Neutral Citation: [2024] UKFTT 00397 (TC)

Case Number: TC09164

FIRST-TIER TRIBUNAL
TAX CHAMBER

By remote video hearing

Appeal reference: TC/2023/00898

INCOME TAX AND NATIONAL INSURANCE CONTRIBUTIONS – notice of requirement to give security for payment of PAYE and NICs – application to bring late appeal – Martland considered – whether HMRC's decision to require security was reasonable – yes – permission for late appeal refused

Heard on: 4 March 2024
Judgment date: 16 May 2024

Before

TRIBUNAL JUDGE RACHEL GAUKE
NOEL BARRETT

Between

(1) BLOCKSURE LIMITED (IN LIQUIDATION)

(2) RANVIR SINGH SAGGU

Appellants

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Second Appellant: Liban Ahmed of CTM Tax Litigation Ltd

For the Respondents: Joshua Carey of counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs

The First Appellant did not appear and was not represented.

DECISION

INTRODUCTION

1. The Appellants applied for permission to make a late appeal to HMRC against Notices of Requirement ("NoRs") to provide security in the amount of £585,109.90 for PAYE and national insurance contributions ("NICs") in accordance with Part 4A of the Income Tax (Pay As You Earn) Regulations 2003 ("PAYE Regulations") and Part 3B of Schedule 4 to the Social Security (Contributions) Regulations 2001 ("NICs Regulations").

2. The NoRs were issued on 4 July 2022 and made the Appellants jointly and severally liable to provide the required security. The liquidators of the First Appellant, Blocksure Ltd ("Blocksure"), wrote to the Tribunal in advance of the hearing. Blocksure has not withdrawn its appeal, but the liquidators stated that they did not intend to attend or be represented at the hearing, nor to take any part in the proceedings thereafter. Therefore only the Second Appellant, Mr Saggu, was represented at the hearing.

3. We were satisfied that Blocksure had been notified of the hearing and that it was in the interests of justice to proceed in its absence.

HEARING AND EVIDENCE

4. The hearing was conducted by video link on the Tribunal's Video Hearing Service. Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely to observe the proceedings. As such, the hearing was held in public.

5. The documents to which we were referred were a hearing bundle of 716 pages, a supplementary authorities bundle of 163 pages, Mr Saggu's opening submissions and amended application to appeal late, HMRC's skeleton argument and a chronology of events produced on behalf of Mr Saggu. We had four witness statements: two from Mr Saggu (one produced at the time of the creation of the hearing bundle, the second to update the Tribunal on events since that time); one from Blocksure's Director of Operations, Mr Peter Temperley; and one from the HMRC officer who issued the NoRs, Officer Matthew Laurie. At the hearing, the witness statements stood as evidence in chief. All three witnesses attended the hearing and were cross-examined.

SUBJECT MATTER OF THE HEARING

6. We informed the parties at the outset of the hearing that we proposed to hear submissions and evidence both on the application to make a late appeal, and the substantive appeal against the NoRs, and would then reserve our decision on both matters. The parties confirmed that they had attended the hearing prepared to present their cases on both the late appeal and the substantive issue, and were content to proceed on that basis. They duly presented their cases on both matters.

7. We considered that proceeding on this basis, namely "rolling up" the application for permission to bring a late appeal with the substantive appeal and hearing both together, was fair to both parties. It has given us a better understanding of the Appellants' prospects of success if were we to grant permission for a late appeal. This is in accordance with the views of the Upper Tribunal in *Charles Horder v HMRC* [2023] UKUT 106 (TCC) ("*Horder*") at [68], a case to which we refer further below.

FINDINGS OF FACT

8. We make the following findings of fact based on the documentary evidence and the evidence of the witnesses who appeared before us. We have taken account of the witness statements and of any points that emerged on cross-examination.

Background facts

9. Blocksure was a technology company operating in the insurance sector, focusing on developing blockchain solutions for regulated insurance markets. Mr Saggu was its sole director. At all relevant times Blocksure was a wholly owned subsidiary of Blocksure Holdings Ltd. Mr Saggu was also a director of Blocksure Holdings Ltd.

10. Mr Saggu is an experienced director with a number of previous directorships.

11. At all relevant times Blocksure's business was at a stage where it was primarily conducting research and development (R&D). It had little revenue from customers and relied heavily on funding from external investors.

12. Mr Saggu personally invested around £1,000,000 in Blocksure. He and the other directors of Blocksure Holdings Ltd were committed to ensuring the success of Blocksure's business.

13. Blocksure made a number of successful claims for R&D tax credits, as follows:

Period	**Amount of R&D credit claim**	**Date amount of credit confirmed by HMRC**
1 August 2017 to 31 July 2018	£70,637.91	(Not provided)
1 August 2018 to 31 July 2019	£200,559.50	6 February 2020
1 August 2019 to 31 July 2020	£97,213.80	(Not provided)
1 August 2020 to 31 December 2020	£72,610.20	22 October 2021
1 January 2021 to 31 December 2021	£230,953.09	9 January 2023
1 January 2022 to 31 December 2022	£82,218.26	12 May 2023

14. Blocksure had received a NoR in respect of PAYE and NICs on a previous occasion, on 3 July 2019. This required security to be given by 14 August 2019.

15. On 9 August 2019, Mr Saggu wrote to HMRC, stating: "We would like you to consider the following "Time to Pay" proposal that would result in clearing all the outstanding balance by 30 March 2020". The actions Blocksure proposed to take included paying specified amounts on specified dates so that the balance would be cleared by the end of March 2020.

16. HMRC replied on 11 September 2019 to confirm that they agreed to the proposed time to pay agreement ("TTP"), and on 23 September 2019 they withdrew the NoR.

17. Blocksure was negatively affected by the covid pandemic, with investors becoming more hesitant about investing in the business. As at 30 June 2023 (the date of Mr Saggu's first witness statement), it had raised total external investments of around £1.7m. It had also been in negotiations relating to several other investments, but for a variety of reasons these had either not gone ahead, or been delayed. For instance, one investor had withdrawn for personal reasons, and another had passed away.

18. At some point towards the end of 2021, Blocksure Holdings Ltd (Blocksure's parent company) was offered an investment from an investor ("the Investor"). We were not told the Investor's identity. The proposed investment was to be made on the understanding that Blocksure Holdings Ltd would use the money to fund its subsidiary, Blocksure. Mr Saggu told us that the Investor (and other proposed investors) regarded an investment in Blocksure Holdings Ltd as being, in effect, an investment in Blocksure. HMRC did not challenge this evidence and we accept it as a fact. In this decision, therefore, when we refer to a proposed investment into Blocksure, we use this as a shorthand for an investment into Blocksure Holdings Ltd which Blocksure Holdings Ltd would use to invest in its subsidiary, Blocksure.

19. The anticipated investment from the Investor was for £1.7m, with an initial payment of £1m. However, this investment was dependent on the Investor receiving funds from the sale of a business in the US. The business sale ran into legal difficulties, resulting in a delay in payment of the sale proceeds. This in turn delayed the proposed investment into Blocksure.

20. Certain other investors had agreed to invest in Blocksure, but only once the funding from the Investor had been received. The delays affecting the Investor therefore also delayed these other investments.

21. Once the NoRs had been issued, investors became even more uncomfortable about investing in Blocksure. Mr Saggu and his fellow directors in Blocksure Holdings Ltd were well aware that, if they were unsuccessful in managing risk and securing investment, it was likely that Blocksure would fall into liquidation.

22. One of the consequences of Blocksure's financial difficulties was that at some point in 2022 it stopped paying its employees the full amount of their salary. However, on the advice of Blocksure's payroll provider at the time, it continued to operate its payroll as though the full amounts of salary were still being paid. This meant that the amounts of salary being reported to HMRC for the purposes of calculating PAYE and NICs were overstated.

23. Blocksure also fell behind in its payments to HMRC of PAYE and NICs. The last such payments (as opposed to reductions in arrears from payroll adjustments or offsetting of amounts due from HMRC) were made in October 2021.

24. Blocksure continued to expect the investment from the Investor throughout 2022 and until July 2023, when the Investor's offer was withdrawn. On learning that the offer of investment was withdrawn, the board of directors of Blocksure Holdings Ltd decided to place Blocksure into liquidation.

25. Liquidators were appointed to Blocksure on 4 September 2023. The letter from the liquidators to the Tribunal, referred to above, includes the following: "I would like the Tribunal and the parties to be aware that on present information, asset realisations will be insufficient to enable a dividend to become available for any class of creditors within the liquidation."

The notices of requirement (NoRs)

26. As the outstanding amounts of PAYE and NICs were increasing, Blocksure was referred to HMRC's Securities team in January 2022.

27. HMRC wrote to Blocksure on 28 February 2022 to warn it that it had not paid all the PAYE and NICs that were due, and that if it did not do so it would receive a NoR.

28. Between March and May 2022, there were a number of phone calls between HMRC and Mr Temperley, and between HMRC and Mr Saggu. In these calls Mr Temperley and Mr Saggu referred to the expected investment and their intention to enter into a TTP once these funds had been received. HMRC were in principle open to agreeing a TTP and gave Blocksure some time to address the situation.

29. As no payments were received, the matter was referred, within HMRC's Securities team, to Officer Matthew Laurie to consider whether to issue NoRs. He reviewed the case on 28 June 2022.

