had resorted to hand delivering a letter to him in an attempt to elicit a response. The appellant does state in his witness statement that he handed that over to Mr Moughal and relied on him to progress matters. Since Mr Moughal was his agent at that time, he should have been concerned that HMRC were taking such steps to contact him.

31. The appellant is not apparently financially, or indeed otherwise, naïve. Prior to the banking crisis and subsequent economic hiatus he had built up a multi-million pound property business. He has negotiated many purchases, sales and leases or he has instructed others to do so for him. He was an articulate and intelligent witness. He understood the documentation in front of him. He was confident and had no hesitation in raising matters with the Tribunal, Ms Cowan and Mr Moughal. To use the vernacular, he did not present as an innocent abroad.

32. Shortly put we did not find the appellant to be a wholly credible witness. He had told the original hearing that his mail had accumulated whilst he was away in Wales because he had not redirected it nor asked his daughter who stayed at the house whilst at College to open or forward any mail. He had done neither of these things because he was confident that Mr Moughal would deal with any matters arising. We found it inherently unlikely that anyone, let alone a businessman, would adopt such a course of action in regard to all of the mail arriving at their home. It is particularly surprising at a time when there had been considerable correspondence with HMRC on issues that have not been resolved and that had been clearly identified in a letter to him of 14 December 2011, which he acknowledged that he had received. It is even more unlikely that when Sheriff Officers visited him in July 2012 on his return to Glasgow that he did not open any of the mail. By his own admission, he was able to deal with his mail by August 2012.

33. At the heart of his case was his argument that he had relied on Mr Moughal throughout and had been let down by him. However, as Ms Cowan very cogently argued, even if that had been the case, he had been repeatedly warned that matters were outstanding with HMRC.

34. Quite apart from the penalties imposed, he personally received letters from HMRC issued on 2 October, 11 November and 7 December 2009 all stating that neither he nor Mr Moughal had provided the relevant information to HMRC and that he needed to take action.

35. He told the Tribunal that whenever he received letters from HMRC he passed them to Mr Moughal and he thought that he had dealt with them because he had observed that he had a large correspondence file. He said that after Sheriff Officers visited him in July 2012 he had spoken to Mr Moughal. He must have known that HMRC were taking action against him. When Mr Moughal contacted the Tribunal in very early September 2012 he told the Clerk that Mr Mandagie had telephoned him stating that HMRC were chasing him for payment of tax. That does not sit well with the appellant's assertion that he did not understand the position until mid-September.

Mr Moughal and his dismissal at the first Hearing

36. We turn now to the first Tribunal hearing. Mr Moughal had been warned that since he had chosen to give evidence, in the sense that he was making assertions about his own conduct and experience and he wished to rely on that to support his arguments for the appellant, his credibility was a possible issue. He had been referred to his own letters to the Tribunal which contradicted his oral evidence. As we indicate above, the appellant had seen fit to contradict him, repeatedly. In the face of those conflicts, they had been given two recesses to discuss the position. On the

balance of probability, we found that the appellant did not wish to have Mr Moughal represent him because in giving evidence it was abundantly clear to everyone (the appellant said that he “could see where it is going”) that Mr Moughal was being exceptionally “economical with the truth”, to use a time honoured phrase and if he was allowed to continue there might be an exposure which might prove to be undesirable.

37. We were very surprised indeed, not that the appellant said that he did not want Mr Moughal to represent him in the hearing but rather that he said that Mr Moughal could stay, not only in the room but next to him, and more so that he asked that all information be sent to Mr Moughal thereafter both by HMRC and the Tribunal. It was clear that he was not cutting ties with Mr Moughal even at that stage.

The Notices of Appeal

38. We had some considerable issues with the credibility of the appellant’s account of how the Notices of Appeal came to be lodged and we put that to Mr Simpson, recounting the evidence that previously we had heard. HMRC confirmed that it met their record. As with the evidence of ill health the appellant nodded vigorously throughout confirming the accuracy of our record with one exception. The exception was in relation to who had helped him complete the Notice of Appeal in his name.

39. At the original hearing the appellant told us that the reason one appeal was from Mr Moughal and one from himself was that he had spoken with Mr Moughal on the morning of 27 September 2012 and Mr Moughal had told him that he was going to lodge an appeal. He was very concerned about the sequestration proceedings, which were due to be in court the following week and he had a meeting with his lawyer later that day. He had been unable to contact Mr Moughal. In discussion with his lawyer, since he was not certain that Mr Moughal had actually lodged an appeal, they telephoned Mr Boyle at HMRC from the lawyer’s office and as “belt and braces” had decided to lodge an appeal in case it might help with the sequestration proceedings. In the event it had not helped. That lawyer had arranged for him to have independent tax advice.

