UPPER TRIBUNAL
TAX AND CHANCERY CHAMBER

Neutral Citation Number: [2026] UKUT 00333 (TCC)

Applicant: Ian Mihill	**Tribunal Ref: UT-2025-000129**
Respondents: The Commissioners for His Majesty's Revenue and Customs	

RECONSIDERATION OF APPLICATION FOR PERMISSION TO APPEAL

DECISION NOTICE FOLLOWING HEARING ON 18 JUNE 2026

JUDGE JEANETTE ZAMAN

1. The applicant, Ian Mihill, applied to the Upper Tribunal (Tax and Chancery Chamber) for permission to appeal against the decision (the "FTT Decision") of the First-tier Tribunal (Tax Chamber) ("FTT") released on 31 July 2025 (TC/2024/01251). Mr Mihill applied first to the FTT for permission to appeal against the FTT Decision and, in a decision notice released on 16 October 2025, the FTT refused permission on all grounds (the "FTT PTA Decision").

2. On 14 November 2025 Mr Mihill renewed his application for permission to appeal. I refused that application on the papers in a decision released on 6 February 2026 (the "UT Papers Decision").

3. On 18 February 2026 Mr Mihill applied for that decision to be reconsidered at a hearing. That hearing was held on 18 June 2026 and was attended by Mr Mihill and by Madeline di Benedetto and Sarah Jane Hassan for HMRC. Mr Mihill had been represented by Jesmin Rahman of Tax Resolute Ltd before the FTT, and had subsequently instructed Harriet Brown and Rebecca Sheldon, of counsel, who had prepared the application for permission to appeal and the application for the UT Papers Decision to be reconsidered at a hearing. However, Mr Mihill has since been made bankrupt and is no longer able to instruct counsel (and his application for annulment of the bankruptcy order is not listed to be heard until the end of 2026). Ms Brown and Ms Sheldon nevertheless attended the hearing as amicus curiae to assist the Upper Tribunal.

4. I am very grateful to both Ms Brown and Ms Sheldon for their assistance, and appreciate their time and commitment in this matter.

When does an appeal lie to the Upper Tribunal?

5. Pursuant to s11(1) Tribunals Courts and Enforcement Act 2007 an appeal to the Upper Tribunal may only be made on a point of law. An application for permission to appeal must demonstrate that it is arguable that the FTT made an error of 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.

FTT Decision

6. Mr Mihill applied to the FTT for permission to make late appeals against various assessments and penalties, the total amount of which (excluding interest) was £875,623.

7. The FTT found that all of the decisions had been notified to Mr Mihill and refused to grant permission for him to make late appeals against the assessments and penalties. In refusing permission, the FTT applied the guidance set out by the Upper Tribunal in *Martland v HMRC* [2018] UKUT 0178 (TC) ("*Martland*").

8. References below in the form FTT[x] are to paragraphs of the FTT Decision.

Grounds of appeal

9. Mr Mihill sought permission to appeal against the FTT's refusal to give permission for late appeals to be made. The application for permission and the application for reconsideration both identified three grounds of appeal, although the explanations and reasons given in support have differed slightly reflecting the decisions in Medpro (referred to below) and the reasons given in the UT Papers Decision. The three grounds of appeal are based on the following:

(1) It was not open to HMRC to refuse to accept a late appeal, and the FTT erred in failing to consider whether HMRC had correctly (or at all) considered the conditions in s49 Taxes Management Act 1970 ("TMA 1970").

(2) The FTT applied the wrong test by following *Martland* and the FTT erred by giving the "*Katib*" factors excessive weight in their consideration of the balancing exercise, and/or by not departing from this guidance.

(3) The FTT erred in failing to consider, at stage 1 of the *Martland* test, the seriousness and significance of the delay separately.

Approach to applications to make a late appeal

10. The FTT Decision was released on 31 July 2025 and, as recorded above, the FTT followed the approach in *Martland* (FTT[99]).

11. The reasons in support of Ground 2 in the application for permission relied heavily on the decision of the Upper Tribunal in *Medpro Healthcare Ltd and another v HMRC* [2025] UKUT 255 (TCC) ("*Medpro UT*") which had been released on 30 July 2025 and was not considered in the FTT Decision.

12. By the time I issued the UT Papers Decision, the Court of Appeal had released its decision in *HMRC v Medpro Healthcare Ltd and others* [2026] EWCA Civ 14 ("*Medpro CA*"). Lewison LJ, in a judgment with which Whipple LJ and Miles LJ agreed, allowed HMRC's appeal and concluded that the *Martland* guidance, as amplified by *HMRC v Katib* [2019] UKUT 189 (TCC) ("*Katib*"), is appropriate, whilst emphasising that guidance provided by a superior court or tribunal is just that, guidance.

13. Since the date of the UT Papers Decision, the Supreme Court has refused permission to appeal the decision in *Medpro CA*.

DISCUSSION AND DECISION

Ground 1

14. Mr Mihill submitted that the FTT erred in failing to consider whether HMRC had correctly (or at all) considered the conditions in s49 TMA 1970. The reasons in support of this ground were set out in both of the written applications and were addressed by Ms Brown at the hearing.

15. The application for reconsideration seeks permission to appeal on the basis that:

(1) there is no evidence that HMRC ever considered whether or not the Conditions A to C in s49 were met;

(2) had HMRC considered Conditions A to C, they would have been required to grant permission to appeal out of time; and

(3) the FTT appears not to have considered whether or not HMRC was required to grant permission.