30. Matters considered by Officer Laurie in deciding whether to issue NoRs were:

(1) The amount of the arrears, which were £248,923.41 of PAYE and £219,801.49 of NICs. These related to the period January 2021 to June 2022.

(2) The fact that the most recent payment of PAYE and NICs was in October 2021.

(3) The history of contact between Blocksure and HMRC. Officer Laurie noted that the most recent contact was on 31 May 2022, when Mr Saggu had indicated that the investment was expected in the next two weeks and that he would call back with a realistic payment proposal. Mr Saggu had also referred to an expected R&D claim of around £250,000. Officer Laurie noted that, in this call, Mr Saggu had said he was aware that credit balances (a reference to the R&D claim) were not an "ongoing way of paying taxes". A date of 16 June 2022 was set for Blocksure to call HMRC back.

(4) There was no record of Blocksure having called HMRC since 31 May 2022. Officer Laurie judged that this constituted a lack of engagement with HMRC.

(5) The repeated references, in HMRC's records, to phone calls between December 2021 and May 2022 in which Mr Temperley or Mr Saggu had said that investment funds were expected, but had been delayed.

31. Taking all of these factors into account, Officer Laurie formed the view that Blocksure posed a serious ongoing threat to the revenue, in that it would not pay its ongoing liabilities in full and on time. He therefore decided that it was necessary for the protection of the revenue to issue NoRs.

32. In reaching his decision, Officer Laurie was not aware of, and so did not take into account, the previous investments that had been made in Blocksure by external investors.

33. Officer Laurie was aware, when deciding whether to issue the NoRs, that Blocksure had made previous successful R&D claims, and was aware of the amounts of those claims. He was also aware that the company intended to make a future R&D claim, but decided that there was nonetheless a risk to the revenue, because the success of this claim was not guaranteed and could not be relied upon. He also took the view that, as the amounts of the previous claims had fluctuated significantly, the amounts of future claims could not be predicted.

34. The NoRs were issued on 4 July 2022, on the stated grounds that HMRC believed there was a risk that Blocksure would not pay the PAYE and NICs that were, or may have become,

due. The amount of security required for PAYE was £310,210.41, and for NICs was £274.899.49, giving a total amount of £585,109.90. The date the security was due was 13 August 2022, and the period of time for which HMRC proposed to hold the security was 24 months. The security was to be given either by making payment to a specified HMRC bank account, or as a guarantee in the form of a performance bond from an approved financial institution.

35. The NoRs included the basis on which the amount of security had been calculated. This was the estimated amount of PAYE and NICs due to be paid by Blocksure for a 4-month period (£61,287 of PAYE and £55,098 of NICs) plus the arrears of £248,923.41 of PAYE and £219,801.49 of NICs. The amounts due to be paid for a 4-month period were based on the most recent payment and return information held by HMRC.

36. As we have noted above, the amounts of salary on which the PAYE and NICs arrears had been calculated were overstated as a result of payroll reporting errors. Blocksure's case is that as a result, the arrears set out in the NoRs were overstated by £108,538.77. HMRC have not confirmed whether they agree with this figure. We make no finding as to the correct figure, but find that £108,538.77 is the maximum amount by which the arrears set out in the NoRs were overstated as a result of the payroll errors. It is therefore not disputed that at the time of the issue of the NoRs, Blocksure owed HMRC substantial amounts of PAYE and NICs.

37. The NoRs also stated that failure to give the security requested was a criminal offence. Blocksure and Mr Saggu were informed that they may face criminal prosecution and may have to pay a fine if the security was not paid.

38. The NoRs were issued in substantially the same terms to both Blocksure and Mr Saggu, and made them jointly and severally liable to pay the full amount of the security.

Correspondence and phone calls following the issue of the NoRs

39. It was clear from the evidence that Blocksure was in frequent contact with HMRC, from mid 2021 onwards, about the outstanding PAYE and NICs, about the NoRs once they had been issued, and about how the company proposed to settle the amounts that were owed. It was also clear that in their responses, HMRC made repeated references to the enforcement action they intended to take, and the impending prosecution. Communication between the parties was by phone, email and letter. We have not recorded every interaction below, but have selected those that are most relevant to our findings. We have not disregarded communications we have not referred to, but have kept these in mind when reaching our conclusions.

40. For our findings on the contents of phone calls, in addition to witness evidence we had notes of calls provided by both HMRC and Mr Temperley, and in one case (as we note below) a transcript.

41. On 12 July 2022, Blocksure's Director of Operations, Mr Temperley, called HMRC to discuss the NoRs. He explained that Blocksure was expecting an investment towards the end of the month and would also make an R&D claim. Mr Temperley said that Blocksure would like to enter into a TTP once the investment was received. HMRC were in principle willing to agree a TTP, on the basis that Blocksure would first pay £25,000, would make an R&D claim of £180,000, and would clear the rest of the debt within 24 months. The call handler suggested putting this TTP in place immediately, but Mr Temperley did not want to do this until the investment had been received, as he would then have a better idea of the available funds.

42. On 26 July 2022, Mr Saggu called HMRC and spoke to a member of their Securities team. We had a transcript of this call. Mr Saggu referred to Mr Temperley's discussions with a different department of HMRC about a TTP. Mr Saggu said he understood the NoR would be waived once the TTP was agreed, and the call handler agreed that would be the case provided the TTP was being adhered to. Mr Saggu did not request that a TTP be set up at that point, but referred to the investment that was expected in the next week or two, and said that once that was received they could start making payments.

43. In the call Mr Saggu also said that the business had been processing payroll as normal but that in large part the payments (to employees of salary) had not actually been made.

44. HMRC's Securities Team sent reminder letters to both Blocksure and Mr Saggu on 29 July 2022, stating that if the security was not paid by 13 August 2022, Mr Saggu would be committing a criminal offence.

45. Mr Saggu and Mr Temperley made a number of calls to HMRC in August and September 2022, stating that the investment was still expected imminently and that they would propose a TTP once the money came in. In these calls the HMRC staff explained that, notwithstanding this, the case would remain on "the enforcement path".

46. On 2 September 2022, Mr Temperley called HMRC again to advise that the investment was now due by the end of that month. HMRC asked him to call back on 10 October 2022, with a view to negotiating a TTP then.

47. On 6 September 2022, HMRC's Debt Management Team sent Blocksure Ltd a warning of a winding up action as a result of the unpaid debt.

48. HMRC's Securities Team sent "final reminder letters" to both Blocksure and Mr Saggu on 7 September 2022, stating that as the security amount had still not been received, Mr Saggu had committed a criminal offence. HMRC said that they would consider starting a criminal investigation if payment was not made within seven days.

49. On 13 October 2022, Mr Temperley called HMRC. The HMRC call handler asked if he had a TTP proposal and Mr Temperley said they were still waiting for the investment money, but that when this came through they would pay £25,000, then make further payments over the following 24 months. The HMRC call handler said 24 months was too long and that the case would be passed to HMRC's Enforcement and Insolvency Service.

50. On 15 November 2022, Ms Gilbert of HMRC's Securities Team wrote to Blocksure and Mr Saggu, stating that it was her intention to refer matters to the Crown Prosecution Service (CPS) for them to consider prosecution.

51. Ms Gilbert spoke to Mr Saggu on 23 November 2022. We were provided with Ms Gilbert's note of this call. Mr Saggu referred to the investment they were expecting to receive and that they would write with a business plan. Ms Gilbert said they had until 5 December 2022 to "make some headway with things", otherwise she would be looking to pass information to the CPS.

52. On 5 December 2022, Mr Saggu replied to Ms Gilbert to explain how the arrears had come about and how the company proposed to resolve the situation. He proposed a "way forward" under which Blocksure would make R&D claims for 2021 and 2022, use these to reduce the liability, and enter into a TTP "to clear the remaining balance within an agreed timescale of 2 years". This letter did not set out what amounts Blocksure proposed to pay on what dates in order to meet this two-year deadline.

53. Ms Gilbert responded by email on 6 December 2022, noting that no TTP had been received, no payments had been made to the relevant HMRC account since October 2021, and that matters would be referred to the CPS for consideration of prosecution proceedings.

54. Mr Saggu replied by email on the same day to request a 14-day "grace period" before further action was taken. This email included the following: "In all our communications we have been consistent in stating that we need our investor to complete his investment before we can move forward. This includes any payments, lump sum and time to pay arrangement, and submission of the Research and Development claim."

55. Ms Gilbert's response, on 7 December 2022, was that no further extensions of time would be given and that it remained her intention to pass the information to the CPS.

56. On 14 December 2022, Blocksure submitted an R&D claim for the year ended 31 December 2021 in the amount of £230,953.09. HMRC accepted the claim and their Corporation Tax Services department informed Blocksure, in a letter dated 10 January 2023, that they had used the credit to offset the arrears of PAYE.

57. On 21 December 2022, Mr Saggu wrote again to Ms Gilbert to provide "additional background" and a summary of actions completed since his previous letter. This included the submission of the R&D claim, and work to correct the previous incorrect reporting of unpaid salaries.

58. On 7 February 2023, a postal requisition was sent by Croydon Magistrates Court to Mr Saggu, requiring him to appear on 13 March 2023 to answer the charge of failing to give security as required by the NoR.

