

UNITED KINGDOM / JUDGMENT

Dreyer v Revenue and Customs (VAT - civil evasion penalty of almost £5m for dishonest behaviour) [2025]

UKFTT 1336 (TC) (10 November 2025)

[2025] UKFTT 1336

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Citation: [2025] UKFTT 1336 (TC) Case Number: TC09684 FIRST-TIER TRIBUNAL TAX
CHAMBER By remote video hearing Appeal reference: TC/ 2024/02959 VAT - civil evasion
penalty of almost £5m for dishonest behaviour - appeal not made to the Tribunal within
the statutory time limit - whether as a result of Bill of Rights Act 1689 and/or the European
Convention of Human Rights, no time limit for appealing - whether review request
notified – Medpro considered and applied - application for late appeal refused - costs
application refused Heard on: 28 October 2025 Judgment date: 10 November 2025 Before
TRIBUNAL JUDGE ANNE REDSTON Between JOHN EARL DREYER Appellant and THE
COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS Respondents
Representation: For the Appellant: Mr Andrew Young of Counsel, instructed by Lexlaw For
the Respondents: Mr James Puzey of Counsel, instructed by the General Counsel and
Solicitor to HM Revenue and Customs DECISION

Introduction

1. At all relevant times, Mr Dreyer was the director, majority shareholder and beneficial owner of Contactlenses Limited ("CLL"), a company in the Seychelles. On 13 May 2020, HM Revenue & Customs ("HMRC") issued CLL with a civil evasion penalty of £4,964,865 under VATA s 60, and on the same day issued Mr Dreyer with a civil evasion penalty of the same amount ("the Penalty") under VATA s 61, on the basis that CLL's behaviour was wholly attributable to Mr Dreyer's dishonesty. On 16 May 2024, Mr Dreyer applied to the Tribunal for permission to make a late appeal against the Penalty. At the hearing, Mr Young represented Mr Dreyer and

Mr Puzey represented HMRC. 2. The issues in the case were: (1) Whether the 30 day time limit in VATA s 83G(1) had legal effect, or whether as the result of the Bill of Rights Act 1689 and/or the European Convention on Human Rights ("the Convention"), there was no time limit for making an appeal. Mr Young described this as "the Constitutional Issue". (2) Whether Mr Dreyer had notified HMRC that he was accepting the offer to review the Penalty. (3) If neither of the above was the position, whether Mr Dreyer should be given permission to bring his appeal to the Tribunal after the statutory time limit. 3. I decided as follows: (1) the 30 day time limit did have legal effect; (2) Mr Dreyer did not notify HMRC that he had accepted HMRC's review offer; and (3) Mr Dreyer does not have permission to bring his appeal late. The Constitutional Issue 4. The hearing of Mr Dreyer's late appeal application was listed for 28 October 2025. On 7 October 2025, Mr Young filed his skeleton argument; this included submissions about the Constitutional Issue. 5. On 21 October 2025, he applied for those submissions to be determined as a preliminary issue at a separate hearing. On 22 October 2025, Judge Williams directed that the application be determined as a preliminary issue at the hearing listed for 28 October 2025. The preliminary issue was argued as a point of law, without reference to the facts of Mr Dreyer's appeal. The Issue in outline 6. VATA s 83G includes the following provisions: "(1) An appeal under section 83 is to be made to the tribunal before—

- (a) the end of the period of 30 days beginning with—
- (i) in a case where P is the appellant, the date of the document notifying the decision to which the appeal relates...
- (6) An appeal may be made after the end of the period specified in subsection (1)...if the tribunal gives permission to do so." 7. Although the Penalty was classified as a civil penalty under UK law, it was common ground that it was criminal in nature for the purposes of Article 6 of the Convention, see *C & E Commrs v Han & Yau*

[2001] EWCA Civ 1040 ("Han"), a case in which Mr Young represented the appellants. 8. Mr Young submitted that as the Penalty was criminal in nature, the 30 day time limit in VATA s 83G(1) was prevented from applying by virtue of Article 6 and/or the Bill of Rights Act 1689. Although he put more weight on the latter, I begin with Article 6. Article 6 9. Article 6 is headed "right to a fair hearing" and it includes the following provisions "1 In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law... 2 Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law. 3 Everyone charged with a criminal offence has the following minimum rights: a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

- b) to have adequate time and facilities for the preparation of his defence;

