Neutral Citation: [2026] UKUT 00284 (TCC)

Case Number: UT/2023/000123

UPPER TRIBUNAL
(Tax and Chancery Chamber)

Rolls Building, London

Stamp duty land tax – claim for multiple dwellings relief not made in land transaction returns – subsequent out of time request to amend the returns to claim the relief rejected due to their lateness – whether the request should have been treated as a valid claim for overpayment relief – whether HMRC had given notice of enquiry into the appellant's claim and closed their enquiry – whether an appealable decision had been made – Case A and Case C in paragraph 34A Schedule 10 Finance Act 2003 also considered

Heard on: 16 April 2026
Written submissions on: 13 May 2026, and 27 May 2026
Judgment date: 28 July 2026

Before

JUDGE KEVIN POOLE
JUDGE ASHLEY GREENBANK

Between

RICHARD WARNER

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

<u>Representation:</u>

For the Appellant: Harriet Brown, Rebecca Sheldon and Zac Salmon, Counsel (direct access)

For the Respondents: Nicholas Macklam, instructed by the General Counsel and Solicitor to His Majesty's Revenue and Customs

DECISION

INTRODUCTION

1. This is an appeal against a decision of the First-tier Tribunal ("FTT") in *Richard Warner v HMRC* [2023] UKFTT 751 (TC) ("the FTT Decision"), striking out the proceedings which were before it on the basis that the FTT had no jurisdiction in the matter because there had been no appealable decision made by HMRC, nor were there any other issues that could be determined by the FTT.

2. The FTT refused permission to appeal, as did the Upper Tribunal ("UT") in the first place. Upon reconsideration of that application following an oral hearing, however, the UT granted permission to appeal on two grounds of appeal, explored in more detail below. References in this decision to paragraph numbers refer to paragraphs in the FTT Decision unless the context requires otherwise.

BACKGROUND AND FTT DECISION

3. These proceedings are concerned with an application for multiple dwellings relief ("MDR") in relation to the stamp duty land tax ("SDLT") incurred on the purchase of two plots of land. There is no dispute about the background facts, which were summarised at [10] as follows:

> (1) Mr Warner acquired two adjacent plots of land in the Isle of Wight on 25 May 2016;
>
> (2) On 1 and 6 June 2016, Mr Warner submitted land transaction returns (SDLT 1) for the two properties, which identified them as non-residential property. No claim for multiple dwellings relief (MDR) was included in these returns. The amount of SDLT was £58,500 for one property and £110,000 for the other, amounting to £168,500 for both properties;
>
> (3) On 3 July 2018, Mr Warner wrote to HMRC requesting that SDLT should be recalculated on the basis that he had been unaware at the time of submitting the returns that he could have claimed MDR. He submitted that this would reduce the SDLT to £41,300. [1]
>
> (4) On 19 July 2018, HMRC replied to this letter. I will return to the full details of this letter later, but for the purposes of the background it is sufficient to say that the request was refused. [2]
>
> (5) On 12 August 2019, Mr Warner wrote again asking HMRC to reconsider the position, citing ill-health during the period starting September 2016 and requesting leniency, particularly in light of an outstanding bankruptcy proceeding being pursued by HMRC.
>
> (6) On 17 October 2019, HMRC replied, maintaining their rejection of the late MDR claim. The letter referred to the relevant sections of the law, concluding "any request for MDR is time barred under Section 58D(2) and as explained above your SDLT1 returns can't be amended".
>
> (7) On 1 November 2019, Mr Warner replied to that letter stating that he wished to appeal the decision and that he was intending to refer the matter to the first-tier tribunal.
>
> (8) On 31 March 2022, Mr Warner notified an appeal to the Tribunal.

[1] A copy of this letter is set out in the Appendix to this decision.

[2] There were in fact two letters from HMRC, one in relation to each land transaction return. A copy of one letter is also set out in the Appendix to this decision, together with a note of the small differences in the other letter.

(9) On 28 July 2022, the case was allocated to the basic track and directions were issued to proceed.

(10) On 8 September 2022, HMRC made an application to strike out the appeal.

(11) On 9 December 2022, Mr Warner submitted his representations against the strike out.

(12) None of the SDLT set out in the returns has been paid to HMRC.

4. HMRC applied to strike out the appeal before the FTT, essentially on the grounds that they had not made any appealable decision on Mr Warner's application for MDR. This was because none of the appealable decisions listed in paragraph 35 of Schedule 10 Finance Act 2003 ("Schedule 10" and "FA03" respectively) had been made by them, they had simply rejected his claim on the basis that it had been made out of time.

5. Mr Warner argued that the sequence of events that had occurred amounted, in law, to HMRC opening enquiries into his claim, and that when they refused the claim, that amounted to issuing closure notices in respect of those enquiries, which gave rise to a right of appeal under paragraph 35 of Schedule 10; alternatively, even if HMRC were not to be taken as having issued closure notices, they had nonetheless opened enquiries and therefore the FTT had power to direct the issue of closure notices pursuant to paragraph 24 of Schedule 10.

6. In response to HMRC's argument that he was out of time to amend his original SDLT returns, Mr Warner argued that the normal 12-month time limit for doing so was subject to an explicit qualification "except as otherwise provided" (set out in paragraph 6(3) of Schedule 10), and that qualification should be regarded as applying in his case "as a matter of common sense".

