UT Neutral citation number: **[2026] UKUT 00282 (TCC)**

UT (Tax & Chancery) Case Number: UT/2025/000081

Upper Tribunal
(Tax and Chancery Chamber)

Hearing venue: Rolls Building, 7 Rolls Buildings,
Fetter Lane, London, EC4A 1NL

Heard on: 20 May 2026
Judgment date: 27 July 2026

SDLT – overpayment relief – paragraph 34 Schedule 10 Finance Act 2003 – substantial performance of contract not carried into effect – taxpayer out of time to amend land transaction return – whether claim for overpayment relief barred by section 44(9) Finance Act 2003 – no – appeal dismissed

Before

MR JUSTICE CAWSON

JUDGE ASHLEY GREENBANK

Between

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Appellants

and

CHRISTIAN PETER CANDY

Respondents

Representation:

For the Appellants: Imran Afzal KC, instructed by the General Counsel and Solicitor for His Majesty's Revenue and Customs

For the Respondent: Michael Thomas KC, instructed by Sean Randall Tax LLP

DECISION

Introduction

1. This is an appeal by the Commissioners for His Majesty's Revenue and Customs ("HMRC") against a decision of the First-tier Tribunal (Tax Chamber) (the "FTT") released on 10 April 2025 (the "FTT Decision")[1]. The Respondent is Mr Christian Candy.

2. The issues in this appeal concern a claim (the "paragraph 34 claim") for repayment of stamp duty land tax ("SDLT") in the amount of £1,920,000 made by Mr Candy under paragraph 34, Schedule 10, Finance Act 2003 ("FA 2003"). The claim concerned SDLT which had been paid by Mr Candy on a contract for the assignment of a lease (referred to as the "Contracted-out Lease"), which had been substantially performed, but which was subsequently not carried into effect.

3. Mr Candy had also made a claim for repayment of the SDLT under section 44(9) FA 2003 (the "section 44 claim"). HMRC refused the section 44 claim. Although the FTT allowed Mr Candy's appeal against HMRC's refusal of the section 44 claim (in *Christian Peter Candy v HMRC* [2020] UKFTT 0113 (TC) ("*Candy 1 FTT*")), the Upper Tribunal ("UT") allowed HMRC's appeal and upheld HMRC's refusal of the section 44 claim (*Christian Peter Candy v HMRC* [2021] UKUT 0170 (TCC) ("*Candy 1 UT*")). The Court of Appeal affirmed the UT decision (*Christian Peter Candy v HMRC* [2022] EWCA Civ 144 ("*Candy 1 CA*").

4. HMRC refused the paragraph 34 claim in a closure notice dated 13 August 2015 on the grounds, inter alia, that the claim for repayment could only be made in these circumstances by amendment to a land transaction return under section 44(9) FA 2003 and Mr Candy was out of time to amend his return. In the FTT Decision, the FTT allowed Mr Candy's appeal against the closure notice.

5. HMRC applied for permission to appeal to this tribunal on a single ground supported by six reasons. The FTT granted permission, but on restricted grounds derived from two of the reasons given by HMRC in support of its application. HMRC renewed its application before the UT. The UT granted permission to appeal on the single ground (supported by the six reasons) originally requested in HMRC's application to the FTT.

The facts

6. The facts are not disputed.

7. In the FTT Decision, the FTT adopted the summary of the facts as set out by the FTT in *Candy 1 FTT* (at *Candy 1 FTT* [11]-[27]). We do the same. It is set out below. In this summary, Mr Candy is referred to as "CC" and his brother, Mr Nicholas Candy, as "NC"; the references to the "alternative claim" are to the paragraph 34 claim, which is the subject matter of this appeal.

> [11] On 9 August 2012, CC entered into two contracts with the Commissioners of the Royal Hospital Chelsea ("the Seller") and Major-General Archibald Peter Neil Currie CB and Justin Francis Quintus Fenwick QC in their capacity as intermediate landlords (the "Intermediate Landlords") in respect of a property known at that time as "Gordon House" (and referred to as "Gordon House" in this decision). Gordon House is a substantial house (with associated buildings and a garden) adjacent to the grounds of the Royal Hospital in Chelsea, London.

[1] The FTT Decision is reported with neutral citation number [2025] UKFTT 00416 (TC). In this decision notice, we refer to paragraphs in the FTT Decision in the format "FTT [xx]".

[12] The first agreement was an agreement for a lease (the "Initial Lease") of Gordon House for a term of 25 years and was entered into together with a "Supplemental Deed" which governed the development of that property by CC. The premium for the grant of the Initial Lease was £20 million.

[13] The second agreement was an agreement for the assignment to CC of another lease (the "Contracted-out Lease") of Gordon House for a term of 201 years from 1 October 2012. The purchase price for the Contracted-out Lease was £48 million, payable in four instalments. CC paid the first instalment payment of £7.39 million on 1 October 2013.

[14] The Initial Lease was granted on 1 October 2012. The Contracted-out Lease was granted on 16 April 2019.

[15] The reason for the two leases and the timing of their grants was to address enfranchisement rights. The transaction was structured so that an application for a court order to grant the Contracted-out Lease without enfranchisement rights would be made after a flat was constructed by CC as part of the development of the property. After the grant of the court order the Contracted-out Lease would be granted by the Seller to the Intermediate Landlords, who would then assign the Contracted-out lease to CC. This structure enabled the Contracted out Lease to be excluded from the enfranchisement legislation which applies to long leases of residential premises and gives tenants the right to the extension of lease terms and, in certain cases, the right to acquire the freehold.

[16] If the Contracted-out Lease had not been granted by a long-stop date of 26 January 2021 (four years after the date of practical completion of the flat), the Seller and CC each had put and call options for the sale and purchase of the freehold of the property for a total price of £53 million.

[17] On 10 August 2012 CC's building contractors commenced work at Gordon House. This effected "substantial performance" of the agreement for the Contracted-out Lease for the purposes of s44(4).

[18] On 1 April 2014, CC gifted his interests in Gordon House (being the Initial Lease and the benefit of the Contracted-out Lease agreement) to his brother, Nicholas Candy ("NC"), in consideration of natural love and affection. This was done prior to the completion of the development of Gordon House. No debt was secured on the property at the time of this transfer. The Initial Lease was assigned by CC to NC, whilst both the Supplemental Deed and the Contracted-out Lease agreement were novated by deed. The parties to the deed of novation of the Contracted-out Lease agreement (the "Deed of Novation") were the Seller, the Intermediate Landlords, CC, and NC. Under the Deed of Novation, the Seller and the Intermediate Landlords released and discharged CC from all obligations and liabilities which remained to be performed under the agreement for the Contracted-out Lease. The original parties to the agreement for the Contracted-out Lease acknowledged between themselves that the obligations and liabilities as against each other under the agreement were extinguished. NC thereafter assumed the obligations and liabilities, as described above, which remained to be performed under the agreement for the Contracted-out Lease.

[19] Upon execution of the Deed of Novation on 1 April 2014, NC took possession of Gordon House. NC paid the second and third tranches of the £48 million premium on 1 October 2014 and 1 October 2015, respectively.

[20] The date of the practical completion of the flat referred to above was agreed as being 26 January 2017, the Court Order was obtained on 9 April 2019 and the grant of the Contracted out Lease to the Intermediate Landlords was completed on 16 April 2019.

[21] NC together with his family continue to reside in Gordon House under the Initial Lease, pending his acquisition of the Contracted-out Lease. When the assignment of the Contracted out Lease to NC is completed, he will become liable to pay the final tranche of the consideration and the Initial Lease will expire.

The Background to the SDLT dispute

[22] SDLT was paid by CC in respect of both the completion of the Initial Lease and the substantial performance of the agreement for the Contracted-out Lease. The chargeable consideration was £20 million in respect of the Initial Lease and £48 million in respect of the substantial performance of the agreement for the Contracted-out Lease. CC submitted two land transaction returns on 8 October 2012, one in respect of each transaction, and the corresponding amounts of SDLT were duly paid.

