



Neutral Citation: [2025] UKFTT 00749 (TC)

Case Number: TC09556

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Birmingham

Appeal reference: TC/2023/09268
and others

*INCOME TAX – application for permission to appeal out of time – reliance on advisers –
application of s118(2) TMA 1970 - Martland – application dismissed*

Heard on: 21 October 2024
Judgment date: 12 June 2025

Before

**TRIBUNAL JUDGE ANNE FAIRPO
TRIBUNAL MEMBER MOHAMMED FAROOQ**

Between

RAJAB ALI ZAFARI

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS
Respondents

Representation:

For the Appellant: Mr Blades, of counsel, instructed by WK Solicitors

For the Respondents: Mr Suleiman, litigator of HM Revenue and Customs’ Solicitor’s Office

DECISION

Introduction

1. The appellant (Mr Zafari) seeks permission to appeal out of time pursuant to s49(2)(b) Taxes Management Act 1970 (TMA 1970) against tax liabilities for income tax, namely, three closure notices issued under ss28A(1B) & (2) Taxes Management Act 1970, two discovery assessments issued under s29, Taxes Management Act 1970, and five penalty assessments issued under Schedule 24 of the Finance Act 2007.

2. The Tribunal heard evidence from Mr Zafari. A witness statement was also provided by a friend of Mr Zafari's, who had assisted him during the relevant years. The friend unable to be present at the hearing; the panel considered the contents of the friend's witness statement and concluded that, the friend was not present to be cross-examined and the statement repeated information already in Mr Zafari's witness statement with very similar wording, it was to be given little weight.

3. The judge apologises to the parties for the delay in producing this decision which arose as a result of medical leave and extended health issues which were not anticipated at the time of the hearing.

Background

4. From the documents provided, we find the following summary chronology of events:

Enquiry opened - September 2014

5. HMRC first opened an enquiry into Mr Zafari's tax affairs for 2012/13 on 4 September 2014 by writing to him directly and also writing to his accountants (Heartlands). The letter to Heartlands included a schedule of documents which HMRC asked to be provided. Heartlands replied on 7 October 2014 and telephoned HMRC on the same day with a query about the check. HMRC replied on 22 October 2014 with various queries regarding the information provided. Heartlands replied on 25 November 2014 to advised that they were waiting for information from Mr Zafari, who had some health issues.

6. On 26 November 2014, Mr Zafari called HMRC to say that he had received HMRC's letter of 22 October 2014 from his accountants and that he would be replying directly. He asked for an extension of time to reply and it was agreed that he would reply on 5 January 2015.

7. On 5 January 2015, Heartlands wrote to HMRC with explanations provided by Mr Zafari and stating that remaining points would be answered when they had received information from Mr Zafari. A further letter was sent on 5 February 2015 with the remaining information.

8. Correspondence continued between HMRC and Heartlands, in some cases also copied to Mr Zafari, regularly throughout 2015 and 2016.

Heartlands involvement ceased

9. On 29 March 2017 Heartlands wrote to HMRC to say that Mr Zafari was having financial difficulties and could not afford to pay an adviser to deal with HMRC's checks. They considered that he would not be able to answer HMRC's queries directly.

10. On 21 April 2017, HMRC wrote to Mr Zafari directly and enclosed a "streamlined" request for documents and information. On 2 June 2017, HMRC issued another formal information notice as Mr Zafari had not provided the information requested. On the same date, they received bank mandates signed by Mr Zafari. A further information notice, acknowledging the bank mandates but noting that the rest of the information was still outstanding, was sent to Mr Zafari on 19 June 2017. On 3 July 2017, HMRC received a hand-annotated copy of the information notice schedule and statement of assets and liabilities from Mr Zafari.