7. In the alternative, Mr Warner argued that his original claim should have been treated as an overpayment relief claim pursuant to paragraph 34 of Schedule 10, thereby benefiting from a 4-year time limit (with which he had complied).

8. The FTT formulated the questions it had to decide as follows:

(1) Did HMRC make an appealable decision, which requires me to consider:

(a) Whether an enquiry was opened into the SDLT returns;

(b) Whether a closure notice was issued;

(c) If not, can this Tribunal nevertheless direct HMRC to issue a closure notice?

(2) Does the proviso "except as otherwise provided" extend the time limits for making the amendment?

(3) Can the claim be treated instead as an "overpayment claim" with its 4-year time limit?

9. As to the first question, the FTT decided, after considering *Portland Gas Storage Ltd v HMRC* [2014] UKUT 0270 (TCC), *HMRC v Raftopoulou* [2018] EWCA Civ 818 and *Secure Service Ltd v HMRC* [2020] UKFTT 0059 (TC), that none of the communications from HMRC could properly be regarded as the opening of an enquiry into Mr Warner's SDLT returns (question 1(a)). It followed that it did not need to address the questions 1(b) (whether a closure notice had been issued) or 1(c) (whether HMRC could be directed to issue such a notice).

10. As to the second question, after considering *Candy v HMRC* [2022] EWCA Civ 1447, the FTT decided that the proviso in question did not assist Mr Warner.

11. As to the third question, the FTT held that "overpayment relief is not relevant in this case. A claim for MDR is not a claim for overpayment relief. The SDLT payable (I note that it was not in fact paid) by Mr Warner was the SDLT set out in the returns. The avenue for him to reduce that amount through MDR was through an amendment to his returns in accordance with section 58D, not under paragraph 34." The FTT also went on to observe that any overpayment relief claim could in any event have been refused by HMRC pursuant to Case C, set out in paragraph 34A(4) of Schedule 10.

LAW

12. Section 58D FA03 introduces MDR:

> **58D Transfers involving multiple dwellings**
>
> (1) Schedule 6B provides for relief in the case of transfers involving multiple dwellings.
>
> (2) Any relief under that Schedule must be claimed in a land transaction return or an amendment of such a return.

13. The detailed provisions of Schedule 6B FA03 governing the relief do not need to be set out in full, but paragraph 1(c) of that Schedule says that "paragraphs 4 and 5 describe the relief available if a claim is made", and paragraph 4 provides that:

> If relief under this Schedule is claimed for a relevant transaction, the amount of tax chargeable in respect of the transaction is the sum of –
>
> (a) the tax related to the consideration attributable to dwellings (see paragraph 5(1) and (2)), and
>
> (b) the tax related to the remaining consideration (if any) (see paragraph 5(7)).
>
> …

14. A purchaser is required, under section 76 FA03, to deliver a land transaction return to HMRC in respect of any notifiable transaction before expiry of the relevant deadline; at the time relevant to this appeal, that deadline was 30 days after the effective date of the transaction.

15. Schedule 10, headed "Stamp Duty Land Tax: Returns, enquiries, assessments and appeals" sets out the requirements for a land transaction return and also makes provision, at paragraph 6, for a return to be amended:

> *Amendment of return by purchaser*
>
> 6 (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.

16. Under paragraph 12 of Schedule 10, HMRC "may enquire into a land transaction return if they give notice of their intention to do so ("notice of enquiry")", subject to the time limits there set out. For this purpose, amended land transaction returns are included, and the time

limit for enquiry runs from the date of amendment. Any enquiry is then completed, pursuant to paragraph 23 of Schedule 10, when HMRC, "by notice (a "closure notice") inform the purchaser that they have completed their enquiries and state their conclusions". Under paragraph 23(2) of Schedule 10:

> A closure notice must either –
>
> (a) state that in the opinion of the Inland Revenue no amendment to the return is required, or
>
> (b) make the amendments of the return required to give effect to their conclusions.

17. Under paragraph 24 of Schedule 10, the purchaser may apply to the FTT for a direction that a closure notice be issued within a specified period. It is implicit that an enquiry must have been opened in order for such a direction to be available.

18. Part 6 of Schedule 10, headed "Relief in case of overpaid tax or excessive assessment" includes, at paragraphs 34, 34A and 34B:

> *Claim for relief for overpaid tax etc*
>
> **34** (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.
>
> …
>
> *Cases in which Commissioners not liable to give effect to a claim*
>
> **34A** (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.

…

Making a claim

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

…

19. In Part 7 of Schedule 10, headed "Reviews and appeals", paragraph 35(1) (headed "Right of appeal") provides as follows:

35 (1) An appeal may be brought against –

(a) an amendment of a self-assessment under paragraph 17 (amendment by Revenue during enquiry to prevent loss of tax),

(b) a conclusion stated or amendment made by a closure notice,

(c) a discovery assessment,

(d) an assessment under paragraph 29 (assessment to recover excessive repayment), or

(e) a Revenue determination under paragraph 25 (determination of tax chargeable if no return delivered).

….

