



**UPPER TRIBUNAL
TAX AND CHANCERY CHAMBER**

Neutral Citation Number: [2026] UKUT 00193 (TCC)

Applicant: Michael Nielson	Tribunal Ref: UT-2025/000117
Respondents: The Commissioners for His Majesty's Revenue and Customs	

APPLICATION FOR PERMISSION TO APPEAL

DECISION NOTICE FOLLOWING HEARING ON 30 APRIL 2026

JUDGE VIMAL TILAKAPALA

1. The Applicant, Michael Nielson, applies to the Upper Tribunal (Tax and Chancery Chamber) (the “UT”) for permission to appeal against the decision (the “Decision”) of the First-tier Tribunal (Tax Chamber) (the “FTT”) released on 17 July 2025 (TC/2022/02543).
2. Mr Neilson applied to the FTT for permission to appeal against the Decision but the FTT refused permission in a decision released on 9 October 2025 (the “FTT PTA Decision”).
3. Mr Neilson renewed his application for permission to appeal within the applicable time limit (the “Application”). I refused permission to appeal on the papers (the “UT Papers Decision”) and Mr Neilson applied for that decision to be reconsidered at a hearing.
4. The hearing was held on 30 April at which I heard from Mr Neilson and from Ms Rebecca Arnold for HMRC.
5. Pursuant to s 11(1) Tribunals Courts and Enforcement Act 2007 an appeal to the UT may only be made on a point of law. The Applicant must demonstrate that it is arguable that the FTT made an error in law in reaching its decision which was material to that decision. “Arguable” means an argument that carries a realistic as opposed to fanciful prospect of success.
6. References below in the form FTT [x] are to paragraphs of the Decision.

THE APPLICATION

7. Mr Neilson’s case before the FTT involved a dispute as to whether or not he had succeeded in amending his self-return tax assessment for 2007/2008.
8. The issue is complicated by the fact this was in the context of him having entered into a tax avoidance scheme which led to the issue to him by HMRC of an Accelerated Payment

Notice and a Follower Notice pursuant to Part 4 of the Finance Act 2014 (FA 2014). A Follower Notice is, so far as relevant, intended to inform an affected taxpayer about how to take “corrective action” to counter by, inter alia, amending his or her self-assessment return or claim, the tax advantage sought from the relevant tax scheme.

9. Mr Neilson was outside the ordinary statutory time limit for amending his return. However, corrective action pursuant to s 208 FA 2014 allows amendment of a tax return outside the statutory time limit in order to enable the countering of the tax advantage sought through use of the relevant tax scheme.

10. Instead of making amendments to counter the tax advantage, Mr Nielson sought to use the corrective action form (the “Corrective Action Form” or the “Form”) to make a different amendment to his return. That amendment was, so far as relevant, to re-categorise as a gift, an amount of £1,000,000 described in his return as “other income” (FTT [15]). The effect of this was, in his view, to render what would otherwise have been a taxable sum as non-taxable

11. HMRC had also issued a Closure Notice to Mr Neilson which stated that no claim within the statutory time limit had been made to amend his self-assessment return in order to re-categorise the amount of £1,000,000 as a gift and that HMRC held evidence which demonstrated that the amount was taxable (FTT [29]).

12. As well as contending for the Closure Notice to be upheld, HMRC contended that (a) the Corrective Action Form could not be used to make amendments to the tax return other than those required to counteract the tax advantage arising from the relevant tax scheme and (b) the Closure Notice contained no appealable decision (FTT [9]).

13. Mr Neilson argued that he had successfully amended his tax return. He also complained that HMRC had not raised any arguments as to the ineffectiveness of his amendment until shortly before the hearing when they were revealed in its skeleton argument (FTT [10] and [18]).

14. He also submitted what he regarded as clear third party evidence as to the £1,000,000 payment being a gift and challenged the evidence underpinning the Closure Notice, arguing that it should not be admissible.

15. The FTT determined, so far as relevant, and in summary, that

(1) Mr Neilson’s attempt to amend his return by way of the Corrective Action Form had not succeeded – the Form only allowed amendment to the extent necessary to counter the identified tax advantage (FTT [26]); and

(2) the Closure Notice contained no appealable decision – HMRC had accepted what he put in his tax return in relation to the money not being a gift and that in any event the time period for amending his return had passed (FTT [36] and [37]).

16. It also concluded that it had no scope to consider arguments relating to the underlying treatment of the issues referred to in the Closure Notice as consideration of those matters was outside the scope of the matter subject to review and so outside the FTT’s jurisdiction (FTT [49]).