- c) to defend himself in person or through legal assistance of his own choosing...
 - d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court." 10. In Mr Young's submission, it followed from Article 6(1) that Mr Dreyer had the right to a hearing, and the time limit provisions were therefore of no effect. 11. However, as Mr Puzey pointed out, that position is not supported by the case law. In Han, Potter LJ gave the leading judgement. He said (emphasis in original): "83.... It must be remembered that the requirements of article 6(1) in relation to a fair trial, together with what has been held to be the implicit recognition of a right to silence and a privilege against self-incrimination, are of a general nature and are not prescriptive of the precise means or procedural rules by which domestic law recognises and protects such rights.
84. It by no means follows from a conclusion that Article 6 applies that civil penalty proceedings are, for other domestic purposes, to be regarded as criminal and, therefore, subject to those provision[s] of PACE and/or the Codes produced thereunder, which relate to the investigation of crime and the conduct of criminal proceedings as defined by English law ..." 12. Mance LJ, giving a concurring judgment, said at [88]: "The classification of a case as criminal for the purposes of Article 6(3) of the Convention on Human Rights, using the tests established by the Strasbourg jurisprudence, is a classification for the purposes of the Convention only. It entitles the defendant to the safeguards provided expressly or by implication by that Article. It does not make the case criminal for all domestic purposes. In particular, it does not, necessarily, engage protections such as those provided by the Police and Criminal Evidence Act 1984." 13. In Khan v HMRC
- [2006] EWCA Civ 89 , Mr Young also represented the appellant. He submitted that HMRC's interview of Mr Khan should have been conducted under Code C issued under PACE, which inter alia required a formal caution to be issued. That submission was rejected. Buxton LJ said: "87. Section 60 of the Value Added Tax Act 1994 [VATA] introduces a regime for the imposition of a penalty where a person has acted dishonestly for the purpose of evading VAT. The interviews of which complaint is made in this case were conducted under that regime. In Commissioners of Customs and Excise v Han
- [2001] STC 1188 this court held that the characteristics of that regime rendered proceedings under it criminal for the purposes of Article 6 of the ECHR . On that basis Mr Young argued that the Convention therefore required that there should be applied to the VAT evasion regime all the rules applying to a criminal process in English domestic law. In particular, at the interview with the Customs officials Mr Khan should have been cautioned in the terms required by s10(4) of PACE Code C. Failure to do so meant that he was "denied the constitutional protections of [PACE]".

88. This argument, if correct, would have marked a very striking departure from the usual understanding of Convention jurisprudence. While the Convention will require the exclusion of some categories of evidence obtained by serious misconduct (e.g. torture, *Montgomery v HM Advocate*
- [2003] 1 AC at 649D, per Lord Hoffmann; or entrapment, *Allan v UK* (2003) 36 EHRR 12) the Convention's characteristic mission is to determine whether proceedings viewed as a whole have been fairly conducted, without mandating specific general rules of evidence or procedure for the law of the member state: see the ECtHR in *Schenk v Switzerland*
- (1988) 13 EHRR 242 [46]: 'While Article 6 of the Convention guarantees the right to a fair trial, it does not lay down any rules on the admissibility of evidence as such, which is therefore primarily a matter for regulation under national law.'
89. Convention jurisprudence could not, therefore, require the use of PACE procedures in the VAT evasion regime even though the latter is, in Convention terms, a criminal process. All that it could do is to control the general fairness of the whole of a particular set of proceedings. PACE can only be brought into the case by the further step of arguing that the decision in *Han* caused the VAT evasion process to be criminal in domestic as well as in Convention terms, and therefore the whole of the domestic regime of criminal process must be applied to it: it would seem as a matter of English domestic, not of Convention, law.
90. The premise behind that argument is clearly wrong. In *Han* this court continued, to cite from §88 of the judgment of Mance LJ (as he then was): "The classification of a case as criminal for the purposes of art 6(3) of the Convention, using the tests established by the Strasbourg jurisprudence, is a classification for the purposes of the ECHR only. It entitles the defendant to the safeguards provided expressly or by implication by that article. It does not make the case criminal for all domestic purposes. In particular, it does not, necessarily, engage protections such as those provided by the Police and Criminal Evidence Act 1984 " That, with respect, must be so. It is trite law that the Convention operates an autonomous regime of classification, and that the criteria under that regime for determining whether proceedings are criminal are to be found in the jurisprudence of the ECtHR, dating from *Engel v Netherlands* (1979–80) 1 EHRR 647 . Those criteria are the domestic classification of the proceedings; the nature of the offence; and the severity of the penalty to which the subject is at risk. Of these, the first, the domestic classification, is only a starting point: *Benham v UK*
- (1996) 22 EHRR 293 [56]. If the domestic law does classify the proceedings as criminal, then that will conclude the issue under the Convention. But, as *Han* itself demonstrated, even if the domestic regime is specifically distinguished from domestic criminal proceedings, as the VAT evasion regime is so distinguished by section 60(6) of VATA , it may still be found to be "criminal" in nature under the Convention. As the ECtHR said in *Engel* , at its §81, "the autonomy of the concept of 'criminal' operates, as it were, one way only". Accordingly, although proceedings can be classified as criminal under the Convention when they are