[23] NC, on taking possession of Gordon House on 1 April 2014, substantially performed the novated agreement for the Contracted-out Lease agreement for the purposes of s44(4). The chargeable consideration for this transaction is deemed to be the full purchase price of the Contracted-out Lease received by the Seller (£48 million) rather than the three outstanding instalments payable under the novated agreement for the Contracted-out Lease – even though it was only the liability for the three outstanding instalments that was assumed by NC pursuant to the Deed of Novation. This was a consequence of the subject-matter of the Deed of Novation being an uncompleted contract and the gift being between relatives, so that the special charging rules in paragraphs 12 to 14 Schedule 2A were engaged. A land transaction return was submitted by NC, and in it he duly self-assessed his liability to SDLT.

[24] On 10 April 2014, CC applied to HMRC for repayment of the amount of SDLT paid on substantial performance (£1,920,000) under s44(9) by amending the SDLT return that related to the Contracted-out Lease agreement. This was on the basis that the original agreement for the Contracted-out Lease was extinguished as a result of the Deed of Novation, and therefore not carried into effect. CC also applied for a repayment of the same tax in the alternative under paragraph 34 (claim for relief for overpaid tax etc).

[25] By a letter dated 16 May 2014 (following a meeting between the parties in April 2014), HMRC stated that they did not consider that CC could amend his return. His first basis of claim was accordingly rejected, and it is this decision which is the subject of this appeal.

[26] I am told that CC was advised that the HMRC's decision was not capable of being appealed, and therefore he did not lodge any appeal against this decision at that time. On 17 June 2014, the Upper Tribunal handed down its decision in Portland Gas Storage Limited v HMRC [2014] UKUT 0270 (TCC) and CC became aware of that decision on the same day. Acting upon further advice, CC considered that Portland Gas confirmed that the letter of 16 May 2014 was a closure notice, and thus the conclusion stated in it was capable of being appealed.

[27] By a letter dated 2 July 2014, HMRC gave notice of their intention to enquire under paragraph 7 Schedule 11A into CC's alternative claim for repayment of the tax under paragraph 34. HMRC rejected this claim by a separate decision dated 13 August 2015. This alternative claim is the subject of a separate appeal under appeal number TC/2015/06378.

Relevant legislation

8. We will first set out some of the relevant legislation.

9. Section 44 FA 2003 deals with circumstances where a contract for a land transaction is to be completed by a subsequent conveyance. So far as relevant, at all material times, it was in the following form:

> **44 Contract and conveyance**
>
> (1) This section applies where a contract for a land transaction is entered into under which the transaction is to be completed by a conveyance.
>
> (2) A person is not regarded as entering into a land transaction by reason of entering into the contract, but the following provisions have effect.
>
> (3) If the transaction is completed without previously having been substantially performed, the contract and the transaction effected on completion are treated as parts of a single land transaction. In this case the effective date of the transaction is the date of completion.
>
> (4) If the contract is substantially performed without having been completed, the contract is treated as if it were itself the transaction provided for in the contract. In this case the effective date of the transaction is when the contract is substantially performed.
>
> (5) A contract is "substantially performed" when—
>
> (a) the purchaser, or a person connected with the purchaser, takes possession of the whole, or substantially the whole, of the subject-matter of the contract, or
>
> (b) a substantial amount of the consideration is paid or provided.
>
> …
>
> (9) Where subsection (4) applies and the contract is (to any extent) afterwards rescinded or annulled, or is for any other reason not carried into effect, the tax paid by virtue of that subsection shall (to that extent) be repaid by the Inland Revenue.
>
> Repayment must be claimed by amendment of the land transaction return made in respect of the contract.
>
> …

10. As can be seen from the above extract, section 44 FA 2003 provides (in section 44(4)) that, if it has not otherwise been completed, a contract is treated as a land transaction (and so SDLT becomes payable) if and when it is "substantially performed". However, if the contract is subsequently "rescinded or annulled, or is for any other reason not carried into effect" and so is not completed, the SDLT is to be repaid by HMRC (section 44(9)). But any repayment "must be claimed by amendment of the land transaction return".

11. Paragraph 6, Schedule 10, FA 2003 deals with the amendment of land transaction returns. At all material times, it was in the following form:

> **6 Amendment of return by purchaser**
>
> (1) The purchaser may amend a land transaction return given by him by notice to the Inland Revenue.
>
> (2) The notice must be in such form, and contain such information, as the Inland Revenue may require.
>
> (2A) If the effect of the amendment would be to entitle the purchaser to a repayment of tax, the notice must be accompanied by–
>
> (a) the contract for the land transaction; and
>
> (b) the instrument (if any) by which that transaction was effected.

(3) Except as otherwise provided, an amendment may not be made more than twelve months after the filing date.

12. As can be seen from this extract, "except as otherwise provided" amendments to land transaction returns must be made no later than 12 months after the filing date. At the time of the transactions that are relevant to this appeal, the filing date was 30 days after the "effective date" of the transaction (section 76 FA 2003), which was the date on which the contract was substantially performed (section 44(4)).

13. Paragraph 34, Schedule 10, FA 2003 permits a taxpayer to make a claim for the repayment of SDLT that has been overpaid. So far as relevant, it provides:

34 Claim for relief for overpaid tax etc

(1) This paragraph applies where—

(a) a person has paid an amount by way of tax but believes that the tax was not due, or

(b) a person has been assessed as liable to pay an amount by way of tax, or there has been a determination to that effect, but the person believes that the tax is not due.

(2) The person may make a claim to the Commissioners for Her Majesty's Revenue and Customs for repayment or discharge of the amount.

(3) Paragraph 34A makes provision about cases in which the Commissioners for Her Majesty's Revenue and Customs are not liable to give effect to a claim under this paragraph.

(4) The following make further provision about making and giving effect to claims under this paragraph—

(a) paragraphs 34B to 34D, and

(b) Schedule 11A.

(5) Paragraph 34E makes provision about the application of this paragraph and paragraphs 34A to 34D to amounts paid under contract settlements.

(6) The Commissioners for Her Majesty's Revenue and Customs are not liable to give relief in respect of a case described in sub-paragraph (1)(a) or (b) except as provided—

(a) by this Schedule and Schedule 11A (following a claim under this paragraph), or

(b) by or under another provision of this Part of this Act.

(7) For the purposes of this paragraph and paragraphs 34A to 34E, an amount paid by one person on behalf of another is treated as paid by the other person.

14. Paragraph 34A sets out circumstances (referred to as "Cases") in which HMRC are not required to give effect to a claim under paragraph 34. It provides, so far as relevant:

34A Cases in which Commissioners not liable to give effect to a claim

(1) The Commissioners for Her Majesty's Revenue and Customs are not liable to give effect to a claim under paragraph 34 if or to the extent that the claim falls within a case described in this paragraph.

(2) Case A is where the amount paid, or liable to be paid, is excessive by reason of—

(a) a mistake in a claim or election, or

(b) a mistake consisting of making or giving, or failing to make or give, a claim or election.

(3) Case B is where the claimant is or will be able to seek relief by taking other steps under this Part of this Act.

(4) Case C is where the claimant—

(a) could have sought relief by taking such steps within a period that has now expired, and

(b) knew, or ought reasonably to have known, before the end of that period that such relief was available.

(5) Case D is where the claim is made on grounds that—

(a) have been put to a court or tribunal in the course of an appeal by the claimant relating to the amount paid or liable to be paid, or

(b) have been put to Her Majesty's Revenue and Customs in the course of an appeal by the claimant relating to that amount that is treated as having been determined by a tribunal (by virtue of paragraph 37 (settling of appeals by agreement)).

(6) Case E is where the claimant knew, or ought reasonably to have known, of the grounds for the claim before the latest of the following—

(a) the date on which an appeal by the claimant relating to the amount paid, or liable to be paid, in the course of which the ground could have been put forward (a "relevant appeal") was determined by a court or tribunal (or is treated as having been so determined),

(b) the date on which the claimant withdrew a relevant appeal to a court or tribunal, and

(c) the end of the period in which the claimant was entitled to make a relevant appeal to a court or tribunal.

(7) Case F is where the amount in question was paid or is liable to be paid—

(a) in consequence of proceedings enforcing the payment of that amount brought against the claimant by Her Majesty's Revenue and Customs, or

(b) in accordance with an agreement between the claimant and Her Majesty's Revenue and Customs settling such proceedings.