17. As part of its determinations the FTT determined that it was able to hear all of HMRC’s submissions on the ineffectiveness of the amendments despite the alleged lateness of those arguments. In order to ensure fairness it allowed Mr Neilson to make written submissions in response to those arguments (FTT [11]).

18. Despite the FTT’s conclusion that no amendment had been made it went on nonetheless, on the basis that (a) it would be relevant only if its initial decision was incorrect, and (b) the

parties had provided evidence and made submissions, to consider the evidence on the treatment of the underlying £1,000,000 payment in question (FTT [54]), agreeing ultimately with HMRC that it was taxable income rather than a gift (FTT [75]).

THE GROUNDS OF APPEAL FOR THE APPLICATION

19. Mr Neilson included with his Paper Application a document headed “Reasons for appealing” which contained five paragraphs.

20. In my UT Papers Decision I considered each paragraph in turn as follows.

Paragraph 1

21. The first paragraph contained a general statement that:

“... the Appellants Grounds of Appeal were not raised/properly debated in the Hearing as heard on 10 September 2024.”

22. From the context this appeared to be a response to the FTT PTA decision which concluded (at [11]) that:

“The appellant’s grounds of appeal repeat points which were raised in the hearing and submissions and were dealt with in the Decision.”

23. I could identify no clear ground of appeal in this Paragraph.

Paragraph 2

24. Paragraph 2 stated as follows:

“The First-tier Tribunal’s Hearing on 10 September 2024 lasted less than 90 minutes including a number of recesses and closing directions. The Respondent’s had estimated a 3 day Hearing and the Hearing was fixed for 3 days. The Respondent’s had travelled to Edinburgh for the Hearing from Manchester and Belfast, The Hearing as heard did not raise/properly debate the Appellant’s Grounds of Appeal as the Hearing duration evidences.”

25. Here Mr Neilson asserted that the hearing length *per se* indicated that his grounds of appeal were not raised or properly debated by the FTT.

26. The length of a hearing depends on multiple variable factors which include the issues in question, the submissions made, the evidence put forward and cross examination of witnesses (if any). Just because a hearing is scheduled for a set number of days does not mean that it will actually take that time. It may be shorter or in some cases it may be longer. Ultimately the time required for a hearing will depend on the relevant factors and the discretion of the FTT judge responsible for managing the hearing. It is essentially a matter of case management for the FTT.

27. It is well established law that for the UT to find an error of law in a case management decision, it must be satisfied that the decision of the FTT must be “plainly wrong” or “unjustifiable”. This is a high threshold (see for example *HMRC v Ingenious Games LLP* [2014] UKUT 0062).

28. The FTT Decision summarises the issues and the parties’ submissions. It reaches clear conclusions and provides reasons for them.

29. I did not consider it apparent from the Decision that any relevant issues had been improperly addressed. Accordingly I concluded that no arguable error of law had been identified.

Paragraph 3

30. In this paragraph Mr Neilson's contended that the FTT decision relied upon an incorrect application of facts.

31. Read in the context of the Decision this appeared to be a reference to the evidence underlying HMRC's Closure Notice (see FTT [29(3)]).

32. Although expressed in general terms as an "*.. incorrect application of facts, which the First-Tier Tribunal's Decision dated 17 July 2025, relies upon.*", Mr Neilson (a) gave a single example of alleged incorrectness which was that a signature on documentation relied on by HMRC was not his signature, and (b) repeated his assertion that evidence relied on by HMRC was inadmissible.

33. As stated above, the FTT concluded that it was unable to consider the evidence underlying HMRC's Closure Notice for the reasons given at FTT [34]:

"... our powers with regard to closure notices are limited by statute and do not include any freestanding jurisdiction to consider the underlying information which may have been part of the enquiry proceedings"

34. It also concluded at FTT [39] that the Closure Notice contained no appealable conclusion or amendment to Mr Neilson's return and so there was "*no matter in question*" for it to determine under s 49G of the Taxes Management Act 1970 (FTT [45]).

35. Having reached those conclusions, it nevertheless went on to consider the evidence provided by the parties on the nature of the payment at the heart of the dispute.

36. In doing so it was aware of Mr Neilson's assertions as to the veracity of his signature on documentation (FTT [65]) and the inadmissibility of the evidence (see for example FTT [12] and [34]).

37. Having considered the evidence, the FTT concluded (FTT [72] and [75]) that the payment was not, as Mr Neilson contended, a gift but was instead taxable income paid to him in connection with and arising from his business activities.

