Medpro: the treatment of appeals filed after statutory deadlines

Management of taxes | General Features



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The case of *Medpro* re-examines the criteria that tribunals use to decide on the admission of appeals filed after statutory deadlines.

Key Points

What is the issue?

The article discusses the legal framework and recent case law regarding the admission of late appeals in tax tribunals. Appeals against tax assessments must be made within 30 days, but tribunals have discretion to admit late appeals if there is a reasonable excuse or other considerations justify it.

What does it mean to me?

The Upper Tribunal in *Martland v HMRC* established a three-stage test for admitting late appeals: assess delay length, reason for delay, and balance all circumstances including prejudice to parties. This has been widely applied to various tribunal deadlines, not just initial appeal filings, including costs regime opt-out deadlines.

What can I take away?

Tribunals have broader discretion than HMRC to admit late appeals. How they apply the *Martland* criteria, especially para 45, may be grounds for further appeals if not properly considered.

One of the first practical rules I learnt in tax was that appeals against assessments should be made within 30 days. Strictly speaking, if an appeal is not made within that 30-day period then the assessment becomes final. However, the legislation does provide for an element of flexibility in cases where that 30-day time limit is missed.

First, HMRC can admit the appeal late if it is satisfied that the appellant has a reasonable excuse for missing the 30-day time limit. However, even if HMRC is not so satisfied, the tribunal has the power to admit the late appeal. As was confirmed by the High Court in *R (on the application of Cook) v General Commissioners* [2007] EWHC 167 (Admin), the tribunal's approach to such applications is not limited to considering whether the appellant has a reasonable excuse for missing the time limit (see my article in the April 2007 issue of *Tax Adviser*).

The question that has since been asked is how applications for the late admission of an appeal should be addressed. At the simplest (as noted in *Cook*), this looks at the competing considerations of injustice to the taxpayer and prejudice to HMRC. However, further guidance has since evolved.

The most significant development came with the Upper Tribunal's decision in *Martland v HMRC* [2018] UKUT 178 (TCC).In that case, the Upper Tribunal had the advantage of looking at evolving case law in the civil courts and considering how the High Court and the higher courts had dealt with cases where litigants had missed deadlines and then sought from the courts relief from sanctions (i.e. a reversal of the ordinary consequences for missing a deadline).

With that in mind, the Upper Tribunal in *Martland* then gave the guidance set out in the box above.

These *Martland* criteria, often referred to as a three-stage analysis, have been repeatedly applied, not only to situations where a taxpayer has failed to appeal in time but also in those cases where an existing appeal is underway in the tribunal and where one of the tribunal's own deadlines has been missed. For example, they have been applied to the 28-day time limit for taxpayers to opt out of the costs regime which (by default) applies in cases allocated to the complex case category (see *Betindex Ltd (in liquidation) v HMRC* [2022] UKFTT 372 (TC)).

However, the applicability of the *Martland* guidance has come into question in the recent case of *Medpro Healthcare Ltd v HMRC* [2025] UKUT 255 (TCC).

The *Martland* criteria

'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.'
Martland v HMRC [2018] UKUT 178 (TCC)

The facts of the case

Three applications for a late appeal came before the First-tier Tribunal in October 2023. Two applications were made by a Mr Ruprai and the third by a company, Medpro Healthcare Ltd ('Medpro'). Medpro and a further company had both been assessed for penalties. Medpro's penalty was in excess of £1 million and the other company's penalty was for over £40,000. In relation to both penalties, Mr Ruprai had been issued with a personal liability notice requiring him to pay 100% of the penalties assessed on the two companies. Mr Ruprai was 70 days late in appealing against the £40,000 penalty. In respect of the £1 million penalty, both he and the company (Medpro) were five-and-a-half months late in appealing.

The First-tier Tribunal refused to admit the appeals. The taxpayers appealed against that refusal to the Upper Tribunal.

The Upper Tribunal's decision

The case came before Mr Justice Marcus Smith and Judge Jonathan Cannan.

They agreed that the appeal should be allowed and the case remitted to the First-tier Tribunal for fresh consideration. In short, they accepted that the First-tier Tribunal's decision was flawed for not sufficiently clearly setting out its reasons for reaching its decision. Allied to that, but representing a further reason for allowing the appeal, the Upper Tribunal was not sufficiently sure that the First-tier Tribunal had properly applied the third stage of the *Martland* analysis.

Furthermore, in the analysis that was given by the First-tier Tribunal, it appeared that at least some of the responsibility for the delay lay with the professional adviser for both Mr Ruprai and the company. Whilst case law is clear that an adviser's faults

will normally be attributed to the adviser's clients, this is not an invariable rule. The Upper Tribunal considered that the First-tier Tribunal had failed to consider whether the facts of this case merited a departure from the normal position (or, if the First-tier Tribunal had considered that issue, then whether its decision was again deficient for failing to explain adequately why the normal position was followed).

