UT Neutral citation number: **[2026] UKUT 00173 (TCC)**

UT (Tax & Chancery) Case Number: UT/2025/000078

Upper Tribunal
(Tax and Chancery Chamber)

Hearing venue: Remote hearing

Heard on: 23 April 2026
Judgment date: 1st May 2026

Procedure – application for extension of time to seek permission to appeal – Martland v HMRC applied – application refused

Between

FURLONG SERVICES LIMITED

Appellant

- and –

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Geraint Jones KC instructed by GSP Law Limited

For the Respondents: Amy Cook, litigator of HM Revenue and Customs

DECISION

Introduction

1. The Appellant has made an application for permission to appeal a decision of the First-tier Tribunal (Tax Chamber) ("the FTT"). The application is out of time in the circumstances set out below. I refused the Appellant's application for an extension of time ("the Extension Application") on paper in a decision dated 23 February 2026. The Appellant requested an oral reconsideration of that decision. These are my reasons for refusing the Extension Application following an oral hearing.

2. The application for permission to appeal is against a decision of the FTT released on 25 July 2024 ("the Decision"). The FTT had heard an appeal against an information notice issued by HMRC. It confirmed certain aspects of the information notice requiring the Appellant to provide information and documents but varied other aspects of the information notice. The FTT noted at the end of the Decision that in accordance with paragraph 32(5) Schedule 36 Finance Act 2008, the Decision was final.

3. The Appellant seeks to challenge the Decision by way of appeal. As part of that challenge, it contends that there is a right of appeal against the Decision. This decision is concerned solely with whether there should be an extension of time for the Appellant to seek permission from the Upper Tribunal to appeal. In considering that question, I was also invited to address the merits of whether there is a right of appeal.

4. The Appellant applied to the FTT for permission to appeal on 27 August 2024. The FTT issued a decision refusing permission to appeal on 23 September 2024. It appears that this was sent to an incorrect email address for the Appellant's solicitor with conduct of the proceedings and so it was not received by them. The FTT re-sent the decision on 11 October 2024. The FTT refused permission to appeal on the basis that there was no right of appeal.

5. The Appellant was then entitled to apply to the Upper Tribunal for permission to appeal, assuming for present purposes there is a right of appeal. Upper Tribunal Rule 21(3)(b) provides that an application for permission to appeal has to be made in writing and received by the Upper Tribunal no later than one month after the date on which the FTT sent its notice refusing permission to appeal. The Appellant therefore had until 11 November 2024 to apply to the Upper Tribunal for permission to appeal.

6. The application for permission to appeal was not sent to the Upper Tribunal until 7 August 2025. It included grounds of appeal, a timeline of events dated 16 October 2024 entitled "The Facts and Litigation History" and the Extension Application which read as follows:

> The appeal to the Upper Tribunal was sent in time but was defective because it was sent using the wrong form. Consequently the matter was sent back. There was then added confusion over which address the form was sent back from and where the appeal was to be re-sent. This was an unfortunate set of errors. We submit that there is no prejudice (beyond what may be seen as a technical breach of the rules concerning time limits) as HMRC are well aware of the Appellants intention to appeal.

7. The Facts and Litigation History was a document that had been sent to the FTT in October 2024 setting out its grounds of appeal. Given its date, it contained no explanation of the delay in seeking permission to appeal from the Upper Tribunal. The only explanation for that delay appeared in the Extension Application as set out above.

8. The appeal was notified to HMRC by the Upper Tribunal on 11 August 2025 and HMRC were invited to make submissions on the Extension Application. Those submissions were received on 12 August 2025 and included a detailed timeline of events. HMRC objected to the Extension Application. Unfortunately, it appears that the submissions were not copied to the Appellant by HMRC or by the Upper Tribunal.

