Neutral Citation: [2023] UKFTT 63 (TC)

Case Number: TC08705

FIRST-TIER TRIBUNAL
TAX CHAMBER

By remote video hearing

Appeal reference: TC/2022/02064

INCOME TAX - application for permission to make late appeal – Martland and Katib considered and applied – application refused

Heard on: 9 January 2023
Judgment date: 19 January 2023

Before

TRIBUNAL JUDGE ANNE REDSTON

Between

MARTIN CLARKE WEST

Appellant

and

THE COMMISSIONERS FOR
HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Mr Neil Bolton, and Mr Caleb Desouza of Prudens Accounting and Consulting Ltd, both instructed by Mr West

For the Respondents: Ms Caitlin McDonald, Litigator of HM Revenue and Customs' Solicitor's Office

DECISION

INTRODUCTION AND SUMMARY

1. This is Mr West's application for permission to make late appeals in relation to assessments and closure notices issued in 2018, and in relation to penalties issued in 2017 and 2018 ("the Application").

2. I applied the three-stage test set out by the Upper Tribunal ("UT") in *Martland v HMRC* [2018] UKUT 0178 (TCC) ("*Martland*"). The delays were clearly serious and significant, as they were made more than 1,000 days after the statutory time limit of 30 days.

3. Mr West placed most of the blame for the delays on his previous accountants, ABC Accounting ("ABC") and Ms Suji Sri. For the reasons explained in *Katib v HMRC* [2019] UKUT 189 (TCC) ("*Katib*"), failures by an appellant's adviser are normally treated as the failures of the appellant, and so do not provide a good reason for delays. Moreover, Mr West had been sent the original assessments, closure notices and penalties and so had been informed of the appeal time limits; he had also failed to provide ABC with relevant information and documents, and he was aware of at least some of the discussions Ms Sri was having with HMRC.

4. I considered whether there was any other good reason for the delays and found that there was none. Having identified and balanced the factors, it was clearly not in the interests of justice to give Mr West permission to make late appeals. As a result, the Application is refused.

THE EVIDENCE

5. HMRC provided the Tribunal with a Bundle of documents, which included:

   (1) Mr West's Notice of Appeal ("NoA"), together with the Application;

   (2) HMRC's Notice of Objection to the Application;

   (3) correspondence between the parties, and between the parties and the Tribunal;

   (4) copies of tax returns sent to HMRC by Mr West on 7 December 2021; and

   (5) notes from HMRC's self-assessment ("SA") system relating to Mr West;

6. The Bundle also included a number of emails from Mr Bolton to Ms Sri asking her to contact him; I consider at §37 the weight to be placed on this evidence.

7. Mr Bolton and Mr Desouza gave oral evidence, but this was limited to their relatively recent involvement in Mr West's case; in particular they gave no evidence as to the reasons why they considered Mr West's appeals should succeed on the merits.

8. Mr West attended the hearing, sharing a screen with Mr Bolton. I asked if he wanted to give oral evidence but he declined.

9. The findings of fact are set out in the next part of this decision; there is a further finding at §59. They are based on the evidence in the Bundle, supplemented by Mr Bolton's and Mr Desouza's oral evidence.

THE MATTERS FOR WHICH A LATE APPEAL WAS SOUGHT

10. Mr West's NoA said "Mr West disputes the amount that he has been petitioned for". No particulars of any specific HMRC decision was referred to in the text of the NoA, and no HMRC assessments, closure notices or penalties were attached.

11. Instead, Mr West attached a letter he had written to HMRC dated 24 November 2021 which said (text as in original including the date):

> "I am currently the subject of a bankruptcy petition from HMRC for the sum of......However please note that the last statement received (27th November 2021 had the amount of £120,329.16 which clearly has taken into account previous correct statements sent in and payment made upon acceptance."

12. As is clear from the citation above, no figure had been inserted after the words "for the sum of", but only an ellipsis. At the beginning of the hearing, I sought further information from Mr Bolton and Mr Desouza as to the HMRC decisions which formed part of the Application, but their focus remained on the bankruptcy proceedings.

