Neutral Citation: [2026] UKFTT 01034 (TC)

Case Number: TC 09953

FIRST-TIER TRIBUNAL
TAX CHAMBER

Taylor House

Appeal reference: TC/2024/04574

PROCEDURE – application for permission to appeal out of time – whether appeal made late – whether letters sent and received – application of Martland – appeal dismissed

Heard on: 21 and 22 May 2026
Judgment date: 08 July 2026

Before

TRIBUNAL JUDGE HUGO HOLMES
TRIBUNAL JUDGE ANNE FAIRPO
MOHAMMED FAROOQ

Between

RH INDEPENDENT HEALTHCARE LIMITED

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Mr Ross Birkbeck of counsel

For the Respondents: Mr Emile Simpson and Mr Arthur Wong of counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs

DECISION

INTRODUCTION

1. This case concerned an application by RH Independent Healthcare Limited ("the Appellant") for permission to notify an appeal to the Tribunal outside the statutory time limit.

2. The appeal related to (1) a determination issued by HMRC on 9 March 2012 under regulation 80 of the Income Tax (Pay As You Earn) Regulations 2003 (the "Income Tax Determination" and the "Regulations" respectively) and (2) a notice issued on 20 September 2012 under section 8 of the Social Security Contributions (Transfer of Functions) Act 1999 (the "NICs Notice").

BACKGROUND AND CHRONOLOGY

3. The Appellant is part of a group of companies known as the "Abbey Group". The Abbey Group also included the following other companies:

(1) Abbey Healthcare Homes Ltd;

(2) Abbey Healthcare (Kendal) Ltd;

(3) Abbey Healthcare (Huntingdon) Ltd;

(4) Abbey Healthcare (East Kilbride) Ltd;

(5) Trees Park (East Ham) Ltd;

(6) Trees Park (Kenyon) Ltd; and

(7) Abbey Healthcare (Farnworth) Ltd.

4. In the tax years 2007-08 and 2008-09 the Appellant and other Abbey Group companies entered into arrangements under which funds were transferred to employer financed retirement benefit schemes ("EFRBS"). HMRC is challenging the tax treatment of contributions into the EFRBS. Litigation involving the other Abbey Group companies is ongoing (the "Other Appeals").

5. In March and September 2012, the Respondents issued a Regulation 80 determination and a section 8 decision to the Appellant=. The Appellant appealed both decisions to the Respondents within time.

6. On 3 February 2023, the Respondents issued a "view of the matter" letter, followed by a revised version on 14 June 2023. This offered the Appellant a statutory review. On 21 June 2023, the Appellant accepted this offer.

7. On 13 October 2023, HMRC wrote to the Appellant proposing an extension to the review period (the "13 October 2023 Letter").

8. On 22 November 2023, HMRC wrote a Review Conclusion Letter (the "RCL"), notifying the Appellant that the determinations and decision were upheld and setting out a 30-day time limit for appealing to the Tribunal. Whether this was sent and received was a matter for the Tribunal to determine in this case.

9. HMRC issued further correspondence on 6 February 2024 (in relation to follower notices).

10. On 20 March 2024, the Respondents wrote a letter (the "March 2024 Letter") to the Appellant confirming that the review had concluded and asking whether the Appellant intended to appeal to the Tribunal. HMRC maintain that a copy of this letter was also sent to the Appellant's adviser ("Streets") on 21 March. Whether this letter was sent and received was a matter for the Tribunal to determine in this case.

11. In July 2024, the Appellant's then Representative (Mr Alan Craddock) corresponded with HMRC regarding case management proposals for the other EFRBS cases. This correspondence also discussed whether the Appellant was making an appeal. Mr Craddock corresponded with his clients and a previous adviser ("GreyEclipse"), concluding that no appeal had been filed in respect of the Appellant.

12. On 16 July 2024, HMRC wrote to the Appellant confirming that, in the absence of an appeal, the determinations were treated as settled, enclosing the earlier Review Conclusion Letter (the "16 July 2024 Letter").

13. On 30 July 2024, the Appellant submitted a Notice of Appeal to the Tribunal (the "Appeal").

ISSUES FOR THE TRIBUNAL

14. The Appellant maintains that their appeal was made in time as they did not receive (a) the letter of 13 October 2023 requesting an extension, (b) the RCL in November 2023, and (c) the March 2024 Letter (together the "Missing Letters"), and appealed within 30 days of receiving the 16 July 2024 Letter. The Tribunal needs to determine whether the Missing Letters were sent in order to determine whether the appeal was made late and, if so, the extent of the delay in appealing.

15. The Tribunal must determine the effect of HMRC requesting an extension of time for the RCL, but receiving no response, on the Appeal.