11. On 27 July 2017, HMRC called and wrote to Mr Zafari asking him to complete the mandates again as they had not been properly completed. A further formal information notice requesting the mandates was sent to Mr Zafari on 14 September 2017. Mr Zafari completed these on 5 October 2017.
12. On 23 February 2018 HMRC issued notices of assessment to Mr Zafari for tax years 2011/12, 2013/14. These included details of what to do if Mr Zafari disagreed with the notices. Mr Zafari replied on 9 April 2018 disputing the figures in the assessments and asking HMRC to cancel the assessments. HMRC wrote to him acknowledging the appeal on 18 April 2018 and reminding him that they were waiting for information in respect of other tax years.
13. Correspondence continued between HMRC and Mr Zafari. On 5 September 2018, Mr Zafari wrote to HMRC stating that he wanted to appeal. HMRC replied on 10 September 2018 advising him that he would need to apply to appeal out of time, giving reasons why he had not appealed earlier.
14. On 21 November 2018, HMRC wrote to Mr Zafari issuing closure notices in respect of 2012/13, 2014/15, and 2015/16. Each of these included details of what to do if Mr Zafari disagreed with the notices.
15. On 12 February 2019, HMRC wrote to Mr Zafari. The letter stated that Mr Zafari had not appealed the closure notices although there were open appeals against the assessments for 2011/12 and 2013/14, and the check for 2016/17 also remained open. The letter advised that HMRC were considering penalties. A penalty explanation letter was sent to Mr Zafari on 20 February 2019 which included information as to what to do if he did not agree with the penalties.
16. On 21 February 2019 HMRC wrote to Mr Zafari, noting that he had changed his correspondence address and enclosing a further copy of the letter of 12 February 2019. The letter also advised no further information had been provided in respect of the appeals against the assessments for 2011/12 and 2013/14 and confirmed HMRC's view of the matter on these tax years. The letter advised Mr Zafari that he had 30 days to either accept an offer of a review or notify his appeals to this Tribunal.
17. On 27 February 2019, a friend of Mr Zafari called HMRC. Mr Zafari was present on the call and authorised HMRC to speak to his friend. HMRC were told that Mr Zafari was in the process of instructing a tax advisor as he did not understand all of the correspondence being received and asked for action to be suspended. HMRC advised that Mr Zafari had not appealed within the time limit and that he would have to apply to make a late appeal with reasons.
18. On 26 March 2019, HMRC issued a penalty assessment to Mr Zafari. This included information as to what to do if he did not agree with the assessment.
19. On 21 May 2019 HMRC wrote to Mr Zafari setting out the position on each of the tax years and the penalties as they had not heard from him or his new tax adviser. The letter confirmed that no appeals had been made (to HMRC or the Tribunal, as relevant).
20. On 28 May 2019 Mr Zafari emailed HMRC to say that he had made an arrangement to pay on 14 May 2019 "in order to review [his] SA account and provide ... correct figures". The email advised that the new accountant had not had time to look into Mr Zafari's file and that Mr Zafari was looking for another accountant to assist him.
21. On 30 May 2019 HMRC wrote to explain that Mr Zafari was out of time to appeal and (in bold text) that his only option was to apply for permission to appeal or a review (as relevant) out of time, giving reasons for the failure to appeal in time.

22. On 11 June 2019, Mr Zafari emailed HMRC chasing a response to his email of 28 May 2019. HMRC responded on the same day to advise that a letter had been sent by post.

23. On 25 July 2019 Mr Zafari emailed HMRC asking for a breakdown of the tax calculation for 2014/15 and 2012/13.

Meer & Co appointed

24. On 27 July 2019, Mr Zafari apparently emailed HMRC to advise that he had appointed a new accountant (the email was not included in the bundle but was referred to in the reply from HMRC). HMRC replied on 30 July 2019 with copies of correspondence between October 2018 and May 2019 to provide to the new adviser, drawing his attention to the letter of 30 May 2019.

25. On 31 July 2019 Meer & Co wrote to HMRC providing a 64-8 agent authorisation form and asking to appeal out of time due to Mr Zafari's parents' health, including a medical report. HMRC replied on 11 September 2019 asking for confirmation as to what was being appealed and for more details of the reasons for the delay.

26. On 30 October 2019 HMRC wrote to Meer & Co to confirm that the applications for late appeals against the 2012/13, 2014/15 and 2015/16 closure notices and the penalty assessment had been accepted. The request for review of 2011/12 and 2013/14 would be let open pending the outcome of the appeals.

27. Meer & Co replied on 13 October 2019 setting out details of what was being appealed and stating that the grounds for the late appeal were that the appeals should have been made by the previous agent but that he had refused as Mr Zafari had been unable to afford the fees required. The letter also set out various health and financial issues as explanations for the delay. An NHS letter dated 11 March 2010 was provided in support.

