



[2022] UKFTT 84 (TC)

TC 08415

Appeal number: TC/2021/02386

STAMP DUTY LAND TAX – penalty for late filing of a Land Transaction return – Appellant initially unaware of requirement to file return, then awaiting return of amount equal to the SDLT that he had sent in error to the Land Registry – return filed four months late – whether Appellant has reasonable excuse for the delay in filing his return – no – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

ALASTAIR FERGUSON

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE JANE BAILEY

The Tribunal determined the appeal on 14 February 2022 without a hearing under the provisions of Rule 26 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (default paper cases) having first read the Notice of Appeal (with enclosures) received on 19 July 2021, HMRC's Statement of Case (with enclosures) received by the Tribunal on 15 September 2021, the additional documents provided by the Appellant and the correspondence on the Tribunal file including bank statements provided by the Appellant.

DECISION

Introduction

1. This appeal by Mr Ferguson (the “Appellant”) is against (a) a flat rate penalty of £200 imposed on him by HMRC due to his failure to file a land transaction return by the filing date, and (b) the interest of £46.65 that had accrued on the Appellant’s late payment of the Stamp Duty Land Tax (“SDLT”).

Summary of conclusions reached

2. As this is a lengthy decision, I set out here the conclusions I have reached.
3. The interest part of this appeal is struck because the Tribunal does not have jurisdiction to hear such an appeal (see paragraphs 7 to 11 below).
4. The penalty part of the appeal is:
 - not admitted due to it being filed out of time (see paragraphs 12 to 17, and 56 to 67), and (if that decision is wrong)
 - not allowed because the Appellant has not demonstrated he has a reasonable excuse for his delay (see paragraphs 69 to 90 below) .
5. As a consequence, the penalty of £200 is confirmed.

Preliminary issues that arise before the substantive appeal can be considered

6. There are two preliminary issues that must be considered before I can consider whether the Appellant has a reasonable excuse for the late filing of his Land Transaction return. The first issue concerns the Tribunal’s jurisdiction when an appeal is made against an interest charge; the second issue is whether the Appellant should be given permission to file an appeal with the Tribunal when that appeal was filed outside the 30 days permitted for making an appeal.

Interest appeal – the Tribunal’s jurisdiction

7. Part of the Appellant’s appeal is against the interest of £46.65 that accrued due to his late payment of SDLT. That interest was imposed under Section 87 Finance Act 2003 (“FA 2003”). As the bundle of legislation provided by HMRC focusses only on the legislation relating to the penalty appeal, for the benefit of the Appellant, the relevant parts of Section 87 provide:

87 Interest on unpaid tax

- (1) Interest is payable on the amount of any unpaid tax from the end of the period of 30 days after the relevant date until the tax is paid.

(1A) But where the relevant date is determined by subsection (3)(aa), (aaa), (ab) or (c), and a return is required to be delivered before the end of the period of 14 days after that relevant date, interest is instead payable on the amount of any unpaid tax from the end of that period until the tax is paid.

...

(3) For the purposes of this section “the relevant date” is—

...

(c) in any other case, the effective date of the transaction.

8. As a Land Transaction return is required to be filed 14 days after the “effective date” (here the date of completion on the purchase), Subsection 87(1A) applies. That means that interest is payable on any SDLT that was due and that remains unpaid after the deadline for filing the Land Transaction return has passed, i.e., 14 days after the date of completion. Statutory interest is charged when tax is paid late to reflect the use that HMRC could have made of the money if it had been in their hands from the due date for payment.

9. As a recently created statutory body, the Tribunal can only accept appeals against a particular charge or imposition where Parliament has provided that a person has a right of appeal to the Tribunal against that specific charge or imposition. Section 87 imposes an interest charge on a delayed payment of SDLT but it does not provide a taxpayer with a right to appeal to the Tribunal (or to HMRC) against such an interest charge.

10. As there is no right of appeal to the Tribunal, the Tribunal does not have jurisdiction to accept the Appellant’s appeal against the statutory interest he has been charged. Rule 8 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 provides that if the Tribunal does not have jurisdiction over part of the proceedings, then that part must be struck out.

11. Therefore, the Appellant’s appeal against the interest of £46.65 is struck out.

Penalty appeal – whether to grant the Appellant permission to file a late appeal?

12. Before I can consider the Appellant’s appeal to the Tribunal against the penalty, I must decide whether the Tribunal should hear the appeal at all. That is because the Appellant’s appeal was received by the Tribunal more than the 30 days after the time that is permitted for making an appeal against a penalty for the late filing of a land transaction return. The decision of HMRC against which the Appellant wishes to appeal is dated 14 June 2021 and so the deadline for making an in-time appeal to the Tribunal was 14 July 2021. The Appellant’s appeal was not received in a complete form by the Tribunal until 19 July 2021, so it is five days late.

13. The Tribunal has the power to grant a person an extension of time to make an appeal but must decide, in each case, whether it would be appropriate to do so given the particular circumstances of the case. When a party is late in undertaking any action,

the onus of proof is upon that party to explain the reasons for their delay and to make the case for being given relief from their failure to comply with the relevant time limit.

14. Therefore, the onus is on the Appellant to persuade me that it would be appropriate for him to be granted permission to make this late appeal. The standard of proof is the balance of probabilities.