40. He said that his lawyer had told him to put the wording “It cannot be in the interests of justice that I can be made bankrupt due to incompetence by my accountant” in the Notice of Appeal in order to give him a “fighting chance”.

41. We asked him who the “new tax adviser” was and he explained that the lawyer had arranged for Mr McGuigan of Narplan (Taxation Consultants) to be retained.

42. He was very clear that his lawyer had arranged for him to submit the Notice of Appeal. It is therefore surprising indeed that in his witness statement he states that he had telephoned a lady in HMRC before speaking to Mr Moughal and that the call with Mr Boyle had been arranged by Mr O’Donnell of Tax & Forensic Services Limited (who represented him in this hearing and instructed Mr Simpson).

43. Whilst it is of course possible that he mistakenly referred to Mr O’Donnell as being a lawyer, as Mr Simpson argued, we have considerable difficulty with that argument for a number of reasons. Firstly, at the first hearing the appellant went to some length to explain to us that his actions in lodging the appeal had been driven by

discussion with his lawyer about the legal proceedings. Secondly, because of the argument in regard to possible incompetence on the part of Mr Moughal, he explained that Mr McGuigan had been retained to assist in resolving matters with HMRC and their letter dated 5 October 2012 is entirely consistent with that. Thirdly, there would be no reason to have yet another tax advisor involved at that juncture and seemingly only for that afternoon and no argument was advanced to explain that. It did not sit well with the appellant's previous explanation that after the meetings on 27 September 2012 he had had other meetings with the lawyers, Counsel and Mr Moughal in regard to the sequestration and that he had spoken with Mr McGuigan. There was no mention of Tax & Forensic Services Limited.

44. Lastly, we have substantial doubts about the two actual Notices of Appeal themselves. At the first hearing we asked the appellant how the lawyer, or he, would have had the HMRC reference number and dates for the decisions to be appealed. He became very vague and said that he did not then and still did not understand the appeals. He thought that possibly the lawyer or an administrator had found the reference. He said that he had not discussed the appeals with Mr Moughal. He said that it was the lawyer who had completed the appeal. He said that the lawyer was Lavelle Legal. We asked why the substantive appeal had been ticked indicating that it had been made by him and also by a representative. He said that it was a mistake.

45. On closer review, we note that Box 7 (the grounds for appeal box) in both Notices of Appeal contains precisely the same first sentence. That sentence includes a most unusual spelling mistake, namely "erroneus". That spelling mistake occurs twice in the appeal lodged by Mr Moughal and once in the appeal lodged by the appellant. Secondly, in Box 6 (reasons for the late appeal) in both Notices of Appeal the first two sentences are identical. The error in grammar in the second sentence is therefore the same in both. That box in both Notices of Appeal includes an identical typing error, namely "OFFICERIN CHARGE". Lastly, whilst we do see some Notices of Appeal entirely completed in capital letters it is comparatively rare. On the balance of probability, we consider it highly improbable that different people completed these two Notices of Appeal independently.

46. Mr O'Donnell was at the Hearing and instructing Mr Simpson so presumably it was indeed Mr O'Donnell who helped the appellant with the second Notice of Appeal. Perhaps that answers the question as to why there seemed to be a third tax advisor fleetingly involved on 27 September 2012 (see paragraph 43 above). Since there is a clear link between the two Notices of Appeal it seems that on the balance of probability there was a link between the appellant and Messrs O'Donnell and Moughal at that time. It casts yet further doubt on the credibility of the appellant's evidence to the Tribunal.

47. We find it extraordinary and incredible that the appellant would dismiss Mr McGuigan and continue to instruct Mr Moughal right until the end of the last hearing and indeed thereafter unless the two were indeed complicit. We find that the argument about Mr Moughal's incompetence was indeed put in place to give the appellant a "fighting chance".

48. In summary, as far as reliance on Mr Moughal is concerned, even if there had been no collusion between the appellant and Mr Moughal, looking at the totality of the evidence, even if at an early stage it would have been reasonable for the appellant

to rely on verbal reassurances from Mr Moughal, nevertheless by no later than early 2009 he should have known that matters had gone seriously awry and that he required to take action himself if he had any intention of honouring his obligations in terms of the Taxes Acts. He should have asked for evidence as to what had been provided to HMRC and when. It would appear that he only took action in the face of sequestration proceedings years later.