(8) Case G is where—

(a) the amount paid, or liable to be paid, is excessive by reason of a mistake in calculating the claimant's liability to tax, and

(b) liability was calculated in accordance with the practice generally prevailing at the time.

(9) Case G does not apply where the amount paid, or liable to be paid, is tax which has been charged contrary to EU law.

(10) For the purposes of sub-paragraph (9), an amount of tax is charged contrary to EU law if, in the circumstances in question, the charge to tax is contrary to—

(a) the provisions relating to the free movement of goods, persons, services and capital in Titles II and IV of Part 3 of the Treaty on the Functioning of the European Union, or

(b) the provisions of any subsequent treaty replacing the provisions mentioned in paragraph (a).

15. The time limit for claims under paragraph 34 is four years from the effective date of the transaction. That time limit is found in paragraph 34B, Schedule 10, FA 2003. It is in the following form:

34B Making a claim

(1) A claim under paragraph 34 may not be made more than 4 years after the effective date of the transaction.

(2) A claim under paragraph 34 may not be made by being included in a land transaction return.

The FTT Decision

16. We have set out below a brief summary of the key aspects of the FTT Decision.

17. The FTT identified only one issue for it to decide: whether relief from overpayment of SDLT is available under paragraph 34, Schedule 10 FA 2003 in circumstances where: (i) the tax would have been repayable under section 44(9) FA 2003 because a substantially performed contract was not carried into effect, but (ii) the tax could not be reclaimed under section 44(9) because the taxpayer is out of time to amend the relevant return (FTT [13]). It was common ground that, if a claim could have been made (and had been made) in time under section 44(9), relief would have been available (FTT [14]).

18. HMRC's case before the FTT was that section 44(9) FA 2003 precluded a claim under paragraph 34, Schedule 10, FA 2003. Mr Afzal KC, who also appeared for HMRC before the FTT, relied on the language of section 44(9). He submitted that the language was mandatory: any repayment "must" be claimed by amendment of a land transaction return and could not be claimed in any other way. If that were not the case, it would undermine the time limit to which a section 44 claim was subject (FTT [20]-[22]).

19. Mr Thomas KC, who also appeared for Mr Candy before the FTT, submitted that paragraph 34 was a distinct, stand-alone statutory remedy, which operated as a "back-stop" in circumstances where relief could not be claimed on any other statutory basis. That remedy was subject to the restrictions in paragraph 34A and the time limit in paragraph 34B, but none of those restrictions applied in this case (FTT [23]-[27]).

20. The FTT accepted Mr Thomas KC's submissions.

(1) The FTT found that paragraph 34 is of potentially wide application once its threshold provisions and procedural requirements were met. Its purpose was to provide "a final statutory remedy" where no other remedy exists (FTT [33], [47]).

That conclusion was supported by the structure of paragraph 34 and paragraph 34A, and by the legislative history. The FTT relied on the Explanatory Notes to the Finance (No.2) Bill 2010 (which introduced paragraph 34 in its current form) and HMRC's Technical Note "Relief for mistakes in Stamp Duty Land Tax Returns – draft legislation", which introduced the draft legislation including paragraph 34 when it was issued for consultation (FTT [40]-[47]).

(2) The FTT also rejected the argument that the language of section 44(9) precluded a claim under paragraph 34. The requirement that the repayment "must" be claimed by amendment to the return governed the procedure for claims made under s 44(9), but it did not prevent reliance on other statutory provisions (FTT [48]).

Accordingly the fact that the time limit for an amendment to Mr Candy's return had expired did not prevent Mr Candy from relying on paragraph 34, provided that the requirements of that provision were satisfied (FTT [48]-[49]).

(3) The FTT rejected HMRC's argument that such an interpretation would undermine the statutory time limits. The FTT found that a paragraph 34 claim was subject to a distinct set of limitations, including the exclusions contained in paragraph 34A and the four-year time limit in paragraph 34B (FTT [51]-[54]).

21. HMRC also argued that there was no "overpayment" for the purposes of paragraph 34 unless tax had been overpaid, and that no tax had been overpaid in the absence of a claim in the return under section 44(9). The FTT rejected that argument relying on the reasoning of the FTT in *L-L-O Contracting Limited v HMRC* [2023] UKFTT 859 (TC) ("*L-L-O FTT*") (FTT [55]-[61]).

22. On that basis, the FTT allowed the appeal (FTT [68]).

The Grounds of Appeal

23. As we have described above, HMRC were granted permission to appeal by the UT on a single ground. That single ground was that the FTT erred in law in holding that paragraph 34 could be used to obtain repayment in the circumstances of this case.

24. That single ground of appeal was supported by six reasons. In summary, they were:

(1) the wording of section 44(9) is clear and unambiguous and requires that repayment "must" be claimed by way of amendment to a land transaction return;

(2) the FTT Decision, if it is correct, severely undermines the decision in *Candy 1 CA*;

(3) the FTT Decision, if it is correct, produces some very odd outcomes in other circumstances, which Parliament cannot have intended;

(4) the FTT's view that paragraph 34 operated as a "backstop" could not provide licence to depart from the clear wording of section 44(9); the FTT failed to properly engage with whether, as a matter of principle, paragraph 34 should operate as a 'backstop' in cases where a substantially performed contract has "gone off";

(5) the FTT was wrong to consider that Case C in paragraph 34A supported its view that paragraph 34 operated as a 'backstop';

(6) the FTT failed to take into account and give proper effect to paragraph 34(6), Schedule 10 FA 2003.

The issues before this tribunal

25. The ground of appeal is, on its terms, very broad. Before this tribunal, however, HMRC does not pursue its argument (which it had made before the FTT) that in the present case there was no "overpayment" of tax because tax had not been "overpaid" if no claim for repayment was made in a land transaction return (see FTT [55]-[61]). The sole issue before the tribunal is whether section 44(9) FA 2003 applies to preclude any claim for overpayment under paragraph 34 Schedule 10 FA 2003.

26. We will address Mr Afzal KC and Mr Thomas KC's detailed submissions in the course of our discussion of the relevant issues below. However, in short, Mr Afzal KC says that the wording of section 44(9) is clear and unambiguous and it precludes any repayment of tax under paragraph 34 where the basis of the claim is that tax would have repayable under section 44(9) if a claim could have been made in time. Mr Thomas KC says that a claim under paragraph 34 is distinct and separate from a claim for repayment under section 44(9). Paragraph 34 is intended to apply in circumstances where it has not been possible to make a claim for repayment in a land transaction return. It is subject to clear restrictions in paragraph 34A and a separate time limit in paragraph 34B.

Discussion

Principles of statutory construction

27. As the issue before us is therefore one of statutory construction. We will begin by reminding ourselves of the relevant principles of statutory construction.

28. The parties referred us to various authorities. We have taken them into account. We will, however, limit our reference in this decision notice to the judgment of Lord Hodge in *R(on the application of O (a child)) v Secretary of State for the Home Department* [2023] AC 255, [2002] UKSC 3 ("*R(O)*"), a judgment with which Lord Briggs, Lord Stephens and Lady Rose all agreed. Lord Hodge said this at [29]-[32]:

> 29. The courts in conducting statutory interpretation are "seeking the meaning of the words which Parliament used": *Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG* [1975] AC 591, 613 per Lord Reid. More recently, Lord Nicholls of Birkenhead stated: "Statutory interpretation is an exercise which requires the court to identify the meaning borne by the words in question in the particular context." (*R v Secretary of State for the Environment, Transport and the Regions, Ex p Spath Holme Ltd* [2001] 2 AC 349, 396.) Words and passages in a statute derive their meaning from their context. A phrase or passage must be read in the context of the section as a whole and in the wider context of a relevant group of sections. Other provisions in a statute and the statute as a whole may provide the relevant context. They are the words which Parliament has chosen to enact as an expression of the purpose of the legislation and are therefore the primary source by which meaning is ascertained. There is an important constitutional reason for having regard primarily to the statutory context as Lord Nicholls explained in *Spath Holme*, p 397 : "Citizens, with the assistance of their advisers, are intended to be able to understand parliamentary enactments, so that they can regulate their conduct accordingly. They should be able to rely upon what they read in an Act of Parliament."
>
> 30. External aids to interpretation therefore must play a secondary role. Explanatory Notes, prepared under the authority of Parliament, may cast light on the meaning of particular statutory provisions. Other sources, such as Law Commission reports, reports of Royal Commissions and advisory committees, and Government White Papers may disclose the background to a statute and assist the court to identify not only the mischief which it addresses but also the purpose of the legislation, thereby assisting a purposive interpretation of a particular statutory provision. The context disclosed by such materials is relevant to assist the court to ascertain the meaning of the statute, whether or not there is ambiguity and uncertainty, and indeed may reveal ambiguity or uncertainty: *Bennion, Bailey and Norbury on Statutory Interpretation*, 8th ed (2020), para 11.2. But none of these external aids displace the meanings conveyed by the words of a statute that, after consideration of that context, are clear and unambiguous and which do not produce absurdity. In this appeal the parties did not refer the court to external aids, other than explanatory statements in statutory instruments, and statements in Parliament which I discuss below. Sir James Eadie QC for the Secretary of State submitted that the statutory scheme contained in the 1981 Act and the 2014 Act should be read as a whole.
>
> 31. Statutory interpretation involves an objective assessment of the meaning which a reasonable legislature as a body would be seeking to convey in using the statutory words which are being considered. Lord Nicholls, again in *Spath Holme* [2001] 2 AC 349, 396, in an important passage stated:
>
>> "The task of the court is often said to be to ascertain the intention of Parliament expressed in the language under consideration. This is correct and may be helpful,

> so long as it is remembered that the 'intention of Parliament' is an objective concept, not subjective. The phrase is a shorthand reference to the intention which the court reasonably imputes to Parliament in respect of the language used. It is not the subjective intention of the minister or other persons who promoted the legislation. Nor is it the subjective intention of the draftsman, or of individual members or even of a majority of individual members of either House … Thus, when courts say that such-and-such a meaning 'cannot be what Parliament intended', they are saying only that the words under consideration cannot reasonably be taken as used by Parliament with that meaning."

> 32. In their written case the appellants sought to support their contention that a child's acquisition of substantial ties with the UK by spending time in the UK in the first ten years of his or her life created a complete entitlement to citizenship by referring to statements by a Government minister, Timothy Raison, to the Standing Committee which considered an amendment which became section 1(4) to the 1981 Act. Such references are not a legitimate aid to statutory interpretation unless the three conditions set out by Lord Browne-Wilkinson in *Pepper v Hart* [1993] AC 593, 640 are met. The three conditions are (i) that the legislative provision must be ambiguous, obscure or, on a conventional interpretation, lead to absurdity; (ii) that the material must be or include one or more statements by a minister or other promoter of the Bill; and (iii) the statement must be clear and unequivocal on the point of interpretation which the court is considering. It was not argued, and I am not satisfied, that the first and third conditions are met in this case. The court was not referred to any relevant provision of primary legislation that was said to be ambiguous and the statements in any event did not meet the stringent requirements of the third condition. Sir James Eadie in para 10 of the Secretary of State's written case referred to a ministerial statement in the House of Lords during the passage of the 2014 Act which sought to explain the policy behind what became section 68 of that Act. But it is not argued that this reference is admissible because the first condition in *Pepper v Hart* has been met. I am satisfied that there is no such ambiguity, obscurity or absurd result in the relevant statutory provisions which would allow the court to have regard to that statement.

29. The key principles that we take from this passage are:

(1) The process of statutory interpretation is one of seeking the meaning of the words that Parliament has used. Words and passages in a statute derive their meaning from their context. The words that Parliament has chosen to enact as an expression of the purpose of the legislation are therefore the primary source by which meaning is ascertained.

(2) External aids to interpretation therefore play a secondary role. Explanatory notes may cast some light on the meaning of a particular provision. Other sources may assist in identifying the context of the legislation and so assist a court or tribunal in ascertaining the meaning of the statute and whether or not there is any ambiguity or uncertainty. But external aids cannot displace the meanings conveyed by the words of a statute that are clear and unambiguous and do not produce absurdity.

(3) Statutory interpretation involves an objective assessment of the meaning which Parliament would be seeking to convey by the statutory words. The phrase "the intention of Parliament" is a shorthand reference to the intention which the court reasonably imputes to Parliament in respect of the language used. It is not a reference to the subjective intention of the persons who promoted the legislation, the draftsman, or members of Parliament.

(4) Statements by government ministers in the course of parliamentary debates in relation to particular provisions are not a legitimate aid to statutory interpretation unless the conditions set out by Lord Browne-Wilkinson in *Pepper v Hart* [1993] AC 593 are met.

Section 44 FA 2003

30. With those principles in mind, we turn to the statutory provisions in this case. We will begin with the context and purpose of section 44 itself.

31. Section 44 was the subject of the decision of the Court of Appeal in *Candy 1 CA*, which dealt with the section 44 claim. Mr Candy claimed that he was entitled to repayment of the SDLT that had been paid under section 44(4) FA 2003 following the novation of the Contracted-out Lease to his brother. In short, Mr Candy's argument was that he should be entitled to make a claim for repayment notwithstanding the provisions of section 44(9) and the time limit in paragraph 6(3) Schedule 10 – on the grounds that the time limit for amending a return in paragraph 6(3) Schedule 10 applied "except as otherwise provided" and section 44(9) made alternative provision by providing that a repayment could be claimed where, at any time after substantial performance, the contract was not carried into effect. The FTT initially allowed Mr Candy's appeal. That decision was, however, reversed by the UT. The Court of Appeal dismissed Mr Candy's appeal from the UT decision holding that the strict time limit in paragraph 6(3) Schedule 10 applied.

32. In her judgment in *Candy 1 CA*, Simler LJ, as she then was, said this about the purpose of section 44(4) (*Candy 1 CA* [41]-[43]):

> 41. There is no dispute that at least one of the purposes of section 44 FA 2003 was to deal with an avoidance technique known as "resting on contract" that was prevalent under stamp duty, where a person acquired the beneficial ownership of land by performing the obligations under the sale contract without formally completing the contract. Under the stamp duty regime, so long as a transfer was not executed, no stamp duty would be payable. The predecessor legislation contained provisions designed to prevent or frustrate such arrangements (see for example, the provision made by Schedule 9 Finance Act 1999 and section 115 Finance Act 2002).
>
> 42. This particular avoidance purpose is clear from the terms of section 44 itself, and reinforced by the passage in the Explanatory Notes to the Bill that became FA 2003, dealing with section 44 as follows:
>
>> "This clause ensures that, in the majority of cases, stamp duty land tax will arise on completion. But it is also designed to prevent avoidance of postponement of tax by the technique of "resting on contract." In such cases the clause ensures that a transaction is only charged to stamp duty land tax once."
>
> 43. Section 44 introduced the concept of "substantial performance" as the means of preventing resting on contract schemes from having the effect of deferring the tax point for the charge to SDLT on a potentially indefinite basis (section 44(4)). Section 44(5) identified two ways in which a contract could be "substantially performed". First, where the purchaser takes possession of the whole, or substantially the whole, of the subject-matter of the contract ((5)(a)); and secondly, where a substantial amount of the consideration is paid or provided ((5)(b)). For the application of subsection (5)(a) it does not matter whether possession is achieved under the contract in question: possession under a licence or lease of a temporary character is enough (see subsection (6)(b)).

33. In relation to the purpose of section 44(9) and the interaction of the requirement in that subsection for a claim to be made in a return and the time limit for amending returns in paragraph 6(3) Schedule 10 FA 2003, Simler LJ continued at *Candy 1 CA* [46] and then at [48]-[51] as follows:

> 46. Section 44(9) deals with the case where the contract is never completed: either because it ends by recission or some form of declaration of invalidity (annulment), or because it is for any other reason not carried into effect. It is understandable that

Parliament decided to provide this safeguard: in the absence of completion following substantial performance, the full benefits under the contract are unlikely to be obtained by the purchaser. In some cases, and recission may be an example, where each contracting party is returned (to the extent possible) to the position they were in before the contract was entered into, the purchaser may not obtain any benefit under the contract. In other cases, while some benefit may be obtained, the closer the contract terminates after substantial performance occurs, the less the benefits are likely to have been.

