UPPER TRIBUNAL
TAX AND CHANCERY CHAMBER

Neutral Citation Number: [2026] UKUT 00249 (TCC)

Applicant: ENGIM CENKCI	**Tribunal Ref: UT-2025-000104**
Respondents: The Commissioners for His Majesty's Revenue and Customs	

APPLICATION FOR PERMISSION TO APPEAL

DECISION NOTICE

JUDGE ANNE REDSTON

1. By a decision issued on 9 March 2023 ("the Decision"), the First-tier Tribunal (Tax Chamber) ("the FTT") refused to give Mr Cenkci permission to make a late appeal. The FTT subsequently refused Mr Cenkci permission to appeal against the Decision. Mr Cenkci applied to the Upper Tribunal (Tax and Chancery) Chamber ("the UT") for permission to appeal.

2. I considered his application on the papers, and refused permission. Mr Cenkci subsequently asked for the application to be reconsidered at an oral hearing on the basis of amended grounds of appeal drafted by Mr Colm Kelly of Counsel, instructed by Collyer Bristow LLP. Attached to the amended grounds was a witness statement from Mr Cenkci and various exhibits.

3. The oral hearing took place on 30 June 2026 by video. Mr Kelly attended, together with his instructing solicitors. HM Revenue & Customs ("HMRC") were notified of the hearing but decided not provide submissions or send a representative.

4. For the reasons explained in this decision notice, permission to appeal to the UT is refused.

THE LAW

5. An appeal to the UT from a decision of the FTT can only be made on a point of law (section 11 of the Tribunals, Courts and Enforcement Act 2007). The UT thus has a discretion whether to give permission to appeal.

6. It is the practice of this Chamber of the UT to grant permission to appeal where the grounds of appeal disclose an arguable error of law in the FTT's decision which is material to the outcome of the case or if there is some other compelling reason to do so (such as if the appeal raises a point of law of general public importance), see *Spirit Motor Company v HMRC* [2024] UKUT 00230 (TCC).

THE WITNESS EVIDENCE

7. Mr Cenkci's witness statement had been deposed after the FTT hearing. If permission were to be given for an appeal to the UT, that evidence would not be admissible at the appeal hearing unless the UT gave permission, see the discussion of the relevant principles in *Ketley v HMRC* [2021] UKUT 218 (TCC). However, for the purposes of deciding this application I have assumed that permission would be given, and have thus included extracts from Mr Cenkci's witness evidence in the rest of this decision notice.

BACKGROUND

8. Mr Cenkci's accountant at the time of the FTT hearing was Ms Nihat of HV Akin & Co; she had carried out that role for over 30 years. She knew Mr Cenkci owned residential properties and received rental income. Mr Cenkci regularly forwarded to her the correspondence he received from HMRC. She completed his tax returns, but Mr Cenkci did not check those returns; he trusted Ms Nihat.

9. On 20 July 2020, HMRC issued Mr Cenkci with assessments to capital gains tax ("CGT"). On 9 February 2021, Ms Nihat contacted HMRC's Debt Management and Banking ("DMB") team and told them she had made an appeal on behalf of Mr Cenkci.

10. On 16 April 2021, she emailed Mr Cenkci saying "we have already done what is necessary for the appeal". On 23 April 2021, she sent the DMB officer a copy of a letter dated 27 July 2020 appealing the assessments; this was forwarded to the HMRC officer with responsibility for Mr Cenkci's case.

11. HMRC refused to admit the appeals on the basis that they were late, and Ms Nihat applied to FTT. The hearing took place on 7 November 2022 before Judge McGregor. Mr Cenkci did not attend, because he had been told by Ms Nihat that it was "a simple procedural matter that would be quickly dealt with".

12. At the hearing, Ms Nihat said that she had posted the notice of appeal on 27 July 2020, so it was not late. Judge McGregor found that Ms Nihat had not met the burden of proving that the appeal had been made on or around that date; it was instead not made until 23 April 2021 and was thus late.