9. Resource and administrative issues in the Upper Tribunal meant that the application for permission to appeal including the Extension Application was not placed before a Judge until December 2025. At that stage I gave instructions for the Appellant to be provided with a copy of HMRC's submissions and directions as follows:

   (1) The Appellant was directed to provide its detailed response to HMRC's submissions by 20 January 2026. The response was to include copies of all documents relevant to the Extension Application.

   (2) HMRC were directed to provide any reply to the Appellant's response within 7 days of receipt. The reply was to include any additional documents relied on by HMRC.

10. The parties were informed that I intended to deal with the Extension Application on paper in light of those submissions.

11. There was no response from the Appellant's solicitor, and the Upper Tribunal chased a response on 27 January 2026. The Appellant's solicitor apologised but offered no explanation. It seems that the Upper Tribunal had not attached HMRC's submissions to the directions and a copy was immediately provided. The Appellant provided its response to HMRC's submissions within the hour. Provision had been made for a detailed response with copies of relevant documents, however the response simply stated:

    1. The factual history of the matter is not disputed.

    2. As set out in the Application for Permission to Appeal dated 7 August 2025, the Appeal to the Upper Tribunal was sent in time but was defective because it was sent using the wrong form. Consequently the matter was sent back. There was then added confusion over which address the form was sent back from and where the appeal was to be re-sent. This was an unfortunate set of errors. We submit that there is no prejudice to the Respondent as they were well aware of the Appellant's intention to appeal. However, there would be prejudice to the Appellant if the appeal were not able to be determined by the Upper Tribunal.

    3. In relation to the assertion that there is no right of appeal against the decision of Tribunal Judge Gauke dated 25 July 2024, we refer to paragraphs 11-22 of the Grounds of Appeal dated 16 October 2024 in this regard.

12. HMRC provided their detailed reply on 2 February 2026. It set out their submissions as to the 3-stage test to be applied to the Extension Application and included a bundle of relevant documents.

13. I will determine the Extension Application in light of the parties' submissions. It is appropriate to use the 3-stage test described in *Martland v HM Revenue & Customs* [2018] UKUT 178 (TCC) at [44] – [46] in the context of appeals to the FTT, as recently endorsed by the Court of Appeal in *HM Revenue & Customs v Medpro Healthcare Ltd* [2026] EWCA Civ 14:

> 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… 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 important however that this should not descend into a detailed analysis of the underlying merits of the appeal…

14. Before considering the 3-stage test, I must record my reasons for refusing an application to adjourn the oral hearing made shortly before the hearing and renewed at the hearing.

Application to adjourn

15. I set out below the reasons for the Appellant's delay, which are largely undisputed. Essentially, there was a catalogue of errors on the part of the Appellant's solicitors. Throughout the appeal to the FTT and until April 2026, the Appellant had instructed Rainer Hughes. On 1 April 2026, the Solicitor's Regulation Authority intervened to close down Rainer Hughes. The Appellant then instructed GSP Law Limited ("GSP") to act in relation to these proceedings. The chronology of events following my decision on paper dated 23 February 2026 is set out in the following paragraphs.

16. On 4 March 2026, a paralegal with Rainer Hughes who I shall identify as MN, emailed the Upper Tribunal to say that they had now had an opportunity to obtain their client's instructions following my decision. They requested that the matter be listed for an oral hearing. MN had been in contact with both the FTT and the Upper Tribunal on behalf of the Appellant throughout the proceedings.

17. The parties provided dates to avoid and on 11 March 2026 the Upper Tribunal issued a notice of hearing for 23 April 2026.

18. It appears that MN transferred to GSP when Rainer Hughes closed down. On 8 April 2026, she notified the Upper Tribunal that GSP had been instructed on behalf of the Appellant. The solicitor with conduct of the matter was Mr Essa. I am not aware whether Mr Essa had previously worked at Rainer Hughes.