16. If the Tribunal finds that the Appeal was late, then we must consider whether to grant permission to bring the appeal late.

17. We are grateful for the clear and comprehensive submissions, both written and oral, provided by Mr Birkbeck for the Appellant and Mr Simpson. However, we have not found it necessary to refer to each and every argument advanced or all the authorities cited in reaching our conclusions.

18. We refer to Mr Simpson as making the submissions for HMRC. This is purely for convenience and should not detract from the value of Mr Wong's helpful contributions. Mr Wong conducted part of the cross-examination and may well have drafted parts of HMRC's skeleton argument.

RELEVANT LAW

19. Regulation 80(5) provides that the Determination is to be treated as an assessment to tax under parts 4 to 6 of the Taxes Management Act 1970 ("TMA"). Similarly, section 13 of the 1999 Act together with regulation 7 of the Social Security Contributions (Decisions and Appeals) Regulations 1999 provides that section 49A to 49I of the TMA apply to in respect of the NICs Notice.

20. S.49C establishes the process for HMRC offering a review.

> (2) When HMRC notify the appellant of the offer, HMRC must also notify the appellant of HMRC's view of the matter in question.
>
> (3) If, within the acceptance period, the appellant notifies HMRC of acceptance of the offer, HMRC must review the matter in question in accordance with section 49E.

21. S.49D(5) establishes that where s.49C applies,

> the appellant may notify the appeal to the tribunal, but only if permitted to do so by section 49G or 49H.

22. S.49E sets out the HMRC's obligations regarding the conclusion of reviews.

> (6) HMRC must notify the appellant of the conclusions of the review and their reasoning within—
>
> (a) the period of 45 days beginning with the relevant day, or
>
> (b) such other period as may be agreed.
>
> (7) In subsection (6) "relevant day" means—
>
> (a) in a case where the appellant required the review, the day when HMRC notified the appellant of HMRC's view of the matter in question,
>
> (b) in a case where HMRC offered the review, the day when HMRC received notification of the appellant's acceptance of the offer.
>
> (8) Where HMRC are required to undertake a review but do not give notice of the conclusions within the time period specified in subsection (6), the review is to be treated as having concluded that HMRC's view of the matter in question (see sections 49B(2) and 49C(2)) is upheld.
>
> (9) If subsection (8) applies, HMRC must notify the appellant of the conclusion which the review is treated as having reached.

23. S.49G establishes the window for appealing to the Tribunal where the Appellant has requested a review.

> (1) This section applies if—
>
> (a) HMRC have given notice of the conclusions of a review in accordance with section 49E, or
>
> (b) the period specified in section 49E(6) has ended and HMRC have not given notice of the conclusions of the review.
>
> (2) The appellant may notify the appeal to the tribunal within the post-review period.
>
> (3) If the post-review period has ended, the appellant may notify the appeal to the tribunal only if the tribunal gives permission.
>
> (4) If the appellant notifies the appeal to the tribunal, the tribunal is to determine the matter in question.
>
> (5) In this section "post-review period" means—
>
> (a) in a case falling within subsection (1)(a), the period of 30 days beginning with the date of the document in which HMRC give notice of the conclusions of the review in accordance with section 49E(6), or
>
> (b) in a case falling within subsection (1)(b), the period that—
>
> (i) begins with the day following the last day of the period specified in section 49E(6), and
>
> (ii) ends 30 days after the date of the document in which HMRC give notice of the conclusions of the review in accordance with section 49E(9).

24. S.114 addresses the effect of errors on assessments and determinations.

> (1) An assessment or determination, warrant or other proceeding which purports to be made in pursuance of any provision of the Taxes Acts shall not be quashed, or deemed to be void or voidable, for want of form, or be affected by reason of a mistake, defect or omission therein, if the same is in substance and effect in conformity with or according to the intent and meaning of the Taxes Acts, and if the person or property charged or intended to be charged or

> affected thereby is designated therein according to common intent and understanding.
>
> (2) An assessment or determination shall not be impeached or affected—
>
> (a) by reason of a mistake therein as to—
>
> (i) the name or surname of a person liable, or
>
> (ii) the description of any profits or property, or
>
> (iii) the amount of the tax charged, or
>
> (b) by reason of any variance between the notice and the assessment or determination.

25. Section 7 Interpretation Act 1978 establishes the principles of deemed service by post.

> Where an Act authorises or requires any document to be served by post (whether the expression "serve" or the expression "give" or "send" or any other expression is used) then, unless the contrary intention appears, the service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

26. The Tribunal considered the following cases in light of the parties' submissions. Where they are relevant, we have quoted sections or cited paragraphs in the body of the judgment below.