59. On 9 February 2023, Mr Saggu wrote to HMRC to provide a further update on actions the company was taking to pay the balance due to HMRC. This included the news that HMRC had now accepted the company's R&D claim for the year ended 31 December 2021 in the amount of £230,953.09. The letter included the following statement: "As soon as the agreed investment completes, we will submit a TTP proposal alongside making the first payment."

60. Mr Saggu sought advice from CTM Tax Litigation Ltd on 10 February 2023. The advice he received was to make a late appeal to HMRC without delay.

61. Mr Saggu lodged an appeal with HMRC against the NoRs, on behalf of both himself and of Blocksure, on 13 February 2023.

62. On 13 February 2023, alongside the letter bringing the appeal, Mr Saggu sent HMRC a TTP proposal under which Blocksure would pay off outstanding balances over a 24 month period that would commence on receipt of the first tranche of investment. HMRC replied on 16 February 2023, stating that they were unable to agree to the proposed instalments.

63. HMRC rejected the appeal on 17 February 2023 on the grounds that there was no reasonable excuse for appealing late. The appeal was notified to the Tribunal on 1 March 2023.

THE LAW ON NOTICES TO PROVIDE SECURITY FOR PAYE AND NICS

64. Relevant extracts from the PAYE Regulations and the NICs Regulations are set out in the Appendix to this decision.

65. The provisions are materially the same, and to avoid repetition, we refer primarily to the PAYE Regulations. In the remainder of this decision, a reference to a particular Regulation is a reference to the PAYE Regulations.

66. Regulation 97N provides for the requirement for security. It provides that where an officer of HMRC considers it necessary for the protection of the revenue, the officer can require certain persons to give security or further security for the payment of amounts of PAYE in respect of which an employer is or may be accountable to HMRC under various of the PAYE Regulations.

67. As a director of Blocksure (the employer), Mr Saggu was a person from whom security could be required by virtue of Regulation 97P(1)(b)(i).

68. Regulation 97P(2)(b) permits HMRC to require more than one person to give security, and where this happens, those persons are jointly and severally liable.

69. Regulation 97Q sets out certain matters which must be specified in a NoR, otherwise the person is not treated as having been required to provide security.

70. Under Regulation 97R, the date specified in a NoR on which security is to be given cannot be earlier than 30 days after the date on which the NoR is issued. If, before the date on which security is to be given, the employer makes a request to HMRC under paragraph 10(1) of Schedule 56 to the Finance Act 2009 ("FA 2009") that payment of the amount of tax be deferred, the requirement to give security by that date does not apply. In that case, if HMRC does not agree to the employer's request, security is to be given on or before the 30th day after HMRC notifies the employer of their decision.

71. FA 2009, Sch 56, para 10(1) provides:

> "(1) This paragraph applies if—
>
> (a) P fails to pay an amount of tax when it becomes due and payable,
>
> (b) P makes a request to HMRC that payment of the amount of tax be deferred, and
>
> (c) HMRC agrees that payment of that amount may be deferred for a period ("the deferral period")."

72. Regulation 97V makes provision in relation to appeals, and relevantly provides:

> "(1) A person who is given notice under regulation 97Q may appeal against the notice or any requirement in it.
>
> […]
>
> (3) Notice of an appeal under this regulation must be given—
>
> (a) before the end of the period of 30 days beginning with—
>
> (i) in the case of an appeal under paragraph (1), the day after the day on which the notice was given […]
>
> (b) to the officer of Revenue and Customs by whom the notice was given or the decision on the application was made, as the case may be.
>
> (4) Notice of an appeal under this regulation must state the grounds of appeal.
>
> (5) On an appeal under paragraph (1) that is notified to the tribunal, the tribunal may—
>
> (a) confirm the requirements in the notice,
>
> (b) vary the requirements in the notice, or
>
> (c) set aside the notice.
>
> […]

(7) On the final determination of an appeal under this regulation—

(a) subject to any alternative determination by a tribunal or court, any security to be given is due on the 30th day after the day on which the determination is made, or

(b) HMRC may make such arrangements as it sees fit to ensure the necessary reduction in the value of security held."

73. Under Regulation 97W, if the employer has made a request to HMRC under FA 2009, Sch 56, para 10(1) that payment of the amount of tax be deferred, the latest date for giving notice of an appeal is also deferred. In such a case, notice of an appeal must be given before the end of the period of 30 days beginning with the day after the day on which HMRC notify the employer of their decision not to agree to the employer's request.

74. Failure to provide security by the due date is an offence of strict liability for which a fine may be imposed. This is the effect of section 684(4A) of the Income Tax (Earnings and Pensions) Act 2003, which provides:

"A person who fails to comply with a requirement imposed under PAYE regulations to give security, or further security, for the payment of any amount commits an offence if the failure continues for such period as is specified; and a person guilty of an offence under this subsection is liable on summary conviction—

(a) in England and Wales, to a fine;

(b) in Scotland or Northern Ireland, to a fine not exceeding level 5 on the standard scale"

75. Regulation 97X provides that, for a NoR that is the subject of an appeal, the period specified for this purpose is the period which starts with the day of the final determination of the appeal and ends with the first day after either the day determined by the tribunal or court as the day on which security is to be given, or 30 days after the date of that final determination, as the case may be.

THE LAW ON LATE APPEALS

76. The effect of Regulation 97V(8) is that an appeal under Regulation 97V is subject to TMA 1970, s 49, which provides relevantly as follows:

"(1) This section applies in a case where—

(a) notice of appeal may be given to HMRC, but

(b) no notice is given before the relevant time limit.

(2) Notice may be given after the relevant time limit if—

(a) HMRC agree, or

(b) where HMRC do not agree, the tribunal gives permission."

77. In *William Martland v HMRC* [2018] UKUT 178 (TCC) ("*Martland*"), the Upper Tribunal provided guidance to the First-tier Tribunal (FTT) on the approach to adopt when considering whether to admit a late appeal. The Upper Tribunal said:

"[44] When the FTT is considering applications for permission to appeal out of time, therefore, it must be remembered that the starting point is that permission should not be granted unless the FTT is satisfied on balance that it should be. In considering that question, we consider the FTT can usefully

follow the three-stage process set out in [*Denton v TH White* [2014] EWCA Civ 906]:

> (1) Establish the length of the delay. If it was very short (which would, in the absence of unusual circumstances, equate to the breach being "neither serious nor significant"), then the FTT "is unlikely to need to spend much time on the second and third stages" – though this should not be taken to mean that applications can be granted for very short delays without even moving on to a consideration of those stages.
>
> (2) The reason (or reasons) why the default occurred should be established.
>
> (3) The FTT can then move onto its evaluation of "all the circumstances of the case". This will involve a balancing exercise which will essentially assess the merits of the reason(s) given for the delay and the prejudice which would be caused to both parties by granting or refusing permission.
>
> [45] That balancing exercise should take into account the particular importance of the need for litigation to be conducted efficiently and at proportionate cost, and for statutory time limits to be respected. […]
>
> [46] In doing so, the FTT can have regard to any obvious strength or weakness of the applicant's case; this goes to the question of prejudice – there is obviously much greater prejudice for an applicant to lose the opportunity of putting forward a really strong case than a very weak one. It is important however that this should not descend into a detailed analysis of the underlying merits of the appeal."

DISCUSSION

78. We consider, and both parties agreed, that the correct approach is for us to adopt the three-stage process described in *Martland*. We are mindful that the starting point is that we should not grant permission for a late appeal unless the Appellants can satisfy us that we should.

The length of the delay

79. The NoRs were issued on 4 July 2022. Mr Saggu appealed to HMRC, on behalf of both himself and Blocksure, on 13 February 2023. The period for bringing an appeal was 30 days beginning with the day after the day on which the NoRs were issued, unless a request for payment of tax to be deferred had been made before the date on which the NoRs provided that security was to be given. If such a request had been made, the effect of Regulations 97R(2) and 97W would have been to defer both the date when security was required to be given, and the last date for bringing an appeal.

80. In the period between 4 July 2022 (when the NoRs were issued) and 13 August 2022 (when the security under the NoRs was due to be given), Mr Saggu and Mr Temperley made a number of phone calls to HMRC in which entering into a TTP was discussed. The nature of the communication from Blocksure was that the company wanted to propose a TTP in the future, but was not able to propose one at that time. This was because it anticipated receiving funds from the Investor, and did not want to commit to making payments until those funds had been received.

81. Mr Ahmed did not argue that the effect of these conversations was to engage Regulations 97R(2) and 97W so as to defer the date when security was required to be given

and the last date for bringing an appeal. We have therefore proceeded on the basis that an appeal had to be brought by the end of the period of 30 days beginning with 5 July 2022, so the last day to appeal was 3 August 2022. The appeal was made on 13 February 2023, which was a delay of over six months.

82. Mr Ahmed accepted that the appeal was late and that there was a significant delay. We find that, in the context of a statutory time limit of 30 days, the delay was both serious and significant.