28. Correspondence continued between HMRC and Meer & Co. On 9 September 2020 HMRC called Meer & Co to chase information requested in July 2020; Meer & Co advised that they were waiting for information from Mr Zafari, who had not responded to attempts to contact him.

Relevant decision issued

29. On 13 October 2020 HMRC wrote to Mr Zafari, copied to Meer & Co, to advise that as no response had been received to requests for information, no progress could be made. The letter set out HMRC's view of the matter and offered a review. The letter advised (in bold) that Mr Zafari had 30 days to accept the offer of review or appeal to this Tribunal.

30. On 7 January 2021 HMRC wrote to Mr Zafari directly to state that they had not received any response to their letter of 13 October 2020 and so were treating the appeals as settled on the basis of the view of the matter letter.

Statutory demand and subsequent correspondence

31. In August 2022 Meer & Co wrote to HMRC, in response to a statutory demand notice, to advise that expenditure had not been taken into account in the tax returns for 2013/14, 2014/15, 2016/17 and 2017/18. The letter requested that HMRC permit late amendments to the returns for these years. On 16 December 2022, HMRC refused to allow the late amendments as the request was out of time.

32. Following the issue of a bankruptcy petition, there was correspondence between solicitors acting for Mr Zafari, Meer & Co, and HMRC from March 2023. The solicitors also wrote to Heartlands in November 2023.

Appeal to this Tribunal

33. Mr Zafari appealed to this Tribunal with notices of appeal dated 7 July 2023. The notices of appeal gave the reasons for the delay in appealing as:

(1) “... reliance on the Appellant’s previous accountants(s) who informed him that he would appeal to the Tribunal but, as it now transpires, never did in fact appeal to the Tribunal. The Appellant was heavily reliant on his accountant(s) because his English is poor and he was unable to understand the relevant appeal process without the advice of the accountant(s)”.

(2) “...this difficulty was compounded by the ill-health of the Appellant’s parents. At the time, he spent a significant majority of his time caring for his then very ill (and now deceased) parents. For that reason, he placed his reliance extremely heavily on his previous advisor(s) who, unfortunately, did not act in the manner that (a) was agreed; and (b) the accountant(s) claimed to have acted.”

34. HMRC objected to the late appeal, contending that no good reason for the delay had been provided.

Relevant law

Application of s118(2) TMA 1970

35. In the hearing, for Mr Zafari it was contended that the provisions of s118(2) TMA 1970 meant that, if he had a reasonable excuse for the delay, he was to be treated as there had been no delay without undertaking the three part approach set out in *Martland*.

36. s118(2) TMA 1970 is part of the interpretation clause of TMA 1970 and states (as relevant):

“For the purposes of this Act ... where a person had a reasonable excuse for not doing anything required to be done he shall be deemed not to have failed to do it unless the excuse ceased and, after the excuse ceased, he shall be deemed not to have failed to do it if he did it without unreasonable delay after the excuse had ceased”

37. The decision in *Miron* [2018] UKFTT 0118 (TC) was cited in support of this. We note that this is a First-tier Tribunal decision and, although potentially persuasive, is not binding upon us. That decision did not consider the application of s118(2) TMA 1970 in any detail but rather stated simply (at [10]) that “the Appellant can succeed in this appeal if she has a reasonable excuse for her failure to give notice of her appeal against the relevant assessment on time or if I think it is appropriate to exercise my discretion to allow her to do so”.

38. Mr Zafari appealed to this Tribunal under s49 TMA 1970 for permission to appeal out of time. s49 TMA 1970 states:

“(1) This section applies in a case where—

(a) notice of appeal may be given to HMRC, but

(b) no notice is given before the relevant time limit.

(2) Notice may be given after the relevant time limit if—

(a) HMRC agree, or

(b) where HMRC do not agree, the tribunal gives permission.

(3) If the following conditions are met, HMRC shall agree to notice being given after the relevant time limit.

(4) Condition A is that the appellant has made a request in writing to HMRC to agree to the notice being given.

(5) Condition B is that HMRC are satisfied that there was reasonable excuse for not giving the notice before the relevant time limit.

(6) Condition C is that HMRC are satisfied that request under subsection (4) was made without unreasonable delay after the reasonable excuse ceased.