(1) Martland v HMRC [2018] UKUT 0178 (TCC)

(2) Medpro Healthcare v HMRC [2026] EWCA Civ 14

(3) Katib v HMRC [2019] UKUT 189 (TCC)

(4) Romasave (Property Services) Ltd v HMRC [2015] UKUT 254 (TCC)

EVIDENCE

27. The Tribunal heard evidence from both parties focussing around their respective postal systems to support their assertions on whether the Missing Letters were sent and received. There was no dispute that the Missing Letters were addressed to the Appellant's registered address. We found all the witnesses who gave oral evidence to be truthful. They gave the best evidence they could.

28. The Appellant put forward the following witnesses:

(1) Kelsey Gillan – the Office Manager of Rawyards House Care Home (the Appellant's registered address);

(2) Paresha Purohit - Group Financial Controller for the group of companies which includes the Appellant (the "Group"); and

(3) Andy Taylor – Group Finance Director for the Group.

29. A witness statement was also provided from Alan Craddock. Mr Craddock was the Appellant's representative in respect of this appeal from 11 March 2024 but unfortunately passed away in October 2025. His witness statement was admitted into evidence and there were no submissions as to the weight to be given to it as he was not involved with the Appellant's post handling systems.

30. The Respondents put forward the following witnesses:

(1) Jordan Sanders – Review Officer who prepared the RCL;

(2) Nabila Ali – Officer of HMRC in the Mail Services Department.

31. Counsel took us to email correspondence involving the Appellant, Mr Craddock, GreyEclipse and HMRC in July 2024 relating to the Appeal and the Other Appeals discussed above at [11] (the "July 2024 Emails").

Mr Craddock

32. Mr Craddock's witness statement described his involvement in the Appeal and the Other Appeals. He was appointed to act for the Appellant on 11 March 2024 for all those appeals. He described correspondence with HMRC regarding them. He described contacting a Liz Bodfish of GreyEclipse to confirm whether they had a copy of the RCL.

33. His witness statement exhibited various emails between him, employees or officers of the Appellant and HMRC.

Ms Gillan

34. In her witness statement, Ms Gillan described her role as the Office Manager of the care home at the recipient address marked on the Missing Letters. She is an employee of the Appellant. She described her duties in relation to handling post that comes in. She scans them and emails them to a Mr Lee Fry in the Appellant's head office. If she is absent, then the "Care Home Manager" is responsible for following the same process.

35. In her witness statement she stated that she did not receive the RCL in November 2023. However, she did receive a copy as an enclosure to the 16 July 2024 Letter. Her witness statement indicated that she received this on 16 July 2024. She similarly stated that she did not receive the March 2024 Letter.

36. In oral evidence she provided further details on the care home, her role and the post-handling system. Mail handling is one part of a large and varied role as Officer Manager. She deals with payroll, fees, invoicing and collection among other matters. The care home has capacity for 74 residents.

37. The postman normally delivers the post to the care home's reception. Sometimes the postman physically hands the post to the receptionist. Sometimes they ring the doorbell to say they have been and leave the post on the front doormat. The receptionist passes the mail to Ms Gillan who sorts it.

38. Post arrives from various sources. She gave examples of local authorities, the NHS, and relatives. She passes birthday cards or other correspondence for residents directly to them. She deals with correspondence addressed to the "Care Home Manager", e.g. from the NHS or local authorities. If a letter came from HMRC she would send it to the Appellant's head office.

39. She does not exercise a decision-making function regarding letters from HMRC, e.g. deciding on their importance. She stated that she did not receive instructions to look out for particular HMRC correspondence in the windows when the Missing Letters were dated.

40. In cross-examination Mr Simpson tested her recollections of those time windows. Unsurprisingly she did not recall specifically what letters she received when. She keeps a hard copy file of the letters received. She had consulted her files when preparing the witness statement. This exercise prompted her statement that she had not received the letters.

41. She confirmed that she sent the 16 July 2024 Letter to head office on 24 July 2024, so would have received it in that window, not 16 July as in her witness statement.

42. During the hearing, she confirmed that she was on annual leave from 20 November to 3 December 2023. She did not recall taking any leave in March 2024.

Ms Purohit

43. Ms Purohit submitted two witness statements – one dated 20 May 2025 and the other dated 13 June 2025.

44. In the first witness statement she described her role in the post-handling process. She receives emails from Mr Fry with scans of correspondence sent to the care home address. She forwarded them on to Mr Craddock following his appointment. Prior to this she sent them to Liz Bodfish of GreyEclipse. She stated that she did not receive the RCL. She indicated that sometimes Mr Fry would send correspondence just to her and she would forward it on to Mr Taylor. Sometimes Mr Fry would send it both to her and to Mr Taylor.