19. On 14 April 2026, GSP served a bundle of documents in readiness for the hearing.

20. On 20 April 2026, both parties lodged their attendance forms and were sent links for a video hearing.

21. On 20 April 2026, GSP emailed HMRC to invite their agreement to an adjournment of the hearing. HMRC responded to express their concerns as to the timing and manner in which

that application had been made. However, they said that they were neutral on the question of whether the hearing should be adjourned.

22. An application for an adjournment was made to the Upper Tribunal on 21 April 2026. The grounds on which GSP sought an adjournment are as follows:

    (1) Mr Essa was out of the country which hindered the Appellant's ability to prepare for the hearing.

    (2) There was a lack of clarity on HMRC's case.

    (3) The Appellant was unaware that any procedural deadlines had been missed and it had had no opportunity to provide an explanation for the defaults.

23. I refused that application on paper but granted permission to the Appellant to renew the application at the beginning of the oral hearing. In renewing the application, Mr Jones KC rightly focussed on ground (3) and did not seek to rely on grounds (1) and (2). There was no reason Mr Essa's absence abroad should have affected the Appellant's ability to prepare for the hearing and HMRC's case had been clearly put in writing and was addressed in my decision on paper.

24. Mr Jones did maintain that the Appellant's director, Mr Curtis, had been unaware of any procedural defaults in relation to the application for permission to appeal until 8 April 2026, when GSP was instructed. He submitted that Mr Curtis should have an opportunity to explain the defaults, and in particular that Rainer Hughes had not informed him of those defaults.

25. During the course of the hearing, Mr Jones was able to take instructions from Mr Curtis as to what MN, then of Rainer Hughes, had told the Tribunal in her email dated 4 March 2026. Namely, that they had obtained instructions from the Appellant following my decision on paper and were requesting an oral hearing. I was told that Mr Curtis' firm instructions were that this email was simply wrong. His instructions had not been obtained.

26. Mr Jones submitted that the hearing should be adjourned for the Appellant to serve a witness statement from Mr Curtis setting out that he had no knowledge of the alleged defaults until 8 April 2026. The oral hearing could then be re-listed on the first available date thereafter.

27. Ms Cook on behalf of HMRC informed me that she had had some email correspondence with Mr Curtis on 8 April 2026 from which she inferred that Mr Curtis had indeed been unaware about what was happening in relation to the Appellant's appeals before the FTT or about the oral hearing. I was not provided with copies of that email correspondence. In the event, Ms Cook's submissions on behalf of HMRC were not entirely neutral. She invited me to take into account that vacating the hearing would result in yet further delay in dealing with the Extension Application and the application for permission to appeal.

28. I refused the adjournment application and informed the parties that I would give reasons in this decision. Taking into account all the circumstances, I did not consider that it was in the interests of fairness and justice to HMRC or in the interests of the administration of justice to postpone the hearing.

29. For reasons given below, I am satisfied that the Appellant's delay in applying to the Upper Tribunal for permission to appeal was caused by default on the part of its solicitors, Rayner Hughes. Given Ms Cook's concession that she believed Mr Curtis had not been kept informed by Rayner Hughes, I am prepared to accept that is the case until 8 April 2026, when he instructed GSP.

30. In the ordinary course, a failure by a litigant's legal adviser is treated as a failure by the litigant. I was referred to the decision of *HM Revenue & Customs v Katib* [2019] UKUT 189 (TCC) where the Upper Tribunal was considering the 3-stage approach to extending time limits in *Martland*. It stated at [54]:

> 54. It is precisely because of the importance of complying with statutory time limits that, when considering applications for permission to make a late appeal, failures by a litigant's adviser should generally be treated as failures by the litigant. In Hytec Information Systems v Coventry City Council [1997] 1 WLR 666, when considering the analogous question of whether a litigant's case should be struck out for breach of an "unless" order that was said to be the fault of counsel rather than the litigant itself, Ward LJ said, at 1675:
>
> > Ordinarily this court should not distinguish between the litigant himself and his advisers. There are good reasons why the court should not: firstly, if anyone is to suffer for the failure of the solicitor it is better that it be the client than another party to the litigation; secondly, the disgruntled client may in appropriate cases have his remedies in damages or in respect of the wasted costs; thirdly, it seems to me that it would become a charter for the incompetent (as Mr MacGregor eloquently put it) were this court to allow almost impossible investigations in apportioning blame between solicitor and counsel on the one hand, or between themselves and their client on the other. *The basis of the rule is that orders of the court must be observed* and the court is entitled to expect that its officers and counsel who appear before it are more observant of that duty even than the litigant himself. [emphasis added]