(7) If a request of the kind referred to in subsection (4) is made, HMRC must notify the appellant whether or not HMRC agree to the appellant giving notice of appeal after the relevant time limit.

(8) In this section “relevant time limit”, in relation to notice of appeal, means the time before which the notice is to be given (but for this section).”

39. We consider that, if s118(2) TMA 1970 were to apply in the way contended for on behalf of Mr Zafari, the provisions of s49(5) and (6) would be superfluous. s118 is an interpretation clause and applies only “unless the context otherwise requires” (s118(1)).

40. In this regard, we note the decision of the Court of Session in *Advocate General for Scotland v General Commissioners for Aberdeen City* [2006] STC 1218, referred to in *Martland*, which states (at [22]) that

“s49 is a provision that is designed to permit appeals out of time. As such, it should in my opinion be viewed in the same context as other provisions designed to allow legal proceedings to be brought even though a time limit has expired. The central feature of such provisions is that they are exceptional in nature; the normal case is covered by the time limit, and particular reasons must be shown for disregarding that limit.”

41. Given that s118 is an aid to interpretation and only applies unless the context otherwise requires, we consider that *Aberdeen* makes it clear that the context of s49 is such that the full appellate jurisdiction given to the tribunal in s49 is not restricted by the provisions of s118(2) TMA 1970.

42. We note also that the decision in *Miron* was issued before the decision of the Upper Tribunal in *Martland* [2018] UKUT 178 (TCC), which considered in some detail the statute and case law relating to applications for permission to bring appeals out of time, and set out the approach to be taken. We note that although *Martland* related to an excise duty appeal, it makes it clear that the approach set out follows that established in case law in the higher courts relating to s49 TMA 1970 such as that in *Aberdeen*. For Mr Zafari, it was contended that *Martland* had not mentioned the application of s118(2); for the reasons set out above, we do not consider that this means that s118(2) must apply in preference to the three-stage approach in *Martland*.

43. We consider therefore that the question of whether there is a good reason (effectively, a reasonable excuse) for the delay is part of the balancing exercise set out by *Martland*,

considering all of the circumstances. It is not a prior test which, if established, entirely removes the need to undertake the balancing exercise set out in *Martland*.

Approach to be taken

44. We therefore consider that the appropriate approach to be followed is that set out by the Upper Tribunal in *Martland* [2018] UKUT 178 (TCC) at [44]-[46]) :

“[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.

[45] That balancing exercise should 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. By approaching matters in this way, it can readily be seen that, to the extent they are relevant in the circumstances of the particular case, all the factors raised in *Aberdeen* and *Data Select* will be covered, without the need to refer back explicitly to those cases and attempt to structure the FTT’s deliberations artificially by reference to those factors. The FTT’s role is to exercise judicial discretion taking account of all relevant factors, not to follow a checklist.

[46] In doing so, 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 however important that this should not descend into a detailed analysis of the underlying merits of the appeal...”

Length of delay

45. It was common ground that the relevant deadline for appealing was 30 days from 13 October 2020 and that the appellant did not appeal until 7 July 2023. The delay in appealing was therefore 2 years, 7 months and 24 days. There was no dispute that this was a serious and significant delay.

Reasons for delay

46. In summary, the reasons given by Mr Zafari for the delay are that he relied on his accountants’ assertions that an appeal would be made to the Tribunal and that he had relied on his accountants because his English is poor, he was unable to understand the relevant appeal process and he was caring for his very ill parents.

47. There were submissions made that some of the delay (between January 2023 and July 2023) arose because of delays in HMRC sending information to Mr Zafari’s solicitors.

Balancing all the circumstances

Whether there is a good reason for the delay

Belief that accountants had appealed on his behalf

48. Mr Zafari's grounds of appeal and submissions on his behalf indicated that he believed that both of his accountants had made the required appeals and that he had been diligent in following up progress with them.

49. With regard to Heartlands, his first accountants, we do not accept that Mr Zafari could have had any such belief. Heartlands ceased to be involved in correspondence with HMRC in March 2017, at which point no appealable decision had been made. Subsequent correspondence was to Mr Zafari directly, only. The first appealable decisions were issued on 23 February 2018 and these were appealed by Mr Zafari directly. Although Mr Zafari's witness statement included criticisms of Heartlands, we do not consider that Heartlands can be regarded as having contributed to the delay in appealing.