45. In the second witness statement she addressed the 13 October 2023 Letter and the March 2024 Letter. She stated that she did not receive either of them. She referred to a spreadsheet that she kept in 2023, which recorded PAYE and NI liabilities. This spreadsheet recorded correspondence received from HMRC. There is no entry for the 13 October 2023 Letter or the RCL. The witness statement exhibited a copy of the spreadsheet.

46. In oral evidence she stated that she did not know when she stopped updating the spreadsheet. In cross-examination she confirmed that that she only used letters that reached her through the normal post-handling chain to update the spreadsheet.

47. In cross-examination Ms Purohit confirmed that she did not give Ms Gillan instructions to look out for specific letters. She attested that she never received the Missing Letters at her place in the post-handling chain.

48. Counsel for HMRC cross-examined Ms Purohit on her witness statement's assertion that the 13 October 2023 Letter and the March 2024 Letters were missing. They took her to Mr Taylor's witness statement, which asserted that he was only aware of the RCL being missing. She stood by her statement that all three were missing.

Mr Taylor

49. In his witness statement (dated 20 May 2025), Mr Taylor described the Appellant's post-handling process. He stated that the RCL was not received. He stated that he was "not aware of any other letters being missed in this process". He noted that all the Other Appeals' letters were received and appealed in time. He described the correspondence with Mr Craddock and HMRC in July 2024.

50. In oral evidence he stated that he had not seen any evidence of the other missing letters at the time of writing his witness statement. His comment that the RCL was the only missing letter reflected his understanding at the time of writing.

51. In cross-examination, Counsel for HMRC challenged this on the basis that he would have seen the 16 July 2024 Letter when writing his witness statement. The 16 July 2024 Letter refers to the March 2024 Letter. Mr Taylor acknowledged he must have written the witness statement without referring back to the March 2024 Letter.

52. Mr Taylor asserted that according to the Appellant's records, the March 2024 Letter was not received. Counsel for HMRC asked what date ranges and search terms he used when consulting his records. He was not able to confirm search terms other than that he would have been looking on dates around the dates of the Missing Letters and said he would have been looking for the RCL in November 2023.

Mr Sanders

53. In his witness statement, Mr Sanders described his involvement as the "Review Officer" on the case. He asked a colleague (Mr Waqas Saeed) to contact the Appellant by telephone to

request an extension of time for the RCL. Mr Saeed could not reach Mr Taylor and then contacted Streets. They informed him that they were not involved with this case. On 13 October 2023, Mr Sanders wrote to the Appellant requesting an extension of time. He stated that he finished his review and sent the RCL on 22 November 2023.

54. In cross-examination, Mr Birkbeck challenged Mr Sanders' decision to carry out the review in an extended timeframe without the Appellant's agreement. Mr Birkbeck suggested that this indicates Mr Sanders did not follow the letter of the law in conducting the review. Mr Sanders responded that the majority of requests for extensions of time receive no response from Appellants and it is normal practice not to follow up on them.

Ms Ali

55. In her witness statement, Ms Ali described her role in HMRC's Mail Services Team. She explained that a daily internal report (the "OFMA Report") logs outgoing correspondence. She set out the details recorded in the OFMA report for each letter. This includes the mailing service used to send the letter and the envelope code. She described the searches she conducted in the OFMA Report for the Missing Letters. Her witness statement exhibited entries from the OFMA Report for each one.

56. In oral evidence, she was asked whether the OFMA Report only shows that a document has been printed. She stated that the OFMA Report information for each letter gives confirmation that it has (1) gone from HMRC's post chain, (2) been enveloped and (3) sent to Royal Mail.

APPELLANT'S SUBMISSIONS

57. In the skeleton argument, Mr Birkbeck identified that there are five alternative possibilities as to lateness:

> (1) HMRC did not send the Review Conclusion Letter within the 45-day window required by s.49E(6) TMA. Therefore, HMRC should have sent a notification of the deemed conclusion of the review under s.49E(8) and (9). They have still not done so. Therefore the "post-review period", defined in s.49G(5), for the purposes of s.49G(2) is still running and the appeal is not late; or
>
> (2) The Appellant did not receive a copy of the RCL until 16 July 2024. This is effectively the deemed conclusion of the review under s.49E(9). Therefore, the clock started on 16 July and the Appeal is in time; or
>
> (3) The March 2024 Letter was effectively the notice of the deemed conclusions of the review. This would mean that the Appeal was 4 months late; or
>
> (4) The RCL in November 2023 was effectively the notice of the deemed conclusions of the review. This would mean that the Appeal was 8 months late; or
>
> (5) The RCL in November 2023 was a valid notice of the conclusions set out there. This would mean that the Appeal was 8 months late.