The test for granting permission to make a late appeal

15. In *Martland v HMRC* [2018] UKUT 178 (TCC), concerning a late appeal against an excise duty assessment, the Upper Tribunal set out what the First-tier Tribunal (FTT) should consider when deciding whether an extension of time should be granted where an appeal is made late. The Upper Tribunal stated:

44. When the FTT is considering applications for permission to appeal out of time, therefore, it must be remembered that the starting point is that permission should not be granted unless the FTT is satisfied on balance that it should be. In considering that question, we consider the FTT can usefully follow the three-stage process set out in *Denton*:

(1) Establish the length of the delay. If it was very short (which would, in the absence of unusual circumstances, equate to the breach being “neither serious nor significant”), then the FTT “is unlikely to need to spend much time on the second and third stages” – though this should not be taken to mean that applications can be granted for very short delays without even moving on to a consideration of those stages.

(2) The reason (or reasons) why the default occurred should be established.

(3) The FTT can then move onto its evaluation of “all the circumstances of the case”. This will involve a balancing exercise which will essentially assess the merits of the reason(s) given for the delay and the prejudice which would be caused to both parties by granting or refusing permission.

16. Following that guidance, I will consider the extent of the delay and whether there are reasons for all or part of that delay. I will then consider and weigh all the circumstances of the case to decide whether this appeal should be admitted out of time.

17. In order to consider these matters, it is necessary to understand the factual background. To avoid the potential for repetition later in this document, in this part of the decision I will set out the facts I find that are relevant to the Appellant’s delay and also the facts relevant to the Appellant’s substantive appeal against the penalty.

Facts

18. On the basis of the documents in the bundle and the correspondence on the Tribunal file, I find as follows:

19. The Appellant purchased a property (the “Kings Avenue property”) in England from his son. The completion date of this transaction, and thus the “effective date” for the purposes of SDLT, was 11 December 2020.

20. At the time of the purchase, provisions of the Stamp Duty Land Tax (Temporary Relief) Act 2020 were in force. These provided that no SDLT was payable on residential properties with a value not exceeding £500,000 purchased between 8 July 2020 and 30 June 2021. The Kings Avenue property is a residential property and the purchase price agreed by the Appellant was £130,000. However, the King’s Avenue property was not purchased by the Appellant to be his main or only dwelling. Section 128 of the Finance Act 2016 had inserted further provisions and Schedule 4ZA into FA 2003 substantially with effect from 1 April 2016, and these provided that additional rates of SDLT are payable upon the purchase of additional dwellings. Those additional rates remained payable during the period 8 July 2020 to 30 June 2021.

21. The Appellant understood correctly that SDLT would be payable by him upon his purchase of the King’s Avenue property. The Appellant calculated correctly the SDLT payable by him on his purchase to be £3,900.

22. Section 76 FA 2003 requires that the purchaser must file a Land Transaction return for every “notifiable transaction”. The Appellant’s purchase of the King’s Avenue property fell within the definition of “notifiable transaction” and so a Land Transaction return was required.

23. The Appellant had decided not to use a solicitor for the purchase of the King’s Avenue property. The Appellant explained that the purchase was from his son and that no further searches would be needed, and so he thought that that completing the necessary forms and filing them would be an “easy exercise”. Unfortunately, matters did not turn out as the Appellant hoped.

24. On an unknown date the Appellant downloaded a Land Registry Form TR1 “from the internet”. I find, on the balance of probabilities, that the TR1 was downloaded from the Land Registry website. Guidance about how to complete the TR1 is also available on that website, and that guidance includes a reference to the need to provide a Land Transaction Return Certificate with the TR1 if the transfer is one that is liable to SDLT. HMRC issue such a certificate to a purchaser once the Land Transaction return has been received and checked.

25. On or about 12 December 2020, the day after completion, the Appellant sent his completed TR1 to the Land Registry. With this form, the Appellant also enclosed one cheque in the amount of £4,090. That cheque was from the Appellant’s wife’s account and it was intended to pay both the Land Registry fee (of £190) and the SDLT (of £3,900).

26. As there was one cheque to cover both amounts, the Land Registry was required to cash the cheque in order to receive its own fee. The Appellant has provided a copy of a bank statement from his wife’s account for the month ended 8 January 2021. This shows that a cheque for £4,090 was cashed on 22 December 2020. I find, on the balance

of probabilities, that the remaining £3,900 was held in a Land Registry account to the Appellant's order or to his credit.

27. On an unknown date the Appellant received a letter from the Land Registry. In his letter to HMRC dated 8 May 2021, the Appellant says that he received this letter "shortly after" he had submitted his form. The order in which the Appellant has set out events in his letter of 8 May 2021 to HMRC suggests that this letter from the Land Registry was received by the Appellant before the Land Registry banked the cheque he had sent to them. However, the Appellant sent the TR1 and the cheque to the Land Registry on 12 December 2020, and the cheque was banked on 22 December 2020. I consider it unlikely that eight working days just before Christmas would be sufficient for the Land Registry to receive and process incoming post, and also compose and send a letter in response. In the absence of a copy of the Land Registry letter I find, on the balance of probabilities, that the Appellant's package was received by the Land Registry around 22 December 2020 and the cheque was cashed on receipt. I find that the Land Registry wrote to the Appellant at some point after cashing the cheque, and that this was most likely to be in early 2021.