13. In the Objection, HMRC had identified the following assessments, closure notices and penalties and confirmed that none had been appealed:

(1) assessments under Taxes Management Act 1970 ("TMA") s 29 for 2009-10 to 2012-13 inclusive, issued on 8 March 2018;

(2) closure notices under TMA s 28A for 2013-14 to 2015-16 inclusive, issued on 13 July 2018;

(3) an assessment under TMA s 29 for 2017-18 issued on 28 September 2018;

(4) penalties for failing to comply with a Notice issued under Finance Act 2008, Sch 36 ("Sch 36 Notice"); the penalties were issued on 10 March 2017, 28 April 2017, 24 July 2017 and 1 September 2017; and

(5) a penalty under Finance Act 2009, Sch 24 ("Sch 24") issued on 1 October 2018.

14. The Bundle also included a information about a further Sch 24 penalty of £40,286.40. I asked Ms McDonald about this, and after taking instructions she confirmed that it had been issued in 2018 and had not been appealed.

15. Mr Bolton then asked that the Application be treated as covering all of the above decisions. Ms McDonald did not object, and I proceeded on that basis. In this judgment, the term "Decisions" refers to all the above listed assessments, closure notices, and penalties.

FINDINGS OF FACT

16. At the relevant time, Mr West owned a number of properties and was in business on a self-employed basis. In 2009, he appointed ABC to act as his agent in dealing with HMRC. Ms Sri, an employee of ABC, had day-to-day client responsibility for Mr West.

17. On 22 January 2016, Mr Mason, an HMRC Inspector of Taxes, wrote to Mr West, copying ABC, asking for the following in relation to the year ended 5 April 2014:

(1) a schedule of sales invoices and details of how costs of sales/purchase were calculated;

(2) details of the turnover figure, how it was calculated and the records from which it was derived;

(3) a list of Mr West's bank and building society accounts and the interest received thereon;

(4) accounts for rental income and related bank statements; and

(5) invoices for repairs and professional fees.

18. Neither Mr West nor ABC responded. On 16 November 2016, Mr Mason sent Mr West a Sch 36 Notice, copied to ABC, requiring that the information and documents listed above be provided under that statutory provision. No information or documents were provided.

19. Mr Mason sent Mr West penalties for failure to comply with the Sch 36 Notice on 10 March 2017, 28 April 2017, 24 July 2017 and 1 September 2017. No appeal was made against those penalties.

20. Mr Mason sent a further letter to Mr West on 20 October 2017. On 21 December 2017, Mr West called HMRC's SA helpline and said he wanted a time-to-pay agreement for the penalties and would call back after Christmas with bank details, but he did not do so.

21. On 29 January 2018, Mr Mason sent another letter to Mr West setting out his view of the position for all the years from 2009-10 to 2015-16. His letter ended:

> "It is not too late for you to co-operate with our checks and provide the outstanding information and documents."

22. Also on the same day, 29 January 2018, Mr Mason sent Mr West a "penalty explanation letter" relating to the two Sch 24 penalties set out above; these totalled £49,613.41. No response was received.

23. On 8 March 2018, Mr Mason issued the assessments for the years 2009-10 to 2012-13 on the basis set out in his letters to Mr West. All the assessments informed Mr West that he had 30 days to appeal and how to do this.

24. On the same day, Ms Sri called Mr Mason. His contemporaneous note of call, which I accepted as factually accurate, says (where "SS" is Ms Sri):