not so classified in domestic law, such a Convention decision cannot affect, and is recognised in the jurisprudence cited above as being quite different from, the classification of proceedings in domestic law." 14. It is thus beyond doubt that classification as criminal for the purposes of Article 6 does not mean that the time limit requirement in VATA s 83G is of no effect. As Buxton LJ said in *Khan* , "the Convention's characteristic mission is to determine whether proceedings viewed as a whole have been fairly conducted, without mandating specific general rules of evidence or procedure for the law of the member state". VATA gives appellants a right of appeal, with the proviso that the appeal must be made within 30 days unless the Tribunal gives permission for a longer period. There is nothing unfair about those provisions, and they are not rendered ineffective by Article 6. I thus reject Mr Young's submissions in reliance on the Convention. The Bill of Rights Act 1689 15. The context of the Bill of Rights Act 1689 is that the catholic monarch, James II, had been deposed and Parliament had invited William and Mary to rule in his place. The Act contains a number of declarations, the first of which is that "the pretended power of suspending of laws or the execution of laws by regal authority without consent of Parlyament is illegall". In other words, it established parliamentary sovereignty. 16. One of the particular abuses which, according to the Bill of Rights Act, had been committed by James II, was to make: "severall grants and promises made of fines and forfeitures before any conviction or judgement against the persons upon whome the same were to be levied." 17. The Act prohibited this, stating that "all grants and promises of fines and forfeitures of particular persons before conviction are illegal and void" ("the Declaration"). 18. Mr Young submitted the Declaration remained in full force and effect, because the Bill of Rights Act had never been repealed, and was a "constitutional statute". He relied on *Thoburn v Sunderland City*

[2002] EWHC 195 (Admin) (" *Thoburn* ") in which Laws LJ said at [62] that the Bill of Rights was a constitutional statute, and at [63] that "Ordinary statutes may be impliedly repealed. Constitutional statutes may not". It followed, said Mr Young, that a person charged with a criminal offence had "a constitutional right to have the criminal charges determined by a court"; that right could not be removed, and thus there was no time limit by which a person had to exercise that right. 19. There are a number of difficulties with those submissions. (1) The Declaration refers to the "conviction" of a person, and thus relates to criminal charges, whereas the penalties charged under VATA ss 60 and 61 are civil penalties. The fact that they are classified as criminal under the Convention does not make them criminal for the purposes of domestic law, and the Bill of Rights Act is plainly concerned with domestic law. (2) I concur with Collins J, who said in *Rooney (De Crittenden) v National Parking Adjudication Service*

[2006] EWHC 2170 (Admin) at [8]: "... The Bill of Rights' reference to fines and forfeitures before conviction or judgment means that what cannot prevail is a fine or a forfeiture in respect of which there is no right of appeal, whether ultimately to a court or through a system which is set up which is equivalent to a court." (3) Parliament has explicitly enacted civil penalty regimes in many areas of the law, from environmental penalties to parking fines,

each with time-limited appeal rights, and it is inconceivable that all these time limit provisions are illegal. In *Thoburn*, Laws J said at [63] that: "For the repeal of a constitutional Act or the abrogation of a fundamental right to be effected by statute, the court would apply this test: is it shown that the legislature's actual - not imputed, constructive or presumed - intention was to effect the repeal or abrogation? I think the test could only be met by express words in the later statute, or by words so specific that the inference of an actual determination to effect the result contended for was irresistible." (4) Thus, even if Mr Young were to be correct in his understanding of the meaning of the Declaration, the irresistible conclusion would be that the Bill of Rights has been amended so as to allow civil penalty regimes together with the related time-limited appeal rights such as that introduced by VATA. (5) Finally, the first of the declarations in the Bill of Rights Act established parliamentary sovereignty. It follows that Parliament, with the legislative sovereignty vested in it by the very same Bill of Rights, can and did give HMRC the power to impose and collect civil penalties such as those set out in VATA ss 60 and 61. 20. I therefore reject Mr Young's submissions on the Bill of Rights Act. Conclusion on the Constitutional Issue 21. For the reasons set out above, I refuse Mr Dreyer's application on the Constitutional Issue. I gave the parties my conclusion at the hearing (but reserved the reasons), and moved on consider the other issues. The Evidence 22. I was provided with a documents bundle of 459 pages, which included correspondence between the parties and between the parties and the Tribunal. It also included: (1) A judgment from the Supreme Court of the Seychelles, which cited from an affidavit given by Mr Dreyer in those proceedings. The case was heard on 6 December 2017. (2) The FTT judgment in *Fulfillment Logistics UK Ltd v HMRC*