28. As the Appellant has not provided a copy of the Land Registry's letter to the Tribunal then, as well as not knowing the date of that letter, I do not know the precise contents of the letter. However, based on the Appellant's reply (below), I find that in this letter the Land Registry explained to the Appellant that there were errors in the TR1 form he had provided, and that more documents were required from him. In his letter of 8 May 2021 to HMRC, the Appellant explains:

I received a letter shortly after pointing out that they could not complete as I had not sent a Land Transaction Return Certificate.

I was unaware of this requirement but requested the form by post.

29. On the basis of this statement, I find that one of the issues that the Land Registry drew to the Appellant's attention was that the Appellant had failed to send them the Land Transaction Return Certificate for his purchase.

30. On 24 February 2021, the Appellant telephoned the Land Registry. There is no note of this call but I find, on the balance of probabilities, that the Appellant and the Land Registry discussed the errors that the Land Registry had identified in its letter of unknown date. I find, on the balance of probabilities, that the Appellant was unaware of the requirement to provide a Land Transaction Return Certificate until after he had either received the Land Registry letter or spoken to the Land Registry. I consider it more likely than not that the Appellant was advised by the Land Registry that he should file a Land Transaction return with HMRC in order to receive the Land Transaction Return certificate that was required. I also find that the reference (in the Appellant's letter to HMRC of 8 May 2021) to requesting "the form by post" is an explanation that the Appellant asked HMRC for a paper copy of the Land Transaction return that he was required to complete. There is no evidence as to when this request to HMRC was made by the Appellant but, on the balance of probabilities, I find it was made after the Appellant's call to the Land Registry on 24 February 2021.

31. On the balance of probabilities, the Appellant received the blank Land Transaction return form from HMRC in late February or very early March 2021.

32. It is unclear whether the Appellant had realised, before his receipt of the Land Transaction return form, that he should have sent his payment of SDLT to HMRC (not the Land Registry) or whether it was only when the Appellant received the blank Land Transaction return form and saw the references in that form to SDLT that he recognised his error in sending a payment of £3,900 to the Land Registry.

33. On 3 March 2021, the Appellant again telephoned the Land Registry. The Appellant made a further telephone call to the Land Registry on 11 March 2021. I also find that at some point during either his first telephone call to the Land Registry in late February or in his two subsequent telephone calls in early March, the Appellant asked the Land Registry to return to him the £3,900 that had been sent to them in error.

34. On 19 March 2021, the Land Registry transferred £3,900 to the Appellant's wife's bank account. That transfer took place 23 days after the Appellant's first telephone call to them.

35. On 25 March 2021, the Appellant wrote to the Land Registry. The Appellant wrote:

I have received your letter and I have telephoned a couple of times to try to resolve the problems.

I willing agree that all the problems are mine because I sent to you both the fee and the Stamp Duty Tax i.e. £190 + £3900 by cheque and I should have sent the stamp Duty to HMRC. I am awaiting you returning £3900 so that I can forward the Land Transaction Return with the duty.

From your letter there are two other requests

- 1) ID 1 for my son Scott. He has the forms but no photo at present
- 2) The TR1 was incorrect.

I have completed again TR1 which I forward to you now.

Could I now have £3900 by return to complete the L T R and get the certificate required from them?

36. The Appellant has provided a copy of a bank statement from his wife's account for the month ended 8 April 2021, showing the £3,900 being transferred to his wife's account on 19 March 2021. The Appellant has handwritten a note on that statement stating that the bank statement was not received "until probably 16 April 2021". In his letter to HMRC of 8 May 2021, the Appellant stated that the bank statement was received on 14 April 2021. I find that this earlier date is more likely to be correct because the 8 May 2021 letter was written only a few weeks after the event. Nothing turns on this very minor difference in dates.

37. In his handwritten note on the April bank statement the Appellant also stated that he was not aware that the £3,900 had been repaid by the Land Registry to his wife until the April bank statement was received. Although it is not further explained, I assume the Appellant is saying that his wife did not have access to online or telephone banking, and she did not ask her bank to send her a mobile telephone alert, and so it was not until she received a paper bank statement through the post that she and the Appellant were able to check the transactions into the account.

38. The Appellant has also stated, in his letter of 8 May 2021 to HMRC:

Once I had realised my mistake I contacted the land Registry on more than three occasions and I asked them to return the £3900 to me so that I could forward it to HMRC. Every time I was guaranteed that my request had been forwarded to the right department to issue the refund. I would wait anxiously for the return but when it didn't come I would ring again. Covid lockdown was always the excuse for inactivity.

39. The Appellant has not explained how he became aware, prior to his call of 3 March 2021, that the £3,900 had still not yet been received. If the Appellant was reliant on the monthly paper bank account statements to know whether the £3,900 had been returned to his wife's account then it is understandable that the 11 March 2021 call was made following the Appellant's wife's receipt of her paper bank statement for the period ended 8 March 2021. But, if the Appellant's wife had no way of checking transactions into her bank account other than inspecting monthly bank statements sent in the post, then it is not obvious how the Appellant could have known, prior to his 3 March 2021 telephone call, that there was still no refund. Perhaps it is the case that the Appellant did not realise the SDLT payment had been sent to the wrong destination until he received the blank Land Transaction return form from HMRC, and it was this realisation that prompted the call of 3 March 2021 to seek the return of the funds? It does not make a difference to the outcome of this appeal and I make no findings in this regard. I accept the Appellant's explanation of when he found out that the £3,900 had been returned, and I find that it was not until 14 April 2021, that the Appellant found out that the Land Registry had refunded £3,900 to his wife on 19 March 2021.