58. The Appellant's primary case is that the appeal is not late at all on the basis of (1) or (2). In oral submissions Mr Birkbeck focussed the underlying assertion for (2) – that the RCL and the March 2024 Letter were not received.

59. The Appellant's secondary case is that, if the Tribunal finds that the Appeal is late on the basis of (3), (4) or (5), we should grant permission to appeal late, applying *Martland*.

60. Mr Birkbeck's submissions regarding the evidence on postage can be summarised as follows.

(1) The Appellant's system for handling post was not infallible. However, it was straightforward and reliable.

(2) HMRC's approach to the enquiry was confused. Their approach to contacting Streets was inconsistent between the Missing Letters. They decided not to send a copy of the RCL to the Appellant's tax agents, Streets, on the basis of a phone conversation between an HMRC officer and that agent, without checking with the Appellant. Mr Sanders departed from the statutory process by taking an extension of time for the RCL without the Appellant's agreement.

(3) The Appellant received another letter, dated 6 February 2024 and concerning a follower notice. This worked its way through the Appellant's post-handling processes. This indicates that they were processing HMRC correspondence successfully.

(4) HMRC maintains that they sent a copy of the March 2024 Letter to Streets. However, Streets did not inform the Appellant of this.

(5) The consistent trend across the Missing Letters (including Streets not forwarding their copy on to the Appellant) is that they were sent by Mr Sanders and relate to the review process.

(6) Ms Purohit was tracking correspondence with HMRC in her spreadsheet described above at [45] and [46]. This does not show an entry for the Missing Letters arriving.

(7) The evidence therefore suggests that, on the balance of probabilities, a mishap occurred at HMRC's end in sending correspondence relating to the review. This is more likely than the three letters (or four including Street's copy of the March 2024 Letter) connected to the review each going astray within the Appellant's systems.

61. If we find that the Appeal was late, Mr Birkbeck's submissions on *Martland* can be summarised as follows.

(1) Length of delay – either four or eight months, either of which are "serious and significant" as described in *Romasave*. However, this time period is not significant in the context of the slow pace of the enquiry and appeal to HMRC.

(2) Reasons for the delay – the Appellant, or at least the officers, employees and agents of the Appellant who made decision regarding tax matters, were not aware of the conclusion of the review.

(3) Consideration of all the facts and circumstances –

(a) The Appellant risks paying approximately £290,000 plus significant accrued interest without a determination of the merits;

(b) It would be unfair to deny the Appellant the opportunity to litigate this issue after over a decade progressing the case; and

(c) HMRC would suffer minimal prejudice in terms of additional resource or reopening closed matters because the underlying issues would be litigated in the Other Appeals. Mr Birkbeck noted the discussion of permission to appeal out of time in the context of related appeals in *Romasave* (discussed below in the Respondents' submissions section). He submitted that the Other Appeals are relevant here because the progress of the Appeal has not been affected by the failure to appeal in time. The Appeal could join the ongoing progress of the Other Appeals without holding it or them back.

(d) HMRC did not show a great deal of concern about whether the appeal was in time in previous correspondence. Mr Birkbeck cited the March 2024 Letter, which asked if the Appellant intended to raise the Appeal. He also cited the July 2024 Emails. There HMRC asked whether the Appeal would be included in case management for the Other Appeals. He submitted this shows HMRC were willing to allow the cases to be joined.

(e) The Appellant's lack of knowledge of the passage of the appeal deadline was "innocent" and not an intention to disrespect time limits, citing *Bridgerman* [2026] UKFTT 00679 (TC); they had appealed very quickly after receiving the 16 July 2024 letter.

RESPONDENTS' SUBMISSIONS

62. Mr Simpson provided detailed submissions in the skeleton argument regarding the legislation concerning reviews and appeals. These can be summarised as follows.

(1) There was no agreement under s.49E(6)(b) for an extension to provide the RCL. Therefore the 45-day window in s.49E(6)(a) applied to the review.

(2) When that period concluded, s.49E(8) applied, deeming HMRC's view of the matter letter to be the conclusion of the review. The next day was the start of the "post-review" period under s.49G. By Mr Simpson's reckoning this started on 7 August 2023.

(3) HMRC was obliged under s.49E(9) to notify the Appellant of this deemed conclusion. This notification activates a 30-day window to the end of the "post-review period" under s.49G(5)(b)(ii).

(4) The RCL on 22 November 2023 was the notification of the deemed conclusion for the purposes of s.49E(9) and s.49G(5)(b)(ii). Therefore the "post-review" period by Mr Simpson's reckoning ran from 7 August 2023 to 22 December 2023.