The reasons for the delay

83. Mr Saggu's grounds of appeal explained the lateness of his, and Blocksure's, appeal as follows.

> (1) He believed the matter was being reviewed and considered from the moment the NoRs were received until HMRC made it clear that the NoRs would not be removed and a personal prosecution would be brought.
>
> (2) He had not sought legal advice prior to bringing his application for a late appeal because he believed agreement could be reached to remove, or substantially reduce, the security.
>
> (3) Contact with HMRC, by way of dozens of calls and letters set out clearly the financial strengths of the company going forward and it could not be understood why HMRC maintained their position.

84. Mr Ahmed expanded on the reasons for the delay in his oral submissions at the hearing. He said that Mr Saggu had not appealed because he thought he was in continuing discussions with HMRC both about whether the NoRs were necessary, and about entering into a TTP. According to Mr Ahmed, HMRC had given Mr Saggu the impression that he did not need to be unduly concerned with the 30-day time limit for bringing an appeal. Mr Ahmed suggested that it was misleading that the NoRs stated that the security had to be given by 13 August 2022, when the deadline for bringing an appeal expired on 3 August 2022. We accept that the NoRs made no express reference to 3 August 2022 as the date by which an appeal must be made.

85. Both parties made submissions about the contents of the NoRs and it is relevant to set out the following paragraphs in full. These are copied from the NoR issued to Blocksure on 4 July 2022:

> " **'Time to pay' arrangements**
>
> An employer can ask us to consider a time to pay arrangement. This is an agreement where the employer pays the amount of any PAYE and NICs which still need to be paid over a period of time. If you want a time to pay arrangement, you must contact us before the date that the security is required. We will extend the time allowed for providing the security while we consider it.
>
> If we do not agree a time to pay arrangement, you will then have 30 days from the date of our decision to give security. If we agree a time to pay arrangement, we will withdraw the requirement to give security. This means you will not have to give it.
>
> […]
>
> **What to do if you disagree with this notice**

> If you disagree with anything in this notice you need to tell us within 30 days of the date of this notice. You will need to tell us what you disagree with and why. We will then contact you to try to settle the matter. If we cannot come to an agreement, we will write to you and tell you why. We will then offer to have the matter reviewed by an HMRC officer who has not previously been involved in the case. We will also tell you about your right to appeal to an independent tribunal.
>
> You can find more information about appeals and reviews in the enclosed factsheet, HMRC1, 'HMRC Decisions – what to do if you disagree'."

86. The NoR issued to Mr Saggu was identical except that the section on "What to do if you disagree with this notice" contained this additional sentence: "This should be independent from any action taken by Blocksure Limited for this Notice of Requirement".

87. Mr Ahmed submitted that there is a conflict between the 30-day deadline for bringing an appeal, and the wording of the section about TTPs. This section states that if the recipient of the notice requests a TTP, and no TTP is agreed, there is then a further 30 days before security is required. It also states that if a TTP is agreed, the requirement to give security is withdrawn, in which case, Mr Ahmed said, there would be no need to appeal. Mr Ahmed submitted that the opportunity to negotiate a TTP appears open-ended, and that it is not stipulated that the recipient only has one chance to request a TTP. According to Mr Ahmed, the implication was that a TTP could be agreed at any reasonable time in the future.

88. Mr Ahmed further submitted that HMRC reinforced Mr Saggu's understanding by their conduct in continuing to indicate that they were willing to negotiate a TTP. In these circumstances, Mr Ahmed suggested, it was natural for Mr Saggu not to bring a formal appeal, as he believed a TTP would be entered into, which would have the same effect as an appeal (in that the NoRs would be withdrawn). We accept that Mr Saggu engaged actively with HMRC in the period following the issue of the NoRs, and did not, in Mr Ahmed's words, "sit on his hands".

89. By way of explanation as to why Mr Saggu did not seek legal advice at an earlier stage, Mr Ahmed drew our attention to Blocksure's experience of having received NoRs in 2019. On that previous occasion, a TTP had been agreed and the NoRs had been withdrawn without bringing an appeal or seeking legal advice. Mr Ahmed submitted that when the NoRs were received in 2022, Mr Saggu had proceeded on the basis that he could adopt the same approach again, with the same outcome.

90. Mr Ahmed also asked us to consider Mr Saggu's phone call to HMRC on 26 July 2022 (of which we had a transcript). In this call Mr Saggu referred to the NoRs and said:

> "So, the business has been waiting for a large amount of investments coming in to us from a couple of investors and that's been delayed, so, we've been processing payroll as normal just to make sure the employees have a payslip and know what they're due to be paid, but there hasn't actually been payments made to them for quite a large part, I mean myself I haven't been paid since September last year."

91. Mr Ahmed invited us to find that by making this statement Mr Saggu was in effect disagreeing with the NoRs, because the payroll errors meant that the arrears of PAYE and NICs as set out in the NoRs were overstated. As a result, Mr Ahmed submitted, Mr Saggu had complied with the requirement in the NoRs to tell HMRC within 30 days if he "disagreed" with anything in the notice.

92. Mr Ahmed did not argue that the phone call of 26 July 2022 constituted an appeal against the NoRs, nor that Mr Saggu thought that it constituted such an appeal. We accept

that it does, however, constitute evidence that Mr Saggu was seeking to comply with the terms of the NoRs.

93. We find that the reasons for the delay were, in essence, the reasons put to us by Mr Ahmed. Mr Saggu thought that he did not need to make an appeal because he was in discussions with HMRC about entering into a TTP. He had two reasons for believing that discussing a TTP removed, or at least deferred, the need to make an appeal. The first reason was his previous experience in 2019, when a NoR had been withdrawn because a TTP had been agreed, without an appeal having been made. The second reason was the wording of the NoRs, which stated that the time allowed for providing security would be extended if an employer contacted HMRC before the date that security was required to ask them to consider a TTP. He believed he was in discussions with HMRC about entering into a TTP, and he continued to believe this until he received the postal requisition from Croydon Magistrates Court dated 7 February 2023.

94. We reject a further submission from Mr Ahmed that HMRC should have responded to the challenge made in Mr Saggu's call to HMRC on 26 July 2022 by making a formal offer of a review. This would require HMRC to have treated the phone call as a notice of an appeal, which Mr Ahmed accepted it was not. We do not consider that HMRC should have regarded this phone call as a notice of appeal: for this to have been the case Mr Saggu would have had, at a minimum, to state directly his belief that the NoRs were incorrect, rather than leaving this to be inferred by the call handler.

95. We also reject a submission by Mr Carey that the timing of the application to make a late appeal was intended to frustrate the bringing of a criminal prosecution. We find that the receipt of the postal requisition caused Mr Saggu to appreciate that his efforts to agree a TTP were likely to be unsuccessful, and so he sought legal advice as to the other options available to him. This was what led him to bring the application at that time. We saw no evidence to justify a conclusion that he was motivated by seeking to subvert the proper workings of justice.

Evaluation of all the circumstances

96. The third stage of the *Martland* test requires us to evaluate all the circumstances of the case, carrying out a balancing exercise in which the length of the delay, the merits of the reasons for it, and the prejudice that would be caused to the parties by granting or refusing permission, are assessed.

97. This balancing exercise must take into account the particular importance of the need for litigation to be conducted efficiently and at proportionate cost, and for statutory time limits to be respected.

Assessment of the merits of the reasons for the delay

98. In accordance with the findings of the Upper Tribunal in *Shane De Silva v HMRC* [2021] UKUT 275 (TCC) ("*De Silva*") at [32], we are not required to make a binary decision as to whether Blocksure and Mr Saggu had a reasonable excuse for the delay in bringing the appeal, but to evaluate the merits of the reasons given for the delay.

99. We find that to an unrepresented taxpayer, even an experienced businessman such as Mr Saggu, it is not clear how the "time to pay arrangements" and "what to do if you disagree" sections of the NoRs interacted, and whether one overrode the other. It was therefore reasonable, based on the wording of the NoRs, for Mr Saggu to believe that he did

not need to appeal for so long as he was in discussions to enter into a TTP, and for that belief to continue for so long as those discussions had a reasonable prospect of success.

100. We find that Blocksure and Mr Saggu were earnest in their desire to enter into a TTP, not least because Mr Saggu believed (correctly) that agreeing a TTP would result in the NoRs being withdrawn, and the NoRs were making investors uncomfortable about investing in Blocksure. However, it would not have been reasonable for Mr Saggu to believe that a TTP was sure to be agreed. Mr Saggu referred in his oral evidence to the risks and uncertainties associated with seeking external investment. He should therefore have contemplated that there was at least a risk that Blocksure would be unable to clear the arrears within a timescale that would be acceptable to HMRC.

101. We have found that one of the reasons for the delay was that Mr Saggu's understanding was informed by his previous experience of receiving a NoR in 2019. However, Mr Saggu and Blocksure did not proceed in the same way in 2022 as they had in 2019. In 2019, Mr Saggu had written to HMRC before the date on which security was due to have been given, proposing the terms of a TTP under which Blocksure would pay specified amounts on specified dates so that the arrears would be paid off within the following eight months.

102. In 2022, Blocksure was in a very different position, in that it could not afford to begin paying off the arrears until it received funds from the Investor. In the many calls between Blocksure and HMRC in 2022, the consistent message from Blocksure was that it wanted to enter into a TTP, but not until the investment had been received. We do not therefore consider that it was reasonable for Mr Saggu to conclude that Blocksure's position, in regards to negotiating a TTP with HMRC, was the same in 2022 as it had been in 2019.