Compliance with Directions

49. The Directions at Appendix B make it explicit that the appellant was required to comply with the outstanding Directions from the Tribunal. That required him to lodge the List of Documents required in terms of Rule 27. Although that was lodged and by 2 pm on the day of the Hearing the documents referred to therein were in the hands of HMRC and the Tribunal, the documents did not and could not found the grounds of appeal relating to the postponement application which was due to be heard that day if the out of time applications were successful.

50. Items 2, 3 and 4 had been lodged at the previous Tribunal and had not been deemed to comply with the Directions. Items 5 and 6 are irrelevant since the mortgage arrears and negative equity can have nothing to do with the charge to tax. Item 7, tabled as the Tribunal walked into the Hearing, was meaningless in isolation and had apparently been produced in response to a telephone request from the appellant so it could not be put into context. Both members of the Tribunal have experience in conveyancing and would read it to mean that the mortgage was not for a fixed minimum period and therefore could be repaid at any time. That is not the construction, which the appellant had asked Mr Simpson to argue. In any event there are several lenders so evidence would be required in regard to each and every one.

51. We pointed out that if the terms of lending were to be relied on in regard to the postponement application (and they would have to be) then the best evidence would be the original documentation and with so many mortgages there should be numerous copies available for each lender. None was provided.

52. Mr Simpson agreed that if the postponement application were to succeed then in terms of Section 55(6) Taxes Management Act 1970, the Tribunal would have to “have reasonable grounds for believing that” the appellant had been overcharged to tax. He conceded that the List of Documents would have to be amended, and further documentation would be required to be lodged.

53. It matters not, per se, since the out of time applications are refused but in making the decision thereon the Tribunal had due regard to Rule 2 of the Rules and looked to the appellant’s co-operation and likely co-operation with the Tribunal. It was yet another indication that the appellant and/or his agent was not producing the information which was required. Incidentally if the new agent had looked at Item 3 on the List of Documents in conjunction with the Bundle, in even passing detail, it can be seen that numerous entries are quite simply factually inaccurate.

Possibility of success in either appeal

54. Mr Simpson argued that HMRC’s right to certainty had to be balanced with the appellant’s right to pay the correct amount of tax and that there was a strong

likelihood that he would succeed in having the tax postponed in the first instance and secondly succeeding in the substantive appeal.

55. We agree that the possibility of success is certainly a factor, as is the amount of money which is at stake, but we totally disagree with his arguments in regard to the likelihood of success.

56. It is not in doubt that the tax returns that were the subject matter of the enquiry had only been submitted because the appellant had been served with a charge for payment in the sum of £8,581.57. The returns disclosed no income or gains for 2004-05 and 2005-06. In 2006-07 and 2007-08 there was income with no tax deducted. It was £2,000 in the earlier year and an undisclosed (to the Tribunal) figure for the latter year. No tax returns have been lodged since.

57. Although some information was provided to HMRC in April and May 2012 (and that was only provided in order to achieve the postponement of tax which was later reversed) it related to only two years and as HMRC said in their letter dated 14 August 2011, to which there has been no response at any stage:-

“95% of the mortgage information relating to two years may have been submitted but....a substantial amount of documentation and information remains outstanding as detailed below:

- All State for Settlements for all properties purchased between 6 April 2004 and 5 April 2007. Mr Paterson-Mandagie has only supplied the documentation for the two years 2007/08 and 2008/09. If the documents do not provide details of how the funding was obtained then documentation to evidence this should also be provided.
- All lease agreements for the properties let during the period 6 April 2004 to 5 April 2009.
- Revised accounts for each year documenting any expenses claimed. Again all you have provided is a list of the monthly mortgage repayment and the monthly rent for 50 properties for 2007/08 and 2008/09. Am I to assume that there is no additional expenditure for these properties and that they all had full tenancy for the entire period since purchase?
- Details of how each rent was paid eg cash, cheque for BGC (detailing what account the funds were lodged).
- All personal and business bank statements that Mr Paterson Mandagie had solely, jointly or had an interest in for the period 6/4/04 to 5/4/09. I had previously advised that I required sight of at least the 2007/08 bank and building society statements but on reviewing the transactions I now consider it prudent to review the entire period that has been assessed commencing with 2004/05 which is the year of enquiry.
- Provide details of any properties sold since 6 April 2004 together with the State for Settlement for each sale and details of where any free proceeds were deposited.

Director

From the documentation you have submitted I see that Mr Paterson-Mandagie has a considerable involvement with Penny Lane Financial Ltd and is in fact listed as a director. Please advise if he received the following from this source

- A salary/dividend during the period 6/4/04 to 5/4/09. If so provide details of:
 - ❖ How much he was paid
 - ❖ What bank account it was paid into
 - ❖ Where the salary has been declared.”

