



TC05077

Appeal number: TC/2015/06935

*PROCEDURE – income tax appeal – whether an appealable matter -
jurisdiction of Tribunal – lodging of appeal following correspondence with
HMRC’s Complaints Service – held, not appealable – appeal struck out*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

KENNETH PERCIVAL

Appellant

- and -

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

TRIBUNAL: JUDGE JOHN CLARK

**Sitting in public at Fox Court, 30 Brooke Street, London EC1 7RS on 26 April
2016**

The Appellant did not appear, but made written representations

**Sue Murray-Pritchard, Officer of HM Revenue and Customs, for the
Respondents**

DECISION: REASONS FOR DIRECTION

1. Following the hearing on 26 April 2016, I decided that Mr Percival's appeal should be struck out. As he was not present at the hearing, I consider it necessary to set out my reasons in this Decision.

Background

2. Mr Percival has raised with the Respondents ("HMRC") a question concerning the taxation treatment of his pension. He is resident in the Republic of Ireland.
3. From 13 April 2014 he started to receive his UK state pension. The calculation of this pension showed that it had been abated by £84.85 per week because of the State Earnings Related Pension Scheme ("SERPS") which ran from 1978 to 2002.
4. In a letter to HMRC dated 30 April 2014, he referred to this and argued that since 13 April 2014 his Civil Service pension now contained an element (Guaranteed Minimum Pension) which was not attributable to a pension solely from Government service. This element comprised £84.85 per week.
5. Subsequently there were various exchanges of correspondence between him and HMRC; it is not necessary to set out the details here. On 30 October 2015 HMRC's Complaints Service wrote to him; their letter included the following paragraphs:
- "I can confirm that under the Double Taxation Agreement between the UK and Ireland, your Civil Service pension remains fully taxable in the UK because it is paid as a Government pension for services rendered to the UK.
- As my colleague explained each Double Taxation Agreement is particular to each specific country. We have to follow the guidelines set out in the agreement relevant to your circumstances."
6. The letter gave information about the further steps available if Mr Percival felt that HMRC had not dealt with his complaint fully or correctly.
7. Mr Percival did not choose to follow that route. Instead, on 29 November 2015 (incorrectly dated 29 October 2015, as he subsequently acknowledged) he gave Notice of Appeal to HM Courts & Tribunals Service ("HMCTS").
8. On 10 December 2015 HMCTS wrote to Mr Percival returning his original documents, with the following comments:

- ". . . The letter from HMRC you have provided in support of your appeal appears to be in relation to a complaint. You will be aware that not all decisions made by HMRC are appealable matters. We do not have a general regulatory oversight of HMRC and cannot deal with complaints about HMRC's policies or procedures or the conduct of

their officers. We may only consider appeals where the legislation provides a right of appeal to the Tribunal.

5 We are returning your appeal as HMRC's letter dated 30 October 2015 does not appear to be an appealable decision. However, if you think we are mistaken please let us know and provide reasons as to why you think we have jurisdiction in this matter."

9. On 11 December 2015 Mr Percival sent an email to HMCTS. He referred to his letter to HMRC dated 8 September 2015, in which he had requested a review. He commented:

10 "From HMRC reply it can be seen that they have refused to carry out a review so that is why I am appealing direct to you."

10. In letters to Mr Percival and HMRC dated 21 December 2015, HMCTS stated that the matter had been passed to a duty judge to consider, and that his appeal originally submitted on 30 November 2015 had been allocated to proceed under the standard category.

11. On 23 December 2015 HMRC wrote to HMCTS, making the following comments:

20 "With respect HMRC would suggest that this issue is not one of which Tribunal has any jurisdiction. HMRC would therefore request an indefinite stay on the requirement to produce a statement of case.

25 It is clear that there is no appealable decision in this case. HMRC have not opened an enquiry, have raised no assessment, there is no suggestion of a disagreement with any coding notice, and HMRC have not refused any overpayment request. Section 31 Taxes Management Act 1970 specifies what constitutes an appealable matter.

...

30 The letter to which Mr Percival refers is not a decision letter but is merely a response to a complaint which explains the legislation. The implementation of UK primary legislation is not an issue on which the FTT can make any ruling, and neither is the makeup of the Civil Service pension, something of which Tribunal has any role.

35 Mr Percival's observation relating to perceived discrimination between Irish and Cyprus Double Taxation agreements is again not within the remit of the FTT.