20. Schedule 11A FA03 contains provisions, the detail of which is not relevant for present purposes, as to the method of making claims (including for overpayment relief under paragraph 34 of Schedule 10) which are not required to be made in land transaction returns. They include: power for HMRC to determine the form in which claims must be made (paragraph 2, Schedule 11A); provisions for HMRC giving notice of enquiry into claims (paragraph 7, Schedule 11A) and issuing closure notices on completion of enquiries (paragraph 11, Schedule 11A); and the procedure for appeals against closure notices (paragraph 14, Schedule 11A). These provisions largely follow the pattern for those governing claims which are required to be made in land transaction returns.

21. Section 3 of the Human Rights Act 1998 requires that "[s]o far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights." This includes a right, under Article 1 of the First Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms ("A1P1"), expressed in the following terms:

> Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

GROUNDS OF APPEAL AND DISCUSSION

Grounds of appeal

22. Both the FTT and the UT initially refused Mr Warner permission to appeal. Following an oral renewal of his application and some subsequent written submissions, however, the UT (Judge Jones) granted permission to appeal on the following grounds:

> … that the FTT erred in concluding that the Applicant (a) could not make a valid claim to overpayment relief based on entitlement to MDR; and (b) did not qualify for overpayment relief pursuant to paragraphs 34 and 34A(4) of Schedule 10.

23. To the extent that reliance on section 3 Human Rights Act 1998 "aids the argument concerning the construction of paragraphs 34 and 34A of Schedule 10 to FA03 and [their] application to these facts" (but not further), permission was also granted to rely on that section.

24. Mr Warner's stated grounds of appeal in his notice of appeal to the UT (drafted by him without professional assistance) did not address the grounds for which permission had been given (and indeed concentrated solely on grounds for which permission had actually been refused, namely question (2) identified by the FTT at [8] above), but before us the parties sensibly argued the grounds for which permission had been given (Mr Warner having in the meantime obtained *pro bono* help through the Revenue Bar Association from Ms Brown, to whom we are grateful for her assistance).

25. Following the hearing, we requested written representations from the parties on questions of whether, assuming that Mr Warner made a valid claim for overpayment relief based on entitlement to MDR: (a) HMRC gave notice of enquiry into such claim, and (b) if so, HMRC gave a valid closure notice in respect of their enquiries in accordance with paragraphs 7 and 11 of Schedule 11A Finance Act 2003 respectively. This decision notice reflects both the representations made at the hearing and those written submissions.

Preliminary point

26. Mr Macklam first submitted that since there was no appeal against the FTT's finding at [52] that "there was no enquiry opened", this was determinative of the appeal, broadly on the basis that if no enquiry had been opened, there could be no closure notice and accordingly no right of appeal, irrespective of what view was taken of the merits of Mr Warner's claim for overpayment relief, and regardless of the final decision on the grounds of appeal set out at [22] above. As such, it was in his submission clear that the FTT's decision that it had no jurisdiction was unimpeachable.

27. Ms Brown submitted that, if this was correct, then the permission to appeal actually granted by Judge Jones would have been completely pointless and ineffective, and it was extremely unlikely that any permission would have been granted on that basis.

28. The key plank of Mr Macklam's argument was that there are no differences between the process for opening an enquiry into an amended land transaction return claiming MDR and the process for opening an enquiry into a claim for overpayment relief; so whichever was in fact the underlying subject matter, the FTT's unappealed finding that no enquiry had been opened was determinative so far as the matter of jurisdiction was concerned.

29. However, it is clear when reading the FTT Decision as a whole (and in particular at [29(1)(a)] and [53]) that its finding on this point was addressed solely to the question of whether there was an enquiry opened into the SDLT returns in respect of their possible amendment to claim MDR. The FTT did not address the question of whether any enquiry had been opened into an overpayment relief claim, since it found at [68] that "overpayment relief is not relevant in this case", on the basis that "[a] claim for MDR is not a claim for overpayment relief".

Whilst acknowledging that the procedure for enquiring into a land transaction return and a claim for overpayment relief is essentially the same, that does not in our view change the fact that the FTT's finding that "there was no enquiry" was specifically addressed purely to a "claim for MDR" and not to an overpayment relief claim. The grounds of appeal address the question of whether the FTT erred by not taking jurisdiction on the basis that Mr Warner's letter of 3 July 2018 was a claim for overpayment relief under paragraph 34 of Schedule 10. We therefore reject Mr Macklam's submission on this point.

30. We now turn to the grounds of appeal set out at [22]-[23] above for which permission to appeal was granted.

Ground 1 - Did the FTT err in concluding Mr Warner could not make a valid claim to overpayment relief based on entitlement to MDR?

31. Whilst the permission granted by Judge Jones was phrased as set out at [22] above (and summarised in the heading to this section), it is clear from the reasoning which he gave for granting permission that the error of law which he considered had arguably arisen was rather wider, as explained in paragraphs [51]-[52] of his decision granting permission to appeal, which read as follows:

> 51. The first arguable error of law is that it is arguable that the Applicant's claim that he had overpaid tax by virtue of being entitled to MDR, notwithstanding the fact that the strict procedural requirements of claiming relief under section 58D of FA 2003 had not been followed such that there was no valid claim to MDR, might constitute a valid claim for overpayment relief based upon entitlement to MDR. This would be contrary to the FTT's finding at [68] that overpayment relief was not relevant.
>
> 52. It is arguable that the Applicant's letter of July 2018 might constitute a claim by the Applicant for overpayment relief for the purposes of paragraph 34. It is arguable that the procedural requirements under paragraph 34(1) and (2) of Schedule 10 and those in paragraph 11A[3] were satisfied (a claim for overpaid tax) and that entitlement to MDR could be relied upon as a ground even if the strict formal requirements for making an MDR claim for relief pursuant to section 58D FA 2003 were not so satisfied.