31. In my view, it is far too late in these proceedings for the Appellant to adduce evidence seeking to explain its delay in applying for permission to appeal. It had an opportunity to do so in the Extension Application and in its response to HMRC's submissions on the Extension Application. It might also have put in a witness statement from Mr Curtis prior to the oral hearing. Further, this is mitigated by the fact that I have accepted that Mr Curtis was unaware of defaults by the Appellant's solicitors.

32. HMRC came prepared to deal with the Extension Application. There would be prejudice to HMRC and to the administration of justice generally if the hearing were to be vacated and re-listed.

33. In deciding not to vacate the hearing, I took into account the nature of the decision which the Appellant seeks to appeal. In particular, Mr Jones acknowledged that compliance with the Information Notice as varied by the FTT would not be unduly onerous or costly for the Appellant. The prejudice is that HMRC would be given information which, if there is merit in the appeal, it would not otherwise have access to. It is not necessary for me to describe in detail the issues before the FTT. They were summarised by the FTT at [55] of the Decision. The information notice as varied requires the Appellant to provide the following information and documents:

> **Item 1**
> A breakdown of the income declared by Furlong in its accounts for each of the periods ending on 31 March 2017, 31 March 2018, 30 September 2019, 30 September 2020 and 31 July 2021, splitting the income based on its sources (e.g. income from farming, income from football etc).
>
> **Item 2**
> A breakdown of the income relating to the football industry that Furlong received in each of the periods ending on 31 March 2017, 31 March 2018, 30 September 2019, 30 September 2020 and 31 July 2021, stating who the work was completed for and the amount received from each paying party.

Item 4
For the period ending on 30 September 2019, details of the travelling expenses totalling £66,854. This should include the date expenditure was incurred and its value as well as an explanation of the business purpose.

Item 5
Copies of all consultancy agreements relating to the football industry entered into between Furlong and other parties between 1 December 2016 and 30 September 2019.

Item 7
Invoices for the travelling expenditure incurred during the period ending on 30 September 2019.

34. In the context of this case, I was not satisfied that having to provide this information would amount to serious prejudice to the Appellant, even if there was an arguable case that the FTT's Decision was wrong in law.

35. I now turn to consider the substance of the Extension Application by reference to the 3-stage test.

Length of delay

36. As noted above, the Appellant ought to have submitted its application for permission to appeal to the Upper Tribunal on or before 11 November 2024. It did not do so until 7 August 2025. That is a delay of some 9 months which on any view is a serious and significant delay.

Reasons for the delay

37. The reasons for the delay relied on by the Appellant may be summarised as follows:

(1) The appeal was sent to the Upper Tribunal in time but was defective because the wrong form was used.

(2) There was then added confusion over which address the form was sent back from and where the appeal was to be re-sent.

38. Those reasons were stated in the Extension Application and repeated in what was supposed to be the Appellant's detailed response to HMRC's objection. I set out my understanding of the chronology in my decision on paper and Mr Jones confirmed that the Appellant accepts that chronology.

39. The FTT refused permission to appeal on 23 September 2024, and this was sent to the Appellant's solicitors on 11 October 2024. The Appellant then sent a further application for permission to appeal to the FTT on 22 October 2024. This ought to have been sent to the Upper Tribunal.