50. Mr Zafari states in his witness statement that he "was proactive and moved to [his second accountants, Meer & Co] in desperation to have matters resolved". The context of this comment implied that he considered that Heartlands were not acting properly on his behalf.

51. In correspondence in 2023 with Mr Zafari's solicitors, Meer & Co stated that they were appointed by Mr Zafari in September 2018. However, all correspondence with HMRC was with Mr Zafari directly from March 2017 until 30 July 2019. As noted above, in February 2019 Mr Zafari stated that he was seeking new advisers. On 28 May 2019, he told HMRC that he was still looking for an accountant. Given the continuing direct correspondence between Mr Zafari and HMRC and Meer & Co's first letter to HMRC enclosing a 64-8 agent authorisation dated 31 July 2019, we find that on the balance of probabilities that Meer & Co's reference to September 2018 in the correspondence with the solicitors was an error and that they were not instructed by Mr Zafari in respect of these matters until late July 2019. If they had been instructed in September 2018, it would be somewhat surprising that they would have delayed filing a 64-8 and that Mr Zafari would be telling HMRC in February and May 2019 that he was still seeking representation. Indeed, even if Meer & Co were instructed in September 2018, there would still be a considerable time period during which Mr Zafari did not instruct accountants.

52. From the documents provided, as set out above, Heartlands ceased to be involved around March 2017. We find that Meer & Co were instructed in July 2019. Given that over two years elapsed between Heartlands ceasing to act for Mr Zafari and his appointment of Meer & Co, during which time Mr Zafari corresponded directly with HMRC, we consider that Mr Zafari's witness statement shows a poor grasp of history. He may recall events as he now wishes they had occurred, rather than as they in fact took place.

53. Meer & Co appealed to HMRC on his behalf on 31 July 2019. In July 2020, following correspondence in the intervening months, they advised HMRC that Mr Zafari had not responded to their requests to contact them to provide required information.

54. Mr Zafari's witness statement goes on to say that he had instructed Meer & Co to appeal to the Tribunal and that he believed that they were progressing the appeals and "at all material times" he believed that Meer & Co had done so and that there were no issues with time limits. Given the correspondence sent to him on 7 January 2021, in which HMRC stated that the matter was considered settled as no review or appeal had been requested, we consider that his recollection may not be entirely accurate.

55. Mr Zafari said that, when he was served with a statutory demand in August 2022, Meer & Co had told him that they were dealing with everything and that he did not require solicitors.

At that time, Meer & Co wrote to HMRC to request permission to submit late amendments to some of Mr Zafari's tax returns, claiming overpayment relief in respect of unclaimed expenses: the correspondence from the solicitors in 2023 to HMRC prior to the appeals (and even after) is consistent with the solicitors having understood that this was the course of action which Meer & Co were pursuing.

56. Mr Zafari stated that he did not realise that no appeals had been submitted until the bankruptcy petition was issued. In support of this, Mr Zafari stated that an email sent on his behalf on 14 April 2022 "clearly illustrates" that he believed that the appeals to the Tribunal were being submitted. The only email of that date provided to the Tribunal is an email to HMRC (sent via Mr Zafari's friend's email account) which states that Mr Zafari would start paying £500 "whilst the Tribunal case is submitted through my accountant". There is, however, no correspondence of any description between Mr Zafari and his accountants to this effect. Mr Zafari stated that, at this time, the accountants were still telling him that everything was under control even though he was corresponding with HMRC debt management and the reference is to an appeal apparently yet to be made over a year after HMRC had advised that the matter was considered settled. In the hearing, Mr Zafari stated that he did not know what this email was in response to as his friend and the accountants "were doing everything", although he also said that he had decided to start paying HMRC as he would receive the money back if it was an overpayment.

57. Mr Zafari's evidence in the hearing was that he was willing to pay any tax due but had not done so because the accountants had told him that they were "in contact with the tax man, the process is almost complete, will be finalised very soon" and that no tax should be due. This is not consistent with an intention to appeal amounts due.

58. Mr Zafari could not recall when Meer & Co had told him that an appeal had been submitted to the Tribunal, although he said that they had told him at some point that they would go to Tribunal. His evidence in the hearing was that he had tried to call Meer & Co many times for an update and asked what was happening with the appeal and that Meer & Co would tell him that there was no problem. It was contended that his friend's witness statement supported this: it is certainly the case that both Mr Zafari's witness statement and his friend's witness statement make the same assertions in almost exactly the same words. Mr Zafari confirmed in the hearing that his witness statement had been written for him in English, following his explanation of events.