> "SS asked DM if he had taken any of the action warned in his last letter. DM said that he had issued assessments for tax years 09/10 to 12/13 inclusive this morning based on the figures shown in his last letter but that MW could appeal if he wished. SS said MW was now keen to sort things out.
>
> SS said MW agreed DM's CGT figures for 09/10 and 10/11 and was ready to pay the tax for those 2 years…SS said that she had got bank statements from MW from 2012. She planned to analyse these together with statements from MW's letting agent and prepare rental income and expenditure figures as best she could…
>
> DM said he was concerned with the absence of both income from property and self employment from some of MW's returns and his means position for those years. SS said she completely understood DM's concerns and she accepted that there was self employment (SE) as well as rental income.
>
> SS said she might pick up some SE in the analysis of the bank statements but that it would be more difficult to ascertain because of the absence of records. SS said MW had not kept records in the past and accepted DM's comment that this would have to change now.
>
> SS proposed to prepare rental income figures 1st and then consider the likely SA income. DM said he would probably take a view of how realistic any overall income figures for rental income and SA were from a means point of view.
>
> DM said that it was important that SS saw all of MW's bank accounts, including savings accounts, in preparing her figures. SS agreed and said she had told MW this and had done a credit check to be sure. She was confident that she had or would have statements for all accounts.
>
> SS assured DM of MW's desire to sort things out now. She said she thought MW had been avoiding the issue in the past but now wanted to face up to it. …SS said that she and MW accepted that MW had to have income to live on and the reason for the nil returns in the past was that her firm had put in returns

> with no figures because MW had not provided them with the information that they needed to prepare the returns.
>
> SS said that part of the problem in preparing accurate figures was that MW could genuinely not remember details of what he had been doing in the past and had not kept business records. SS said she expected to have at least one set of figures ready for DM by next Friday 16 March and everything analysed within 30 days. SS said she would keep DM informed.
>
> DM said again that, if MW wanted to appeal against the assessments that DM had made today, then he needed to do so within 30 days."

25. None of Mr West, Mr Bolton or Mr Desouza have said that this summary of Mr West's position was incorrect. Mr Bolton said that Mr West accepted he had "messed up his tax position" and that "his own responsibility was accepted".

26. I find as facts, in reliance on Mr Mason's contemporaneous call note, that:

(1) Mr West was fully aware of the assessments issued for the years 2009-10 to 2012-13 because he called Ms Sri and said "he was now keen to sort things out", and he also agreed the CGT figures in Mr Mason's letter of 29 January 2018;

(2) Mr West had not kept records of his self-employment or rental income; and

(3) ABC had filed SA returns with nil self-employment and rental income in the past because Mr West had not provided the firm with that information.

27. On 12 March 2018, Mr Mason opened enquiries into Mr West's tax returns for the years 2013-14 through to 2015-16; the opening letter was sent to Mr West with a copy to ABC. On 23 and 26 April 2018, Mr Mason tried to contact Ms Sri by phone and by email to establish progress.

28. On 13 July 2018, he issued Mr West with closure notices and related amendments for the years 2013-14 through to 2015-16, these notices included Mr West's appeal rights and the time limits; they were copied to ABC. Mr Mason tried to call Ms Sri again on 4 June 2018, but without success.

29. On 28 September Mr Mason issued a TMA s 29 assessment for 2016-17, and on 1 October 2018, he issued the two Sch 24 penalties to Mr West with a copy to ABC; the penalty notices also included Mr West's appeal rights and the time limits.

30. On 30 October 2018, Mr Jamal Warshow, a director of ABC, called Mr Mason. He apologised for the delay, said that he had been ill since Maty 2018 and that Ms Sri had had to cover his work, and as a result had not had time to deal with Mr West's case. Mr Mason listed the HMRC decisions he had issued; said that no appeals had been made, and explained the procedure for making late appeals against his earlier decisions.

31. On 6 November 2018, Ms Sri called HMRC to speak to Mr Mason; as he was not there, the call was taken by his colleague Mr Myles Gardiner. Mr Gardiner's contemporaneous record of the call, which I accept as accurate, includes the following:

> "She [Ms Sri] was concerned and wants to resolve matters. She mentioned that their client received a letter dated 25 October 2018 from Justin Younger in Debt Management…in which he threatened to apply for a bankruptcy order."