[2023] UKFTT 131 (TC) ("*Fulfillment*"). The appellant in that case ("*FLUK*") had provided fulfilment services to CLL and its predecessor company. The FTT found at [248] that "CLL and the Dreyers [Mr Dreyer and his wife] were engaged in VAT fraud and that the appellant, through its director Mr Lambert, knew or ought to have known of that fraud"; it also found (at [302] that CLL had a fixed establishment in the UK, and that at the relevant time, this was Units 3 and 4 of The Laurels, Cribbs Causeway, Bristol (see [26], [104] and [153]). I return to the *Fulfillment* case later in this judgment. 23. Mr Dreyer provided a witness statement, gave oral evidence led by Mr Young, was cross-examined by Mr Puzey and re-examined by Mr Young. His evidence on key issues lacked credibility, see in particular that relating to his role in CLL, see §29; the hearing of *Fulfillment*, see §36 and his reasons for the delay in making his appeal, see §70. 24. Mr Rooney provided two witness statements and was cross-examined by Mr Young. He was an entirely straightforward and credible witness. Findings of fact 25. On the basis of the evidence in the Bundle and that given orally by the witnesses, including my findings on credibility, I make the findings of fact below. I make additional findings of fact later in this decision, and where I do so, they are identified as such. CLL 26. Mr Dreyer is a qualified optometrist. He established a company called Contact Lenses UK ("*CLUK*"), and in around 2004 CLUK began supplying contact lenses to UK customers via the internet; VAT was

charged on the sales. 27. After a visit to the Seychelles in 2005, Mr Dreyer moved the contact lens business from CLUK to CLL, a company registered in the Seychelles. He was CLL's sole shareholder at all times after 19 June 2013, and its sole director from 10 June 2013. CLL supplied contact lenses to UK customers. 28. FLUK, provided fulfilment services to CLUK and CLL, and was based at Units 3 and 4 of The Laurels, Cribbs Causeway, Bristol. 29. Mr Dreyer's evidence in his witness statement was that his role at CLL was "primarily that of an Optometric Consultant" providing clinical services, and he "was not involved in the day to day management of the financial or tax affairs of CLL". This was robustly challenged by Mr Puzey, and having been shown the documentary evidence of his shareholding, Mr Dreyer eventually accepted that he was the "beneficial owner" of CLL and its only director. I find as a fact that CLL was owned and controlled by Mr Dreyer. The assessments and the penalties on CLL 30. On 28 November 2019, HMRC issued a VAT assessment to CLL for periods from 1 November 2007 to 31 January 2014 of £1,660,141, and further assessments for periods from 1 January 2014 to 31 July 2017, totalling £4,964,865. The assessments were addressed to CLL at the Cribbs Causeway address. Mr Rooney was the assessing officer. 31. On the same day, HMRC sent a copy of those assessments to Mr Dreyer at an address in Vancouver, Canada using "track and sign". Mr Dreyer confirmed in the hearing that he was living at that address at the time, and the envelope containing the assessments was recorded as "delivered" on 12 December 2019. I find as a fact that the assessments were delivered to Mr Dreyer on 12 December 2019. 32. On 13 May 2020, HMRC issued a civil evasion penalty of £4,964,865 to CLL at the Cribbs Causeway address, and on the same day, sent a civil penalty notice of the same amount to Mr Dreyer on the basis that he was "wholly responsible for the dishonest actions" ("the Penalty Letter"). Mr Rooney made several attempts to deliver this letter to Mr Dreyer. 33. I do not need to make findings about those earlier attempts, because on October 29 2021, Mr Kerr of the Canadian Revenue Authority left the Penalty Letter in Mr Dreyer's mailbox. Mr Dreyer accepted in the hearing that he had taken the Penalty Letter from the mailbox and so had received it. The Penalty Letter states that an appeal to the Tribunal must be made "within 30 days of the date of this letter". The request for witness evidence 34. Mr Jade Lambert was the director of FLUK, and on 25 March 2021, he emailed Mr Dreyer as follows: "HMRC is alleging that Contactlenses Ltd has fraudulently evaded VAT and that I ought to have known this. HMRC also believes that Contactlenses Ltd had a fixed establishment in the UK and that Fulfillment Logistics should have charged VAT on the fulfillment services it provided to Contactlenses Ltd. Fulfillment Logistics is obviously fighting this allegation and we are about to take it to a First-Tier Tribunal. It would help our defence if you would be willing to provide a witness statement, stating that you were not aware that Contactlenses Ltd should have been VAT registered, nor had been compulsorily registered by HMRC and has not received any assessments of VAT from HMRC and that Contactlenses Ltd did not, and does not, have a fixed establishment in the UK as it has no resources, no employees nor offices in the UK. Please can you confirm that you are willing to do this for the company." 35. On 31 March 2021, Mr Dreyer replied, saying: "In response, I can confirm that I worked for Contactlenses Ltd as a consultant, mainly in an