103. Mr Ahmed submitted that HMRC had, by continuing to engage with Blocksure over the possibility of a TTP, led Mr Saggu to believe that a negotiated way forward was still possible. Mr Carey, in response, submitted that these negotiations had reached the "end of the road" by 15 November 2022, the date on which Ms Gilbert of HMRC wrote to Blocksure and Mr Saggu stating her intention to refer matters to the CPS. Mr Carey submitted that from this point there was no longer a genuine dialogue between Blocksure and HMRC about a TTP, but there was instead a situation in which Blocksure was "firing off" suggestions which HMRC was rejecting.

104. While we have found Mr Saggu's reading of the NoRs to be reasonable, we do not consider it was reasonable for him to conclude either that the external investment was certain to be received, or that he could continue to defer the requirement to provide security by maintaining the position that Blocksure wanted to enter into a TTP in the future, but could not do so at that moment. He should have appreciated, from the many times when HMRC told him so, that in these circumstances HMRC would pursue the other avenues available to them, including initiating a prosecution.

105. We have not found it straightforward to assess the merits of the reasons for the delay, as the arguments are relatively evenly balanced. Overall however, we consider that the reasons given are not strong enough to amount to good reasons for a delay of over six months.

Prejudice to Mr Saggu and Blocksure

106. We considered the prejudice to Mr Saggu if we do not permit him to bring a late appeal. The main prejudice is that he would face criminal prosecution and potentially a fine. We understood that at the time of the hearing, the prosecution had been put on hold pending the outcome of the decision of this Tribunal. If we refuse permission for a late appeal, the effect of Regulation 97V(7)(a) is that the security required by the NoRs would become

payable 30 days after we make our determination. We had no evidence or submissions to suggest that either Blocksure or Mr Saggu would be able to provide this security, and so it is highly likely that the prosecution would proceed.

107. We do not know what the outcome of the prosecution would be. Mr Carey submitted that there were a number of possible outcomes and that conviction was not inevitable. In any event it is clear that being subject to a criminal prosecution is a very serious matter.

108. We had no submissions as to any prejudice that may arise to Blocksure if we refuse permission to bring a late appeal (as opposed to any prejudice that arose previously as a result of the imposition of the NoRs). The company is in liquidation and the liquidators have stated that as at 26 February 2024 (the date of their letter to the Tribunal) their information was that no dividend would be available for any creditors within the liquidation. We have been unable to make any findings as to any prejudice that may arise to Blocksure, and do not take this into account in the *Martland* balancing exercise.

Strength of Blocksure and Mr Saggu's case

109. For the purposes of the *Martland* balancing exercise, the Tribunal would normally only take account of any obvious strengths or weaknesses in the parties' cases and would refrain from carrying out a detailed analysis of the underlying merits of the appeal. In this case, however, we have heard full evidence and submissions on the substantive appeal against the NoRs. We therefore consider that the fairest approach is for us to make findings on the merits of the substantive appeal. We consider that this is in line with the approach which was taken by this Tribunal in *Quadragina Ltd and Charles Horder v HMRC* [2019] UKFTT 639 (TC) ("*Quadragina*"), and which was approved by the Upper Tribunal (in *Horder*, to which we have already referred above).

110. Mr Ahmed contended that the merits of the appeal are strong. He submitted that the NoRs were not valid because there was very little risk at the time they were issued, despite the significant arrears of PAYE and NICs that had accrued. His more detailed reasons for submitting that the NoRs were not valid were:

(1) HMRC ignored the future R&D credits, which would eliminate the arrears and substantially reduce the risk of future arrears. In the event, HMRC's R&D team credited an amount for the accounting period ending 31 December 2021 which had the effect of halving the arrears. R&D credits are only made after a thorough risk assessment process, meaning that HMRC's R&D credits team had concluded that Blocksure was low risk.

(2) HMRC ignored the fact that imminent external investments would remove the risk of further arrears. Blocksure's business model, which had been provided to HMRC, was extremely attractive to investors and substantial investment was predicted over the coming years. HMRC was aware of evidence of investment at the time the NoRs were issued.

(3) HMRC ignored the fact that the arrears had built up as a result of economic conditions that were caused by the covid pandemic but no longer existed. The pandemic had put a pause on investment.

(4) HMRC did not provide reasons for issuing the NoRs.

(5) HMRC had no regard for the future financial position of the company, either short or long term. Had they properly considered it, they could not have reached the

conclusion that the NoRs were required. In fact, it would have been clear that the opposite was the case, in that the NoRs would be a barrier to future investment.

111. On the question of the validity of the NoRs, we have considered the similarly-worded provisions relating to the requirement to provide security for VAT. These provisions are in paragraph 4 of Schedule 11 to the Value Added Tax Act 1994. Paragraph 4(2) provides that if they think it necessary for the protection of the revenue, HMRC may require a taxable person, as a condition of supplying or being supplied with goods or services under a taxable supply, to give security, or further security, for the payment of any VAT that is or may become due from the taxable person, or any person by or to whom relevant goods or services are supplied.

112. It is clear that, in relation to an appeal against a requirement to provide security for VAT, the jurisdiction of this Tribunal is supervisory only. The relevant principles were summarised in the decision of this Tribunal in *The Southend United Football Club Ltd v HMRC* [2013] UKFTT 715 (TC) at [10]:

> "It is undisputed that our jurisdiction is supervisory only. That is, if we are to allow the appeal we must be satisfied that the decision is one at which the Commissioners could not reasonably have arrived. That understanding of the law derives from the judgements of Farquharson J in *Mr Wishmore Ltd v Customs & Excise Commissioners* [1988] STC 723, of Dyson J in *Peachtree Enterprises Ltd* [1994] STC 747 and of the Court of Appeal in *John Dee Ltd v Customs & Excise Commissioners* [1995] STC 941. The cases show that we must limit ourselves to a consideration of the facts and matters which were known when the disputed decision was made, so cannot take account of developments since that time, and that we may not exercise a fresh discretion. In other words, if the decision was flawed we must allow the appeal and leave HMRC to make a further determination if they so choose. If we are persuaded the decision was flawed but that, had HMRC approached the matter correctly, they would inevitably have arrived at the same conclusion we should dismiss the appeal."

113. In deciding whether HMRC's decision is one at which they could not reasonably have arrived, the Tribunal must consider whether HMRC took into account some irrelevant matter or ignored a relevant factor. The decision may also be unreasonable if HMRC made an error of law.

114. In our view, these are the principles we should apply in considering whether the NoRs in this case were validly issued.

115. Mr Ahmed did not seek to persuade us that, if we were to grant permission for a late appeal, we should take into account facts or circumstances in existence after Officer Laurie took the decision to issue the NoRs. Mr Ahmed also did not seek to persuade us that we should vary the notice by substituting a different figure for the amount of security to be given.

116. We note that this Tribunal has previously held (in *D-Media Communications Ltd v HMRC* [2016] UKFTT 430 (TC) ("*D-Media*"), and *Quadragina*) that it has jurisdiction to re-make HMRC's decision to issue a NoR to give security for PAYE and NICs, even if that decision was reasonable, on the basis of information that is available to the Tribunal at the hearing but which was not available to the decision-maker at the time. Mr Carey submitted that this interpretation of the PAYE and NIC Regulations was incorrect, and that *D-Media* was wrongly decided.

117. We note that in *Boship Lions Farm Hotel Ltd and others v HMRC* [2018] UKFTT 411 (TC), the Tribunal held that it could only consider facts as they were at the time the decision to require security was taken, although in that case the Tribunal was not referred to *D-Media*. We further note that although *Quadragina* was appealed, the Upper Tribunal declined to express a view on the (First-tier) Tribunal's jurisdiction, having made its decision on other grounds.

118. Given that Mr Ahmed did not seek to persuade us to the contrary, we have proceeded, for the purposes of the *Martland* exercise, on the basis that if we were to grant permission for a late appeal, the strength of Blocksure and Mr Saggu's case would depend on whether HMRC's decision to issue the NoRs was reasonable on the basis of information which existed at the time the decision was made. We therefore make no findings on the correctness of the approach taken in *D-Media*.

119. We have set out, at paragraph [30] above, the matters which Officer Laurie took into account in reaching his decision to issue the NoRs. Mr Ahmed cross examined Officer Laurie at the hearing. We accept Officer Laurie's evidence and take it into account in our findings below.

120. We find that, given the amount of the arrears of PAYE and NICs and the amount of time since any payments of PAYE or NICs had been made, it was reasonable for Officer Laurie to come to the view that Blocksure posed a risk to the revenue.

121. We have found that Officer Laurie was aware of the previous successful claims for R&D credits and that further claims were planned for the future, but decided that this did not remove the risk to the revenue which he had identified. He took the view that there was no guarantee that future claims would be successful, and that the amount of any future claim or claims was uncertain.

122. Mr Ahmed submitted that Blocksure's history of previous successful claims meant that HMRC should have taken intended future claims into account. He did not dispute that the future claims were not guaranteed, but said that they did not need to be guaranteed for HMRC to take them into account in reaching their decision; the pattern of past payments of R&D credit claims should have been sufficient to indicate that the risk to the revenue was low.