32. Mr Gardiner looked on the HMRC system and then listed to Ms Sri the decisions which Mr Mason had made and the appeal position, including how to make late appeals. His note continued:

> "I would expect that late appeals re the decisions in September and October would likely be considered, but that reopening older decisions would be dependent on the circumstances. Suji said she planned to work on this tonight and would email appeals to you tonight or tomorrow. She has my name and number so she may reference me when she emails you. I would note that Suji was a little flustered and a little confused about the appeals process. Also, she mentioned that the client is having health issues: epilepsy and something else."

33. No appeals were made. In early 2019, HMRC presented a bankruptcy petition to the court to recover the sums owed by Mr West.

34. On 21 February 2019, Ms Sri called Mr Mason to say she had left ABC and was now freelance, and that she had been contacted by Mr West about his position. Mr Mason said that as ABC was still shown as Mr West's agent, he could not discuss his case with her.

35. Later the same day, Mr West called Mr Mason and said he wanted Ms Sri to be his agent instead of ABC. The relevant authority form was however not received by HMRC until 8 October 2019.

36. Mr West asked Mr Bolton to help. On 26 February 2020, Mr Bolton spoke to Ms Sri, and then sent her an email, attaching a copy of the Land Registry details for Mr West's property, and saying:

> "As we spoke about I feel that you are doing the correct thing in negotiating with HMRC and the salient inspector. As I stated there are important points here:
>
> 1. To get the bankruptcy petition removed by HMRC
>
> 2. To get the overall amount reduced
>
> 3. To show good faith
>
> 4 . In line with 3. above to make a payment on account to demonstrably show this.
>
> It is equally important that you emphasise that there was never an intention not to not pay HMRC. Again as stated you need to obtain HMRC's exact position on the disposal of the property and payment to then with funds from thereof."

37. The Bundle also included a number of emails from Mr Bolton to Ms Sri asking her to contact him. Mr Bolton said that these should be accepted as the basis for a finding of fact that Ms Sri failed to respond to queries. However, the emails are sporadic and refer to other conversations and contacts, about which no documents or evidence have been supplied. Ms Sri herself had not been asked to give witness evidence. I accept that the emails prove Mr Bolton had contacted Ms Sri, but that they could not fairly form the basis for a finding that she had consistently failed to respond.

38. On 28 January 2021, Prudens Accounting and Consulting Ltd ("Prudens"), Mr Desouza's firm, was appointed as Mr West's agent in place of Ms Sri. The Bundle contains records of calls which Mr Desouza made to HMRC between 15 February 2021 and January 2022. These concerned a possible claim for overpayment relief; amendments to the SA returns previously filed, payments and their allocation to particular debts, and interest charges.

39. On 7 December 2021, Mr West sent a letter to HMRC attaching newly completed tax returns for 2009-10 to 2016-18. On 25 January 2022, Mr Fazil, an HMRC Officer, wrote to Mr West saying that the returns were "out of time to be accepted".

40. The bankruptcy proceedings were adjourned a number of times to allow Mr West to seek advice and to contact HMRC, and they were adjourned again to allow him to make this application to the Tribunal. The NoA was filed on 10 March 2022.

THE CASE LAW

41. The case of *Martland* concerned an application to make a late appeal against excise duty and a related penalty, but the principles there set out have been applied and followed when deciding late appeal applications in relation to income tax and other taxes and duties, see for example *Shane de Silva v HMRC* [2021] UKUT 0275 (TCC).

42. In *Martland* at [37] the UT set out Rule 3.9 of the Civil Procedure Rules ("CPR"), which reads:

> "(1) On an application for relief from any sanction imposed for a failure to comply with any rule, practice direction or court order, the court will consider all the circumstances of the case, so as to enable it to deal justly with the application, including the need –
>
> (a) for litigation to be conducted efficiently and at proportionate cost; and
>
> (b) to enforce compliance with rules, practice directions and orders."