Optometric Professional capacity and, as such, have no knowledge about previous operational issues." 36. In his witness statement, Mr Dreyer said that he was "not notified" of the Tribunal proceedings relating to FLUK, and "had no opportunity to provide evidence or witness testimony". Mr Puzey challenged that evidence by reference to the emails set out above. I have no hesitation in finding that the evidence in Mr Dreyer's witness statement was not credible, and I find as a fact that he had been notified of the FLUK appeal and had been asked to give evidence in the proceedings, but had refused to do so. 37. FLUK's appeal was heard in June 2022 and the Fulfillment judgment was issued on 23 November 2022. All FLUK's grounds of appeal were dismissed, and the Tribunal held at [248] that "CLL and the Dreyers were engaged in VAT fraud". Subsequent correspondence and the Fulfillment case 38. The Bundle included a letter ("the Disputed Letter") with Mr Dreyer's address at the top, but without the address of the recipient or any reference number. It was dated 12 November 2021, and began "Dear Mr Rooney". 39. In the text of the Disputed Letter, Mr Dreyer confirmed he had received the Penalty Letter and went on to deny that he was a "controller" of CLL; it ended by saying "I request HMRC review this decision". I return to the Disputed Letter at §48ff below. 40. On 3 March 2023, Mr Dreyer wrote to Mr Rooney saying that the Canadian Revenue Authority was seeking to enforce the debt of £4,964,865, and continuing "I wrote to you in or around November 2021 and stated the following". That sentence is followed by a repetition of the text of the Disputed Letter other than the penultimate paragraph and the final paragraph, with its reference to requesting a statutory review. 41. On 13 April 2021, Mr Rooney replied to that letter, saying he had not received the Disputed Letter and asking Mr Dreyer to send him a copy together with proof of posting. Mr Dreyer did not send Mr Rooney a copy of the Disputed Letter or proof of posting. 42. Mr Rooney also asked Mr Dreyer to meet so as to discuss the matter, and to allow correspondence to continue by email. Mr Dreyer replied on 15 June 2023, saying that he had passed Mr Rooney's letter to CLL. 43. Mr Rooney's unchallenged evidence was that he subsequently received an email from an unknown sender, with an attachment; the covering email did not cite Mr Dreyer's tax reference number, his name, or any other identifying details. Mr Rooney thought it was a spam email and referred it to HMRC's Cyber Security team, who agreed it had the hallmarks of a phishing message. It was deleted unread. 44. On 3 March 2024, Mr Dreyer wrote to Mr Rooney; his letter did not include the case reference number, but it reached Mr Rooney after some delay. In the letter Mr Dreyer asked Mr Rooney to respond to a letter sent by Sey Chambers, CCL's lawyer in the Seychelles and he attached a copy of that letter. I find as a fact on the balance of probabilities that this letter had been attached to the email which had been deleted unread by HMRC. 45. The letter from Sey Chambers asked Mr Rooney to provide details of the VAT assessments made on CLL, and ended by saying that when Mr Rooney has provided that information "our clients can revert to try to reach an amicable resolution of this issue". On 22 March 2024, Mr Rooney replied; he pointed out that he had no authority to deal with Sey Chambers in relation to Mr Dreyer's tax affairs. 46. On 11 May 2024, HMRC were provided with a letter authorising Lexlaw Ltd to act on Mr Dreyer's behalf. In the same letter, Lexlaw say that during a meeting between that firm