None of this information has been produced.

58. In his submission Mr Simpson said that the appellant would produce documentary evidence to vouch the mechanism he utilised to purchase the properties. He did not.

59. Item 4 in the list of documents purports to be that. It is a note by Mr Moughal. It is not vouched. We have very considerable reservations about the credibility of Mr Moughal and the appellant. Mr Simpson did the best that he could in the circumstances pointing to the schedule prepared by Mr Moughal dealing with the property purchases in 2007-2009. That shows that the appellant apparently borrowed more than he paid for the properties and it was argued that that funded his lifestyle using the capital apparently liberated thereby. The only other evidence on the funding mechanism was the witness statement for the appellant. There was no evidence about any expenditure and given that apparently these were repossessed properties, there could well have been very significant expenditure, notwithstanding the discounted purchase prices. There must have been void periods between purchase and lease; there is no evidence. The list of the information which is lacking is long.

60. No information whatsoever has been provided in regard to 2004-05, 2005-06 and 2006-07. Apparently the appellant had neither income nor gains in those years. That is simply incredible. What had he done to enable him to obtain significant bridging finance in 2007 and later years? The last 10 disclosed transactions were after the collapse of Lehman in September 2008. Lending criteria had tightened.

61. Crucially, the appellant has been wholly unable to produce evidence from anyone other than himself or Mr Moughal to vouch the mechanism for the financing of these transactions. He appears to have used at least six lenders yet not one copy agreement has been produced, even in the face of insolvency proceedings. According to his evidence to the Tribunal he knew that the primary issue for HMRC was the source of funding of the property purchases yet all that has been provided is Item 7 on the list of Documents. There is no real information about the rental income, nothing about voids, no copy leases, no information about expenditure.

62. Whilst he has provided 95% of the information relating to the purchases in 2007-2009, there is no information about how he was in a position to obtain bridging finance, if his account is to be believed, or any detail of the rental income or any ancillary matters.

63. The onus of proof lies with the appellant since the assessments have been raised. The combination of the dearth of any detailed information about anything other than the cost of purchases and the available mortgages means that a computation of income is well nigh impossible. There is no relevant information for the earlier years.

64. The sole question for the Tribunal in this context is to assess the strength of the appellant's case on both postponement and the substantive appeal and although the underlying issues are the same the criteria for success are different.

65. On the basis of the evidence before us, we have no doubt that if we had proceeded to hear the postponement application at this hearing, and it was listed for that, the prospects of success were negligible.

66. If the late applications were to be allowed and the substantive appeal could proceed is there a prospect of success, and if so how to what extent? We find the appellant to be inherently incredible. HMRC have offered numerous extensions of time and repeatedly endeavoured to obtain the information that they required. He has only engaged with HMRC in the face of a refusal to postpone a very large amount of tax and even that was late and then he quickly disengaged. It was only when sequestration proceedings were in hand that these appeals were lodged and even the engagement with the Tribunal has been dilatory as evidenced by his own request for postponement of the hearing on 1 November 2013.

67. In the face of the Directions from the Tribunal, even with his new agent, he has not produced the relevant documents to support the appeal on postponement of tax. Unless significant new evidence, whether by way of witness statement or documentation were to be lodged, we have difficulty in seeing how the substantive appeal could succeed.

Conclusion and summary

68. It is well established law that taxpayers have an obligation to act with reasonable prudence and diligence in dealing with their tax affairs. We find that the appellant has neither acted with prudence nor diligence.

69. We found the appellant's evidence in regard to his dealings with Mr Moughal was inherently inconsistent and totally lacking in credibility. He is responsible for compliance with his obligations in terms of the Taxes Acts.

70. Long before his mental health issues, he personally had been issued with a Penalty Notice on 7 December 2009 for £300, and following written and telephone contact with him, as well as Mr Moughal, a further Penalty Notice for £310 was issued on 8 January 2010 for £310. Further Penalty Notices for £2250 and £5760 were issued on 24 March and 29 June 2010. All were ignored. That alone speaks volumes. The appellant has treated HMRC's enquiries and requests with what amounts to cavalier disregard. He has only acted in the face of imminent calamity and not even always then.

71. The decision not to allow a late appeal or appeals cannot be taken lightly especially where a large sum of money is at stake. We have considered it very carefully, hence the length of this decision.

72. At all stages we have had Rule 2 of the Rules very much in mind. It is imperative that we act fairly and justly in deciding on any matter; that is why there was an adjournment before this hearing and that was *ex proprio motu*.