43. The UT then considered the authorities, in particular *Denton v TH White Limited* [2014] EWCA Civ 906 ("*Denton*") and *BPP v HMRC* [2017] UKSC 55 ("*BPP*"). The UT said*:*

> "[40] In *Denton*, the Court…took the opportunity to 'restate' the principles applicable to such applications as follows (at [24]):
>
> > 'A judge should address an application for relief from sanctions in three stages. The first stage is to identify and assess the seriousness and significance of the "failure to comply with any rule, practice direction or court order" which engages rule 3.9(1). If the breach is neither serious nor significant, the court is unlikely to need to spend much time on the second and third stages. The second stage is to consider why the default occurred. The third stage is to evaluate "all the circumstances of the case, so as to enable [the court] to deal justly with the application including [factors (a) and (b)]".'
>
> [41] In respect of the 'third stage' identified above, the Court said (at [32]) that the two factors identified at (a) and (b) in Rule 3.9(1) 'are of particular importance and should be given particular weight at the third stage when all the circumstances of the case are considered.'"

44. The UT noted at [42] that the Supreme Court in *BPP* had implicitly endorsed the approach set out in *Denton.* That Court also confirmed at [26] that "the cases on time-limits and sanctions in the CPR do not apply directly, but the Tribunals should generally follow a similar approach". At [43] the UT said:

> "The clear message emerging from the cases – particularised in *Denton* and similar cases and implicitly endorsed in *BPP* – is that in exercising judicial discretions generally, particular importance is to be given to the need for 'litigation to be conducted efficiently and at proportionate cost', and 'to enforce compliance with rules, practice directions and orders'. We see no reason why the principles embodied in this message should not apply to applications to admit late appeals just as much as to applications for relief from sanctions, though of course this does not detract from the general injunction which continues to appear in CPR rule 3.9 to 'consider all the circumstances of the case'."

45. At [44] the UT set out the following three stage approach by way of guidance to this Tribunal:

(1) establish the length of the delay and whether it is serious and/or significant;

(2) establish the reason(s) why the delay occurred; and

(3) evaluate all the circumstances of the case, using a balancing exercise to 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, and in doing so take into account "the particular importance of the need for litigation to be conducted efficiently and at proportionate cost, and for statutory time limits to be respected".

46. The UT also said at [46]:

> "the FTT can have regard to any obvious strength or weakness of the applicant's case; this goes to the question of prejudice – there is obviously much greater prejudice for an applicant to lose the opportunity of putting forward a really strong case than a very weak one. It is important however that this should not descend into a detailed analysis of the underlying merits of the appeal…It is clear that if an applicant's appeal is hopeless in any event, then it would not be in the interests of justice for permission to be granted so that the FTT's time is then wasted on an appeal which is doomed to fail. However, that is rarely the case. More often, the appeal will have some merit. Where that is the case, it is important that the FTT at least considers in outline the arguments which the applicant wishes to put forward and the respondents' reply to them. This is not so that it can carry out a detailed evaluation of the case, but so that it can form a general impression of its strength or weakness to weigh in the balance. To that limited extent, an applicant should be afforded the opportunity to persuade the FTT that the merits of the appeal are on the face of it overwhelmingly in his/her favour and the respondents the corresponding opportunity to point out the weakness of the applicant's case. In considering this point, the FTT should be very wary of taking into account evidence which is in dispute and should not do so unless there are exceptional circumstances."

47. I now apply the three stage approach in *Martland* on the basis of the facts, taking into account the parties' submissions.

THE LENGTH OF THE DELAY

48. Ms McDonald set out in tabular form the number of days delay in relation to each of the HMC decisions for which permission to appeal is sought. It is between 1,315 days and 1,108 days. There is no doubt that these delays are very serious and significant.

THE REASONS FOR THE DELAY

49. The NoA said there were three reasons for the delay: reliance on Ms Sri and ABC; Mr West's ill health, and his caring responsibilities for his mother. I consider each in turn, followed by the position of Mr Bolton and Mr Desouza.

Reliance on Ms Sri and ABC?

50. The main reason put forward for the delay was the failures of ABC and Ms Sri. The NoA said that "Mr West has at all times been unaware of all proceedings until recent times as a result of the lack of disclosure from the previous accountant", namely ABC and Ms Sri, and that ABC had "failed to file appropriate (and sometimes not at all) correct tax returns which has led to this position". In oral submissions, Mr Bolton placed particular weight on the reference in the file note made by Mr Gardiner (see §32) that Ms Sri "was a little flustered and a little confused about the appeals process".