40. Once he had confirmation that the £3,900 had been returned, the Appellant filled in the Land Transaction return required for his purchase of the King's Avenue property. The completed Land Transaction return was sent to HMRC on or about 16 April 2021. With this return the Appellant sent a cheque for £3,900 from his wife's account, to pay the SDLT due under the return.

41. On 19 April 2021, HMRC received the Appellant's SDLT return in respect of his purchase of the Kings Avenue property. On 20 April 2021, HMRC issued a Land Transaction Return Certificate to the Appellant. For unknown reasons HMRC did not cash the cheque that had been sent to them with that return.

42. On 26 April 2021, HMRC sent a letter to the Appellant in response to the Land Transaction return completed. In this letter HMRC notified the Appellant that he was due to pay £4,133 in respect of the transaction notified in the Land Transaction return.

This figure was made up of SDLT of £3,900, interest of £33 that had accrued, and a penalty of £200 for the late filing of the Land Transaction return.

43. Upon receipt of this letter, the Appellant telephoned the HMRC helpline to explain his position. The Appellant's description of HMRC's response during this call is that the officer taking the call did not seem interested.

44. In early May 2021, the Appellant or his wife put a stop on the first cheque. On 8 May 2021, the Appellant wrote to HMRC. This letter was by way of appeal against the penalty and interest but also notified HMRC that a second cheque for £3,900 had been sent. In this letter dated 8 May 2021, the Appellant wrote:

I wish to appeal against the penalty of £200 and £33 interest as requested in your letter of 26th April 2021.

I believe that I have a reasonable excuse why the return was not made by the filing date.

45. The Appellant set out the factual background and explained his error in sending the SDLT to the Land Registry. The Appellant accepted he was not aware of the need to send a Land Transaction Return Certificate to the Land Registry, and he set out the difficulties he had experienced in having the £3,900 returned to his wife. The Appellant explained that once the £3,900 had been refunded by the Land Registry then he sent a cheque to HMRC but that first cheque had not been cashed. The Appellant continued:

I appeal on the above grounds and also that I had insufficient funds to pay an additional £3900 whilst I awaited the return of the same amount from another government department.

I willingly admit that this has been my only direct dealings with Land Registry and HMRC and I lacked experience. But my ignorance was compounded by the length of time it took for Land registry to return my £3900. Surely a sum of that amount should have been an obvious error and should have been investigated before banking it. If it had been returned immediately then I could have made the filing in the stipulated time.

I ask you to rescind the penalty and interest.

46. The Appellant has referred to having an insufficiency of funds and that he was unable to pay £3,900 to HMRC until he received £3,900 back from the Land Registry. However, the bank statements the Appellant has provided to the Tribunal (to demonstrate the dates on which the cheques were cashed) give an indication of the level of funds in that account in the periods for which statements have been provided. With each bank statement he has provided, the Appellant has redacted the figures on the right hand column of the bank statement, so the balance in the account after each transaction cannot be seen. The Appellant has also redacted the larger transactions made out of the account so the amount paid out cannot be seen (although the redaction indicates the number of digits blacked out). The Appellant has not redacted the left hand side of the bank statement where the opening and closing balances for the period covered by the statement are shown. The bank statement for the period 10 December 2020 to 8 January

2021 shows very large transactions, with £20,025 coming into the account in this period, and £96,062.53 going out. I will assume that these larger transactions either funded or are otherwise related to the purchase of the King's Avenue property. The next bank statement provided is for the period 10 March to 9 April 2021, three to four months after the purchase of the King's Avenue property, and towards the end of the period when the Appellant stated he had insufficient funds available to pay SDLT of £3,900. This statement shows an opening balance of £35,096.83. On the basis of the bank balance as at 10 March 2021, I do not accept the Appellant's submission that until the £3,900 was returned to him he had insufficient funds to pay the SDLT to HMRC. Instead, I find that (for at least part of the period before 19 March 2021) the Appellant had considerable funds available, more than sufficient to enable him to pay the SDLT to HMRC before the refund was received from the Land Registry. I find that the Appellant chose not to use these available funds for the SDLT, and instead chose to wait for the refund from the Land Registry before paying HMRC.

47. On 10 May 2021, HMRC sent a further letter to the Appellant chasing payment of the SDLT, interest and penalty.

48. On 13 May 2021, HMRC cashed the Appellant's cheque for £3,900. The final copy bank statement provided from the Appellant's wife's bank account is a statement dated 10 June 2021. This shows that a cheque for £3,900 was cashed on 13 May 2021.

49. On 24 May 2021, HMRC sent another letter to the Appellant. This referred to the two earlier letters but this third letter was in respect of the £200 penalty only. HMRC warned that interest could accrue and required the Appellant to pay the outstanding amount of £200.