32. Thus there were actually two aspects to the arguable error of law which Judge Jones was identifying. The first, specifically reflected in the wording of the permission he actually gave, was whether, as a general proposition, it was legally possible to make a valid claim for overpayment relief which was, in substance, a claim for MDR which had not been made through the land transaction return as required by section 58D(2) FA03. The second was whether Mr Warner's letter of July 2018 actually constituted a valid claim for such overpayment relief.

33. As to the first aspect, this did not arise as a point of contention at the hearing. Ms Brown put her argument on the tacit assumption that an overpayment relief claim can validly be made on the basis of a failure to claim MDR, and Mr Macklam did not disagree. As Judge Jones pointed out when granting permission to appeal, the FTT in *L-L-O Contracting Ltd and others v HMRC* [2023] UKFTT 859 (TC) had recorded the fact that the parties to that appeal had agreed that, "as a matter of law, a claim for overpayment relief can validly be made pursuant to paragraph 34 of Schedule 10, Finance Act 2003 in respect of a supposed overpayment of SDLT which is said to arise by reason of the availability of multiple dwellings relief, notwithstanding the provisions of section 58D(2) Finance Act 2003". Furthermore, the FTT had, in the same case, decided that even "where a person has failed to claim MDR in accordance

[3] We assume that this was intended to refer to Schedule 11A FA03.

with s 58D(2), an SDLT overpayment can arise for the purposes of a claim for overpayment relief under para 34". Neither of these findings was challenged in the hearing of L-L-O's appeal before the UT (the decision for which was published under reference [2025] UKUT 127 (TCC) after Judge Jones had given his permission to appeal), though the second of them seems to have been questioned by the UT in *HMRC v Ridgway* [2024] UKUT 36 (TCC) at [110]-[114], to which Judge Jones also referred in his decision. The UT in *BTR Core Fund JPUT v HMRC* [2026] UKUT 27 (TCC) ("*BTR*") also proceeds on the assumption that a claim for overpayment relief can be validly made in such circumstances.

34. Since neither side argued before us that the FTT in *L-L-O* was wrong on this point, we are not called upon to decide the point in these proceedings, whatever our actual view of the matter may be. Should HMRC make that argument in a future appeal, it will no doubt be resolved definitively.

35. The second aspect of the arguable error of law which Judge Jones identified was that reflected in paragraph [52] of his decision, set out at [31] above. The argument under this heading was around the question of whether Mr Warner's original letter of 3 July 2018 ought properly to be regarded as a claim for overpayment relief under paragraph 34 of Schedule 10.

36. Here, Ms Brown submitted that Mr Warner's letter dated 3 July 2018 did indeed amount to a valid claim for overpayment relief. In terms of paragraph 34(1)(b) of Schedule 10, Mr Warner had been "assessed as liable to pay an amount of tax", but he believed that the tax was not due. He had then, pursuant paragraph 34(2) of Schedule 10, made a "claim" to HMRC for "discharge" of the amount.

37. Mr Macklam accepted that Mr Warner had been "assessed" to tax for the purposes of paragraph 34(1)(b) of Schedule 10 by reason of his self-assessment in the land transaction returns. However, he argued that the letter could not be regarded as a valid overpayment relief claim for several reasons:

(1) It did not state that it was a claim for overpayment relief, nor did it refer to paragraph 34 of Schedule 10. Instead, it simply enclosed copies of the original returns, identified the amendments which he wished to make to those returns and set out the total amount of SDLT which he considered to be payable on the basis of the amendments he wished to make. In short, it was framed as (and intended to be) an attempt to amend his land transaction returns so as to claim MDR; it was not (and was not intended to be) a claim for overpayment relief (nor indeed was it understood by HMRC to constitute one);

(2) It did not explicitly set out "the amount" which Mr Warner was identifying as having been assessed but which he believed was not due, nor did it make a claim for "discharge" of that amount; and

(3) It did not include a declaration, as required by paragraph 2(2) of Schedule 11A FA03 in relation to any claim for overpayment relief, that "all the particulars given in the form are correctly stated to the best of the claimant's information and belief".

38. As to [37(2)] above, whilst the actual amount may not have been explicitly stated, it was clearly identifiable easily enough as being £127,200, given that the original returns included total self-assessments of £168,500 and the amended liability being claimed by Mr Warner was £41,300.

39. As to [37(3)] above, at the hearing Mr Macklam produced a copy of HMRC's online public guidance at the time, which gave no indication of the need for overpayment relief claims to include this statement. In the light of this, we took him to be accepting for the purposes of this appeal that the absence of such a declaration did not of itself disqualify the letter from

constituting a valid overpayment relief claim, or alternatively that this would constitute a new argument that was not open to him on appeal.