51. Ms McDonald said that Mr West had been copied on the assessments, and was aware of the position throughout. He had called HMRC to say he wanted Ms Sri to continue to represent him after she left ABC, and had subsequently authorised her as his agent. Ms McDonald also relied on *Katib,* which I consider below.

The Tribunal's view

52. In *Katib*, the UT said at [49] (their emphasis):

> "We accept HMRC's general point that, <u>in most cases</u>, when the FTT is considering an application for permission to make a late appeal, failings by a litigant's advisers should be regarded as failings of the litigant."

53. The UT returned to this issue at [54], saying:

> "It is precisely because of the importance of complying with statutory time limits that, when considering applications for permission to make a late appeal, failures by a litigant's adviser should generally be treated as failures by the litigant."

54. The UT then cited the Court of Appeal's judgment in *Hytec Information Systems v Coventry City Council* [1997] 1 WLR 666 ("*Hytec*"). Ward LJ, giving the leading judgment, said at p 1675:

> "Ordinarily this court should not distinguish between the litigant himself and his advisers. There are good reasons why the court should not: firstly, if anyone is to suffer for the failure of the solicitor it is better that it be the client than another party to the litigation; secondly, the disgruntled client may in appropriate cases have his remedies in damages or in respect of the wasted costs; thirdly, it seems to me that it would become a charter for the incompetent..."

55. In *Katib*, the UT continued at [56] by concluding that the correct approach was:

> "…to start with the general rule that the failure of Mr Bridger [Mr Katib's adviser] to advise Mr Katib of the deadlines for making appeals, or to submit timely appeals on Mr Katib's behalf, is unlikely to amount to a 'good reason' for missing those deadlines when considering the second stage of the evaluation required by *Martland*."

56. This was followed at [58] by the following passage:

> "It is clear from the [FTT] decision that Mr Bridger did not provide competent advice to Mr Katib, misled him as to what steps were being taken, and needed to be taken, to appeal against the PLNs [personal liability notices] and failed to appeal against the PLNs on Mr Katib's behalf. But…the core of Mr Katib's complaint is that Mr Bridger was incompetent, did not give proper advice, failed to appeal on time and told Mr Katib that matters were in hand when they were not. In other words, he did not do his job. That core complaint is, unfortunately, not as uncommon as it should be. It may be that the nature of the incompetence is rather more striking, if not spectacular, than one normally sees, but that makes no difference in these circumstances. It cannot be the case that a greater degree of adviser incompetence improves one's chances of an appeal, either by enabling the client to distance himself from the activity or otherwise."

57. In deciding that little weight should be given to Mr Katib's reliance on his adviser, the UT also took into account that Mr Katib should have noticed "warning signs", including direct contact from HMRC in the form of enforcement action, which "should have alerted him". The UT therefore concluded Mr Katib was "not without responsibility in this story".

58. In accordance with *Katib* and *Hytec*, this Tribunal should therefore not normally find that reliance on an adviser provides a good reason for delay. I considered whether the facts of the Mr West's case outside that normal range. I agree with Ms McDonald that this was not the position because:

(1) Contrary to the assertion made in the NoA that "ABC had "failed to file appropriate (and sometimes not at all) correct tax returns which has led to this position".

(a) ABC filed Mr West's SA returns showing both self-employment income and rental income as nil, because Mr West had not provided the firm with that information; and

(b) this was because Mr West had not kept records of his self-employment or rental income;

(2) Again, contrary to the position taken in the NoA that "at all times" Mr West had been "unaware of all proceedings until recent times":

(a) Mr West had been copied on all the assessments, closure notices and penalties, each of which included the 30 day time limit for an appeal;

(b) on or shortly before 29 January 2018, after receiving Mr Mason's letter setting out the position for each year, Mr West told Ms Sri that he was "keen to sort things out"; that he agreed with Mr Mason's CGT figures for 09-10 and 10-11 and was ready to pay the tax for those two years; and

(c) Mr West called HMRC's SA helpline on 21 December 2017, and said he wanted a time-to-pay agreement for the Sch 36 penalties, and so was not only aware of these penalties but was also not disputing them.