50. On 14 June 2021, HMRC responded to the Appellant's appeal to them. HMRC explained that the penalty of £200 had been imposed because the Land Transaction return was more than 3 months late. HMRC noted that the Appellant could have filed the Land Transaction return once he was aware of the need to do so, and that he could have paid the SDLT afterwards, once the refund had been made by the Land Registry. HMRC concluded that the Appellant's lack of familiarity with the requirement to file a Land Transaction return was not a reasonable excuse for his delay in filing that return. HMRC also explained that there was no right of appeal against the imposition of interest and confirmed that the interest due was £46.65. Towards the end of the letter the HMRC officer wrote:

What you can do if you disagree with my decision

If you disagree with my decision, you can take further action. But you must do this by 14 July 2021. I enclose a leaflet which tells you what you can do.

51. On 15 June 2021, HMRC sent the Appellant a notice to pay interest of £38.04.

52. On 26 June 2021, the Appellant wrote to the Tribunal seeking to appeal HRMC's review decision. This first attempt at making an appeal was received by the Tribunal on 29 June 2021. In his letter to the Tribunal the Appellant had explained that he had

taken responsibility for filing documents when he purchased the King's Avenue property from his son. The Appellant continued:

My error as previously stated was to forward SDLT to the Land Registry along with their fees. They immediately banked the cheque but they did write to me and request the certificate. Once I realised my mistake I as previously stated contacted the Land Registry for a refund. I telephoned which took at least 30 minutes to get through. If they had acted immediately then there would have been no delay in payment or filing the form. I just could not get the money back (letter 25 March 2021) I did consider sending the form without the money but thought this pointless as it would cause confusion and an immediate request to pay. I just did not have the funds to DUPLICATE THE PAYMENT!!!

Once the £3900 was returned I completed the form immediately (16 April 2021) and forwarded it to HMRC and the certificate arrived on 20 April 2021. But the cheque was never banked – it was lost somewhere at HMRC. I reissued a cheque 8 May 2021 which has been successfully banked now. I recently received another notification of charge and notice to pay reference I telephoned HMRC as I had previously sent them two cheques to cover the penalty and interest of £46.65 which they confirm receipt of and banking them on 22 June 2021 but they have not been passed by my bank yet. HMRC confirmed my account is now settled. The difference in the two charges for interest could not be explained.

I agreed to pay the penalty and interest but did state I would be going to the Tribunal for a determination.

I have not intentionally withheld payment from HMRC nor have I attempted at any time to delay payment it is just that Land Registry had possession and use of the £3900 instead of HMRC.

I believe I have been very harshly treated by HMRC and the department has applied the legislation without consideration of the intransigence of another government department to swiftly return £3900.

53. On 5 July 2021, the Tribunal returned the Appellant's first attempt at an appeal under cover of a letter (with the emphasis shown below as it was in the original) that explained to the Appellant:

Your Notice of Appeal and any documents submitted are being returned to you as the Tribunal has not accepted your appeal for the reason(s) given in the ticked box(es) below:-

- ✓ A copy of any written record of any decision appealed against, and any statement of any reasons for that decision, that you have or can reasonably obtain.

If you wish to re-lodge your appeal with the Tribunal, please note the following:

(a) you should rectify the above-identified error(s) before re-submitting the notice of appeal;

(b) the original time limit to apply to the Tribunal still applies. If you re-submit your appeal and it is outside this time limit, you must give your grounds for making a late appeal on the Notice of Appeal form. If you do not, the Tribunal will reject the appeal again.

(c) The Tribunal does not keep copies of rejected appeals so you must ensure that all documentation including the notice of appeal, decision and supporting documents are returned to the Tribunal.

(d) please quote the Tribunal's reference number given on this letter.

54. The Appellant's resubmitted appeal was received by the Tribunal on 19 July 2021. The Notice of Appeal form, signed by the Appellant, was dated 15 July 2021. Therefore, the appeal was already late at that point. Unfortunately, and for unknown reasons, the Appellant ticked the box on the Notice of Appeal form to indicate that his appeal was in time (although it was not), and he did not take advantage of the white space provided to give any reasons why he had not filed his appeal in time.

55. The Tribunal clerks processed the appeal received on 19 July 2021 but did not notice it was received out of time. The appeal was registered, allocated to the Default Paper category, and notified to HMRC.

Applying the *Martland* guidance to decide whether to admit this late appeal

56. Having set out those facts, I can now consider whether this late appeal should be admitted out of time. Following the guidance in *Martland*, I now look at the extent of the delay, the reasons for that delay and then weigh the circumstances of the case.

The extent of the delay

57. As set out above, the delay is just five days. That is less than the delay of 24 days that has been characterised as "significant" and far less than the delay in excess of three months as "serious" (see *SS (Congo) v Secretary of State for the Home Department* [2015] EWCA Civ 387. Therefore, the Appellant's delay in appealing to this Tribunal is only "very short".

The reasons for the Appellant's delay

58. Very unfortunately, there is no explanation at all for the Appellant's delay. The Tribunal returned the first attempt at an appeal on 5 July 2021, and received back the second attempt on 19 July 2021.

59. The Appellant must have understood that there was a deadline of 14 July 2021 for him to make an appeal because it was stated clearly in HMRC's decision letter that he must act by that date. The Tribunal letter of 5 July 2021 explained that the original deadline still applied, and emphasised that late reasons must be given if this deadline was not met. When the Appellant signed the Notice of Appeal form and dated it 15 July 2021, he must have realised that he had already missed the 14 July 2021 deadline. Regrettably, there is no explanation from the Appellant as to what happened after he had received the first appeal back from the Tribunal. All that was missing from the first

appeal attempt was a copy of the decision appealed against. It is not clear why the Appellant was not able to gather a copy of this decision in time to send a complete appeal back to the Tribunal by 14 July 2021.