38. The FTT's reasoning for its conclusion is set out in the Decision (see FTT [67] – [71]) and I considered that it was a conclusion which the FTT was entitled to reach.

39. The FTT's decision on this point is also put in context in FTT [75] which makes it clear that it is of relevance only if Mr Neilson's return had been amended – which it had concluded (at [FTT 73]) was not the case.

40. Accordingly I did not consider that any arguable error of law had been identified.

41. I noted also that the FTT's decision on this issue did not impact its overall decision on the Appeal, the particular issue being a secondary one which it did not need to consider.

42. In the last sentence of Paragraph 3 Mr Neilson made a statement that he was:

"advised in writing that his return was no longer being considered against the Respondents principle evidence but the First Tier Decision dated 17 July 2025 relies upon the Respondent's principle evidence"

43. This appeared to be a reference to HMRC's handling of matters prior to litigation which the FTT made clear was outside the scope of its jurisdiction (see FTT [12]).

44. If taken as assertion relating to the FTT's decision to allow HMRC to run what Mr Neilson regarded as late arguments (see FTT [10]) then, as outlined above, it was dealt with by the FTT as a case management matter in accordance with its overriding objective as set out in

the Tribunal Procedure (First-tier Tribunal) (Tax Changer) Rules 2009 (see FTT [11]) which is to deal with cases fairly and justly.

45. In this regard it was clear that the FTT had taken into account Mr Neilson's objections and to ensure fairness allowed for written submissions to be provided after the hearing in order to give him time to consider the points raised (see FTT [11]).

46. I did not consider therefore that any arguable error of law had been identified in this paragraph.

Paragraph 4

47. Here Mr Neilson stated that;

“The Appellants evidence is from independent third parties and in the absence of the Respondent providing evidence to the contrary, the First -tier Tribunal's Decision dated 17 July 2025 cannot be founded on a subjective view.”

48. Mr Neilson appeared here to be challenging the conclusions reached by the Tribunal on the taxability of the payment received by Mr Neilson.

49. As stated above, the FTT considered the evidence provided by each party and reached a reasoned conclusion which I considered it was entitled to reach.

50. Accordingly I did not consider that an arguable error of law had been identified in this paragraph.

51. Also, as with the issue raised in Paragraph 3, this was a secondary determination by the FTT which did not impact its overall decision on the Appeal – that decision having been made on the basis that there was no appealable decision or amendment for it to consider.

Paragraph 5

52. Here, Mr Neilson stated that:

“The Appellants for Appeal have not been considered in an impartial way. Respectfully Tribunal Judge Anne Fairpo cannot be considered impartial when considering an Appeal against her own decision. The Tribunal's acknowledgment of appeal letter dated 24 September 2005 confirms that “Your application will be referred to a **Judge** and you will be notified in due course of the outcome”

53. It is standard practice in the FTT for a judge to determine an application for permission to appeal against their own decision. The point was considered by the Upper Tribunal in *Waele Bittar v Secretary of State for the Home Department* [2025] UKUT 00277 (IAC). Here the Upper Tribunal set out the following general conclusions which although expressed in the particular context of the Immigration Appeals Chamber is of relevance to the FTT generally:

“(i) The current practice of salaried FTT (IAC) judges considering PTA applications against their own decisions does not offend against the principles of procedural fairness and does not in principle, give rise to concerns of apparent bias or a judicial mind which is closed to the merits of the application for PTA. The change promotes the most effective use of judicial time and furthers the overriding objective.

(ii) the judge who determined the substantive appeal is best placed to determine the PTA application, and to decide whether the substantive decision should be set aside or reviewed. That judge is also well placed to make observations in the PTA decision which might be of assistance to the UT and/or the parties.

(iii) Judges of the FTT who consider applications for PTA will do so dispassionately and with an open mind and will give adequate reasons for their decisions, bearing in mind the PTA Guidance. The decision on an application for PTA is not an opportunity to provide additional reasons for the substantive decision or to defend that decision against challenge. It is particularly important that the language used in determining a PTA application does not give the impression that the judge approached that application with a closed mind.

(iv) A renewed application for PTA to the UT is against the substantive decision on the appeal, not the FTT's decision on the application for PTA. The Upper Tribunal is for that reason unlikely to be assisted by extensive argument about the FTT's decision on the application for PTA." [20]

54. Accordingly I did not consider that any arguable error of law had been identified.

RENEWAL OF THE APPLICATION

55. At the hearing Mr Nielson largely reiterated some of the grounds of appeal set out in his Paper Application.

56. Ms Arnold outlined the conclusions reached by the FTT and the reasoning behind those conclusions, submitting that they remained correct and that Mr Neilson had not identified any errors of law in the Decision.