59. Mr West declined to give evidence in these proceedings. On the basis of the evidence provided, I find that he was fully aware of the Decisions; that Ms Sri was in contact with him, and that he failed to provide Ms Sri with all the documents and information she requested in order to file correct SA returns.

60. Reliance on Ms Sri therefore does not provide Mr West with a good reason for not appealing against the decisions by the statutory dates.

Mr West's health?

61. The NoA said that Mr West's health conditions were one of the reasons for his late appeals. This was expanded in a letter from Mr West dated 24 November 2021 to HMRC, in which he said he had suffered from epilepsy since 2009, and "now subject to heavy medication". He also suffered a heart attack in 2020 to which the stress of the bankruptcy proceedings and "the disappearance of Ms Sri" contributed.

62. Ms McDonald pointed out that Mr West's health conditions did not prevent him from contacting HMRC on a number of occasions, or from speaking to Ms Sri. In her submission, there was no basis on which his health conditions prevented Mr West from filing in-time appeals against the Decisions.

63. I agree with Ms McDonald. There is no causative link between Mr West's epilepsy and the late filing of his appeals. Mr West was plainly able to speak to both HMRC and Ms Sri, and subsequently to Mr Bolton. He could either have filed appeals himself, or have instructed Ms Sri or another accountant to do so on a timely basis. By the time of his heart attack, the bankruptcy proceedings were already underway, and so that condition is not relevant.

Mr West's mother's health?

64. Mr West's NoA also asked for "mitigation" because of his mother's health. This was explained in the letter of 24 November 2021, as follows:

> " I am the sole carer for my elderly mother (who is now 94). My mother is in poor health (at the time of writing she has been admitted to hospital). As you can imagine the strains and pressure of dealing with all has been a heavy responsibility and one which has added to all the above."

65. I agree with Ms McDonald that there is again no causative connection between (a) Mr West's mother's illness and/or Mr West's caring responsibilities and (b) his failure to file in-time appeals against the Decisions. In addition, the only evidence about these matters dates from 2021, long after the issue date of the Decisions.

Mr Bolton and Mr Desouza?

66. Ms McDonald submitted that part of the delay was due to Mr Bolton and/or to Mr Desouza. She pointed out that neither had explained why they did not file an NoA on Mr West's behalf immediately after their involvement. For the same reasons as set out above in relation to ABC and Ms Sri, in her submission this reliance did not provide Mr West with a good reason for the delay.

67. I again agree. Mr Bolton told Ms Sri on 26 February 2020 that she was "doing the correct thing in negotiating with HMRC and the salient inspector", and Mr Desouza's frequent contacts with the SA helpline did not relate to making a late appeal. However, just as Mr West's reliance on Ms Sri did not provide him with a good reason for the delay, the same is true of his reliance on Mr Bolton and Mr Desouza.

Conclusion on the second step

68. For the reasons set out above, I find that there was no good reason for Mr West's failure to make the appeals within the statutory time limits.

ALL THE CIRCUMSTANCES

69. The third step in the *Martland* approach is to consider all the circumstances, and then to carry out a balancing exercise.

The need for time limits to be respected

70. Significant weight must be placed as a matter of principle on the need for statutory time limits to be respected. This was described as "a matter of particular importance" in *Katib*; the same point is made in Martland at [46].

71. In this case the delay in relation to all the Decisions exceeded 1,000 days. There was no good reason for these delays, and this factor weighs heavily against Mr West.

Reliance on advisers

72. As already noted, in *Katib* the UT found at [56] that reliance on advisers was unlikely to amount to a "good reason" for missing the statutory deadlines in the context of the second stage of the evaluation required by *Martland*. The UT continued in the same paragraph:

> "…when considering the third stage of the evaluation required by *Martland*, we should recognise that exceptions to the general rule are possible and that, if Mr Katib was misled by his advisers, that is a relevant consideration."