123. We accept that it was not necessary for R&D credit claims to be guaranteed for HMRC to take them into account. However, we consider that the fact that they were not guaranteed was a relevant factor which Officer Laurie was entitled to take into account when reaching his decision.

124. We would observe that the NoRs were issued on 4 July 2022 but that the R&D credit claim for the accounting period ending on 31 December 2021 was not submitted until 14 December 2022. This meant that at the time of the issue of the NoRs, neither the amount of that claim, nor the fact that it would be made, were certain. This, and the differing amounts of the past successful R&D claims, lead us to conclude that it was reasonable for Officer Laurie to consider that the amount of any future claim or claims was uncertain.

125. Mr Ahmed also submitted that HMRC were not entitled to take the view that using R&D credits to offset arrears was not an "ongoing way of paying taxes". We understood this submission to mean that Officer Laurie objected, in principle, to arrears being reduced using R&D credits rather than through making payments, and that he inappropriately allowed this consideration to influence his decision to issue the NoRs.

126. We find, however, that what led Officer Laurie to conclude that a risk to the revenue existed, despite the potential for future R&D credit claims, was not the manner in which

those claims were proposed to be offset against the arrears, but the risk that the claims would not come to fruition.

127. Regarding the weight that Officer Laurie should have placed on the anticipated future investment, we have found that he was not aware of the previous investments that had been made into Blocksure. He was, however, aware that the company had since at least December 2021 been telling HMRC that a particular investment was expected imminently, but that this had not been forthcoming. He therefore took the view that HMRC could not rely on the funds from this investment being received. We do not consider that he would have reached a different view if he had been aware of the previous investments, as these did not affect the delays that had already occurred in relation to the future investment.

128. Contrary to Mr Ahmed's submissions, we do not consider that HMRC were obliged to conduct a detailed investigation into, or request evidence concerning, the proposed investment or investments. Officer Laurie's position was not that the potential investments were fabricated, but that they had not been forthcoming, and on this the facts spoke for themselves.

129. Mr Ahmed referred us, in this context, to the decision of this Tribunal in *Half Penny Accountants Ltd v HMRC* [2016] UKFTT 45 (TC) ("*Half Penny*"). In that case, the Tribunal decided that HMRC had erred in excluding the potential sale of the appellant's business from its consideration when deciding whether to require security for VAT. Mr Ahmed submitted that the imminent investment into Blocksure, which was not properly considered or investigated by HMRC, was extremely relevant and that the facts are of a similar nature to the facts in *Half Penny*.

130. We do not consider Blocksure's case to be on all fours with the circumstances in *Half Penny*, for two main reasons. The first is that the HMRC officer in *Half Penny* said that he would not take the business sale into consideration as this would give an unfair advantage over other taxpayers. The Tribunal found that the unfairness argument appeared to be misconceived. No such argument has been put forward by HMRC in this case.

131. The second difference is that in *Half Penny*, the Tribunal found that the HMRC officer had ignored the business sale entirely in reaching his decision to require security. In Blocksure's case, we find that Officer Laurie did not ignore the external investment, or the R&D credits, but considered them and decided that a risk to the revenue remained.

132. We have considered Mr Ahmed's submission that HMRC ignored the future financial position of the company, including the fact that the arrears had built up as a result of economic conditions that were caused by the covid pandemic but no longer existed. He did not, however, provide us with information on specific factors HMRC should have considered relating to Blocksure's financial prospects, beyond the anticipated investments and R&D credits which we have already considered. We understood that, for instance, as a start-up business Blocksure was not yet receiving significant amounts of customer revenue, although it hoped these amounts would increase in the future.

133. We also do not consider that Officer Laurie should have taken account of the likelihood that the issuing of a NoR would act as a barrier to future investment. We do not consider that he was under an obligation to second-guess how external investors would react to the imposition of a NoR, as this involves too many uncertainties. We consider that he was entitled to confine his considerations in relation to the external investment to the fact that it had been promised for a long time, but had not been received, and from this to draw the conclusion that this potential investment did not remove the risk to the revenue.

134. We find that it was reasonable for Officer Laurie to set the amount of the security at the estimated amount of PAYE and NICs due to be paid by Blocksure for a 4-month period, plus the arrears.

135. Mr Ahmed submitted that Officer Laurie should have discounted the amount of the security by the intended R&D credit claim. However, at the time of the issue of the NoRs, the amount of the claim was not known (even to Blocksure) and we do not consider it was unreasonable for Officer Laurie not to have discounted the amount of the security by an unknown figure for a claim that may or may not have been successful.

136. We also considered whether Officer Laurie should have discounted the amount of the security to reflect the fact that the arrears were overstated as a result of the payroll reporting errors. We saw evidence that, amongst the many phone calls between Blocksure and HMRC in the run-up to the issue of the NoRs, Mr Saggu made reference to Blocksure running payroll without employees being paid their full salary. We did not, however, have evidence that HMRC had been informed, prior to the issue of the NoRs, of the amounts of the alleged overstatements, or that HMRC would have accepted these amounts as correct. We do not, therefore, consider that Officer Laurie acted unreasonably in not discounting the amount of the security to reflect these overstatements.

137. Even if we are wrong on this, and basing the amount of security on an amount of arrears that was subsequently found to be overstated meant that HMRC did take into account an irrelevant consideration or failed to consider a relevant factor, the amount of the arrears was still substantial. This means that the decision to require security was still reasonable. It is relevant to repeat here that we have not been asked to vary the amount of the security.

138. Mr Ahmed pointed out, and we accept, that since the NoRs were issued, the amount of the arrears has been substantially reduced. This is largely a result of the R&D credits for the years ended 31 December 2021 and 31 December 2022, together with the reversals of the payroll reporting errors. There have also been some VAT refunds. However, all of these are circumstances that arose after HMRC's decision to issue the NoRs, and therefore cannot affect the reasonableness of that decision at the time it was made.

139. The same applies to the argument that R&D credits are only made after a thorough risk assessment process, meaning that HMRC's R&D credits team had concluded that Blocksure was low risk. The R&D credit claim for the year ending 31 December 2021 had not been submitted at the time of the issue of the NoRs, so any risk assessment process for that claim would not yet have begun. As for prior claims, the most recent was accepted by HMRC in October 2021, so would not reflect the situation between then and July 2022, besides which we had no evidence as to what this risk assessment process involved.

140. We can deal shortly with the submission that HMRC did not provide reasons for issuing the NoRs. In fact, the NoRs stated that the reason they had been issued was that HMRC believed there was a risk that Blocksure would not pay the PAYE and NICs that were, or may have become, due. Mr Ahmed also did not provide any basis for his submission that HMRC were under a duty to provide reasons. We therefore do not consider that there is anything in this point.

141. Taking all of the above into account, we have concluded that Officer Laurie's decision to issue the NoRs was not unreasonable. For the reasons we have given, this means that if we were to grant permission for a late appeal, we would go on to dismiss the appeal.

Prejudice to HMRC

142. Mr Carey expressed the prejudice to HMRC, if we were to grant permission for a late appeal, in terms of HMRC's interest in "proper processes" regarding the operation of the rules concerning NoRs.

143. We agree that HMRC have a legitimate interest in ensuring that the statutory provisions regarding NoRs operate in the manner in which Parliament intended, in order to protect the revenue. These provisions include the time limits within which a person who has received a NoR must challenge it through bringing an appeal.

144. We agree with this statement by the Tribunal in *Quadragina*, at [112]:

> "Compliance with time limits is very important; time limits for appeals with NORs are particularly important because NORs are there to protect revenues. NORs are intended to prevent companies continuing to trade without paying over the tax they collect on HMRC's behalf (in this case, PAYE and NIC)."

145. Mr Carey also submitted that HMRC were entitled to conclude that no appeal was being brought and that the NoRs were final. The potential prejudice here was recognised by the Upper Tribunal in *Data Select Ltd v HMRC* [2012] UKUT 187 (TCC) at [37] where it stressed:

> "…the desirability of not re-opening matters after a lengthy interval where one or both parties were entitled to assume that matters had been finally fixed and settled and that point applies to an appeal against a determination by HMRC as it does to appeals against a judicial decision."

146. In this case, HMRC have already suffered this prejudice by having already prepared and presented their submissions and evidence on the substantive appeal. No additional time and resources would be required from HMRC in preparing their case if we were to grant permission for a late appeal.

147. While we agree with Mr Carey that HMRC has an interest in ensuring that statutory time limits are respected, this is a factor that must be taken into account in any event as part of the *Martland* balancing exercise. We have not identified any additional prejudice to HMRC in this case over and above that which would arise from the disregarding of statutory time limits.

Conclusion on the balancing exercise

148. This has not been a standard *Martland* case, in the sense that we have heard both parties' whole case on the substantive appeal. This has enabled us to make a finding that even if we were to allow an extension of time for bringing an appeal, that appeal would have failed. This indicates strongly that we should refuse permission for the appeal to be made late.

149. This also deals with Mr Ahmed's submissions on the decision of this Tribunal in *Eunoia Initiatives v HMRC* [2021] UKFTT 65 (TC) (*Eunoia*), which concerned an application to bring an appeal against a NoR which was 16 months late. In its decision the Tribunal stated, at [60]:

> "In this case I consider the considerable prejudice to the Appellant and the director, and the fact that they consistently engaged with HMRC, mean that the overall circumstances of the case merit the full facts case being heard, nothwithstanding the considerable delay in the making of the appeal."