…

48. Returning to the words used by section 44(9), the first sentence affords a taxpayer an unqualified, substantive right to repayment of SDLT, while the second sentence makes clear that repayment must be claimed by amendment of the land transaction return. In other words, the first sentence provides the substantive right, and the second sentence provides the process for enforcing that right. Logically any timing aspects of the right to claim repayment could have been expected to be addressed in or after the second sentence. However, there is nothing in the second sentence that expressly does so. Instead, Mr Thomas relies on the word "afterwards" in the first sentence to disapply the general time limit governing amendments to returns, leaving it open to a taxpayer to make a claim for repayment (on his case) at any time after substantial performance, even decades later. If "afterwards" does not have effect as an exception as he submitted, nothing does, and his argument must fail.

49. In my judgment, the word "afterwards" does not have the effect contended for by Mr Thomas. Afterwards is an ordinary English word. It indicates a sequence of events. It has the same sequential meaning as the ordinary word "subsequently" used in section 44(8) . Further, the grammatical structure of section 44(9) demonstrates that Parliament intended "afterwards" to be no more than an indication of the sequence of events, and otherwise attached very little weight to this word. That is clear from an ordinary reading of the first sentence: by virtue of the repetition of the verb "is" and the placement of the comma, the word "afterwards" attaches only to the first limb (recission and annulment) and does not go with the second limb (the contract for any other reason not being carried into effect). If Parliament had intended the word "afterwards" to have the significant effect of disapplying the generally applicable time limit, it would surely have been expressed as applying to both limbs.

50. Nor can I see any rational reason why Parliament would have wished to dispense altogether with the generally applicable time limit in paragraph 6(3) , enabling taxpayers to make claims for repayment without any time limit, even decades later when memories may have faded and documents relating to the original land transaction may have been lost. There is nothing inconsistent in Parliament providing a right to reclaim tax paid as a safeguard for innocent taxpayers caught by the widely worded charge in section 44(4), but at the same time making that right subject to clear procedural rules, including time limits on the right to reclaim payment. It is of the essence of a self-assessment system that tax effects can be undone by administrative failure and merely meeting the substantive conditions for the grant of a relief is rarely enough to secure that a taxpayer receives the relief in question. Where the relief requires a claim, and the claim is not made in accordance with any procedural requirements, the taxpayer will not be given the relief.

51. Moreover, hard-edged time limits are a common feature of the self-assessment scheme. Where they govern the availability of a relief, they have the inevitable potential to cause hardship. In the case of section 44(9) , a balance between the competing objectives of preventing tax avoidance on the one hand, and relieving innocent transactions caught by section 44(4) on the other, was clearly intended by Parliament. Since the longer the period of substantial performance lasts without completion of the

contract, the more likely it is the purchaser will have obtained benefits under the contract in a way that justifies maintaining the SDLT charge, it was rational to strike that balance with a time limit of 13 months for amending the return from the effective date of the transaction giving rise to substantial performance (in other words, 12 months after the filing date). This limits the scope for avoidance but is simple to operate (for both HMRC and taxpayers). I can see no good reason why the unambiguous, hard-edged time limit in paragraph 6(3) should yield to section 44(9) as Mr Thomas contended. The consequence of Mr Thomas' construction is to dispense with certainty and finality in the sound administration of SDLT. That would be a surprising result.

34. We will need to return to these passages later in this decision, but the key points that we take from them for present purposes are as follows:

(1) Section 44(4) is designed to address arrangements to postpone (and potentially avoid) duty on land transactions by "resting on contract". It addressed this concern by providing for payment of SDLT on substantial performance of a contract for the sale or purchase of land.

(2) In order to address circumstances in which the charge to tax on substantial performance operates unfairly on a taxpayer because the contract does not complete, section 44(9) allows a taxpayer to claim a repayment of tax in certain circumstances. In particular, where the purchaser does not obtain any or little benefit from the contract before it is rescinded, annulled or not carried into effect.

(3) Any claim for repayment under section 44(9) has to be made in a return by amending the return within the time limit provided in paragraph 6(3) Schedule 10. That strict time limit applies: the application of the time limit is consistent with the structure of the SDLT legislation and its purpose; and there is no good reason why Parliament would have disapplied that time limit and permitted a claim for repayment to be made without any time limit.

Paragraph 34, Schedule 10 FA 2003

35. We must now turn to paragraph 34, Schedule 10. We begin by turning to the purpose of paragraph 34 and whether it is, as the FTT found, to be treated as a "backstop" remedy before we turn to the interaction of paragraph 34 with other reliefs under the SDLT code, including the right to repayment of tax under section 44(9) FA 2003.

The statutory context

36. The principles of statutory construction to which we have referred require us to identify the meaning of the overpayment relief provisions from their statutory context. The overall context of the legislation is described by Simler LJ in *Candy 1 CA* at *Candy 1 CA* [47], where she said:

47. The SDLT scheme operates as a self-assessed tax: section 76 FA 2003. Taxpayers are required to complete a return and include a self-assessment to tax in the return. There are strict time limits for delivering returns: at the material time returns had to be submitted 30 days after the effective date of the transaction (that period is now 14 days). Returns must comply with the requirements of Schedule 10 FA 2003, including the time limits imposed for amending returns in paragraph 6(3), and those imposed on HMRC for opening an enquiry in paragraph 12. As Mr Afzal emphasised, the self-assessment system imposes hard-edged deadlines, both on taxpayers and HMRC, for the sound administration of the tax system and to achieve certainty and finality. If HMRC make no enquiry and a taxpayer has not amended his or her return once the time limits have expired, the self-assessment return becomes final. So, if HMRC fail to open an enquiry in time, the correct amount of tax will not be recoverable by HMRC in respect of an

> insufficient self-assessment (unless the case falls within the exceptions in Part 5 Schedule 10 FA 2003, which has its own time limits). Likewise, if a taxpayer has mistakenly overpaid tax or been subject to an excessive assessment but made no in-time amendment, the tax cannot be reclaimed unless Part 6 Schedule 10 FA 2003 provides a remedy.

37. The final sentence of paragraph [47] of Simler LJ's judgment refers to Part 6 Schedule 10 FA 2003 as an exception to the circumstances in which the hard-edged time limit for amending returns in paragraph 6(3) prevents an amount of overpaid tax from being reclaimed. Paragraph 34 falls within Part 6 of Schedule 10.

38. In this respect, the UT in *BTR Core Fund JPUT v HMRC* [2026] UKUT 27 (TCC) ("*BTR UT*") – a case concerning the application of paragraph 34 where the taxpayer had made an incorrect claim for multiple dwellings relief ("MDR") under section 58D and Schedule 6B FA 2003 in its return – identified the purpose of paragraph 34 as being to provide a statutory remedy of last resort where excessive SDLT had been paid. The UT, having referred to the passage from Simler LJ's judgment at *Candy 1 CA* [47], said this at *BTR* [39]:

> 39. Within this context, what is the purpose of paragraph 34 of Schedule 10? As indicated in the final sentence of this passage, it is to provide what is in effect a statutory remedy of last resort where excessive SDLT has been paid. It is a last resort in part because a taxpayer's primary remedy in such a situation is to amend their SDLT return. Where that primary remedy is available, overpayment relief is not intended to apply, but where it is not available (and no other remedy is available: Case B), it is, as its name suggests, a "relief" which can nevertheless be claimed by a taxpayer, subject to its own time limit and other terms and restrictions.

39. We agree. Overpayment relief is ordinarily a remedy of last resort. It is a separate relief with its own time limits, its own procedure, and subject to its own restrictions.

(1) The time limit for an application for overpayment relief is found in paragraph 34B. A claim for overpayment relief must be made within 4 years of the effective date.

(2) A claim for overpayment relief cannot be made by being included in a land transaction return. The procedure for making claims and enquiries into them is set out in Schedule 11A FA 2003 (not Schedule 10 FA 2003).