59. Following receipt of a bankruptcy petition Mr Zafari instructed solicitors, who contacted Meer & Co in March 2023 requesting information to enable them to respond to HMRC's bankruptcy petition. The solicitor's letter of 30 March 2023 sets out specific information requested, including all documents and file notes. The letter does not request information about, nor make any reference to, any tribunal appeal having been made.

60. Letters from the solicitors to HMRC dated 29 March 2023 and 26 April 2023 in respect of the bankruptcy petition make no reference to any tribunal appeal having been made.

61. In an email from HMRC to the solicitors on 25 May 2023, HMRC stated that "Mr Zafari did appeal but was not successful".

62. In a letter to HMRC Debt Management dated 16 June 2023 the solicitors state (inter alia) that Mr Zafari "will be appealing to the Tribunal" and that "the only cause of delay in appealing to the Tribunal" was HMRC's failure to provide documents which had been requested from them by the solicitors. A letter to HMRC PAYE of the same date is written on the basis that what was in dispute was HMRC's refusal to allow Mr Zafari to make late amendments to his tax returns in order to claim additional expenses to offset his tax liability for 2013/14, 2014/15, 2015/16 and 2017/18. Again, there is no contention that a tribunal appeal had already been

made in respect of the assessments nor any indication that the reference to an appeal in the email of 25 May 2023 from HMRC was taken to refer to a tribunal appeal rather than an appeal to HMRC.

63. On 4 August 2023 the solicitors sent a letter before claim to HMRC PAYE regarding a proposed claim for judicial review of the refusal to allow late amendments. This letter makes no reference to any tribunal appeals having been made although we note that the appeals to this Tribunal had been at least dated by then.

64. The first reference by the solicitors to any appeal to this tribunal is in a letter of 22 August 2023, in which they state that they have submitted appeals to the tribunal. HMRC responded on 31 August 2023 advising that some of the information requested in respect of the penalties could not be provided as no appeal had previously been made. The solicitors' reply of 7 November 2023 does not dispute this statement.

65. Given the content of the solicitors' correspondence in particular, we do not accept Mr Zafari's contention that he believed that his accountants had submitted appeals to this Tribunal. The only evidence to this effect provided is the email of 14 April 2022 (by which stage the appeal would already have been very late) which indicates only that either Mr Zafari or his friend apparently thought at that time that an appeal would be made. The email does not state that an appeal has already been made and we consider that the content of the solicitors' initial correspondence after the bankruptcy petition would have been very different if Mr Zafari had believed, when he instructed the solicitors, that any appeals had been made by his accountants.

66. Indeed, the solicitors' letter to HMRC PAYE of 16 June 2023 makes reference to the accountants having sought to make amendments to his tax returns when they discovered that amendments needed to be made and states that Mr Zafari had not failed to instruct the accountants to make those amendments. Meer & Co had written to HMRC in August 2022, following the statutory demand, to request permission to amend Mr Zafari's tax returns out of time. We consider that Mr Zafari may now be confusing those instructions with instructions to appeal to the Tribunal. We note that Mr Zafari's evidence in the hearing was that his advisers spoke to him in Punjabi and that he understood all of their explanations about tax matters.

67. Mr Zafari's evidence in the hearing was that he did not tell the solicitors anything about the tribunal, that he did not know the process of appealing to the tribunal. We do not consider that a person who had been regularly seeking updates on the appeal progress with his accountants would not have told his solicitors, when instructing them on a bankruptcy petition from HMRC, that he thought that appeals had been made by his accountant. Further, we consider that this is not consistent with the evidence in his witness statement (and the submission made in the hearing) that he found out that no appeals had been submitted when the bankruptcy petition was served on him. We consider that, if this had been the case, he would have told his solicitors and they would have sought information in order to bring an appeal (or at least write to Meer & Co for an explanation). The correspondence from the solicitors, as noted, does not refer to an appeal to this Tribunal until June 2023. On balance, we consider that Mr Zafari did not tell his solicitors that appeals had been made because he did not believe that any appeals had been made.