150. Mr Ahmed submitted that *Eunoia* is on all fours with this application and invited us to come to the same conclusion. We do not accept this submission because unlike the Tribunal in *Eunoia*, we have heard full submissions and evidence on the merits of the appeal. This is reflected in the quote above in which the Tribunal found that the circumstances "merit the full facts case being heard". In the case of the application by Blocksure and Mr Saggu, both parties' full cases have already been heard.

151. The length of the delay, and our finding that there was not a good reason for a delay of that length, further indicate that permission for a late appeal should be refused.

152. The main factor pointing to a contrary conclusion is the significant prejudice to Mr Saggu of the threat of criminal prosecution. However, if we were to grant an extension of time for bringing the appeal, Mr Saggu would still suffer this prejudice, because we have found that we would dismiss the appeal. The threat of prosecution, serious though it is, is therefore not a prejudice that is caused to Mr Saggu by refusing permission for a late appeal, because he would suffer this prejudice whether we refuse permission or not.

153. For these reasons, our conclusion on the *Martland* balancing exercise is that we should not give permission for a late appeal.

DISPOSITION

154. Permission to bring a late appeal is refused for both Appellants.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

155. 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 Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. 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.

RACHEL GAUKE
TRIBUNAL JUDGE

Release date: 16th MAY 2024

APPENDIX

Income Tax (Pay As You Earn) Regulations 2003, Part 4A

97M Interpretation

In this Part—

"a further notice" has the meaning given in regulation 97U(3); and

"PGS" has the meaning given in regulation 97S(1).

97N Requirement for security

(1) In circumstances where an officer of Revenue and Customs considers it necessary for the protection of the revenue, the officer may require a person described in regulation 97P(1) (persons from whom security can be required) to give security or further security for the payment of amounts in respect of which an employer described in regulation 97O (employers) is or may be accountable to HMRC under regulation 67G, as adjusted by regulation 67H(2) where appropriate, 68 or 80 (payments to HMRC and determination of unpaid amounts).

(2) Paragraph (1) does not apply to any amount which the employer is required to pay to HMRC that relates to income to which Part 8 (social security benefits) applies.

97O Employers

(1) The employer is any employer other than—

(a) the Crown,

(b) an employer to whom paragraph (2) applies,

(c) … and

(d) a care and support employer within the meaning given by regulation 206(4) (employers).

(2) This paragraph applies to employers who at the relevant time could not be liable to a penalty under Schedule 56 to the Finance Act 2009 by virtue of paragraph 10 of that Schedule (suspension of penalty for failure to make payments on time during currency of agreement for deferred payment).

(3) In paragraph (2), the relevant time is a time at which, but for paragraph (1)(b), the officer would require security.

97P Persons from whom security can be required

(1) The persons are—

(a) the employer,

(b) any of the following in relation to the employer—

(i) a director,

(ii) a company secretary,

(iii) any other similar officer, or

(iv) any person purporting to act in such a capacity, and

(c) in a case where the employer is a limited liability partnership, a member of the limited liability partnership.

(2) An officer of Revenue and Customs may require—

(a) a person to give security or further security of a specified value in respect of the employer, or

(b) more than one person to give security or further security of a specified value in respect of the employer, and where the officer does so those persons shall be jointly and severally liable to give that security or further security.

97Q Notice of requirement

(1) An officer of Revenue and Customs must give notice of a requirement for security to each person from whom security is required and the notice must specify—

(a) the value of security to be given,

(b) the manner in which security is to be given,

(c) the date on or before which security is to be given, and

(d) the period of time for which security is required.

(2) The notice must include, or be accompanied by, an explanation of—

(a) the employer's right to make a request under paragraph 10(1) of Schedule 56 to the Finance Act 2009, and

(b) the effect of regulation 97R(2) and (3) (date on which security is due).

(3) In a case which falls within regulation 97P(2)(b), the notice must include, or be accompanied by, the names of each other person from whom security is required.

(4) The notice may contain such other information as the officer considers necessary.

(5) A person shall not be treated as having been required to provide security unless HMRC comply with this regulation and regulation 97R(1).

97R Date on which security is due

(1) The date specified under regulation 97Q(1)(c) (notice of requirement) may not be earlier than the 30th day after the day on which the notice is given.

(2) If, before the date specified under regulation 97Q(1)(c), the employer makes a request under paragraph 10(1) of Schedule 56 to the Finance Act 2009, the requirement to give security on or before that date does not apply.

(3) In a case which falls within paragraph (2), if HMRC does not agree to the employer's request, security is to be given on or before the 30th day after the day on which HMRC notifies the employer of that decision.

97S Application for reduction in the value of security held

(1) A person who has given security ("PGS") may apply to an officer of Revenue and Customs for a reduction in the value of security held by HMRC if—

(a) PGS' circumstances have changed since the day the security was given because —

(i) of hardship, or

(ii) PGS has ceased to be a person mentioned in regulation 97P(1) (person from whom security can be required), or

(b) since the day the security was given there has been a significant reduction in the number of employees of the employer to whom the security relates or that employer has ceased to be an employer.

(2) Where regulation 97P(2)(b) applies, a person who has not contributed to the value of the security given may not make an application under paragraph (1).

97T Outcome of application for reduction in the value of security held

(1) If an application under regulation 97S(1) (application for reduction in the value of security held) is successful, the officer must inform PGS of the reduced value of security that is still required or, where that value is nil, that the requirement for security has been cancelled.

(2) HMRC may make such arrangements as they think fit to ensure the necessary reduction in the value of security held.

97U Outcome of application for reduction in the value of security held: further provision

(1) This regulation applies—

(a) in cases which fall within regulation 97P(2)(b), and

(b) where PGS' application is made under regulation 97S(1)(a).

(2) As a consequence of arrangements made under regulation 97T(2) (outcome of application for reduction in the value of security held), an officer of Revenue and Customs may require any other person who was given notice under regulation 97Q (notice of requirement) in relation to the security ("the original security"), or any other person mentioned in regulation 97P(1), to provide security in substitution for the original security.

(3) Where an officer of Revenue and Customs acts in reliance on paragraph (2), the officer must give notice ("a further notice").

(4) Regulation 97Q and regulation 97R (date on which security is due) apply in relation to a further notice.

(5) Subject to paragraph (6), regulation 97V(1) (appeals) applies in relation to a further notice.

(6) A person who is given a further notice and who was also given notice under regulation 97Q in relation to the original security may only appeal on the grounds the person is not a person mentioned in regulation 97P(1).

97V Appeals

(1) A person who is given notice under regulation 97Q may appeal against the notice or any requirement in it.

(2) PGS may appeal against—

(a) the rejection by an officer of Revenue and Customs of an application under regulation 97S(1), and
(b) a smaller reduction in the value of security held than PGS applied for.

(3) Notice of an appeal under this regulation must be given—
(a) before the end of the period of 30 days beginning with—
(i) in the case of an appeal under paragraph (1), the day after the day on which the notice was given, and
(ii) in the case of an appeal under paragraph (2), the day after the day on which PGS was notified of the outcome of the application, and
(b) to the officer of Revenue and Customs by whom the notice was given or the decision on the application was made, as the case may be.

(4) Notice of an appeal under this regulation must state the grounds of appeal.

(5) On an appeal under paragraph (1) that is notified to the tribunal, the tribunal may—
(a) confirm the requirements in the notice,
(b) vary the requirements in the notice, or
(c) set aside the notice.

(6) On an appeal under paragraph (2) that is notified to the tribunal, the tribunal may—
(a) confirm the decision on the application, or
(b) vary the decision on the application.

(7) On the final determination of an appeal under this regulation—
(a) subject to any alternative determination by a tribunal or court, any security to be given is due on the 30th day after the day on which the determination is made, or
(b) HMRC may make such arrangements as it sees fit to ensure the necessary reduction in the value of security held.

(8) An appeal under this regulation is subject to the provisions of Part 5 of TMA (appeals and other proceedings) apart from—
(a) section 46D,
(b) section 47B,
(c) section 50(6) to (9), and
(d) sections 54A to 57.

97W Appeals: further provision for cases which fall within regulation 97R(2)

In a case which falls within regulation 97R(2) (date on which security is due), if the request mentioned in that provision is made before an appeal under regulation 97V(1) (appeals), regulation 97V(3)(a)(i) applies as if the words "the day after the day on which the notice was given" were "the day after the day on which HMRC notifies the employer of its decision".

97X Offence

(1) For the purposes of section 684(4A) of ITEPA (PAYE regulations—security for payment of PAYE: offence)—
(a) in relation to a requirement for security under a notice under regulation 97Q (notice of requirement) the period specified is the period which starts with the day the notice is given and ends with—

(i) the first day after the date specified under regulation 97Q(1)(c), or
(ii) in a case which falls within regulation 97R(2), the first day after the date determined under regulation 97R(3),

(b) in relation to a requirement for security under a further notice the period specified is the period which starts with the day the further notice is given and ends with—

(i) the first day after the date specified under regulation 97Q(1)(c) as it applies in relation to the further notice, or
(ii) in a case which falls within regulation 97R(2), the first day after the date determined under regulation 97R(3) as it applies in relation to the further notice, and

(c) in relation to a requirement for security to which regulation 97V(7)(a) applies the period specified is the period which starts with the day the determination is made and ends with the first day after—

(i) the day the tribunal or court determines to be the day that the security is to be given, or
(ii) the day determined in accordance with that regulation,

as the case may be.