13. Judge McGregor then considered the guidance in *Martland v HMRC* [2018] UKUT 178 ("*Martland*"). In relation to the merits of the appeal, she noted that "there was very little evidence of Mr Cenkci or his agents engaging with the detail of the substantive matter in the correspondence shown in the bundle"; that there had been no response to HMRC's many requests for information as to whether Mr Cenkci lived in the properties in question and an "absence of any actual evidence to support claims for principal private residence relief" other than that the addresses on some of his tax returns was the same as the properties being assessed for CGT. She said this "would make Mr Cenkci's prospects of success in the case very low". On 9 March 2023, the FTT issued the Decision under reference [2023] UKFTT 270 (TC), refusing the application.

14. Ms Nihat passed away in February 2024. Her firm ceased trading and Mr Cenkci instructed new accountants, CWA Accountants Ltd ("CWA"). On 22 January 2025, after a failed attempt to make a fresh late appeal application, CWA applied for permission to appeal the Decision. That PTA application was very significantly late. CWA attached various documents and information to the application.

15. On 5 September 2025, Judge McGregor issued her decision refusing permission for Mr Cenkci to make his application late. She went on to say that even had she given permission for a late PTA application, she would have refused that application. Her refusal decision includes

the following passage, which is based on the documents and information attached to the application:

> "By his own admission, [Mr Cenkci] allowed tax returns to be submitted without checking them and then, when enquiries were started by HMRC, he allowed the same accountants to conduct the enquiries. His claim not to have known how unresponsive [Ms Nihat] had been is also not credible given that letters were sent to him at his home address throughout 2019 and 2020 (when he was still living there) which explained not only the enquiry but also the failure to respond to correspondence, including a Schedule 36 information notice."

16. On 29 September 2025, CWA made an in-time application on behalf of Mr Cenkci to the UT for permission to appeal against the Decision on the basis of two grounds of appeal. Some five months later, on 6 March 2026, Collyer Bristow submitted a "final application" on behalf of Mr Cenkci; this was headed "Application for Permission to Appeal". It contained new grounds of appeal drafted by Mr Colm Kelly of Counsel and made no reference to the grounds previously sent in by CWA.

THE DECISION ON THE PAPERS

17. I decided to refuse permission for Mr Cenkci to appeal against the Decision on the basis of the appeal grounds submitted by CWA. I did not consider those drafted by Mr Kelly because (a) if they were to stand as the original grounds, they were significantly late and no permission application had been filed, and (b) if they were intended to amend CWA's grounds, no application had been made to that effect.

18. Collyer Bristow asked for an oral hearing, and Mr Kelly provided a further submission, explaining why there had been a delay in submitting the appeal grounds he had drafted, and applying to amend those previously sent in by CWA. At the beginning of the hearing, I allowed that application and proceeded to consider only the grounds drafted by Mr Kelly together with his oral submissions.

THE AMENDED GROUNDS

19. Mr Kelly relied on the following interlinked points, which I have called "the Main Ground":

(1) Ms Nihat "deliberately misled" and "deceived" both Mr Cenkci and the FTT;

(2) her conduct fell outside the general guidance in *HMRC v Katib* [2019] UKUT 0189 (TCC) ("*Katib*");

(3) the FTT's error was "to make the Decision based on an inaccurate and incomplete understanding of the facts" as the result of Ms Nihat's evidence and submissions; and

(4) Ms Nihat had passed away, so it was not possible for Mr Cenkci to take legal action against her; his only remedy was for the Decision to be set aside.

20. Mr Kelly also made submissions relating to the time limits for two of discovery assessments, and he concluded his written grounds by referring to the public interest in taxpayers paying the correct amount of tax.

THE MAIN GROUND

21. None of the points made in the Main Ground were put to the FTT: Judge McGregor was not told that Ms Nihat had misled or deceived Mr Cencki. Instead, it was Ms Nihat who put Mr Cenkci's case, and none of the evidence in Mr Cenkci's witness statement was before the FTT.