60. It is incumbent on the Appellant to explain the reasons for his delay. If there is no explanation at all, then I cannot conclude that there was a good reason to explain why the Appellant was late in filing his appeal to the Tribunal.

The circumstances of this appeal, including the strength of the Appellant's case

61. In weighing the circumstances of this case, I take into account what will happen if I either dismiss, or allow, the Appellant's application to make a late appeal.

62. If this application is dismissed then the Appellant will suffer prejudice because he will not be able to argue his case before the Tribunal. However, while the loss of opportunity is some prejudice, a penalty of £200 is not a particularly large amount, and it would be prejudice that the Appellant would suffer only as the result of his own delay in appealing. Looking at the reverse situation, if this application is allowed, there will be prejudice to other taxpayers and Tribunal users who expect the deadlines that they respect and observe to be upheld by the Tribunal and whose appeals may take longer if scarce resources are stretched further to accommodate late appeals.

63. In weighing up the circumstances, I can only take into account the merits of the Appellant's case if those merits are either obviously strong or obviously weak. Therefore, I have briefly considered the merits of the Appellant's case, and I have concluded that the Appellant's case is obviously weak. I have reached this conclusion because the Appellant is required to act without unreasonable delay once a reasonable excuse ceases and so, even if the Appellant's lack of awareness gave him a reasonable excuse until late February 2021, an insufficiency of funds could not be a reasonable excuse thereafter given my findings about the resources available to him and given that the penalty was for late filing of a return, and filing can be achieved without payment of the SDLT.

64. As a consequence, the weakness of the Appellant's case counts against him when considering whether this application to appeal out of time should be granted.

65. Drawing these factors together, I remind myself that the onus is on the Appellant to explain the reasons for his delay in making an appeal, and to make the case for being granted an extension of time. I remind myself that the Tribunal should not take a more relaxed attitude to delay than the attitude taken by the higher courts, and that a grant of an extension of time should be the exception rather than the rule. The time Parliament considered sufficient for a person to file an appeal to the Tribunal is 30 days. The Appellant has only taken five extra days but he has not explained what caused any of this delay. While there will be minor prejudice to the Appellant if I refuse this application, the Appellant's substantive appeal is very unlikely to succeed. If permission to appeal out of time is granted then other taxpayers and Tribunal users who have complied with time limits will be prejudiced by the diversion of resources to this

appeal. The circumstances of this case suggest that this late appeal should not be admitted.

66. Every case should be considered on its own merits but it is important for the Tribunal to be consistent in its application of the law. The limited extent of the delay here has caused me to consider other reported decisions to see whether, if I refuse to grant permission, that would be an outlier compared to other cases where there has been minor delay but no explanation has been given for any of that delay. In *Winfield v HMRC* [2020] UKFTT 0003 the Tribunal also considered a late appeal against a penalty imposed for the late filing of a return, in that case a Land Transaction Tax return (the equivalent in Wales of the SDLT return required in England). Ms Winfield's appeal to the Tribunal was two days late and Ms Winfield had no explanation for her delay. In *Winfield* the Tribunal decided:

28. It is clear from *Martland* that the starting point is that permission to appeal after the "relevant period" should not be granted unless I am satisfied that, on balance, it should.

29. However, I am not satisfied that I should depart from the starting point in the present case. This is because of the complete absence of any reason or explanation for not making the appeal in time notwithstanding the clear reference to the 30 day time limit in the WRA's letter of 6 June 2019 notifying Ms Winfield of the outcome of the review and her appeal rights. Although, taking account all the circumstances of the case, I accept that there is possible prejudice to Ms Winfield in not admitting her appeal I have nevertheless come to the conclusion that permission to make an appeal after the relevant period must be refused.

67. The decision in *Winfield* supports the conclusion I had reached from my application of the three stage test in *Martland*. The Appellant is refused permission to make a late appeal.

The substantive penalty appeal

68. I have decided not to admit the late appeal and so that would ordinarily be the end of the matter. However, in case I am wrong about that decision, I have decided that it would be appropriate also to set out my decision in respect of the Appellant's substantive appeal against the penalty, i.e., the decision I would reach if I admitted the late appeal.

The burden of proof in an appeal against a penalty

69. In an appeal against the imposition of a penalty, the onus of proof is first upon HMRC to satisfy the Tribunal that the penalty has been imposed in accordance with the legislation. If I am satisfied that HMRC have demonstrated that the penalties have been imposed in accordance with the legislation, the onus switches to the Appellant to demonstrate that he has a reasonable excuse for his failure to notify HMRC. The standard of proof in both cases is the civil standard of the balance of probabilities.

Relevant legislation

70. Within the bundle of legislation provided, there is a copy of Section 76 FA 2003 but that appears to be the version of Section 76 as it was enacted rather than as it applied at the relevant time. HMRC's Statement of Case recognises that amendments were made to Section 76 but does not cite the source of those amendments. For completeness, the amendments to Section 76 were made by Section 46 of the Finance 2019. Subsection 46(1) reduced the period of time allowed for taxpayers to deliver returns, from 30 days to 14 days, and Subsection 46(1) provided that the changes to Section 76 FA 2003 applied to land transactions with an effective date from 1 March 2019 onwards.