(5) An appeal outside of the "post-review" period is late and so needs permission from the Tribunal.

(6) The RCL is worded as setting out the conclusions from a review process, not the deemed conclusions under s.49E(8). However, there is no defect of substance in the RCL. It would not have misled the appellant. Therefore s.114 TMA should apply to prevent any adverse effect of an error of form here.

63. This is based on the Appellant receiving the RCL in November 2023. Alternatively, he submitted that the same reasoning would apply for the March 2024 Letter, ending the post-review period on 19 April 2024.

64. Mr Simpson cited s.7 Interpretation Act as authority that HMRC needed to prove that it sent letters. If it gets over that hurdle, then they will be deemed to be properly received "unless the contrary is proved". He described this as the burden of proof shifting to the Appellant to demonstrate that they were not received.

65. He submitted that Ms Ali's evidence, particularly the exhibited reports, met the requirements facing HMRC under s.7.

66. He submitted that the Appellant's system for post-handling was vulnerable to error given the multiple links in the chain creating potential points of failure. He noted that Ms Gillan was away on leave during the window when the RCL would have arrived.

67. He submitted that the post-handling system was not simple as it involved the following:

(1) The receptionist;

(2) Ms Gillan (if on duty) or the Care Home Manager;

(3) Mr Fry;

(4) Ms Purohit;

(5) Mr Taylor; and

(6) The agent acting for the Appellant regarding the relevant tax issue.

68. He noted that no evidence has been provided from the Care Home Manager who was responsible for post while Ms Gillan was on leave in November/December 2023, nor from Mr Fry. He also noted that there has been no evidence provided from Streets confirming whether their records show any sign of the March 2024 Letter.

69. Mr Simpson's submissions on the *Martland* can be summarised as follows.

(1) Length of delay – this was either four or eight months. Either of these would be more than the three months identified in *Romasave* at [96] as "serious and significant".

(2) Reasons – if the Tribunal has already found that the appeal is late, this is because the Appellant received the RCL or the March 2024 Letter. Accordingly, the only reason the appellant has put forward for the lateness is eliminated by the Tribunal's findings. The *Martland* analysis could stop here.

(3) Facts and circumstances – if the Tribunal does wish to consider all the facts and circumstances:

(a) It cannot take account of the Other Appeals in assessing prejudice to HMRC. This is based on the comments in *Romasave* at [100] to [102]. Here the UT stated that the "existence or otherwise of related appeals ought not to be a material factor" as it would create an unfairness between taxpayers in "otherwise identical situations, some of whom have concurrent appeals and others of whom do not". He also submitted that the Appeal is not exactly the same as the Other Appeals and HMRC would need to devote additional resources to litigating it.

(b) The length of HMRC's enquiry does not provide context to how time limits should be approached for the Appeal. If the Appellant wanted the enquiry concluded earlier, they could have applied for a closure notice, but they did not.

(c) In *Medpro* the Court of Appeal emphasised that time limits must be respected. This is consistent with the UT in *Katib* held that "the need for statutory time limits to be respected was a matter of particular importance to the exercise of [the Tribunal's] discretion".

(d) The March 2024 Letter was HMRC prompting the Appellant to check their position in light of the RCL. This suggests HMRC were concerned to progress the matter, rather than taking a relaxed approach. Similarly, HMRC's email asking whether they wanted the Appeal included with case management for the Other Appeals did not constitute HMRC accepting the Appeal could be made out of time.

DISCUSSION

Whether the Appeal is late

70. The effect of the RCL is the same as the deemed conclusion from the view of the matter letter under s.49E(8). The RCL upheld the position in the 14 June 2023 view of the matter letter without reservation. Mr Simpson's submissions that this was a defect of form rather than a matter of substance were not disputed by the Appellants. We agree with Mr Simpson's submissions in this regard and so we conclude that s.114 TMA applies such that, if sent, the RCL should be regarded as a deemed conclusion letter for the purposes of s.49E(8), so that the

deadline for appealing would be established by the date of the RCL and the appeal would therefore be late.

71. The first question is whether HMRC sent the Missing Letters. If they were not sent or can be shown not to have been delivered, then the appeal is not late.

72. We note from Mr Sanders' evidence that he acted as if an extension to the review period had been agreed. While this may be a pragmatic approach from HMRC it is not in accordance with the legislation and so has the potential to create confusion and complexity in how cases develop. However, here the impact was limited as set out in Mr Simpson's submissions and accepted in paragraph 70 above. We do not see this application of an extension as indicating a departure from standard practices that could disrupt HMRC's postal processes.