40. Thus Mr Macklam's main argument under this heading revolved around his submission summarised at [37(1)] above, but with the lack of explicit quantification of the "amount" of the claim adding some additional weight to his overall submissions.

41. Mr Macklam pointed out that from the time of submission of Mr Warner's original letter dated 3 July 2018, he had not mentioned overpayment relief until he was responding in December 2022 to HMRC's application dated 8 September 2022 for his appeal to the FTT to be struck out. Following HMRC's initial rejection of his July 2018 letter, the further correspondence referred to at [3] above was exchanged. In summary, in all the correspondence from Mr Warner up to and including his notice of appeal to the FTT dated 31 March 2022, Mr Warner continued to seek to persuade HMRC to allow an "out of time" amendment to his original land transaction returns so as to claim MDR directly, and made no mention of a claim for overpayment relief.

42. The FTT dealt with this argument shortly, on the basis that "[a] claim for MDR is not a claim for overpayment relief". It had considered the original letter of 3 July 2018 and the subsequent correspondence and clearly reached the view that (a) it constituted an attempt to claim MDR directly by a late amendment of the land transaction returns, and (b) did not include any explicit or tacit alternative claim to overpayment relief.

43. In his original letter of 3 July 2018 (see Appendix), Mr Warner specifically refers to his failure to claim MDR in the original land transaction returns and to the amendments that would be required to be made to those returns to claim MDR. The natural reading of that letter was that it was intended to make claims for MDR by amending the relevant returns. HMRC responded on that basis and rejected those claims on the grounds that they were out of time (see also Appendix).

44. There was no hint in the subsequent correspondence that Mr Warner was seeking to claim overpayment relief in his 3 July 2018 letter. If Mr Warner had intended to make such a claim, then we would have expected him to say so when HMRC rejected his late MDR claims. But he did not, he continued (until well after the expiry of the "overpayment relief" claim deadline) to seek to persuade HMRC to accept his late MDR claims by amending his original returns. The first time at which Mr Warner sought to treat his claim as a claim for overpayment relief was in his response to HMRC's strike out application in December 2022. As we have mentioned, this was some time after the four-year period for making an overpayment relief claim had expired.

45. The only other question that might then arise is whether a document which is neither intended by its sender nor regarded by its recipient as an overpayment relief claim under paragraph 34 of Schedule 10 can and should be treated as one, simply because it is asking for the discharge of tax which is believed to have been over-assessed, even though the mechanism by which it is specifically asking for that discharge to be effected is through an entirely different process, namely an attempt to amend the original land transaction return in order to claim the original underlying MDR, without reference to the separate regime for overpayment relief claims.

46. We consider that the answer to this question must be "no". Were it otherwise, rather than simply considering the claim actually made to them in any particular case, HMRC would potentially be obliged to consider whether there was any other means by which the relief being sought could be claimed, and address that alternative claim also. This would sit very uneasily with the underlying structure of SDLT being a self-assessment regime where it is up to the

taxpayer to assess their own liability to tax and make any necessary claims for relief etc in doing so.

47. Nor do we consider that Mr Warner's argument under the Human Rights Act adds anything here. If the respective positions of the parties are correct, the legislation sets out two perfectly clear, and independent, rights to relief: a claim for MDR, which has to be made in a return or an amended return; or a claim for overpayment relief based on a failure to make a claim for MDR in a return, which cannot be made in a return. Mr Warner has chosen to attempt to avail himself of one of them and not the other. We do not see how it can be fairly argued that it is necessary, in order to afford him "peaceful enjoyment of his possessions", that he should instead be treated as having effectively exercised both rights in the alternative.

48. Thus we consider the FTT was correct to say that "a claim for MDR is not a claim for overpayment relief" and accordingly there was no error of law in its finding that "overpayment relief is not relevant in this case".

49. We therefore dismiss this ground of appeal. In the absence of a claim for overpayment relief, it follows that there can have been no notice of enquiry or closure notice in relation to such a claim. No right of appeal under paragraph 14 of Schedule 11A therefore arose and the FTT was right to hold that it had no jurisdiction in relation to the proceedings. Accordingly, whatever our views on the second ground of appeal, the appeal as a whole must fail.

50. However, since the parties made detailed submissions on the second ground of appeal, we go on to consider that further below. Before doing so, we should record that this second ground of appeal is only relevant if, contrary to our decision on the first ground of appeal, the 3 July 2018 letter should be properly regarded as a claim for overpayment relief under paragraph 34 of Schedule 10 FA03, and also if we were to find that HMRC (i) gave notice of enquiry into that claim and (ii) issued a valid closure notice in respect of any enquiries that they undertook (in accordance with paragraphs 7 and 11 of Schedule 11A FA03). As we have mentioned above, we asked the parties for written submissions on those points following the hearing. It is clear from those submissions that we would need to take further steps in order to be in a position to determine those issues. That would only delay the progress of this appeal. In the light of our conclusion on the first ground of appeal, we have concluded that it would not be appropriate to do so.

Ground 2 - Did the FTT err in concluding that Mr Warner did not qualify for overpayment relief pursuant to paragraphs 34 and 34A(4) of Schedule 10?