The preceding reasons were sufficient to allow the appeal. However, there was a point on which the two judges were unable to agree and that concerns the *Martland* test itself.

The judges agreed that the three-stage test set out in the *Martland* decision was appropriate. In the judges' view, that approached represented a valid expression of the wide discretion conferred by the statute on the First-tier Tribunal when it considers whether an appeal should be admitted late. What has proven to be controversial, however, was the additional commentary found at para 45 of the *Martland* decision.

It was accepted by the two judges that the terminology employed in para 45, being the need for 'litigation to be conducted efficiently and at proportionate cost', derived from the Civil Procedure Rules (CPR) which apply in the civil courts. Furthermore, the reference to 'statutory time limits [needing] to be respected' was the equivalent of the CPR's need 'to enforce compliance with rules, practice directions and orders'.

It was also agreed that, when applied in the civil courts, the CPR has the effect of bringing to the fore certain factors that have to be taken into account when a litigant is seeking relief from sanctions.

Mr Justice Marcus Smith noted that the broad statutory discretion given to the tribunal to admit late appeals does not promote any factor above any other. Accordingly, in his view, at the third stage of the *Martland* analysis, the tribunal should take the factors that it considers to be relevant and give them the weight that the tribunal considers appropriate. In other words, for a tribunal to adopt para 45 of *Martland* would be fettering the discretion granted to it by Parliament.

Mr Justice Marcus Smith noted that, as acknowledged in *Martland* itself, the admission of an appeal late is not totally akin to a case management decision being made in the course of ongoing litigation: instead, it involves the tribunal exercising a discretion specifically and directly conferred on it by statute to permit an appeal to come into existence at all.

On the other hand, Judge Cannan focused on the words ‘statutory time limits [needing] to be respected’ and considered that these were analogous to the CPR position because, whilst an appeal represents the beginning of the formal litigation stage, it is merely one step in a longer statutory process starting with an investigation. Unlike Mr Justice Marcus Smith, Judge Cannan was not persuaded that para 45 of *Martland* did not represent good law.

Commentary

As the two judges were agreed that the appeal should be allowed on the other grounds and the case remitted to the First-tier Tribunal for reconsideration, there was no need for the Upper Tribunal to resolve the impasse on the relevance of para 45. However, one day it might need to be resolved. (Previously, such deadlocks were resolved by the presiding judge’s view prevailing. However, case law in other areas of law suggest that a more nuanced approach is appropriate. That did not need to be addressed in this case because the two judges were in any event in agreement as to how the case should proceed, notwithstanding their disagreement on this important point.)

If Mr Justice Marcus Smith is correct, then a tribunal will need to refer only to para 44 of *Martland* and be free to decide what weight it should give to the various factors when deciding whether a late appeal should be admitted. On the other hand, if Judge Cannan is correct, then a failure to give prominence to the particular importance of the need for litigation to be conducted efficiently and at proportionate cost, and for statutory time limits to be respected, could amount to a misdirection as to the correct legal principles.

However, it should be noted that in those other circumstances when *Martland* is considered (i.e. where there have been compliance failures in the litigation process itself), the Upper Tribunal was clear that there was nothing wrong with para 45 and the particular issues mentioned therein being given additional prominence in the balancing exercise.

The case demonstrate the potential dangers that can be caused by the tribunal borrowing principles from different jurisdictions where the circumstances and procedural rules are different. Not only (as Mr Justice Marcus Smith recognised) does the particular rule in the CPR apply only once the litigation process has started but it

was modified a few years ago so as to take a harsher line in cases where, in the course of that extant litigation, one of the parties fails to do something by the required time. In contrast, the statutory provisions conferring a discretion on the tribunal to admit a late appeal do not contain any presumptions and therefore (if one follows the approach taken by Mr Justice Marcus Smith) the issues identified in para 45 should not assume any particular importance.

Separately, the *Medpro* case serves as a reminder of the importance of tribunals making clear their reasoning. The judicial guidance emphasises that the reasoning in a decision does not need to be lengthy but the parties should not be in any doubt as to why one has won and the other lost. Similarly, the case also emphasises the fact that an adviser's failings should not always be attributed to the adviser's client.

What to do next

The tribunal's discretion to admit a late appeal is broader than HMRC's. That makes the exercise rather unusual because usually the purpose of taking a case to the tribunal is to obtain an outcome HMRC could have reached itself. As a result, it will not usually be possible to analyse HMRC's reasoning if it refuses to admit a late appeal to see whether HMRC has taken into account the factors highlighted in para 45 of *Martland*. However, if a tribunal has considered a late appeal, its approach to para 45 of *Martland* could merit a further appeal. (Of course, any such appeal process should ideally be commenced in time.)

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