and Mr Dreyer on 3 May 2024, Mr Dreyer "was advised for the first time that upon service of an appealable decision the normal limitation period is set at 30 days". I find as fact that this was not the case: the normal time limit was set out in the Penalty Letter, received by Mr Dreyer on 12 December 2019, over four years previously. 47. On 16 May 2024, Lexlaw filed with the Tribunal an appeal against the civil penalty charged on Mr Dreyer and contained within the Penalty Letter, together with an application to make a late appeal. The Disputed Letter 48. It was Mr Dreyer's evidence that he had written the Disputed Letter in November 2021 and posted it shortly afterwards in a post box in Vancouver and that he did not use any service which provides proof of delivery. He was unable to recall how he had addressed the envelope. 49. Although (a) Mr Rooney expressed some doubts about the veracity of those statements, and (b) HMRC's skeleton argument said that they did not accept that the Disputed Letter had been sent, Mr Dreyer's evidence about writing and posting the Disputed Letter was not challenged in cross-examination. I therefore find as a fact that Mr Dreyer wrote the Disputed Letter in November 2021 and posted it the same month in a post box in Vancouver, and did not use any service which provides proof of delivery. I have already found as facts that the Disputed Letter did not set out Mr Rooney's name and address at the beginning and did not include any HMRC case reference number. 50. Mr Rooney's evidence was that the Disputed Letter was not received by him until 3 April 2025 (after it was provided to HMRC's solicitor on 27 March 2025 in the course of preparations for this hearing) and that evidence too was not challenged. I find as a fact that Mr Rooney did not receive the Disputed Letter until 3 April 2025. 51. Mr Young invited the Tribunal to find that, although Mr Rooney had not received the Disputed Letter, it had been received by HMRC. However, there was no evidence to that effect: Mr Rooney steadfastly refused to confirm the repeated suggestions put to him by Mr Young that (a) HMRC routinely mislaid post and (b) on the balance of probabilities, the Disputed Letter had been received by HMRC and simply not forwarded to Mr Rooney. 52. I find as a fact that the Disputed Letter was not received by HMRC: there is no evidence to that effect and there is no basis for the presumption put forward by Mr Young. It follows that HMRC never received the request for a review of the decision contained within the Penalty Letter, until a copy was provided shortly before this hearing. 53. I considered whether the Disputed Letter was nevertheless deemed to have been delivered under the Interpretation Act s 7, which reads: "Where an Act authorises or requires any document to be served by post (whether the expression "serve" or the expression "give" or "send" or any other expression is used) then, unless the contrary intention appears, the service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post." 54. However, in this case Mr Dreyer had not proved he had properly addressed the Disputed Letter, and HMRC had proved that it was not delivered. I thus find that the Disputed Letter was not deemed to have been delivered. 55. It was common ground that there was no other review request: it is not mentioned in Mr Dreyer's letters of 3 March 2023 or 3 March 2024; it is also not referred to in the letter from Sey Chambers, or Lexlaw's letter of 11 May 2024. The

statutory review provisions 56. VATA s 83C is headed "Review by HMRC" and so far as relevant reads (where "P" means the taxpayer): "(1) HMRC must review a decision if

- (a) they have offered a review of the decision under section 83A, and
- (b) P notifies HMRC accepting the offer within 30 days from the date of the document containing the notification of the offer." 57. VATA s 83E is headed "Review out of time" and so far as relevant reads: "(1) This section applies if
 - (a) HMRC have offered a review of a decision under section 83A and P does not accept the offer within the time allowed under section 83C(1)(b)...;
 - (2) HMRC must review the decision under section 83C if
 - (a) after the time allowed, P...notifies HMRC in writing requesting a review out of time,
 - (b) HMRC are satisfied that P...had a reasonable excuse for not accepting the offer or requiring review within the time allowed, and
 - (c) HMRC are satisfied that P...made the request without unreasonable delay after the excuse had ceased to apply.
 - (3) HMRC shall not review a decision if P...has appealed to the tribunal under section 83G in respect of the decision." 58. Thus, HMRC are only required to carry out a review if they have been notified by the appellant within 30 days from the date on the decision. 59. In a case such as this, where HMRC have accepted that the decision was not received until after the end of those 30 days, there would plainly be a reasonable excuse such as to allow HMRC to extend the time, providing Mr Dreyer applied for a review "without unreasonable delay" after he had received the Penalty Letter. 60. However, Mr Dreyer did not notify HMRC of his request for a review. The first time HMRC were aware of the request was on 27 March 2025, after Mr Dreyer had appealed to the Tribunal against the Penalty. VATA s 83E(3) provides that once an appeal has been made to the Tribunal, HMRC "shall not review a decision". 61. It follows from the foregoing that HMRC were not required to carry out a statutory review of the Penalty. The case law on granting permission to make a late appeal 62. There has been extensive case law as to how the Tribunal should approach applications to make a late appeal. In *Martland v HMRC*

[2018] UKUT 178 (TCC) ("*Martland*") at [44] the Upper Tribunal ("UT") (Judges Berner and Poole) set out the following three stage test which this Tribunal should apply in deciding whether to give permission for a late appeal: (1) establish the length of the delay and whether it is serious and/or significant; (2) establish the reasons why the delay occurred; and (3) evaluate all the circumstances of the case, using a balancing exercise to assess the merits of the reasons given for the delay and the prejudice which would be caused to both parties by granting or refusing permission, and in doing so take into account "the particular importance of the need for litigation to be conducted efficiently and at proportionate cost, and for statutory time li