51. It seems to us that there is some confusion around this ground of appeal. In paragraphs [58]-[60] of his decision granting permission to appeal, Judge Jones said this about this ground of appeal:

> 58. The second arguable error of law is that it is arguable that thereafter FTT failed to address how, if entitlement to MDR might be raised in a claim for overpayment relief, the overpayment claim fell within Case C so that the Applicant would be precluded from qualifying for the relief by virtue of paragraph 34A(4).
>
> 59. It is arguable that the FTT did not address how the claim for MDR fell within paragraph 34A(4)(b): it arguably made no findings that the Applicant knew, or ought reasonably to have known, before the period of twelve months following the filing date, that such a claim for relief as MDR was available. The Appellant had raised a number of factual circumstances (such as illness and subsequent planning decisions) that he relied upon as set out at [10(5)] and [71] of the Decision as explaining his late knowledge of and claim to MDR. It is arguable that these were relevant to his state of knowledge as to the availability of MDR. Mr Warner also emphasised in his oral submissions

> to me that the development in question was of a pro-social nature and was not primarily aimed at profit but community generation.
>
> 60. Furthermore, there is a further hurdle for the Applicant to overcome. HMRC did not rely on the denying provision in paragraph 34A(2) - Case A on the failure to make a claim - in this appeal before the FTT. This is a provision, that together with Case C has been considered by the FTT to deny overpayment relief in a number of cases in which MDR is relied upon – including *LLO*, *Smith Homes*, *Secure Service v HMRC* [2020] UKFTT 59 (TC) ("Secure Service") and *BTR Core Fund JPUT v Revenue and Customs* [2024] UKFTT 885 (TC). However, as Case A in paragraph 34A(2) was not argued or relied upon before the FTT, I am not prepared to refuse permission to appeal in reliance on this provision.

52. There are several difficulties with this ground. First, it is clear that the relevant part of the *ratio decidendi* of the FTT's decision was (at [68]) that "overpayment relief is not relevant in this case", because "[a] claim for MDR is not a claim for overpayment relief". Any comment that it made about restrictions on the availability of the relief (if it had been relevant) is therefore *obiter*. Second, the comment which the FTT actually made at [69] about the applicability of Case C did not refer to the fact that HMRC, in their original strike out application, had made no reference to Case C but had, in passing, referred to their contention that in any event "a claim to Paragraph 34 under Case A would not succeed" – which we take, if anything, to be referring to Case A in paragraph 34A. In other words, it appears that the FTT, in referencing Case C, was adding its own thoughts rather than reflecting any argument that had been put to it. Third, it is not clear that Judge Jones, in stating that "as Case A in paragraph 34A(2) was not argued or relied upon before the FTT, I am not prepared to refuse permission to appeal in reliance on this provision", was aware of the fact that Case A had apparently at least been referred to in HMRC's original strike out application, albeit as a matter peripheral to the grounds upon which they were explicitly relying in that application.[4] Case A was also the main "case" under consideration in the various authorities cited by Judge Jones at [60] in his decision.

53. Putting those issues to one side for the moment, before us Ms Brown made submissions in relation to both Case A and Case C, whereas Mr Macklam (suggesting that the FTT's reference to Case C might have been a typographical error, the FTT actually intending to refer to Case A) addressed only the applicability of Case A. We reject his suggestion that the FTT actually intended to refer to Case A because the FTT specifically referred at [69] to Case C as being relevant as "a time-limited means of making the claim" which Mr Warner had not used: that is language that makes sense only in relation to Case C and not in relation to Case A.

54. In view of the difficulties identified at [52] above however, we consider it appropriate to express our views on the arguments advanced by the parties in relation to both Case A and Case C.

Case C

55. As to Case C, Mr Macklam did not address the matter at all, submitting that the present facts fell squarely within Case A and therefore any overpayment relief claim found to have

[4] We note that the FTT also made an apparent reference at [19] to Case A as forming part of HMRC's "alternative" submission; however, that reference is at best ambiguous, stating that "a claim under Case A of paragraph 34 (for overpayment relief) would not succeed." There is no "Case A" referred to in paragraph 34, and whilst from the context (and the echoing of HMRC's inaccurate language in their strike out application just mentioned) it seems more likely that the FTT meant to say "a claim under Case A of paragraph 34A", it could have been intending (incorrectly) to refer to a claim under paragraph 34(1)(b). This merely adds to the confusion around this issue.

been made would be doomed to fail under that Case, following the principles set out by the UT in *L-L-O*.

56. Ms Brown submitted that the FTT could only properly reach a view on the applicability of Case C on the basis of findings of fact around whether Mr Warner "knew, or ought reasonably to have known" about the availability of MDR before the time limit for claiming it under section 58D(2) had passed, particularly in the light of his argument that he could not have made a claim within the 12 month period because he did not by then know how many dwellings were to be built. No such findings were apparent on the face of the FTT Decision, she submitted, and therefore its finding that Case C was applicable was not supported by any evidence and must therefore constitute an error of law.

57. To the extent Case C is relevant, we accept Ms Brown's argument. We find that in making the statement that "HMRC would have been within their rights to refuse it [*i.e. an overpayment relief claim*] pursuant to Case C", the FTT made an error of law because such a finding required supporting findings of fact which are nowhere evident in the FTT Decision.