(3) The restrictions on relief are set out in Cases A to G in paragraph 34A(2)-(8). They place significant and extensive limitations on the right to reclaim. As the UT identified in *BTR UT*, there is no common theme to these restrictions. In that context, the UT said this at *BTR UT* [42]-[43]:

> 42. So, in determining the purpose of the exclusions (or "Cases") in paragraph 34A, it is clear that their general purpose is to restrict the relief which can be claimed by paragraph 34.
>
> Purpose of Case A
>
> 43. However, when one turns to the specific purposes of each Case, it appears that Cases A to G have little in common other than that they address specific situations where for policy reasons (such as the availability of alternative remedies or the finality of litigation) Parliament has decided that overpayment relief should not be available. …

Again, we agree.

40. This analysis supports Mr Thomas KC's submissions in this case that overpayment relief is a separate relief which applies independently of other reliefs within the SDLT code. It is a remedy of last resort, which, consistent with Simler LJ's analysis in *Candy 1 CA*, operates as a limited exception to the principle that an SDLT liability is fixed when a land transaction return becomes final.

Extra-statutory material

41. We have also been referred to various extra-statutory sources as aids to our interpretation of paragraph 34. In accordance with the guidance of the Supreme Court in *R(O)*, these extra-statutory materials must play a secondary role. However, in our view, they support our conclusion.

42. As we have described above, paragraph 34, Schedule 10 and the related provisions in paragraphs 34A to 34E were inserted into the SDLT legislation by Finance (No. 3) Act 2010. These provisions, to which we shall refer as the "overpayment relief provisions", replaced the previous paragraph 34, which had been included in Schedule 10 from the introduction of SDLT in Finance Act 2003. Subject to certain exceptions, the original version of paragraph 34 allowed a taxpayer to make a claim for relief where the taxpayer believed that he had paid tax under "an assessment that was excessive by reason of some mistake in a land transaction return". A person could not claim relief where the return was made in accordance with the practice generally prevailing at that time or the mistake related to a claim or election. A claim for repayment had to be made within six years of the effective date of the transaction.

43. The Explanatory Notes to clause 78 of and Schedule 10 to the Finance (No.3) Bill 2003 (which became Schedule 10 FA 2003) describe the original version of paragraph 34 in the following terms in paragraphs 48 and 49:

> 48 Paragraph 34 provides for relief in cases of a mistake in a return. It is based on section 33 TMA and paragraph 51 of Schedule 18 to Finance Act 1998.
>
> 49 If a person believes they have paid too much tax by reason of some mistake in a land transaction return, he may make a claim to relief to the Inland Revenue. The claim must be within 6 years of the effective date. The paragraph also provides that the Inland Revenue shall make enquiries to decide whether the claim is justified and shall repay any overpaid tax. Decisions of the Inland Revenue can be appealed against. No relief is due where the return was made in accordance with generally prevailing practice or where the error is in a claim or election included in the return.

44. Paragraph 49 of the Explanatory Notes clearly suggests that a claim under the original paragraph 34 could be made after the expiry of the time limit to amend a return.

45. Those Explanatory Notes also contain some commentary relating to the application time limit for the amendment of returns in paragraph 6(3) Schedule 10. As regards the intended interaction of that time limit and claims under the original paragraph 34, paragraph 12 of the Explanatory Notes again suggests that a claim under the original paragraph 34 could be made after the expiry of the time limit to amend a return. It provided:

> 12. If a purchaser discovers too much tax has been paid after the opportunity to amend the return has passed, he may claim relief for the mistake under paragraph 34.

46. The replacement of the original paragraph 34 with the current overpayment relief provisions was part of a wider process to reform overpayment provisions covering several taxes over several Finance Bills. The scope of the new provisions is explained in paragraph 23 of the Background Note in the Explanatory Notes to clause 28 of, and Schedule 12 to, the Finance (No.2) Bill 2010 in the following terms (with our emphasis):

> 23. The new rules cover <u>any situation</u> in which a person overpays or is over-assessed an amount in respect of SDLT including amounts paid under a contract settlement with HMRC. However, a claim will only be possible where there was no other means of reclaiming the overpayment or reducing the assessment in the SDLT legislation when the person first became aware or ought to have become aware that they could recover the overpayment.

47. The Explanatory Notes then continue to describe some of the other restrictions that are now reflected in Case A to Case G in paragraph 34A.

48. The Explanatory Notes therefore suggest that the new rules were intended to broaden the scope of the relief in some respects, albeit subject to some important restrictions. The reasons for this approach are summarized at paragraph 28 of the Explanatory Notes as follows:

> 28. Claims under the new rules will replace the alternative legal actions for repayment or restitution in respect of an overpayment ensuring there is a common route to obtain redress and that disputes are dealt with as far as possible through the tribunal rather than through the courts.

49. A fuller explanation is provided in HMRC's Technical Note entitled "Relief for mistakes in Stamp Duty Land Tax Returns – draft legislation" which was published when the draft legislation was released for comment. We were referred, in particular, to paragraphs 2.2 and 2.9 to 2.11 and 2.13. They read as follows:

> 2.2 The assessment and collection rules for direct taxes aim to strike a fair balance between the effective administration of the system and the protection of taxpayers' rights. A return that can no longer be varied is normally conclusive of a taxpayer's liability. In the majority of cases, this is an efficient and even-handed way for HMRC and taxpayers to finalise tax liabilities. HMRC or the taxpayer have the opportunity in some circumstances to re-visiting a liability for which an assessment has become final and in other respects conclusive.
>
> …
>
> 2.9 The recent House of Lords decision in *Deutsche Morgan Grenfell*[2] has confirmed that it is possible to make a common law claim for restitution of direct tax paid under a mistake of law. However, the courts have also confirmed where there is a statutory remedy there is no alternative right of recovery (*HMRC v Monro*[3]).
>
> 2.10 In view of this, the changes in FA 2009 introduce a consistent and comprehensive statutory scheme for the recovery of overpayments of income tax, CGT and corporation tax. This enables taxpayers to identify the appropriate means for recovering overpayment, allows claims to be administered more easily and, as far as possible, disputed claims to be dealt with initially through the tax tribunal.
>
> 2.11 The proposed amendments to FA 2003 introduce this scheme for SDLT.
>
> …
>
> 2.13 Claims under the new rules will replace alternative legal actions for repayment or restitution in respect of an overpayment ensuring that there is a common route to obtaining redress and that disputes will [be] dealt with as far as possible through the tribunal rather than through the courts."

50. The Explanatory Notes and the Technical Note therefore suggest that the overpayment relief provisions were introduced to provide a consistent and comprehensive code for recovery of overpaid

[2] [2006] UKHL 49
[3] [2008] EWCA Civ 306

tax, replacing the patchwork of remedies that were previously available both in statute and under the common law.

51. As we have described, in accordance with the guidance of the Supreme Court in *R(O)*, these extra-statutory materials must play a secondary role. The Explanatory Notes may cast light on the meaning of the statutory provisions. The Technical Note can provide background to the legislation and its aims and so assist in determining the purpose of the legislation. They cannot, however, displace the meaning of the words of the statute where the wording is clear and unambiguous.

52. That having been said, having taken those principles into account, we regard (in common with the FTT (see FTT [47])) the extra-statutory materials as supportive of our conclusion at paragraph [40] above, that the purpose of the overpayment relief provisions is to provide a remedy of last resort that is separate from other claims for relief.

53. The extra-statutory materials also suggest that a claim under paragraph 34 can be made where a land transaction return can no longer be varied (see the explanation in the Technical Note) and so was not intended as a general rule to disturb the ability of a taxpayer to claim after a time limit for another relief had expired (see the Explanatory Notes to clause 78 of, and Schedule 10 to, the Finance (No.3) Bill 2003, paragraph 12 and the Background Note in the Explanatory Notes to clause 28 of, and Schedule 12 to, the Finance (No.2) Bill 2010, paragraph 23). However, the precise effect of other time limits – and, in particular, the interaction of the overpayment relief rules with the rules imposing time limits on the repayment of SDLT when a contract that has been substantially performed is not carried out – is a matter to which we must now turn.

Interaction of paragraph 34 with other reliefs

54. Mr Afzal KC's central submission is that the word "must" in section 44(9) is mandatory. A claim for repayment of tax where a contract which has been substantially performed is rescinded, annulled or is not carried into effect <u>must</u> be made in a land transaction return. A claim for overpayment relief cannot be made for repayment of an amount of SDLT paid on the substantial performance of a contract under section 44(4). He says that the wording of section 44(9) is clear and unambiguous. It is not necessary to look further unless the interpretation is absurd, which Mr Afzal KC submits, it is not.