22. It is not an error of law for a court or tribunal not to consider (a) a submission which has never been made, and/or (b) evidence which was not put before it. As Lewison LJ said in *Fage*

UK Ltd v Chobani UK Ltd [2014] EWCA Civ 5 at [114], "the trial is not a dress rehearsal. It is the first and last night of the show".

23. I went on to consider whether Mr Kelly was in terms submitting that there was "another compelling reason" to grant permission to appeal, namely that the process had been vitiated by deceit and was fundamentally unfair. I considered each of the points in the Main Ground with that possibility in mind.

Deceit?

24. I asked Mr Kelly to specify what "deceit" was relied on, and he said:

(1) Ms Nihat had told the FTT that an appeal had been made on 26 July 2020 when it had not been so made; and

(2) she had told Mr Cenkci he did not need to attend the hearing, when that was not the case.

25. Neither of the above provides an arguable basis for a submission that Ms Nihat deceived Mr Cencki. In relation to the first, the FTT did not find that Ms Nihat had been dishonest, only that she had not met the burden of showing that the appeal letter had been posted on or shortly after 27 July 2020. Ms Nihat's evidence at the hearing, supported by her conversations with the DMB, was that she thought the appeal letter had been sent. This falls very short of supporting a finding that Ms Nihat acted deceitfully.

26. In relation to the second, the reasonable inference from the Decision is that Ms Nihat thought she had sent the appeal in time; it was thus a "simple procedural matter", and in consequence there was no need for Mr Cenkci to attend. Moreover, Mr Kelly's written submissions referred to Ms Nihat having "negligently informed [Mr Cenkci] that he did not need to attend the hearing" he did not submit that she had deliberately misled him.

The guidance in *Katib*

27. Even if Ms Nihat had deceived Mr Cenkci, that would not change the position. In *Katib*, the UT held that "failures by a litigant's adviser should generally be treated as failures by the litigant", and the guidance in that case was subsequently approved by the Court of Appeal, see *HMRC v Medpro* [2026] EWCA Civ 14 at [57].

28. Mr Kelly emphasised that *Katib* gave general guidance, from which the FTT could depart. That is plainly correct. But neither Mr Cenkci's evidence nor Mr Kelly's submissions come close to showing that as a result of Ms Nihat 's behaviour, Mr Cenkci's position can be distinguished from that in *Katib* so that the guidance does not apply.

29. Mr Cenkci alleges that Ms Nihat was both fraudulent and incompetent, but Mr Katib made similar allegations against his adviser Mr Bridger. In his witness statement, cited at [24] of the UT's decision, he said:

> "Mr Bridger had been feeding lies to me all along to preserve his retainer for as long as possible. There is clear evidence of deception on Mr Bridger's part as he has dishonestly, whilst owing a duty of care, has appropriated my funds without providing the requisite due care and attention and service be that…[impliedly] and/or expressly under the terms of the agreement."

30. At [58], the UT said:

> "It is clear from the Decision [of the FTT] that Mr Bridger did not provide competent advice to Mr Katib, misled him as to what steps were being taken, and needed to be taken, to appeal against the PLNs and failed to appeal against the PLNs on Mr Katib's behalf (see [7] and [16]). But extraordinary though some of Mr Bridger's correspondence was, the core of Mr Katib's complaint

> is that Mr Bridger was incompetent, did not give proper advice, failed to appeal on time and told Mr Katib that matters were in hand when they were not. In other words, he did not do his job. That core complaint is, unfortunately, not as uncommon as it should be. It may be that the nature of the incompetence is rather more striking, if not spectacular, than one normally sees, but that makes no difference in these circumstances. It cannot be the case that a greater degree of adviser incompetence improves one's chances of an appeal, either by enabling the client to distance himself from the activity or otherwise."

Mr Cenkci's evidence

31. Mr Kelly accepted that if Mr Cenkci had been called to give evidence, that evidence would have been relevant to the merits of the appeal. However, in *Martland* at [46] the UT said (its emphasis):

> "an applicant should be afforded the opportunity to persuade the FTT that the merits of the appeal are on the face of it <u>overwhelmingly</u> in his/her favour and the respondents the corresponding opportunity to point out the weakness of the applicant's case. In considering this point, the FTT should be very wary of taking into account evidence which is in dispute and should not do so unless there are exceptional circumstances."