Case A

58. As to Case A, Mr Macklam referred to the decision of the UT in *L-L-O*, where the FTT's interpretation of what could constitute a "mistake" for the purposes of Case A was examined and approved. In confirming the FTT's decision, the UT said that failure to make an MDR claim caused by ignorance of the availability of the relief could (and on the facts of that case, should) certainly be described as a "mistake". It is however true that the UT caveated its conclusion by saying this (at [44]):

> It is possible that in some circumstances questions might arise as to the cause of the failure to make the claim and whether it amounted to a mistake. However, that is not the case before us and we express no view on how a claim for overpayment relief might be dealt with in those circumstances.

59. In the present case, Ms Brown argued that there was no hard-edged rule that failure to make an MDR claim in accordance with the statutory time limit necessarily amounted to a "mistake" for the purposes of Case A. She pointed to the UT's statement in *L-L-O* [44] (set out at [58] above) by reference to the medical and other problems Mr Warner had experienced, summarised at [26] and [71] of the FTT Decision, and submitted that these other factors were sufficient to negate the suggestion that Mr Warner had made a "mistake" in failing to claim MDR in time in either his original returns or within the statutory 12-month period allowed for their amendment. Alternatively, she argued that even if a mistake were found to have caused the failure, HMRC still had a discretion (which, in the circumstances they should have exercised in Mr Warner's favour) to allow his claim.

60. As to Ms Brown's first point, Mr Macklam argued that eligibility for MDR was decided as at the effective date – in this case 25 May 2016; the returns were submitted on 1 and 6 June 2016, and if Mr Warner wanted to claim MDR, he should have done so then; his failure to do so was clearly a "mistake" within the meaning of that word as explored by the UT in *L-L-O*. Further, the deadline for amending his returns was June 2017 and the only significant ill health Mr Warner had said he had suffered by then was "uncomplicated surgery" as a day case for a detached retina in September 2016 and "uncomplicated cataract surgery" on 27 March 2017. Whilst Mr Warner's eye problems would clearly have been unpleasant, they would not have prevented him from making any necessary amendments to his returns. To the extent it was relevant, therefore, he submitted that Mr Warner's failure to amend his returns by June 2017 could also properly be characterised as a "mistake" within the meaning of that word as explored by the UT in *L-L-O*.

61. As to Ms Brown's second point, Mr Macklam argued that no such discretion existed – the statutory scheme was that if an overpayment relief claim was made under paragraph 34 of Schedule 10, then HMRC were obliged to give effect to it unless one of the Cases in paragraph 34A applied.

62. On these issues, we agree with Mr Macklam. Case A excludes a claim for overpayment of SDLT where the SDLT paid (or liable to be paid) was excessive by reason of a mistake in a claim or election, or a mistake consisting of failing to make a claim or election. The UT said this in relation to the purpose of Case A in *L-L-O* at [25]:

> The purpose and rationale behind Case A is clear. It prevents the time limits and procedural requirements in relation to claims being undermined and it promotes certainty and finality in the administration of SDLT. Where a mistake consists of a failure to make a claim for whatever reason, relief is not available.

63. In *L-L-O,* the taxpayer had failed to make a claim for MDR and was attempting to use paragraph 34 of Schedule 10 as a means of reclaiming SDLT. The taxpayer argued that it had not made a "mistake" and so Case A did not apply. The passage above emphasises that HMRC is not required to give effect to a claim for overpayment relief where the mistake in question is that a taxpayer has simply failed to make an application for MDR in accordance with its terms. It is quoted with approval by the UT in *BTR* (see *BTR* [47]).

64. Whilst we would agree with Ms Brown that there may be facts and circumstances in which the concept of "mistake" in Case A has to be applied in a manner which is perhaps not as hard-edged as some of Mr Macklam's submissions might suggest (see *L-L-O* [44]), any such circumstances cannot detract from the basic principle that the overpayment relief provisions are not intended to allow taxpayers to make, alter or revoke claims for relief over an extended period outside the statutory time limits. The facts of this case do not justify a departure from that basic principle. We also agree with Mr Macklam that the structure of the overpayment relief provisions – which require HMRC to give effect to a claim unless one of the exceptions applies – is inconsistent with the idea that there is some kind of residual discretion as Ms Brown was arguing.

65. As in the case of ground 1 above, and for the same reasons, we do not see how the provisions of section 3 Human Rights Act 1998 and A1P1 can assist Mr Warner's case. If overpayment relief were under consideration, the availability of that relief is limited in ways which seem to us to be entirely logical in the context of the scheme of the legislation as a whole. The loss of the opportunity to claim overpayment relief as an alternative to MDR does not appear to us to come close to a situation in which Mr Warner is being "deprived of his possessions" for the purposes of A1P1.

66. We therefore agree with the submissions made by Mr Macklam: if the point were relevant, we consider that any overpayment relief claim found to have been made by Mr Warner would fall within Case A and therefore HMRC would have been entitled to refuse it.