73. At [59] the UT considered the submission made on Mr Katib's behalf that "Mr Katib did not have the expertise to deal with the dispute with HMRC himself", but went on to say:

> "…that does not weigh greatly in the balance since most people who instruct a representative to deal with litigation do so because of their own lack of

> expertise in this arena. We do not consider that, given the particular importance of respecting statutory time limits, Mr Katib's complaints against Mr Bridger or his own lack of experience in tax matters are sufficient to displace the general rule that Mr Katib should bear the consequences of Mr Bridger's failings..."

74. I find that Mr West's reliance on ABC, Ms Sri, Mr Bolton and Mr Desouza is a factor to be weighed in the balance in favour of allowing a late appeal, but that little weight is to be given to that factor as compared to the particular importance of respecting statutory time limits, for the reasons given in *Katib.* In addition, because Mr West had received all the Decisions, he knew that there was a 30 day time limit, and he also knew from his conversations with Ms Sri, Mr Bolton and Mr Desouza that no appeals had been made.

The merits

75. The UT said in *Martland* that there is "much greater prejudice for an applicant to lose the opportunity of putting forward a really strong case than a very weak one". The merits of the appeal may therefore be a relevant factor in the balancing exercise. However, the UT also said that the Tribunal should not " descend into a detailed analysis" of the merits of the appeal.

76. Mr West said in the NoA that he does not "deny any tax liability" but that he "disputes the amount he has been petitioned for", and that HMRC have charged "unfair fines or estimates on some of the annual returns [sic]". There was nothing in the Bundle to explain these statements, other than the SA returns filed on 7 December 2021 which were rejected by HMRC as out of time. No explanation was provided as to why the figures in those returns should displace those in the Decisions. Ms McDonald pointed out that the new figures were lower than those originally provided by Ms Sri and that no reasons had been given for the discrepancies. I agree, and I therefore find that the merits of Mr West's appeal against the assessments, the closure notices and the Sch 24 penalties are extremely weak.

77. No reasons have been given as to why Mr West should succeed in appealing the penalties relating to the Sch 36 Notice, as he plainly did not respond to the information request. Such an appeal would be "hopeless", as the UT put it in *Martland.*

Other factors

78. Mr West will suffer prejudice if permission to make a late appeal is refused, because he will be unable to appeal against the Decisions. That is however an inevitable consequence of losing the opportunity to challenge any HMRC decision. In addition, as the bankruptcy proceedings have been stayed pending the outcome of this application hearing, a failure to obtain permission means those proceedings will resume.

79. HMRC will suffer prejudice if the Tribunal gives permission, because they will have to devote time and attention to defending the Decisions before the Tribunal. I accept that this is the inevitable consequence of *granting* permission, but it carries more weight where, as here, there has been a significant delay: it generally takes longer for HMRC to locate all relevant documents than where a timely Notice of Appeal has been filed.

80. Finally, granting permission also prejudices the position of other taxpayers, in that both HMRC and the Tribunal will divert resources away from other cases, in which the appellants made their appeals on time in accordance with the statutory provisions.

Balancing the factors

81. Once the circumstances have been identified, they must be balanced. The consistent message from *Denton, BPP, Martland* and *Katib* is that particular weight is to be given to the need to enforce compliance with statutory time limits.

82. The delay in relation to all the Decisions was over 1,000 days, and so plainly serious and significant, and there was no good reason for them. Those factors weigh heavily against Mr West. Added to that is the prejudice to HMRC and to appellants in other cases if permission were to be given.

83. On the other side of the scales is the prejudice to Mr West of losing the opportunity of appealing to the Tribunal, together with his reliance his advisers. However, neither of those factors carry significant weight for the reasons given above. The result of the balancing exercise is therefore that permission is refused.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

84. 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 REDSTON
TRIBUNAL JUDGE

Release Date: 19th JANAURY 2023