55. While Mr Afzal KC may regard the wording as clear and unambiguous, the case law demonstrates that other interpretations have found favour with other tribunals or been relied upon by other tribunals with the agreement of the parties. Those cases have addressed claims for overpayment relief under paragraph 34 where the SDLT paid was claimed to be excessive because the taxpayer had not made in-time application in a land transaction return both for repayment under section 44(9) and for other reliefs where the legislation is in a substantially similar form.

56. We will turn first to the two leading cases. They involve claims for overpayment relief where a taxpayer had failed to make a claim for MDR in its return or had made an incorrect claim for MDR in its return. They are: *BTR UT* (the FTT decision in which is reported at [2024] UKFTT 00885 (TC) ("*BTR FTT*")), and *L-L-O Contracting Limited v HMRC* [2025] UKUT 127 (TCC) ("*L-L-O UT*") (the FTT decision is *L-L-O FTT*.

57. As is the case in relation to claim for repayment under section 44(9) FA 2003, the relevant provisions for MDR required any claim to be made in a land transaction return. Section 58D(2) provided:

> (2) Any relief under that Schedule [Schedule 6B FA 2003 which provided for MDR] must be claimed in a land transaction return or an amendment of such a return.

58. The form of words was therefore reminiscent of that in section 44(9) and equally "mandatory".

59. *BTR* was a case concerning a claim for overpayment relief in a case where the taxpayer (BTR) had made an incorrect claim for MDR in its land transaction return. In its return, it had claimed MDR using the higher rate of SDLT in its calculation, in accordance with HMRC's guidance at the time. That guidance was later amended. But it was then too late for BTR to amend its claim for MDR. So BTR claimed overpayment relief under paragraph 34.

60. The only question before the FTT and UT concerned the application of Case A to the error made by BTR in its return. The FTT decided that the overpayment of tax fell within Case A (and so overpayment relief was not available). The UT allowed BTR's appeal against that decision on the grounds that BTR's overpayment of SDLT was not "by reason of a mistake in a claim" and so not within Case A. Before both the FTT and UT, HMRC accepted that they were liable to meet BTR's overpayment relief claim unless the overpayment fell within Case A (*BTR UT* [6]). There was no argument that paragraph 34 could not apply because a claim for overpayment was precluded because the corrected claim for MDR had to be made in a return or by an amendment to a return by virtue of section 58D(2).

61. That having been said, the UT, having set out its view that the purpose of overpayment relief was to provide a remedy of last resort (at *BTR UT* [39] – see above), expressed the view that the time limits applicable to other reliefs did not themselves prevent a claim for overpayment relief: it is a separate remedy and has its own time limit. The UT said this at *BTR UT* [40]:

> 40. It follows from this that in construing paragraph 34 purposively, an assertion that it cannot be used "to circumvent statutory time limits" may not, in our view, be particularly illuminating. It is true that its purpose is not to run in tandem with or to extend the time limit for amending a return in paragraph 6 of Schedule 10, or the time limits for making claims to a relief from SDLT. However, its purpose is to provide a separate remedy, with its own time limit, where the time limit for amending the return has expired, albeit only in tightly defined circumstances.

62. This statement may strictly be obiter. However, we agree. To our minds, it follows logically from the treatment of overpayment relief as a separate remedy. BTR was not claiming MDR. It was claiming overpayment relief because it could not amend its claim to MDR. The requirement that any claim for MDR "<u>must</u>" be made in a land transaction return or an amendment of a land transaction return was not relevant. It was part of the procedure for making an MDR claim. It did not affect the procedure for making a claim for overpayment relief. The relevant time limit for the overpayment relief claim was in paragraph 34B not in paragraph 6(3) Schedule 10. If BTR's claim was to be excluded, it was by reference to the exceptions in Cases A to G in paragraph 34A.

63. *L-L-O* is also a case concerning a claim for overpayment relief relating to a failure to make a claim for MDR. In that case, the taxpayer (L-L-O) had simply failed to include a claim for MDR in its return or in any amendment to its return.

64. One of the issues before the FTT in that case was "whether as a matter of law, an overpayment of SDLT can arise for the purposes of a claim for overpayment relief pursuant to paragraph 34, Schedule 10, Finance Act 2003 from the purported availability of MDR, in light of the provisions of Section 58D(2) Finance Act 2003 and in the absence of a claim to MDR in a return or an amendment to a return?" (see Issue 1(B), *L-L-O FTT* [18]). HMRC submitted that the answer to this question was "no" on the grounds that there was no overpayment of tax which could be reclaimed because the

conditions in section 58D(2) for a claim for MDR had not been met (see *L-L-O FTT* [19]). The FTT dismissed that argument and found that the answer to Issue 1(B) was "yes" (*L-L-O FTT* [22]). By reference to the wording of paragraph 34 and paragraph 34A, the FTT concluded that an overpayment of SDLT could, in principle, arise from a failure to make a claim for MDR (*L-L-O FTT* [22]). However, the FTT went on decide that Case A excluded relief for overpayment of tax because there had been a mistake within Case A, consisting of the failure to make a claim, even if L-L-O was unaware that it was able to make the claim. The UT dismissed the appeal, but the only issue before the UT was the question of the application of Case A.

65. The decision of the FTT in *L-L-O FTT* is not binding upon us in any event. However, the conclusion of the FTT on Issue 1(B) in that case is consistent with the approach of the UT in *BTR UT* to which we referred above and the conclusions that we have drawn from that case.

66. Mr Afzal KC does not put his case in the same terms as HMRC put its case in relation to Issue 1(B) in *L-L-O FTT*. He does not say that because Mr Candy did not – or more accurately could not – make a claim for repayment under section 44(9) in his tax return, there was no overpayment of tax and so paragraph 34 cannot apply. The argument was included in HMRC's Statement of Case and was put to the FTT. However, the FTT dismissed the argument with reference to the decision of the FTT in *L-L-O FTT* (see FTT [55]-[61]). It is not pursued on this appeal.

67. Mr Afzal KC's argument – and HMRC's sole ground of appeal – is simply that the wording of section 44(9) precludes an overpayment relief claim. As we have described, the wording of section 44(9) is similar to that employed in section 58D(2), in particular, in its mandatory nature. It seems to us that Mr Afzal KC's point is essentially the one that was being addressed by the UT at *BTR UT* [40]. If we were to apply the principles that we derive from the case law relating to claims for overpayment relief based on failed or inaccurate claims to MDR to claims for overpayment relief based on repayment claims under section 44(9), that would suggest that we should reject Mr Afzal KC's submission. The question for us therefore is whether there is any reason to distinguish claims for overpayment relief based on an inability to make a repayment claim from those that formed the basis of the decisions in *BTR* and *L-L-O*.

Interaction of paragraph 34 with section 44(9)

68. The only case, to which we have been referred and which concerns a claim for overpayment relief based on a failure or inability of a taxpayer to claim a repayment under section 44(9) FA 2003, is *Smallman v HMRC* [2018] UKFTT 680 (TC) ("*Smallman*"). In that case, the FTT found that a paragraph 34 claim could be made in a case where the taxpayers (Mr and Mrs Smallman) had failed to make a claim for repayment under section 44(9) by amendment to their tax returns within the required time limit (*Smallman* [63]-[65]).

69. The FTT's decision in *Smallman* is not binding upon us. Furthermore, the reasoning of the FTT in that case does not directly address the argument that is put to us by Mr Afzal KC. We should therefore interrogate further whether there is good reason for us to distinguish between claims for overpayment relief made by reference to a failure or inability to make a claim for repayment of tax under section 44(9) in a land transaction return.

70. In this respect, Mr Afzal relies on the six reasons given by HMRC in support of their ground of appeal.

71. We have already addressed the first of those reasons – that the wording of section 44(9) is clear and unambiguous – in the analysis above. For the reasons that we have given, we do not accept that submission.

72. As regards the second reason – that the FTT Decision is inconsistent with the Court of Appeal's decision in *Candy 1 CA* – Mr Afzal KC's submissions both written and oral focused on the implications for Simler LJ's reasons for the application of the strict time limit that applies to amendments of land transaction returns in paragraph 6(3) Schedule 10 FA 2003. Subject to the issues that we discuss below (paragraph [80] et seq), however, the FTT Decision is not inconsistent with the Court of Appeal's decision in *Candy 1 CA*.