Social Security (Contributions) Regulations 2001

Schedule 4, Part 3B

Interpretation

29M - In this Part—
"employer" has the meaning given in paragraph 29O(1);
"a further notice" has the meaning given in paragraph 29U(3);
"PGS" has the meaning given in paragraph 29S(1).

Requirement for security

29N - In circumstances where an officer of Revenue and Customs considers it necessary for the protection of Class 1 contributions, the officer may require a person described in paragraph 29P(1) to give security or further security for the payment of amounts which an employer is or may be liable to pay to HMRC under paragraph 10, 11, 11ZA or 11A.

Employers

29O - (1) An "employer" is any employer within the meaning given in paragraph 1(2) other than—

(a) the Crown;
(b) a person to whom sub-paragraph (2) applies;
(c) … and
(d) a care and support employer within the meaning given in regulation 90NA(3) of these Regulations.

(2) This sub-paragraph applies to persons who at the relevant time could not be liable to a penalty under Schedule 56 to the Finance Act 2009 by virtue of paragraph 10 of that Schedule (suspension of penalty for failure to make payments on time during currency of agreement for deferred payment).

(3) In sub-paragraph (2), the relevant time is a time at which, but for sub-paragraph (1)(b), the officer would require security.

Persons from whom security can be required

29P - (1) The persons are—

(a) the employer;

(b) any of the following in relation to the employer—

(i) a director;

(ii) a company secretary;

(iii) any other similar officer; or

(iv) any person purporting to act in such a capacity; and

(c) in a case where the employer is a limited liability partnership, a member of the limited liability partnership.

(2) An officer of Revenue and Customs may require—

(a) a person to give security or further security of a specified value in respect of the employer; or

(b) more than one person to give security or further security of a specified value in respect of the employer, and where the officer does so those persons shall be jointly and severally liable to give that security or further security.

Notice of requirement

29Q - (1) An officer of Revenue and Customs must give notice of a requirement for security to each person from whom security is required and the notice must specify—

(a) the value of security to be given;

(b) the manner in which security is to be given;

(c) the date on or before which security is to be given; and

(d) the period of time for which security is required.

(2) The notice must include, or be accompanied by, an explanation of—

(a) the employer's right to make a request under paragraph 10(1) of Schedule 56 to the Finance Act 2009; and

(b) the effect of paragraph 29R(2) and (3).

(3) In a case which falls within paragraph 29P(2)(b), the notice must include, or be accompanied by, the names of each other person from whom security is required.

(4) The notice may contain such other information as the officer considers necessary.

(5) A person shall not be treated as having been required to provide security unless HMRC comply with this paragraph and paragraph 29R(1).

(6) Notwithstanding anything in regulation 1(4)(b), where the notice, or a further notice, ("contributions notice") is to be given with a notice or further notice mentioned in regulations 97Q(1) and 97U(3) of the PAYE Regulations ("PAYE notice") the contributions notice shall be taken to be given at the same time that the PAYE notice is given.

Date on which security is due

29R - (1) The date specified under paragraph 29Q(1)(c) may not be earlier than the 30th day after the day on which the notice is given.

(2) If, before the date specified under paragraph 29Q(1)(c), the employer makes a request under paragraph 10(1) of Schedule 56 to the Finance Act 2009, the requirement to give security on or before that date does not apply.

(3) In a case which falls within sub-paragraph (2), if HMRC does not agree to the employer's request, security is to be given on or before the 30th day after the day on which HMRC notifies the employer of that decision.

Application for reduction in the value of security held

29S - (1) A person who has given security ("PGS") may apply to an officer of Revenue and Customs for a reduction in the value of security held by HMRC if—

(a) PGS' circumstances have changed since the day the security was given because —

(i) of hardship; or

(ii) PGS has ceased to be a person mentioned in paragraph 29P(1); or

(b) since the day the security was given there has been a significant reduction in the number of employed earners of the employer to whom the security relates or that employer has ceased to be an employer.

(2) Where paragraph 29P(2)(b) applies, a person who has not contributed to the value of the security given may not make an application under sub-paragraph (1).

Outcome of application under paragraph 29S

29T - (1) If an application under paragraph 29S(1) is successful, the officer must inform PGS of the reduced value of security that is still required or, where that value is nil, that the requirement for security has been cancelled.

(2) HMRC may make such arrangements as they think fit to ensure the necessary reduction in the value of security held.

Outcome of application under paragraph 29S: further provision

29U - (1) This paragraph applies—

(a) in cases which fall within paragraph 29P(2)(b); and

(b) where PGS' application is made under paragraph 29S(1)(a).

(2) As a consequence of arrangements made under paragraph 29T(2), an officer of Revenue and Customs may require any other person who was given notice under paragraph 29Q in relation to the security ("the original security"), or any other person mentioned in paragraph 29P(1), to provide security in substitution for the original security.

(3) Where an officer of Revenue and Customs acts in reliance on sub-paragraph (2), the officer must give notice ("a further notice").

(4) Paragraph 29Q(1) to (5) and paragraph 29R apply in relation to a further notice.

(5) Subject to sub-paragraph (6), paragraph 29V(1) applies in relation to a further notice.

(6) A person who is given a further notice and who was also given notice under paragraph 29Q in relation to the original security may only appeal on the grounds that the person is not a person mentioned in paragraph 29P(1).

Appeals

29V - (1) A person who is given notice under paragraph 29Q may appeal against the notice or any requirement in it.

(2) PGS may appeal against—

(a) the rejection by an officer of Revenue and Customs of an application under paragraph 29S(1); and

(b) a smaller reduction in the value of security held than PGS applied for.

(3) Notice of an appeal under this paragraph must be given—

(a) before the end of the period of 30 days beginning with—

(i) in the case of an appeal under sub-paragraph (1), the day after the day on which the notice was given; and

(ii) in the case of an appeal under sub-paragraph (2), the day after the day on which PGS was notified of the outcome of the application; and

(b) to the officer of Revenue and Customs by whom the notice was given or the decision on the application was made, as the case may be.

(4) Notice of an appeal under this paragraph must state the grounds of appeal.

(5) On an appeal under sub-paragraph (1) that is notified to the tribunal, the tribunal may—

(a) confirm the requirements in the notice;

(b) vary the requirements in the notice; or

(c) set aside the notice.

(6) On an appeal under sub-paragraph (2) that is notified to the tribunal, the tribunal may—

(a) confirm the decision on the application; or

(b) vary the decision on the application.

(7) On the final determination of an appeal under this paragraph—

(a) subject to any alternative determination by a tribunal or court, any security to be given is due on the 30th day after the day on which the determination is made; or

(b) HMRC may make such arrangements as they think fit to ensure the necessary reduction in the value of the security held.

(8) Part 5 of the Taxes Management Act 1970 (appeals and other proceedings) applies in relation to an appeal under this paragraph as it applies in relation to an appeal under the Taxes Acts but as if—

(a) sections 46D, 47B, 50(6) to (9) and (11)(c) and 54A to 57 were omitted; and

(b) in section 48(1)—

(i) in paragraph (a) the reference to "the Taxes Acts" were a reference to "paragraph 29V of Schedule 4 to the Social Security (Contributions) Regulations 2001"; and

(ii) in paragraph (b) the reference to "any provision of the Taxes Acts" were a reference to "paragraph 29V of Schedule 4 to the Social Security (Contributions) Regulations 2001".

Appeals: further provision for cases which fall within paragraph 29R

29W - In a case which falls within paragraph 29R(2), if the request mentioned in that provision is made before an appeal under paragraph 29V(1), paragraph 29V(3)(a)(i) applies as if the words "the day after the day on which the notice was given" were "the day after the day on which HMRC notifies the employer of its decision".

Offence

29X—(1) Section 684(4A) of the Income Tax (Earnings and Pensions) Act 2003 (PAYE regulations – security for payment of PAYE: offence) applies in relation to a requirement imposed under these Regulations as it applies in relation to a requirement imposed under the PAYE Regulations.

(2) For the purposes of section 684(4A) as it applies by virtue of sub-paragraph (1)—

(a) in relation to a requirement for security under a notice under paragraph 29Q the period specified is the period which starts with the day the notice is given and ends with—

(i) the first day after the date specified under paragraph 29Q(1)(c); or

(ii) in a case which falls within paragraph 29R(2), the first day after the date determined under paragraph 29R(3);

(b) in relation to a requirement for security under a further notice the period specified is the period which starts with the day the further notice is given and ends with—

(i) the first day after the date specified under paragraph 29Q(1)(c) as it applies in relation to the further notice; or

(ii) in a case which falls within paragraph 29R(2), the first day after the date determined under paragraph 29R(3) as it applies in relation to the further notice; and

(c) in relation to a requirement for security to which paragraph 29V(7)(a) applies the period specified is the period which starts with the day the determination is made and ends with the first day after—

(i) the day the tribunal or court determines to be the day that the security is to be given; or

(ii) the day determined in accordance with that paragraph,

as the case may be.