FINAL POINTS

67. The parties (at our direction) made written submissions after the hearing on the question of whether (assuming an overpayment relief claim to have been validly made) HMRC's correspondence could in any event be regarded as a notice of enquiry (either with or without a closure notice). We are grateful to the parties for their submissions on this point. However, since we have decided that no overpayment relief claim was made, this question becomes irrelevant. Since any meaningful evaluation of the parties' submissions would require us to start from an assumption, contrary to the clear conclusion we have reached, that a valid overpayment relief claim was made, we do not think it would be helpful or appropriate for us

to do so. Furthermore, any determination of those issues would require us to reach conclusions on questions of fact or inferences from them, for which we have no directly applicable findings from the FTT. Given our firm conclusion on the first ground of appeal, it does not seem appropriate for us to embark upon that enquiry.

Summary and Conclusion

68. We reject HMRC's preliminary argument that the appeal should be dismissed because of the FTT's unappealed finding that HMRC had not made any appealable decision, because no enquiry had ever been opened by them – see [29] above.

69. We consider that in relation to Ground 1, the FTT made no error of law – see [48] above. Mr Warner did not make a valid overpayment relief claim. It follows that HMRC did not open any enquiry into such a claim, nor did they issue a closure notice in respect of any such enquiry. Accordingly, no right of appeal has arisen for Mr Warner pursuant to paragraph 14 of Schedule 11A and the FTT was correct to strike out his appeal. On this basis, the appeal must be DISMISSED.

70. Whilst not relevant to our decision on the appeal as a whole, (i) we agree with Mr Warner that the FTT made an error of law in finding, without any supporting findings of fact, that HMRC would have been within their rights to refuse an overpayment claim by Mr Warner pursuant to Case C of paragraph 34A, but (ii) we consider that HMRC would in any event have been entitled to refuse such a claim pursuant to Case A of paragraph 34A.

JUDGE KEVIN POOLE
JUDGE ASHLEY GREENBANK

Release date: 28 July 2026

APPENDIX

TEXT OF MR WARNER'S LETTER DATED 3 JULY 2018

Dear Sirs

Land at Ryde, Isle of Wight

UTRNs: [Numbers given]

I wish to apply for a recalculation of Stamp Duty Land Tax due on the above transactions. I enclose copies of the original returns.

When submitting the returns, I was unaware of the availability of multiple dwelling relief where construction of the property for residential purposes had not commenced by the effective date of the transaction.

The land the subject of the transaction will encompass 75 affordable one- and two-bedroom apartments for rent to the elderly, 27 shared ownership two-bedroom bungalows again for rent to the elderly, 29 two-bedroom bungalows for open market sale (but restricted to the over-55's), and 45 two- and three-bedroom houses for open market sale to working families.

In view of that, my response to box 9 on the returns should have been "Yes", and I should have entered relief code 33 in the subsequent box.

In view of the number of units, the minimum rate of 1% of the amount paid will apply. This amounts to £27,500 in the case of [*reference number given*], and £13,800 in the case of [*reference number given*].

I should be grateful if you would confirm that a total of £41,300 is now payable.

Yours faithfully

TEXT OF HMRC LETTER DATED 19 JULY 2018

Note: HMRC sent two near identical letters, one in relation to each Land Transaction Return. The text of the two letters was exactly the same except for the references, the financial details (shown below in italics) and one additional paragraph included in one letter (shown below in bold and italics)

Dear Richard

Richard W F Warner

Land on West Side of Weeks Road, Ryde, Isle of Wight

Thank you for your letter dated 3 July 2018. I received this letter on 6 July 2018. Section 58D of the Finance Act 2003 states that claims for Multiple Dwellings Relief (MDR) must be made in a land transaction return or in an amendment to a return. Under Paragraph 6 of Schedule 10 to the Finance Act 2003, an amendment can be made no later than 12 months after the filing date for the return. The filing date for a land transaction return is 30 days after the effective date of the transaction.

The filing date for this transaction was 24 June 2016. The deadline for an amendment to the return was 24 June 2017. As your request was received after this date I am unable to process it as an amendment. There is no right of appeal against a refusal to process a late amendment.

As a claim for MDR can only be made in a return or an amendment to the return I cannot consider your request under any other part of the SDLT legislation.

Therefore, *£109,500* Stamp Duty Land Tax (SDLT) remains outstanding on this account.

Interest will also be levied. *£6,453.90* interest has accrued so far. HMRC charges interest under section 87 of the finance act 2003 if our records show a payment has not been received within 30 days of the effective date of the transaction.

The charging of interest is not a penalty.

It merely gives the Exchequer a reasonable degree of commercial restitution for the period it was denied use of money to which it was legally entitled, irrespective of the reasons for the delay in payment and during which time the person due to pay the money continued to have the benefit of it to earn interest to which they were not entitled.

Because of this I regret that there is no avenue for appeal against interest charge nor is there any discretionary power under which a charge can be waived.

I appreciate this response is not what you would have wanted, but in this case the interest is still due and outstanding.

Therefore, as of today, *£115,953.90* remains outstanding on this account. However, interest will continue to accrue until the full amount of SDLT is received.

This is based on your self-assessment. Your SDLT1 form says £110,000 SDLT was due for this transaction. Please confirm how this was calculated.

If you contact us, we can deal with you more quickly if you quote our reference number and provide a daytime phone number.

Please note that our new address is BT Stamp Duty Land Tax, HM Revenue and Customs, BX9 1HD. If you write to us but do not use this address then we may not get your post.

Yours sincerely