73. We have weighed every factor in the balance. Certainty and public policy for HMRC are the least of the issues. The key factors are the huge lack of credibility of either the appellant or his representative, Mr Moughal, the doubts about the Notices of Appeal themselves, the almost total lack of co-operation at any stage including the implementation of the Directions of this Tribunal, and the failure to produce information, which, if it exists, should be readily available in regard to say the conditions relating to financing. We see no evidence that the appellant has, or is, complying with his obligations in terms of the Taxes Acts.

74. We refuse the application for the appeals to be admitted out of time.

75. 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.

ANNE SCOTT, LLB, NP

TRIBUNAL JUDGE

RELEASE DATE: 22 November 2013



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Appeal number: TC/2012/08864

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

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MARK PATERSON MANDAGIE

Appellant

- and -

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

Respondents

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DIRECTION

TRIBUNAL: JUDGE ANNE SCOTT, LLB, NP

25 WHEREAS on 16 October 2013, the agent for the appellant wrote requesting a postponement of the hearing set down for 1 November 2013 and that application is vigorously opposed by HMRC, NOW THEREFORE it is Directed that the said application for postponement is refused and that for the following reasons:

30 1. The Hearing date was intimated to the parties on 18 July 2013. Accordingly, the argument that the letter requesting dates to avoid for a Hearing was misunderstood is irrelevant. If Mr Moughal has had a diary clash for 1 November since the early part of 2013, as he states in the application, he should have been aware of it in July and could have reverted to the Tribunal immediately. He did not.

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2. Further, in very early September, Mr Moughal telephoned the Tribunal since there was concern that his client was being asked for payment of tax. In that conversation he did not mention the alleged diary clash but did say that he had misunderstood the letter requesting dates to avoid. He stated that he might look for a
40 postponement on those grounds and he was robustly informed that the Tribunal's letter of 2 July 2013 had been explicit in its terms and the intimation of the Hearing date had been in his hands since 18 July 2013. He took no action until yesterday.

3. The appellant has failed to supply the List of Documents required in terms of Rule 27 of The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (the “Rules”). He has failed to comply with Direction 2 of the Tribunal Direction to furnish witness statements. He has not furnished details of Counsel appointed as requested in the letter from the Tribunal dated 29 April 2013, although it may be that no Counsel has been appointed.

4. Rule 2 of the Rules makes it clear that delay should be avoided and the parties must co-operate with the Tribunal. The appellant has been given every opportunity to participate fully in these proceedings. Very fair notice of the hearing has been given.

5. At this very late stage a postponement on the grounds predicated by Mr Moughal would not be compliant with the Rules.

**ANNE SCOTT, LLB, NP
TRIBUNAL JUDGE**

RELEASE DATE: 17 October 2013



Appeal number: TC/2012/08864 & TC/2012/08866

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**FIRST-TIER TRIBUNAL
TAX CHAMBER**

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MARK PATERSON MANDAGIE

Appellant

- and -

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

Respondents

DIRECTION

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**TRIBUNAL: JUDGE ANNE SCOTT, LLB, NP
HELEN M DUNN, LLB**

25 **Sitting in public at George House, 126 George Street, Edinburgh on Friday
1 November 2013**

Having heard Mr Moughal for the Appellant and Ms Cowan, Officer of HMRC, for
the Respondents

30 **IT IS DIRECTED that:**

1. These appeals are adjourned to 2.00pm on 14 November 2013 at George House,
126 George Street, Edinburgh to enable the appellant to seek legal advice in regard

(a) the applications for the appeals to be admitted out of time; and

35 (b) if said applications are successful, the applications for postponement of
tax.

2. It should be noted that the substantive appeal has not yet been listed for hearing.

3. The appellant is directed to lodge a written submission with the Tribunal by no later than noon on Friday 8 November 2013, if there are any further representations to be made to the Tribunal. In the event that there is no submission then the appellant is put on notice that no new evidence will be admitted since he has stated that there are no other facts to be drawn to the attention of the Tribunal. A copy of any such submission should also be lodged with HMRC within the same time scale.
4. In the event that the appellant does lodge a written submission, that submission should address the legal issues relating to out of time appeals and postponement of tax.
5. Unless the appellant makes formal application, with supporting reasoning, to the Tribunal by no later than noon on Friday 8 November 2013, the evidence contained in the witness statement of Officer Boyle will stand as evidence-in-chief.
6. The appellant is directed to comply with the outstanding directions of this Tribunal, which have not been implemented, by no later than noon on Friday 8 November 2013. A failure to do so will result in a strike out of these appeals in terms of Rule 8(1) of The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009.

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**ANNE SCOTT, LLB, NP
TRIBUNAL JUDGE**

RELEASE DATE: 1 November 2013