32. Had Mr Cenkci given evidence before the FTT, it is inconceivable that he would not have been cross-examined on his evidence, given the information set out at §15 above. It would thus have been in dispute, and so very unlikely to have been taken into account by the FTT. Mr Cenkci's absence from the FTT hearing is thus likely to have been of little relevance, because his evidence is much less significant than Mr Kelly submitted was the case.

33. Mr Kelly submitted that as HMRC had not attended this permission hearing, Mr Cenkci's evidence (which had been attached to the grounds of appeal drafted by Mr Kelly) should be treated as not being in dispute. I do not accept that. Although for the purposes of this hearing I have assumed that Mr Cenkci would obtain permission, no application was before me to decide and no permission has been given. see §7 above.

34. If I were to allow Mr Cenkci's PTA Application following this oral hearing, HMRC would be likely to object to the subsequent application to admit the evidence, and if that application succeeded, it would be very surprising if HMRC did not cross-examine Mr Cenkci at the UT hearing. In other words, the evidence would be in dispute.

Ms Nihat's death

35. Mr Kelly relied on *Hytec Information Systems v Coventry City Council* [1997] 1 WLR 666 at 1675, cited in *Martland,* which read (his emphasis):

> "Ordinarily this court should not distinguish between the litigant himself and his advisers. There are good reasons why the court should not: firstly, if anyone is to suffer for the failure of the solicitor it is better that it be the client than another party to the litigation; secondly, <u>the disgruntled client may in appropriate cases have his remedies in damages</u> or in respect of the wasted costs; thirdly, it seems to me that it would become a charter for the incompetent…"

36. Mr Kelly submitted that as Ms Nihat had passed away, and her firm had been wound up, it was not possible for Mr Cenkci to take action against her or her business, and his only remedy was for the case to be heard again by the FTT.

37. Were Mr Kelly to be correct, a person whose adviser had died or become bankrupt would be advantaged compared to other taxpayers, and that would plainly not be in the interests of

justice. It is unfortunate that Mr Cenkci has no right of action against Ms Nihat, but it is for litigants to make themselves aware of their rights against their advisers on a timely basis, including where appropriate by taking advice from a different firm. The death of a taxpayer's accountant does not strengthen their hand in the context of late appeal hearings.

Conclusion on the Main Ground

38. The Main Ground does not identify an arguable error of law, and does not disclose another compelling reason to give permission to appeal.

TIME LIMITS

39. Two of the discovery assessments related to the years 2007-08 and 2010-11, more than six years previously, and the burden therefore rested on HMRC to show that Mr Cenkci acted deliberately.

40. There was no reference to this time limit point in the Decision. I asked Mr Kelly whether it had been included in the original appeal to HMRC or in the appeal to the FTT but Mr Kelly did not know: his instructing solicitors had been unable to locate a copy of either document. There was thus no evidence that this point had been put to the FTT, and it is not an error of law not to consider a point which has not been pleaded.

PAYING THE RIGHT AMOUNT OF TAX

41. Mr Kelly ended his written submissions by saying:

> "Allowing [Mr Cenkci] permission to appeal the Decision, and thereafter allowing the appeal, would vindicate the venerable principle that 'there is a public interest in taxpayers paying the correct amount of tax."

42. However, that venerable principle does not allow taxpayers to bypass procedural requirements. A taxpayer who considers he has been incorrectly assessed has the right to appeal, but is required to respect statutory time limits. If he does not do so, the FTT and the UT will apply the case law to see whether an exception should be made. In this case, the FTT found that there was no basis for such an exception. There was no error of law in the Decision and no other compelling reason to give Mr Cenkci permission to appeal..

DISPOSITION

43. For the above reasons, permission to appeal is refused.

Signed: JUDGE ANNE REDSTON **JUDGE OF THE UPPER TRIBUNAL**	**Date: 6 July 2026**