57. Mr Neilson's material submissions included the following:

The duration of the hearing

58. Mr Neilson referred again to the contrast between the initial three day timetable and the actual duration of the hearing. He explained how the FTT judge had said that there was no need to rehearse the points made in the papers as they had been read by the Tribunal. He expressed his regret at not insisting on debating them. He also raised a concern that the short hearing may have been a consequence of the FTT judge's ill health - although he acknowledged that this was speculation based on subsequent correspondence from the Tribunal notifying a delay in the decision as a result of the Judge's extended absence due to ill health.

59. Mr Neilson's submissions did not contain any new points of sufficient weight to identify an arguable error of law in this regard. The issues raised were not materially different from those referred to in Paragraph 2 of his Application and my view remains as stated in relation to Paragraph 2.

The intended effect of the Corrective Action Form

60. Mr Neilson explained that he had been in discussion with HMRC as to the tax treatment of his arrangements for almost nine years prior to submission of the Corrective Action Form and that he had been led by HMRC to believe that the Form would be the mechanism by which he could address what he referred to as the errors in his return. The Form was submitted to HMRC on that basis. He added that his understanding was reflected in correspondence between him and HMRC both before and after submission of the Form.

61. Mr Neilson submitted that the Corrective Action Form should have been considered in this context - which it had not been.

62. This submission related to the ground of appeal set out in Paragraph 3 of his Paper Application. In essence his submission was that the FTT should have taken into account HMRC's conduct and the historical discussions between him and HMRC which led to issuance of the Corrective Action Notice and the Closure Notice.

63. Whilst sympathetic to Mr Neilson I am not persuaded that an arguable error of law by the FTT has been identified. The FTT's jurisdiction does not extend to investigating the conduct of the parties during the course of the enquiry leading to the relevant decisions. That is instead a matter more suited to HMRC's complaints procedure or ultimately to judicial review.

Allowing HMRC to introduce new arguments at such a late stage

64. Related to his submission on the need to analyse the Corrective Action Form in context Mr Neilson reiterated his argument that he had been significantly prejudiced by the FTT's decision to allow HMRC to introduce at a late stage new arguments which revealed a position fundamentally different to that which it had taken for several years in its discussions with him.

65. Mr Neilson's submission do not add materially to his submissions on this point included in Paragraph 3 of his Paper Application. I was provided after the hearing with a copy of the directions given by the FTT on this point and noted that Mr Neilson had been given 28 days from the date of the directions to make submissions on the new arguments and an additional 28 days to reply to any further submissions from HMRC in response to his submissions.

66. The decision on whether to admit new arguments shortly before a hearing is a case management matter for the FTT. As I concluded in my UT Papers Decision, it is clear that the FTT took into account Mr Neilson's concerns as to the late submission of new arguments (see FTT [11]) and to ensure fairness gave him a significant time to prepare his submissions in response to the new arguments.

67. I remain of the view that no arguable error of law has been identified in this regard.

Issues with evidence

68. Mr Neilson provided a list of what he regarded as issues with HMRC's evidence. These included; the reliance by HMRC on information which he considered to have been improperly obtained from TFO Tax (TFO being advisers who had not been appointed by Mr Neilson and who in his view lacked credibility) and inconsistencies in the evidence given by an HMRC officer involved in the case.

69. In his submissions Mr Neilson expanded and provided more detail in respect of what had been contained in Paragraphs 3 and 4 of his Paper Application.

70. As I concluded in my UT Papers Decision Mr Neilson's concerns in relation to the evidence relate to the FTT's decision on the tax treatment as income of the payment he sought to characterise as a gift. The FTT's decision on this point was relevant only if Mr Neilson's return had been amended – which it concluded was not the case (FTT [73]). This is not therefore a necessary part of the FTT's decision. In short there was no need for the FTT to consider the taxability of the payment having reached its determination on the substantive points being appealed. Even if the FTT's decision on the taxability of the payment had been material, it is clear that the FTT was aware of Mr Neilson's concerns as to the evidence (see for example FTT [13]) and as noted by the FTT, the Tribunal Rules (Rule 15(2)(a)) allow it to admit evidence whether or not that evidence would be admissible in a civil trial.

71. I am not therefore persuaded that this submission identifies an arguable error of law which was material to the FTT Decision.

DECISION

72. For the reasons given permission to appeal is REFUSED on all grounds.

Signed: Judge Vimal Tilakapala
Judge of the Upper Tribunal

Issued to the parties on: 18 May 2026