HMRC therefore submit that the issues in this case have no recourse within the First Tier Tribunal regulations and there is therefore no case for HMRC to answer before the FTT."

12. On 6 January 2016 HMCTS replied to HMRC:

40 "You have asked the Tribunal to grant you an indefinite stay. I am sorry but we cannot accede to your request.

If your contention is that there is no matter in this appeal within the Tribunal's jurisdiction then please make an appropriate application for

the Tribunal's consideration under the relevant part of Tribunal Rule 8."

13. On 11 January 2016 HMRC wrote to HMRC in terms almost identical to those of their letter dated 23 December 2015, but instead requesting a strike out of the appeal under Rule 8(2)(a) of the Tribunal Procedure Rules.

14. Mr Percival's response to HMRC's strike-out application was to state the following in his letter to HMCTS dated 4 February 2016:

"The taxation of my Civil Service pension by way of PAYE is not something that emanates from self assessment and therefore can be appealed under tribunal rule 31 d, I submit."

(He set out substantive arguments; as these do not relate to the question of jurisdiction, it is not necessary to refer to them.)

15. Following a direction by the Tribunal, Mr Percival sent in a response, together with a copy of a previous tribunal decision, *Mr Kenneth Percival v Revenue and Customs Commissioners* [2013] UKFTT 240 (TC), TC02654. (I refer to this as "the 2013 decision".)

Arguments for HMRC

16. Ms Murray-Pritchard submitted that, while Mr Percival had raised matters with regard to the taxation of his Civil Service pension (and HMRC refrained from making any comments as to the merits of his contentions), he had not provided any evidence that HMRC had issued a decision that attracted the right of appeal.

17. By way of information, she stated that in the view of the relevant HMRC specialist colleagues, no part of his pension was allowed to be exempted; the provisions of the Double Taxation agreement did not allow for that.

18. She referred to s 31 TMA 1970, which set out what decisions were appealable. Mr Percival had not provided any evidence of such a decision. All that he had provided was letters of dissatisfaction and copies of letters relating to complaints; these contained no appealable decision.

19. Mr Percival had been pointed down the complaints route many times by HMRC; he had chosen to bring his complaints to the Tribunal. HMRC had informed him many times that there was no appealable decision.

20. In HMRC's submission, Mr Percival's only route was to follow the complaints procedure, with the ultimate resort being to the Adjudicator. He had not followed procedures leading to a decision by HMRC giving rise to a right of appeal.

Mr Percival's arguments

21. Much of the written material provided by Mr Percival (including items which were provided to the Tribunal and HMRC on the day of the hearing, having arrived at

the Tribunal office after normal working hours) related to the substance of his dispute. As the question for my consideration is whether he has an appealable matter, it is inappropriate for me to make any comments on the substantive issues which he is seeking to raise.

5 22. In his letter to HMCTS dated 4 February 2016, he raised two points concerning the Tribunal's jurisdiction. The first was his comment reproduced above concerning Rule 31 d. The second was in relation to the 2013 decision; he argued that this did show that the Tribunal had jurisdiction.

10 23. In the brief which he supplied for the hearing he included the following paragraphs:

15 "3) HMRC should have opened a formal enquiry following this objection and when closing it this should have generated a formal assessment which could be appealed under the Taxes Management Act 1970. This was the process which the respondents followed in [the 2013 decision].

20 4) It is submitted that the Tribunal should consider that for the purposes of an appeal which satisfies the requirements of the Taxes Management Act 1970 (S31) that a valid objection/query has been made by the appellant, that the respondents replied in the negative, that the appellant then asked for a review and the respondents have failed to take the matter forward.

25 5) It is further submitted that it is implicit that the requirements for an appeal under S31 TMA 1970 assume proper conduct by the respondents and their lack of action amounts to administrative chicanery. Attached are four letters from the appellant to HMRC which, it is submitted, have been ignored/maladministered."

(For the reasons I have already given in relation to the substantive issue, there is no need to refer to any of the text of the four letters mentioned in Mr Percival's brief.)

Discussion and conclusions

30 24. The fundamental principle to be borne in mind in addressing questions concerning the Tribunal's jurisdiction is that the Tribunal is a statutory tribunal; see the decision of the Upper Tribunal in *Revenue and Customs Commissioners v Hok Ltd* [2012] UKUT 363 (TCC) at [36]. The consequence is that it only has jurisdiction over matters which the relevant legislation specifically grants rights of appeal.