40. The Upper Tribunal has a form (FTC 1) for litigants seeking permission to appeal a decision of the FTT, although no particular form is required by the Upper Tribunal Rules. Rule 21 provides as follows:

> 21(4) The application must state —
>
> (a) the name and address of the appellant;
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> (b) the name and address of the representative (if any) of the appellant;
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> (c) an address where documents for the appellant may be sent or delivered;

(d) details (including the full reference) of the decision challenged;

(e) the grounds on which the appellant relies; and

(f) whether the appellant wants the application to be dealt with at a hearing.

(5) The appellant must provide with the application a copy of —

(a) any written record of the decision being challenged;

(b) any separate written statement of reasons for that decision; and

(c) if the application is for permission to appeal against a decision of another tribunal, the notice of refusal of permission to appeal, or notice of refusal to admit the application for permission to appeal, from that other tribunal.

41. The Appellant's application dated 22 October 2024 used an FTT form (T247) and was initially sent to the FTT. It was sent by email together with separate grounds of appeal and the Facts and Litigation History. The heading of T247 describes the form as "*Make application to the First-tier Tribunal (Tax) for permission to appeal to the Upper Tribunal*". It is clearly a form to be used when seeking permission to appeal from the FTT and includes the FTT's address. The Appellant's solicitor was aware that the FTT had already refused permission to appeal. It is notable that the Appellant's application on this form would not have complied with Rule 21. The Appellant had not provided a copy of the FTT's Decision or the FTT's decision refusing permission to appeal.
42. The FTT did not respond to the Appellant's application until it wrote to the Appellant's solicitor on 6 March 2025. The FTT's letter explained that the Appellant had used the wrong form and that the application should have been sent to the Upper Tribunal not the FTT. Contact details for the Upper Tribunal (Tax and Chancery Chamber) were provided.
43. Notwithstanding that the FTT had explained that the wrong form had been used, the Appellant's solicitor emailed the T247 FTT form and accompanying documents to the Upper Tribunal on 6 March 2025. There was no copy of the FTT's Decision or of the FTT's decision refusing permission to appeal.
44. Unsurprisingly, on receipt of that email and the FTT form, the Upper Tribunal emailed the Appellant's solicitor on 10 March 2025 to say that it appeared to have wrongly sent the permission application to Upper Tribunal rather than the FTT.
45. On 6 May 2025 the FTT wrote to the Appellant's solicitor in connection with another appeal by the Appellant and pointed out that there was no outstanding application to the Upper Tribunal for permission to appeal in the information notice appeal.
46. On 27 June 2025 the FTT wrote to the Appellant's solicitor to say that in the absence of an application to the Upper Tribunal seeking permission to appeal, the FTT had closed its file.
47. The Appellant's solicitor finally sent the Upper Tribunal Form FTC 1 to the Upper Tribunal on 7 August 2025.
48. The reason for the delay is repeated failures by the Appellant's solicitor to properly follow the requirements of the Rules in applying to the Upper Tribunal for permission to appeal. No explanation for that failure has been offered by the Appellant's solicitor. In particular, how it came to use the wrong form, why it originally sent that form to the FTT instead of the Upper Tribunal, or why it failed to follow the FTT's advice that it had used the wrong

form and wrongly sent it to the FTT rather than the Upper Tribunal. MN would have been in a position to give that explanation.

49. Following this catalogue of errors, it still took the Appellant's solicitor from 27 June 2025 to 7 August 2025 to make a valid application for permission to appeal to the Upper Tribunal. There is no explanation for that further delay of more than a month, when there was an onus on the solicitor to ensure that there was no further delay. At that stage, the application ought to have been made immediately.

50. I take into account that the FTT did not respond to the Appellant's solicitor's email dated 22 October 2024 until 6 March 2025. On one view, the Appellant brought that delay upon itself in failing to make a valid application to the Upper Tribunal. However, in my view it would not be fair to treat the whole of this period as part of the delay. If the FTT had responded to that email within say one month, the period of culpable delay caused by the Appellant would have been approximately 5 months. In the context of a one-month time limit, that remains a serious and significant delay.