mits to be respected". 63. In *Medpro v HMRC*

[2025] UKUT 255 (TCC) ("*Medpro*") at [88], a differently constituted UT, made up of Marcus Smith J and Judge Cannan, endorsed that three stage test, describing it as "an unimpeachable approach". 64. In *Martland*, the UT held that, in evaluating "all the circumstances", a Tribunal should place "particular importance" on the need (a) for litigation to be conducted efficiently and at proportionate cost; and (b) to enforce compliance with rules, practice directions and orders. In *Medpro*, Judge Cannan agreed this was correct, but Smith J disagreed, saying that no special weight should be given to those factors: in other words, they did not have a "top seat at the table". As Smith J was the senior of the two judges, he had the casting vote. 65. In making this Decision, I have followed *Medpro*. In consequence, when considering all the circumstances of the case, I have not given particular weight to factors (a) and (b) above, but considered them along with others. 66. Mr Young submitted that this was the first case to consider a late appeal against a penalty which was criminal in nature, and that a different, more relaxed approach should be taken. That is plainly not correct. I have not gone through all the many hundreds of late appeal judgments made by both this Tribunal and the UT, but note for example that the appellants in *Medpro* were seeking to appeal against a Personal Liability Notice ("PLN"), making Mr Ruprai personally liable for a penalty issued by HMRC against the company, and in *Pawar v HMRC* [2025] UKUT 309 (TCC), the appellant was seeking permission to appeal a PLN of £874,238. Both penalties were criminal for the purposes of the Convention. The first and second *Martland* stage: the delay and the reasons 67. The first stage is to establish the length of the delay and whether it is serious and/or significant. The second is to consider whether there was a good reason for any delay. Because of the facts of this case, I have taken these two stages together. 68. The Penalty Letter was dated 13 May 2020, but was only notified to Mr Dreyer when he received it on 29 October 2021. Mr Young submitted that (a) the Penalty Letter said that an appeal to the Tribunal must be made "within 30 days of the date of this letter", and (b) as the Penalty Letter was only delivered some eighteen months later, then (c) the time limit in the Penalty Letter could never have been met, so the approach in the case law could not apply. 69. HMRC rightly accepted that Mr Dreyer had a good reason for the delay from 12 June 2019 (30 days after the date on the Penalty Letter) until 29 November 2021, 30 days after the Penalty Letter was delivered to Mr Dreyer. However, the appeal was notified to the Tribunal on 16 May 2024, after another two years and six months had passed. That further delay was plainly serious and significant. 70. Mr Dreyer's evidence was that he took no action during that period for a number of reasons: (1) He was "unaware of the strict 30 day time limit". I have already rejected that evidence because the time limit was clearly stated in the Penalty Letter. (2) In the Disputed Letter he denied he was a "controller" of CLL and he thought this was sufficient to address HMRC's concerns. I have already found as a fact that Mr Dreyer was the shareholder and director of CLL, and I reject as not credible his evidence that he thought denying he was a controller was a sufficient response to the Penalty Letter and he did not need to appeal. (3) He was

"unaware of the assessments" which had been served on CLL. However, I have found as a fact that copies of the assessments were served on him, see §31. Even if Mr Dreyer had been unaware of the assessments (which he was not), that would not provide him with a good reason for not appealing the Penalty. 71. Mr Puzey asked Mr Dreyer to agree that the real reason for the delay was that until he was contacted by the Canadian Revenue Authority, he thought that HMRC were unable to enforce collection of the Penalty. Although Mr Dreyer denied that this was the case, I agree with Mr Puzey that it is consistent with the findings I have already made: Mr Dreyer was aware of both (a) the assessments issued to CLL, and (b) the time limits for appealing to the Tribunal against the Penalty, but it was only after the contact from the Canadian Revenue Authority that he took action to instruct lawyers, and then to appeal. I find as a fact that Mr Dreyer delayed making his appeal because, until March 2024, he thought HMRC could not collect the Penalty. That is plainly not a good reason for the delay. The third Martland stage 72. The third stage in the Martland approach is to consider all the circumstances, and then to carry out a balancing exercise. The need for time limits to be respected 73. We have followed Medpro and not given this factor a "top seat at the table", but it nevertheless remains a factor to be considered at this third stage. 74. There was no good reason for the delay of around two and half years before Mr Dreyer appealed to the Tribunal, and that weighs against allowing the application, not because I have adopted the Martland approach, but because of the length of the delay and the lack of a good reason. Merits 75. Mr Young submitted that I should decide the "merits" point in Mr Dreyer's favour, or treat it as neutral, because the Penalty was a criminal charge to which the presumption of innocence applies; he said that to make any other finding would undermine Mr Dreyer's Article 6 rights. 76. This is to misunderstand the purpose of this part of the balancing exercise. As the UT said in Martland, the likelihood of success may be relevant because there is "much greater prejudice for an applicant to lose the opportunity of putting forward a really strong case than a very weak one", albeit the Tribunal should not "descend into a detailed analysis of the underlying merits of the appeal" but instead "form a general impression of its strength or weakness to weigh in the balance". 77. Mr Dreyer's grounds of appeal filed with the Tribunal say only that he has the right to be presumed innocent and that "he reserves his position to plead further particulars in his defence". In correspondence, Mr Dreyer's only relevant point was that he was not liable to the Penalty because he was not the "controller" of CLL. He put forward no submissions to the effect that CCL did not carry out VAT fraud, and I have already found as a fact that as he was CCL's shareholder and director, he was the controller of that company. 78. HMRC's position is that in Fulfillment, the Tribunal made findings about Mr Dreyer's role and held at [248] that "CLL and the Dreyers were engaged in VAT fraud", and that in consequence the merits of his appeal against the Penalty are extremely weak. 79. I do not need to rely on the FTT's findings in Fulfillment and do not do so. Instead, on the basis of the submissions made and evidence provided for this hearing, I find that Mr Dreyer's case lacks any basis and is therefore extremely weak. Prejudice to Mr Dreyer 80. If Mr Dreyer is refused permission to appeal, the Penalty will be final, and it is likely that HMRC will use