73. HMRC asserted that they sent the Missing Letters to the Appellant and that this was supported by Ms Ali's evidence. Mr Birkbeck did not substantially challenge this. We accept Ms Ali's evidence regarding HMRC's postal processes. We find that the OFMA Reports showed that the Missing Letters were sent to the Royal Mail and so were posted.

74. Considering the evidence before us, we find that HMRC have meet the burden of proof on them to show that the requirements of s.7 Interpretation Act are *prima facie* met such that the Missing Letters will be deemed to have been delivered in the ordinary course of the post unless the Appellant can show otherwise.

75. We place little weight on the witness statement of Mr Craddock in this regard as he was instructed after the key events in 2023 and 2024 concerning postage. We also find that Mr Taylor was not involved with the relevant post-handling processes. His evidence was derived from Ms Gillan's evidence.

76. We find that Ms Gillan gave a reliable description of the post-handling processes at the care home, the Appellant's registered address. This gave a helpful insight into how the process was intended to operate but was of limited assistance in determining what happened at the specific times of the Missing Letters.

77. No formal log of mail received and processed was maintained, even though the care home receives mail from entities such as the NHS and local authorities, as well as mail for residents. Some of this would need to be dealt with by the home manager. Some would need to be forwarded to whoever needed to receive it. We would expect correspondence of this significance to be logged formally, to establish clearly what had been received and, if forwarded, to whom.

78. Ms Gillan's evidence was that mail would be opened and either dealt with directly, forwarded or, where it was something that she did not know how to deal with, scanned and forwarded to head office. In order to determine whether something had been received, in this case from HMRC, Ms Gillan consulted her emails to look for items sent to Mr Fry and reviewed the physical file of hard copies of letters received.

79. Ms Purohit's evidence was that she logged letters relating to the appeals across the related companies that she received in a spreadsheet and that, as there were no dates for the Missing Letters in that spreadsheet, that this meant that she had not received them. She confirmed that she had no direct knowledge of mail received at the care home, and so her knowledge of mail received was limited to the mail that she had received.

80. In the hearing Ms Purohit could not confirm when she stopped updating the spreadsheet, and the last date entry for any of the appeals is 9 October 2023.

81. We consider that the Appellant's witness evidence demonstrates the vulnerabilities in their post-handling system. We accept Mr Simpson's submissions on this at [66] and 67] above.

There are multiple potential points of failure. There are significant gaps in the evidence of how this system applied to the Missing Letters. Crucially, Ms Gillan was not present in the window when the RCL would have been due. There has been no evidence from the care home manager who was covering her duties at that time. There has also been no evidence from the receptionist or from Mr Fry.

82. We also note that the Appellant provided no evidence from Streets as to whether or not they had received the March 2024 Letter which HMRC stated had been copied to them. Mr Birkbeck submitted that Streets could not have received such a copy as they had not contacted the Appellant to notify them of receipt. Mr Taylor confirmed that he thought Streets would have forwarded such a letter to him, as they were the Company's tax agents, albeit not instructed to deal with this appeal. In the absence of any evidence on this point from Streets, we do not consider that assumptions as to Streets' likely behaviour are sufficient to show that the Appellant or Streets cannot have received the March 2024 Letter.

83. There was some discussion as the role of GreyEclipse, to whom Ms Purohit sent copies of letters received in respect of this Appellant and the related appeals. However, it was clear from documentation in the bundle that GreyEclipse were not acting for the Appellant (nor were they on record as agents with HMRC) and so we do not consider that it is particularly relevant that GreyEclipse stated in email that they had not received the Missing Letters from HMRC.

84. Considering the evidence before us we find, on the balance of probabilities, that the Appellant has not shown that they did not receive the Missing Letters and so have not displaced the deeming provisions of s.7 Interpretation Act.

85. We accept that the individual witnesses could not locate the Missing Letters when they searched for them within their emails around the dates when they would have expected to receive the letters and, in Ms Gillan's case at least, searched a physical file but this is not sufficient to show that the Missing Letters were not received.

86. Accordingly, we find that the Missing Letters were sent and, in accordance with s.7 Interpretation Act, were delivered to the Appellant and (in the case of the March 2024 Letter) by their agent, Streets.

87. Accordingly, the deadline for appeal was established by the date of the RCL and the appeal was therefore made late.

88. Having established that the appeal was made late, we need to consider whether permission should be granted for the appeal to be brought late. There was no dispute that the approach that we should take is that set out in *Martland* at [44].

Whether permission should be given to appeal late

Length of the delay

89. As noted at [70] above, we find that the RCL was effectively notice of the deemed conclusion of the view of the matter letter. Therefore, the RCL is the starting point for considering time limits. This means the length of the delay was approximately eight months.