35 25. In *Hok* at [38]-[57] the Upper Tribunal made clear that the First-tier Tribunal does not have jurisdiction over the duty of a public body to act fairly in administering its statutory powers. It is clear from the Upper Tribunal's comments that matters relating to the conduct of HMRC fall outside the jurisdiction of the First-tier Tribunal. Mr Percival's complaints largely concern what he perceives to be HMRC's failures to
40 take actions in respect of the matters which he has raised. This Tribunal has no jurisdiction to consider what HMRC might or might not be compelled to do.

26. In his brief, Mr Percival has stated that HMRC should have opened a formal enquiry, and that this had been the process which HMRC had followed in relation to the 2013 decision. I consider that he has omitted to recognise an important distinction between the present proceedings and those relating to the 2013 decision. This is made clear by referring to that decision at [5]-[7]:

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“5. Initially, Mr Percival sought to challenge the refusal of exemption from UK tax for his civil service pension by appealing against his PAYE coding for the year. Having been informed of the correct way to challenge the refusal, Mr Percival made a formal claim on 5 March 2008 for relief in respect of his UK civil service pension. The Respondents (“HMRC”) opened an enquiry into his claim and on 6 November 2008 closed their enquiry by disallowing his claim.

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6. On 12 September 2009 Mr Percival sought to appeal HMRC’s decision. HMRC accepted his reasons for appealing out of time and offered to conduct a review of the decision under section 49C Taxes Management Act 1970. On 15 February 2011 Mr Percival was notified of the review’s conclusion to uphold the decision to refuse relief.

7. Mr Percival now appeals to this Tribunal.”

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27. Thus in relation to the 2013 decision, Mr Percival followed the appropriate statutory route leading to that Tribunal having jurisdiction to deal with the matter in question.

28. In the present case, he has not done so. There is no basis on which, given the steps which he has taken (and, more importantly, the steps which he has not taken), an appeal can lie to the Tribunal.

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29. In his letter to HMRC dated 8 September 2015, he asked for a review of HMRC’s decision in their letter dated 16 July 2015. No copy of that letter was included in the papers placed before me for this hearing. However, it is clear from the subsequent correspondence that the HMRC department with which he was dealing was their PAYE and Self Assessment Complaints Service. Any review which might have been carried out by that department would have been an internal administrative procedure not giving rise to a statutory review.

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30. In the context of income tax, the only reviews relevant to potential appeals to the Tribunal are statutory reviews; without going into the detail of the legislation, if a taxpayer wishes to challenge a decision of HMRC confirmed by a statutory review, that is the point at which a right of appeal arises. As confirmed in *Kanagasabal Thuishyanthan v Revenue and Customs Commissioners* [2016] UKFTT 0186 (TC), it is first necessary to give notice of appeal to HMRC, and then Notice of Appeal can be lodged with HMCTS.

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31. Such a statutory review can only follow one of the procedures mentioned in s 31 TMA 1970. None of those applies in Mr Percival’s case.

32. Mr Percival also referred to “Rule 31 d” of the Tribunal Rules. There is no such provision in The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009

(SI 2009/273 (L.1). In any event, it is not the Tribunal Rules which give rise to the Tribunal's jurisdiction; as already mentioned, that jurisdiction is statutory. Thus the Tribunal Rules cannot offer any assistance in determining the extent of the jurisdiction.

5 33. Further, the Rules make specific provision to deal with cases in which there is no jurisdiction. Rule 8(2)(a) states:

“(2) The Tribunal must strike out the whole or part of the proceedings if the Tribunal—

10 (a) does not have jurisdiction in relation to the proceedings or that part of them . . .”

The use of the word “must” makes clear that there is no discretion; the provision is mandatory. Unless the Tribunal can be satisfied that the correspondence in a particular case discloses an appealable matter, it must strike out the proceedings.

15 34. I am not satisfied that any of the matters referred to in the correspondence before me come within the jurisdiction of the Tribunal. It follows that I have no choice in the matter; I am required to strike out Mr Percival's appeal. I have therefore given a separate Direction to that effect.

20 35. In relation to the decision of HMCTS to accept Mr Percival's Notice of Appeal, despite initially rejecting it, I have no means of discovering why that course of action was taken. If it had been a question referred to me on the basis of the documents now before me, I would not have allowed the appeal to be lodged.

Right to apply for permission to appeal

25 36. 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.

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**JOHN CLARK
TRIBUNAL JUDGE**

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RELEASE DATE: 5 MAY 2016