Consideration of all the circumstances

51. There is plainly no good reason for the Appellant's culpable delay of 5 months in applying to the Upper Tribunal for permission to appeal the FTT's Decision. The Appellant's solicitors appear to have given no thought to the Upper Tribunal's rules and procedures in applying for permission to appeal. I must give particular weight to the importance of litigation being conducted efficiently and at proportionate cost, and to the importance of respecting the rules. Not only has the Appellant's approach caused additional work for the FTT and the Upper Tribunal, it has also meant that HMRC have been required to put resources into dealing with the Extension Application and the adjournment application. These are not insignificant matters. The administration of justice requires all parties to engage in an efficient manner for the benefit of all tribunal-users.

52. I do not regard the Appellant's breach as "technical" as alleged in the Extension Application. The Appellant's solicitor has demonstrated an unacceptable ignorance of the rules, at best, and complete disregard for the rules at worst. That is compounded by the Appellant's failure to comply with the directions I gave on 30 December 2025 for the service of detailed submissions and documentation in support of its Extension Application. It is also compounded by the late application to adjourn the oral hearing.

53. I have regard to the reasons set out in *Katib* as to why it is generally not appropriate to distinguish between the Appellant and its solicitors. I acknowledge that the Appellant would not appear to have any remedy as such against Rainer Hughes. Overall, I do not consider it appropriate to treat the Appellant as having no responsibility for its solicitor's defaults. Having said that, I take into account in the exercise of my discretion that the Appellant was not aware of those defaults.

54. The Appellant submits that there is no prejudice and that HMRC were well aware that the Appellant intended to appeal. I do not consider that is correct. There has been prejudice, in that HMRC have had to devote resources to the Extension Application. The purpose of the time limit is to promote finality. HMRC were entitled to expect that the Appellant would comply with the rules. Certainly, by the end of March 2025 they were entitled to consider that the Appellant was not pursuing an appeal. I do not accept Mr Jones' submission that the expectation of finality carries less weight when it comes to government departments such as HMRC compared to the expectations of other litigants such as individuals or corporate entities. Further, there is prejudice to the administration of justice.

55. The Appellant will be prejudiced if time is not extended. It will be required to comply with the information notice, as varied by the FTT. However, Mr Jones accepted that compliance with the information notice as varied would not be unduly onerous or costly. As indicated above, the Appellant will be required to provide information and documents to HMRC which it might not otherwise have been required to provide. In the context of this case, including the nature of the information and documents involved, I am not satisfied that this would amount to serious prejudice.

56. Mr Jones invited me to take into account the merits of the application for permission to appeal and submitted that there would be strong grounds on which to grant permission to appeal if the extension is granted.

57. There are two aspects to the application for permission to appeal. Firstly, on the face of it there is a statutory bar on appeals from the FTT's Decision in this type of case. Paragraph 32(5) Schedule 36 Finance Act 2008 provides that a decision of the FTT on an appeal against an information notice is "final". It has long been recognised that this has the effect that there is no right of appeal from the FTT to the Upper Tribunal. Secondly, it is said that the FTT erred in law in its approach to the Appellant's appeal against the information notice.

58. Mr Jones made submissions as to why paragraph 32(5) is not a statutory bar to an appeal to the Upper Tribunal in this type of case. Ultimately, however, I am not satisfied that there are strong grounds to say that there is a right of appeal. In the circumstances, I approach the Extension Application on the basis that it is arguable that the Appellant would obtain permission to appeal, and I give weight to the prejudice suffered by the Appellant on that basis.

59. Overall, taking all the circumstances into account, I am satisfied that time should not be extended.

Conclusion

60. For the reasons given above, I refuse the Extension Application. The Upper Tribunal is therefore required by Rule 21(6) not to admit the application for permission to appeal.

Jonathan Cannan
Upper Tribunal Judge

Released: 5th May 2026