90. It was not disputed that such a delay is serious and significant.

Reason for the delay

91. The reason for the late appeal was that the individuals responsible for the Appeal within the Appellant were not aware of the RCL until the letter of 16 July 2024 was received.

Evaluating all the circumstances.

92. We have found that the RCL was deemed received by the Appellant under s.7 Interpretation Act 1978, starting the time limit. This is not the same as the relevant individuals

within a company having knowledge of it. Therefore, contrary to Mr Simpson's submissions, we do need to consider the third stage of the *Martland* test.

93. We accept that the reason for lateness was that the individuals responsible for the Appeal within the Appellant were not aware of the RCL. However, we do not consider that this amounts to a good reason for the delay.

94. This is because the Appellant took no steps to follow up the review that they had requested on 21 June 2023. Although it was contended that there had been long delays in HMRC responding to correspondence, Ms Purohit's spreadsheet shows that the longest gap in the Other Appeals between an HMRC decision letter and the corresponding review conclusion letter was eight and a half months (12 January 2023 to 28 September 2023 in respect of "FNW"); the gap is otherwise 4-5 months. There was no explanation as to why no earlier efforts were made to follow up the review request made by the Appellant.

95. This lack of follow up is clearly illustrated in Mr Craddock's witness statement. He was appointed as representative for this appeal on 11 March 2024, but it was not until 10 July 2024, as part of an "onboarding process" that the review was followed up. There was no explanation as to why, having been appointed in March, his "onboarding" as representative was not until July. The request at that time to HMRC sought copies of all the determinations and decision notices in respect of all the Other Appeals. We were told that these were requested in preparation for a case management conference, suggesting that these were not kept by the relevant appellants (including the Appellant). The correspondence indicates that it was only as part of this exercise that it came to light that the RCL had been sent. There was no specific follow up to the review request.

96. We consider that a reasonable taxpayer would have not simply waited over a year for a review conclusion letter without having followed up with HMRC. If they had followed up once the usual gap in the Other Appeals had elapsed (around October/November 2023), or even once the longest gap had elapsed (around February/March 2024), they would have become aware that the RCL had been issued.

97. Mr Birkbeck's contentions that there was no intention to disrespect the time limits do not assist. The decision in *Bridgerman* is not binding on us and we note that that case was somewhat different. The appellant had responded in time to a review conclusion letter by writing to the Tribunal and HMRC, thinking that his response was sufficient to commence an appeal.

98. Regarding prejudice, we accept Mr Simpson's submissions on *Romasave* set out above at [69.(3)(a)] above. We do not regard the existence of the Other Appeals as affecting the position on prejudice for the reasons set out in the decision in *Romasave* at [100] to [102]. We do not accept Mr Birkbeck's submissions that the Other Appeals are still relevant to the question of prejudice. The UT has given clear guidance for good reasons that we should not consider the potential to join or be stayed behind other appeals when assessing prejudice to HMRC. We do not see how the practicalities of whether an appeal procedure would be slowed as affecting the UT's reasoning around consistency of treatment.

99. HMRC contended that they would be prejudiced by permission being granted because they would be required to divert resources to deal with this appeal, which they considered was not entirely the same as the Other Appeals. We accept that HMRC would be prejudiced by granting permission.

100. The Appellant suggested that HMRC had assumed that there was an appeal in place, or at least that the Appellant intended to appeal, such that it should not now object to a late appeal being brought and would not be prejudiced by a late appeal. We note that it is for this Tribunal

to decide whether or not permission should be granted for an appeal to be brought late: HMRC's views on the matter are not binding on us.

101. The prejudice to the Appellant is, of course, that they will be unable to defend this appeal further: that is a necessary consequence of a failure to appeal on time. There was a suggestion that, as the enquiries in this case have been open for many years, that the prejudice might somehow be greater. We do not consider that the length of an enquiry is particularly relevant to prejudice, noting that we had limited information about the reasons for the length of the enquiry, although it was suggested that HMRC had not acted with particular dispatch: there are many reasons that influence the length of an enquiry, and it is open to a taxpayer who thinks that an enquiry is unduly protracted to request a closure notice.

102. There were no submissions that the merits of the underlying appeal were such as to increase the prejudice to the Appellant if permission is not given (or, conversely, to HMRC if permission were given).

103. Evaluating all the circumstances and noting (as confirmed in *Medpro*) the particular weight to be given to the need for statutory deadlines to be respected, we are not satisfied that we should depart from the starting point set out in *Martland* that permission should not be given.

DECISION

104. The application for permission to appeal out of time is refused.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

105. 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: 08 July 2026