68. In summary, we do not consider that Mr Zafari has established that failure by either of his accountants to appeal on his behalf was a reason for the delay in bringing these appeals. Heartlands, as noted, ceased to act before any appealable decision was made. Meer & Co submitted an appeal to HMRC on his behalf when he eventually instructed them, but Mr Zafari was directly advised that the appeal had failed due to the lack of response and so, we consider, was aware that there was no appeal in place to HMRC. There was no clear evidence that any instructions were given to Meer & Co to appeal to the Tribunal, and the correspondence

indicates that Meer & Co appear to have acted when instructed to do so. Although there is a passing reference to the possibility of an appeal over a year after Mr Zafari was advised by HMRC that no appeal had been made, we find that Mr Zafari made no mention of any appeal when he instructed solicitors and conclude that he did not believe that there was any such appeal in place.

Reliance on his accountants

69. Mr Zafari also contended that he was heavily reliant on his accountants because his English was poor and he did not understand the relevant appeal process. To the extent that this was a reason for the delay, in effect because he was reliant on others to deal with matters for him, we note that Mr Zafari was able to appeal to HMRC directly in response to the assessments sent to him in February 2018 and that he was able to correspond with HMRC for over two years, including writing to ask to appeal in April 2018 and September 2018, whilst he was unrepresented. His friend appears to have assisted him with this, but we consider that indicates that Mr Zafari had access to other assistance if he needed it and so was not reliant on his accountants in this context.

70. Mr Zafari further contended that he was reliant on accountants because of his caring responsibilities for his parents. Various medical letters from 2016, 2017 and 2018 were provided in the bundle which noted that Mr Zafari and his wife cared for his parents. A letter to the Home Office in 2017 in support of his parents' application for leave to remain in the UK stated that he as the primary carer for his parents with support from his wife and his brothers. Mr Zafari's mother died in May 2022; his father died in April 2023.

71. Whilst Mr Zafari clearly had caring responsibilities for his parents, we do not consider that he has established that these meant that he was incapable of dealing with his tax affairs effectively to the point where he was wholly reliant on advisers and incapable of dealing with matters at all. Indeed, as noted above, he was able to appeal directly to HMRC in 2018 and was able to instruct advisers to deal with a statutory demand in August 2022 and a bankruptcy petition in early 2023.

72. As such, we do not consider that Mr Zafari has established that reliance on his accountants was a good reason for the delay in appealing.

HMRC delays in providing information

73. It was submitted that Mr Zafari realised in January 2023 that no appeal had been made and that the delay in appealing between January 2023 and July 2023 arose because HMRC failed to provide relevant information when requested by Mr Zafari's solicitors, and that it was reasonable to wait to get details in order to appeal.

74. The first correspondence between the solicitors and HMRC was dated 29 March 2023 (the contents of this letter indicate that it was the first such piece of correspondence). Even disregarding our findings above as to Mr Zafari's belief that any appeal had been made, the submission is accordingly unsustainable as to the period between January 2023 and 29 March 2023 (at the earliest).

75. As noted above, we do not consider that Mr Zafari has established that he believed that any appeals had been made. None of the correspondence from the solicitors, whether to HMRC or Mr Zafari's previous advisers, prior to 16 June 2023 includes any indication that they were seeking information to enable them to check the status of existing appeals. The correspondence refers only to seeking information to defend the bankruptcy petition.

76. The earliest clear reference, as noted above, to making an appeal to this Tribunal was in correspondence to HMRC Debt Management of 16 June 2023 which also stated that HMRC's delay in providing documents was causing a delay in making that appeal, although the previous

correspondence made no reference to the documents being required in order to make an appeal. That email was sent to HMRC Debt Management despite an email to the solicitors from HMRC Debt Management on 25 May 2023 with closure notices and assessments, advising that further correspondence on these should be to the investigating officer.

77. Accordingly, we do not consider that any delay by HMRC in providing information is a reason for any material part of the delay in appealing.

78. Overall, we do not consider that Mr Zafari has established that there was a good reason for the delay.

Merits of the appeal

79. As noted in *Martland*, the Tribunal can have regard to obvious strengths or weaknesses of the substantive appeal, being relevant to prejudice, but are cautioned against descending into a detailed analysis of the underlying merits of that appeal.