71. So, Section 76 FA 2003, as it applied on 11 December 2020, provided:

76 Duty to deliver land transaction return

(1) In the case of every notifiable transaction the purchaser must deliver a return (a "land transaction return") to the Inland Revenue before the end of the period of 14 days after the effective date of the transaction.

(2) The Inland Revenue may by regulations amend subsection (1) so as to require a land transaction return to be delivered before the end of such shorter period after the effective date of the transaction as may be prescribed or, if the regulations so provide, on that date.

(3) A land transaction return in respect of a chargeable transaction must—

(a) include an assessment (a "self-assessment") of the tax that, on the basis of the information contained in the return, is chargeable in respect of the transaction, . . .

(b)

72. I have found that the Appellant was required to file a Land Transaction return in respect of his purchase of the King's Avenue property. The due date for the Land Transaction return to be filed by the Appellant was 14 days after the date of completion: 25 December 2020. I am satisfied that the Appellant did not file his return by the filing date of 25 December 2020.

73. HMRC's power to impose a penalty when a return is filed late is provided by Schedule 10 to FA 2003. Paragraph 3 of Schedule 10 provides:

(1) A person who is required to deliver a land transaction return and fails to do so by the filing date is liable to a flat-rate penalty under this paragraph.

He may also be liable to a tax-related penalty under paragraph 4.

(2) the penalty is-

(a) £100 if the return is delivered within three months after the filing date, and

(b) £200 in any other case.

74. The date three months after the filing date was 25 March 2021. I have found that the Appellant's return was delivered on 19 April 2021. I am satisfied that the Appellant's return was not delivered by the filing date, and was not delivered within three months after the filing date. I am satisfied that the penalty of £200 was correctly imposed.

75. Therefore, the onus switches to the Appellant to demonstrate that he has a reasonable excuse for the late filing of his Land Transaction return.

Does the Appellant have a reasonable excuse for his late filing?

76. Section 97 FA 2003 is as follows:

97 Power to allow further time and reasonable excuse for failure

(1) For the purposes of this Part a person shall be deemed not to have failed to do anything required to be done within a limited time if he did it within such further time, if any, as the Inland Revenue may allow.

(2) Where a person had a reasonable excuse for not doing anything required to be done for the purposes of this Part—

(a) he shall be deemed not to have failed to do it unless the excuse ceased, and

(b) after the excuse ceased, he shall be deemed not to have failed to do it if he did it without unreasonably delay after the excuse had ceased.

77. Therefore, the Appellant as to show that he has a reasonable excuse and, if the excuse ceased, that he acted without unreasonable delay once his excuse ceased.

78. The Appellant has given a detailed explanation of the issues that arose and he has accepted that he made a mistake due to his lack of familiarity with the relevant processes. From the Appellant's explanation and the facts found, I consider that the primary cause of the Appellant's delay in filing the Land Transaction return was his lack of awareness that he was required to file such a return. Once the Appellant became aware of this requirement, the secondary cause of the delay was the Appellant's decision to await the return of the £3,900 from the Land Registry before filing his Land Transaction return. There was then further delay in the Appellant paying the SDLT because HMRC did not cash the first cheque that was sent to them, and that first cheque had to be stopped and a further cheque sent. I consider that the loss of the first cheque sent to HMRC was outside the Appellant's control (and no doubt caused the Appellant stress) but this aspect is not relevant to whether the Appellant has a reasonable excuse for his delay. This is because the penalty under appeal was imposed for the late filing of the Land Transaction return, not for the late payment of the SDLT. HMRC's loss of the first cheque sent to them did not cause HMRC to receive the Appellant's Land Transaction return any later than they would have received the return if the cheque was not lost.

79. Therefore, the two reasons that the Appellant asserts give him a reasonable excuse for his delay are:

- lack of awareness, until the first conversation with the Land Registry on 24 February 2021, of the requirement to file a return; and
- thereafter an insufficiency of funds to pay the SDLT (that would be self-assessed under the Land Transaction return) until the Land Registry returned the £3900.

80. I accept that the Appellant was genuinely unaware of the requirement to file a Land Transaction return until after he had spoken to the Land Registry. However, a lack of awareness is not, by itself, sufficient to provide a person with a reasonable excuse for failing to comply with a statutory obligation. In *Perrin v HMRC* [2018] UKUT 0156 (TCC), the Upper Tribunal explained what the Tribunal should consider when, as here, a reasonable excuse was based upon a person's belief or lack of awareness:

81. When considering a "reasonable excuse" defence, therefore, in our view the FTT can usefully approach matters in the following way:

(1) First, establish what facts the taxpayer asserts give rise to a reasonable excuse (this may include the belief, acts or omissions of the taxpayer or any other person, the taxpayer's own experience or relevant attributes, the situation of the taxpayer at any relevant time and any other relevant external facts).

(2) Second, decide which of those facts are proven.

(3) Third, decide whether, viewed objectively, those proven facts do indeed amount to an objectively reasonable excuse for the default and the time when that objectively reasonable excuse ceased. In doing so, it should take into account the experience and other relevant attributes of the taxpayer and the situation in which the taxpayer found himself at the relevant time or times. It might assist the FTT, in this context, to ask itself the question "was what the taxpayer did (or omitted to do or believed) objectively reasonable for this taxpayer in those circumstances?"