whatever powers they have to collect the £4,964,865 which has been assessed. 81. I had no information about Mr Dreyer's current financial position, but I make the assumption that losing that sum of money would be a significant prejudice to him. However, having to pay HMRC the sum for which permission to appeal has been sought is the inevitable consequence of failing to gain permission to appeal, and I therefore give little weight to this factor. Prejudice to HMRC 82. If permission were to be given, HMRC would have to divert resources to prepare for the appeal and attend a hearing. That factor has some weight. 83. In addition, Mr Puzey said that the issues would be very similar to those already ruled on in Fulfillment, and that had Mr Dreyer appealed against the Penalty within 30 days after he received the Penalty Letter, his appeal could have been joined to that of FLUK, so that there would have been a single appeal. If permission were given now, HMRC would have essentially to rerun the same case. In other words, the litigation would have been carried out more efficiently and at more proportionate cost than will be the case if permission is given for a late appeal. That submission is plainly correct and Mr Young did not seek to argue otherwise. This factor too has some weight. Other Tribunal users 84. If Mr Dreyer's application were to be allowed, organising the appeal will take the time of tribunal staff. That time would otherwise be spent on the appeals of other Tribunal users, who have complied with the statutory requirements. This factor has some weight. Balancing the factors 85. Once the circumstances have been identified, they must be balanced. In accordance with Medpro, I do not give particular weight as a matter of principle to either the need for litigation to be conducted efficiently and at a proportionate cost, or for statutory time limits to be respected. 86. On one side of the scales is the prejudice to Mr Dreyer if he loses this opportunity of appealing to the Tribunal, because the Penalty will become due. However, I have given little weight to that factor because that is always the case when a person loses an application of this nature. 87. On the other side is Mr Dreyer's failure to comply with the statutory time limit for well over two years; the weakness of his substantive case; the prejudice to HMRC and to appellants in other cases for the reasons set out above, including the extra costs and time which will be required compared to the position had he made a timely appeal on receipt of the Penalty Letter. 88. There is no doubt that those factors significantly outweigh that on Mr Dreyer's side of the scales, and permission to appeal late is therefore refused. 89. That conclusion would have been the same had I given no weight to the "merits" point but had instead treated that as a neutral factor. That is because the other factors would have more than outweighed those in Mr Dreyer's favour. The outcome would also, of course, have been the same had I followed the Martland approach instead of that in Medpro, because more weight would have been given to the need for litigation to be conducted efficiently and at a proportionate cost, and for statutory time limits to be respected. Costs 90. On 21 October 2025, a week before the hearing, Lexlaw applied for the Tribunal to direct that HMRC pay the costs of printing a copy of the authorities bundle for Mr Dreyer. The application made no reference to the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. I refuse the application because: (1) the Tribunal has no free-standing power or discretion to award costs, see *Eclipse v HMRC*

[2016] UKSC 24 ; (2) the case had been categorised as complex, but Mr Dreyer has lost his application, so is not entitled to costs under Rule 10(1)(c); and (3) as Mr Young accepted during the hearing, HMRC did not behave unreasonably within the meaning of Rule 10(1)(b). 91. As HMRC were the successful party, they are entitled to claim their costs under Rule 10(1)(c) in accordance with the Rule 10(3). Right to apply for permission to appeal 92. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Rules. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice. Release Date: 10 th NOVEMBER 2025 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII URL: <https://www.bailii.org/uk/cases/UKFTT/TC/2025/TC09684.html>

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