(1) The Court of Appeal in *Candy 1 CA* is dealing solely with the section 44 claim. The decision says nothing about the limits on a claim under paragraph 34.

(2) In her summary of the statutory context, Simler LJ acknowledges the possibility of a claim under Part 6, Schedule 10 (which includes paragraph 34) as an exception to the general principle of finality of tax returns (see *Candy 1 CA* [47]).

(3) Furthermore, in her reasons in support of the application of the strict time limit to section 44 claims, and her rejection of the arguments put by Mr Candy in that case, Simler LJ focuses on the lack of any applicable time limit if Mr Candy's arguments were to succeed (*Candy 1 CA* [50]). For claims under paragraph 34, there is an applicable time limit; the four-year time limit in paragraph 34B.

73. In relation to the third reason – that the FTT Decision produces some odd outcomes that Parliament cannot have intended – Mr Afzal KC gave various examples of different outcomes that could arise depending upon whether or not a contract that has been substantially performed "goes off" before or after the last date for the amendment of the land transaction return. We will not repeat them here. It is sufficient to say that we agree with Mr Thomas KC that any strict time limit in tax legislation is going to give rise to cases where the outcome appears to be inconsistent or harsh. That is the price that is paid for the certainty that is provided by the time limit.

74. As regards the fourth reason, HMRC say that the FTT failed to engage properly with the argument that any "backstop" should not apply to a claim under section 44(9). In summary, Mr Afzal KC says that the reasoning of Simler LJ in *Candy 1 CA* (in particular at *Candy 1 CA* [51]) – that the time limit in paragraph 6(3), Schedule 10 is intended to strike a balance between preventing tax avoidance on the one hand and relieving innocent transactions caught by section 44(4) on the other – and her rejection of Mr Candy's submissions that it would be unfair if the strict time limit were to apply (*Candy 1 CA* [52]) suggest that there is no need for a "backstop" for a claim under section 44(9).

75. Simler LJ's comments relate solely to the section 44 claim and not the paragraph 34 claim. Nevertheless, we have some sympathy with these arguments. We discuss these wider issues at paragraph [80] et seq below.

76. HMRC's fifth reason concerns the FTT's reference to Case C in paragraph 34A in support of its view that paragraph 34, Schedule 10 operates as a "backstop" (FTT [34]-[35]). Mr Afzal KC says that the FTT's reasoning is a non-sequitur. It does not follow from the fact that, in some circumstances, Case C precludes a claim for overpayment relief where another relief was previously possible, but a time limit has expired that a claim under paragraph 34 is available in cases where the other relief was not available prior to the expiry of the time limit.

77. We agree with Mr Afzal KC on this point, but it does not inform our view on the meaning of the words in section 44(9).

78. HMRC's final reason relates to paragraph 34(6), Schedule 10. Mr Afzal KC says that paragraph 34(6) expressly states that requirements elsewhere in the legislation, such as in section 44(9) can

mean that a paragraph 34 claim cannot succeed and the FTT failed to take this into account. He points out that paragraph 34(6) states that HMRC is not liable to give effect to a paragraph 34 claim "except as provided in Schedule 10 [which includes paragraph 34A and paragraph 34B], Schedule 11A or under another provision of [Part 4 FA 2003]". Part 4 FA 2003 includes section 44(9) and so, he says, it is not the case that a paragraph 34 claim will only fail if one of the Cases in paragraph 34A applies, or if the time limit in paragraph 34B has expired. The other requirements in the legislation, including that in the second sentence of section 44(9) are also relevant to whether a paragraph 34 claim can or should succeed.

79. We do not agree with this interpretation of paragraph 34(6). As Mr Thomas KC identified, and we agree, paragraph 34(6) is simply preventing taxpayers from claiming relief for overpaid SDLT by making claims outside the FA 2003 regime. It is designed, for example, to prevent restitutionary claims at common law. This reading is consistent with the explanation given in the extra-statutory materials to which we have referred.

80. If we stand back from these arguments, there are two issues that we consider are relevant to the question of construction that is before us. They both relate to the nature of a claim under section 44(9). They represent possible reasons why claims for overpayment relief that are based on a failure or inability to claim a repayment under section 44(9) may be treated differently from claims that are based on a failure or inability to make a claim for other reliefs.

> (1) First, it is acknowledged by both parties that section 44(4) is an anti-avoidance provision. As Simler LJ identified at *Candy 1 CA* [41]-[43] it is designed to address arrangements where parties rely on "resting on contract". The anti-avoidance rationale does not apply to claims for other reliefs.
>
> (2) Second, the right to reclaim SDLT under section 44(9) is not a relief, such as MDR and others in the SDLT code, the requirements for which are determined at the effective date of the contract by reference to circumstances surrounding the land transaction that has been undertaken at the time. It is a right to a repayment of tax that has previously fallen due. It only arises on the occurrence of a subsequent event – the rescission or annulment of the contract or the failure of the contract to be carried into effect.

81. As we have seen, the tribunals in *BTR UT* and *L-L-O UT*, have concluded – or at least proceeded on the assumption – that a paragraph 34 claim can be made in the case of a failure or inability to claim MDR. In those cases, the "tightly defined circumstances" in which a claim can give rise to a repayment are imposed by the exceptions in Cases A to G in paragraph 34A. As the parties noted in argument, one consequence of the fundamentally different nature of a claim for overpayment relief that is based on the inability to make a claim under section 44(9) is that the exceptions in paragraph 34A that might be expected to regulate the availability of overpayment relief in relation to a failure or inability to claim another relief (principally Case A and Case C) are difficult to apply.

> (1) Case A only applies if an amount of SDLT that has been paid in excess by reason of a mistake in a claim or a failure to make a claim. In the case of a claim for overpayment relief made in relation to a right to repayment that has arisen after the expiry of the 12-month period for amendment of returns, there will be no mistake in the original land transaction return and no failure to make a claim. There was no right to make a claim at the effective date or the filing date.
>
> (2) Case C only applies where the claimant could have sought relief by taking steps within a period that has since expired. Once again, Case C will not naturally apply in the case of a claim for overpayment relief that is made in relation to a repayment under section 44(9)

arising after the 12-month period for amendment of returns as the right to make the claim will not have arisen.

82. The effect is that the restrictions in paragraph 34A, which play an important role in restricting overpayment relief to the circumstances in which Parliament intended it to apply are unlikely to be relevant if an overpayment relief claim can be made based on an inability to make a claim for repayment under section 44(9). If so, as Mr Afzal KC points out, where a contract, which has been substantially performed, for any reason "goes off" after the 12-month period for amendment of returns has expired, the effective time limit for making a claim is the 4-year time limit in paragraph 34B.

83. The question for us is whether these issues justify an interpretation of the requirement in section 44(9) – that a claim for repayment of tax must be made in an amended land transaction return – that necessarily precludes a claim for overpayment relief. In our view, they do not. We agree with the UT in *BTR UT* that overpayment relief is a separate relief with its own requirements, procedures and time limits. The requirement in the second sentence in section 44(9) is a requirement of the procedure for making a claim for repayment. It does not, of itself, preclude the making of an overpayment relief claim. It operates in a similar way to the very similar wording in section 58D(2) operated in relation to MDR, which was within the same statutory code. That conclusion does not mean that these issues are not relevant to the question as to whether a claim for overpayment relief based on an inability to make a claim under section 44(9) meets the requirements of paragraph 34 itself. They may or may not be. However, that is not the question before us. We do not decide it now in light of the fact that it forms no part of HMRC's present appeal that because Mr Candy could not make a claim for repayment under section 44(9) in his tax return, there was no overpayment of tax and so paragraph 34 could not apply.

84. For the reasons that we have given above, we reject Mr Afzal KC's submission. The wording of section 44(9) does not, in our view, preclude a claim for overpayment relief under paragraph 34, Schedule 10 FA 2003.

Disposition

85. We dismiss this appeal.

MR JUSTICE CAWSON
JUDGE ASHLEY GREENBANK

RELEASE DATE: 27 July 2026