(4) Fourth, having decided when any reasonable excuse ceased, decide whether the taxpayer remedied the failure without unreasonable delay after that time (unless, exceptionally, the failure was remedied before the reasonable excuse ceased). In doing so, the FTT should again decide the matter objectively, but taking into account the experience and other relevant attributes of the taxpayer and the situation in which the taxpayer found himself at the relevant time or times.

82. One situation that can sometimes cause difficulties is when the taxpayer's asserted reasonable excuse is purely that he/she did not know of the particular requirement that has been shown to have been breached. It is a much-cited aphorism that "ignorance of the law is no excuse", and on occasion this has been given as a reason why the defence of reasonable excuse cannot be available in such circumstances. We see no basis for this argument. Some requirements of the law are well-known, simple and straightforward but others are much less so. It will be a matter of judgment for the FTT in each case whether it was objectively

reasonable for the particular taxpayer, in the circumstances of the case, to have been ignorant of the requirement in question, and for how long. *The Clean Car Co* itself provides an example of such a situation.

81. Following that guidance in *Perrin*, I have to consider whether it was objectively reasonable for the Appellant to have been unaware of the requirement to file a Land Transaction return.

82. In considering this I have taken into account the fact that the Appellant had not previously taken responsibility for filing forms following purchase of residential property, and so the situation he was in, in December 2020, was one that was new to him. However, the Appellant had sufficient awareness to know that he was required to file some documentation, and the Appellant had correctly identified that he was required to file a form with the Land Registry, and he had correctly identified that this form was TR1. The Land Registry website (the source of the TR1 used by the Appellant) provides a guidance document to assist with the completion of the TR1 form. The TR1 guidance document explains what must be sent with the TR1 form to the Land Registry, and the first item specified is the Land Transaction Return Certificate. The Appellant had also correctly identified that he needed to pay SDLT and calculated the correct amount. There is guidance about SDLT on the HMRC website, and the HMRC guidance explains that a Land Transaction return must be filed and the various steps to be taken to file this return and to pay SDLT.

83. In considering what a prudent person in the Appellant's position would have done, I conclude that a person who had decided to undertake an important process for the first time instead of instructing professionals as previously, would have read the guidance that was readily available. If the prudent person had read the guidance to the TR1, he would have become aware of the Land Transaction Return Certificate, and that awareness would have led him to the guidance available from HMRC about the Land Transaction return.

84. I conclude that it was not objectively reasonable for the Appellant to be unaware of the requirement to file a Land Transaction return.

85. That means that the Appellant's substantive appeal does not succeed.

86. For completeness, I have considered what the position would be the Appellant's lack of awareness of the requirement to file a Land Transaction return had been objectively reasonable. If that had been the position, the Appellant's first excuse would have ceased on 24 February 2021 when the Appellant spoke to the Land Registry, and so it would be necessary to consider if the Appellant had acted to file his return without unreasonable delay thereafter.

87. The Appellant has explained that once he knew of the filing requirement, he did not file his Land Transaction return until after the Land Registry had returned the £3,900 to him. The Appellant has argued that he did not have sufficient funds to pay the SDLT to HMRC until he had received the refund from the Land Registry. I have found that was not the case, and that for (at least part of this period) the Appellant did

have sufficient funds to pay £3,900 to HMRC without waiting for the Land Registry refund.

88. More critically, as HMRC have argued, it was possible for the Appellant to file his Land Transaction return without paying the SDLT. So, even if (contrary to my findings) the Appellant did not have sufficient funds to pay the SDLT until the Land Registry had refunded him the £3,900, it was still possible for him to file his Land Transaction return. If the Appellant had filed his Land Transaction return at the end of February 2021, the penalty imposed would have been £100 rather than £200, because the return would have been filed less than three months late.

89. The Appellant has argued he thought it would cause confusion if he filed a Land Transaction return without also paying the SDLT due under that return, but he has not suggested that he rang HMRC's helpline, either to check this assumption or to seek advice about whether he should wait until the £3,900 was returned to him. As events transpired, the return was ultimately filed without the SDLT being paid at the same time (because HMRC lost the first cheque sent to them). (HMRC were able to check and process the return, and to issue the Appellant with the Land Transaction Return Certificate he required despite not cashing the first cheque.) I do not consider that an insufficiency of funds provides the Appellant with a reasonable excuse for his failure, from 24 February to 19 April 2021, to file his Land Transaction return.

90. I appreciate that this saga has been long and stressful for the Appellant, and that this will not be the conclusion for which he hoped. I accept entirely that the Appellant's defaults were not intentional or deliberate; matters turned out to be more complicated than the Appellant had anticipated. However, the onus is on the Appellant to demonstrate he has a reasonable excuse for his delay and he has failed to demonstrate a reasonable excuse for any part of the period during which he delayed filing his Land Transaction return. Therefore, this appeal fails.

Outcome of this appeal

91. The interest part of this appeal is struck out for lack of jurisdiction. The penalty part of the appeal is:

- Not admitted due to lateness, and (if that is wrong)
- Not allowed because the Appellant has not demonstrated he has a reasonable excuse for his delay.

92. As a consequence, the penalty of £200 is confirmed.

93. 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: 02 MARCH 2022