80. For Mr Zafari it was contended that his substantive case was very strong, that it was his position that deposits to his bank account were from family and friends rather than being business income. He also contended that HMRC had failed to allow expenses in respect of a rental business. On this basis, it was contended that HMRC had clearly overcharged Mr Zafari and that his appeal would inevitably therefore be at least to some extent allowed.

81. We do not agree that this is an obviously strong case of the sort contemplated; whether or not Mr Zafari can establish that amounts were loans and that expenses should be allowed (as the burden of proof is on Mr Zafari in that respect) will require an examination of evidence that we consider would involve the sort of detailed analysis that *Martland* cautioned against (and in respect of which we did not have all of the evidence). We do not agree that it is inevitable that Mr Zafari would succeed to some extent. As such, we do not consider that the potential merits of the substantive appeal carry any significant weight in considering whether or not to grant permission to appeal out of time.

82. It was also contended that HMRC had incorrectly assessed some of the penalty assessments, as the penalty explanation letter had stated in respect of some of the penalties that the minimum penalty for a prompted deliberate inaccuracy was 45%. Paragraph 10(2), Schedule 24, Finance Act 2007 sets the minimum penalty for such an inaccuracy at 35%.

83. On a review of the penalty explanation letter, HMRC stated that the minimum statutory penalty for such inaccuracy was 45% in respect of the 2011/12 penalty and the penalties for the three years 2012/13 to 2014/15. On the face of it, there appears to have been an error made by HMRC. Submissions by HMRC suggested that this might not have been carried through to the assessment, but the penalty assessment is for the same overall figure as set out in the explanation letter.

84. For the 2011/12 penalty, HMRC allowed no mitigation and charged the statutory maximum penalty for such an inaccuracy, being 70%. The incorrect statutory minimum penalty statement made no difference to the penalty charged. For the other, the mitigation allowed means that the penalty is potentially 1% higher (approximately £600) than might otherwise apply.

85. It was contended that this was a paradigmatic example of the relevance of the merits of an appeal and so should be regarded as close to decisive in giving permission to appeal late,

86. We note from *Martland* that the strengths or weakness of a case go to the prejudice to the parties of giving, or not giving, permission to appeal. It is not a point to be considered in isolation nor is a strong case automatically a reason to grant permission to appeal out of time.

87. In that context, we consider that it is relevant that the specific effect of the error (if there was an error, noting HMRC's submissions) regarding the penalties is approximately £600 in the context of aggregate penalties of over £70,000 and, in considering the contribution to prejudice and the balancing exercise, we do not consider that it carries significant weight.

Prejudice to the parties

88. The rest of the prejudice to the parties is obvious: if permission is not granted, Mr Zafari will lose the opportunity to contest the assessments and penalty notices and would have the financial consequences that follow. It was contended that Mr Zafari would be made bankrupt and lose his life savings, although this was not particularly consistent with Mr Zafari's evidence in the hearing that he had told his accountants that he was prepared to pay whatever tax was owed. It was also not consistent with information in his solicitors' letter to HMRC of 16 June 2023 which states that Mr Zafari had sufficient assets to settle his bankruptcy petition liability. It was contended that the financial impact was disproportionate in the circumstances and that Mr Zafari would be left needing to bring proceedings against his former accountants for negligence, which would be likely to be a significantly less valuable cause of action.

89. The prejudice to HMRC if permission is granted is that they would be required to deal with litigation of a matter which they had considered long closed. It was submitted for Mr Zafari that, as the majority of the burden of proof was on him, there would not be significant prejudice to HMRC. HMRC contended that they would still be required to allocate resources to a matter which had been considered closed.

90. We do not consider that the aspects of prejudice set out above carry particularly significant weight on either side: these are not unusual consequences of an appeal being brought late.

Public interest

91. It was not disputed that there was a public interest in enforcing compliance with time limit, and also in finality in litigation.

Conclusion

92. Overall, we do not consider that it is appropriate to grant permission to appeal out of time. The delay in appealing is serious and significant and we do not consider that good reasons have been established for the delay. In balancing all of the circumstances of the case, and noting the starting point in *Martland*, we do not consider that there are any circumstances which outweigh the delay and lack of good reasons.

93. The application is therefore dismissed.

Right to apply for permission to appeal

94. 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.

Release date: 12th JUNE 2025