16. This ground of appeal does not appear to have been pursued before the FTT. Mr Mihill did apply to the FTT for permission to appeal on this ground and it was addressed at [6] to [9] of the FTT PTA Decision.

17. Section 49 provides:

> "(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.
>
> (3) If the following conditions are met, HMRC shall agree to notice being given after the relevant time limit.
>
> (4) Condition A is that the appellant has made a request in writing to HMRC to agree to the notice being given.
>
> (5) Condition B is that HMRC are satisfied that there was reasonable excuse for not giving the notice before the relevant time limit.
>
> (6) Condition C is that HMRC are satisfied that request under subsection (4) was made without unreasonable delay after the reasonable excuse ceased.
>
> (7) If a request of the kind referred to in subsection (4) is made, HMRC must notify the appellant whether or not HMRC agree to the appellant giving notice of appeal after the relevant time limit."

18. There can be no doubt that HMRC are required by s49(3) to accept late notice of an appeal where Conditions A to C are met – it requires that they "shall agree". Ms Brown explained that failure to consider these conditions, or failure to accept late notice where they are met, would be an ultra vires act of HMRC. Ms Brown drew my attention to the findings made by the FTT, in particular in relation to the timeline and context of the correspondence which led up to HMRC rejecting the appeals.

19. The FTT made the following findings in relation to HMRC's refusal to accept the late appeals:

> “32. No information was subsequently provided, and on 19 May 2021, Mrs McGuire wrote to Mr Milhill under the heading “Late appeals against the 2015 and 2016 assessments issued 2 March 2020” saying:
>
> “As I have not received a reply in respect of your reasonable excuse as to why you submitted late appeals against your 2015 and 2016 tax assessments issued on 2 March 2020 and how this continued until you submitted your appeals on 5 October 2020 then I can only assume you cannot. Consequently, you can either
>
> • withdraw your appeals or
>
> • proceed to Tribunal to have your late appeals accepted.
>
> I would add, that you have made no attempt to provide any further information and/or documents to support your contentions that the amounts assessed in the 2015 and 2016 assessments issued on 2 March 2020 were excessive.””

20. Condition B in s49(5) applies where “HMRC are satisfied that there was reasonable excuse for not giving the notice before the relevant time limit”. Ms Brown focused on the language used by Mrs McGuire, challenging whether the absence of a reply was being assumed to mean that Mr Mihill did not have a reasonable excuse.

21. This letter of 19 May 2021 from HMRC has to be read in the context of the earlier correspondence. The FTT found as follows:

(1) On 2 March 2020 Mrs McGuire issued a closure notice and amendments for Mr Mihill’s 2014/15 return (FTT[20]) and a discovery assessment for 2015/16 (FTT[21]).

(2) Mrs McGuire subsequently sent copies of the correspondence to Mr Mihill’s new home address, asking questions on 9 July 2020 in relation to his errors (in a letter headed “penalties”) (FTT[23]).

(3) On 7 August 2020 Mrs McGuire wrote again saying a penalty for deliberate behaviour was likely because HMRC considered Mr Mihill had knowingly provided an incorrect return (FTT[24]), and HMRC sent a penalty explanation letter on 13 August 2020 (FTT[25]).

(4) The first response by or on behalf of Mr Mihill was on 10 September 2020, when Haines Watts responded, providing some answers and saying that both Mr Mihill and Ms Griffiths had been unwell and Mr Mihill had suffered bereavements (FTT[26]).

(5) On 15 September 2020 Mrs McGuire wrote to Haines Watts, and she said that if the reference to illness and bereavements was being put forward as reasons for the lateness, more details were required (FTT[28]).

(6) Haines Watts provided some more details on 5 October 2020 (FTT[28]).

(7) HMRC then issued Mr Mihill with a Schedule 36 notice, and subsequently a penalty for failure to comply.

(8) On 13 May 2021 Mr Loughlin of Haines Watts emailed Mrs McGuire stating he had made numerous attempts to obtain the information to progress the appeals and enquiries but he had not received a response. He had again contacted his client, and he would contact Mrs McGuire the following day to let her know if he had received a response (FTT[31]).

22. Mrs McGuire then sent the letter of 19 May 2021 refusing the late appeals.

23. The language used by Mrs McGuire in her letter of 19 May 2021 is somewhat imperfect. However, there is a clear danger of scrutinising this letter without regard either to its context

or to its nature as correspondence rather than carefully drafted statute. It is not arguable that Mrs McGuire for HMRC had simply assumed that there was no reasonable excuse, or that she had not turned her mind to the illnesses and the bereavement. Having been told by Haines Watts in September 2020 that Mr Mihill and Ms Griffiths had been unwell and Mr Mihill had suffered bereavements, Mrs McGuire identified that there was an issue as to whether Mr Mihill was seeking to show that he had a reasonable excuse for the late appeal. She asked for more details, was provided with more information and was told (on 13 May 2021) that Haines Watts were seeking more information and would update her the following day. There is no reference to any update being provided. She then refused the late appeals six days later.

24. On the basis of the facts as found by the FTT and the letter dated 19 May 2021, I am not persuaded that it is arguable that HMRC had failed to consider whether Conditions A to C were met, or that if they had considered the Conditions, they would have been required to accept a late appeal. Whilst Condition A was met, Mrs McGuire was seeking information in relation to the illnesses and bereavements and was not satisfied that there was reasonable excuse. On the facts here, she was entitled to take account of the fact that information had not been provided in reaching this conclusion.

25. Mr Mihill's reasons in support of this ground include the submission that the FTT made an error of law in failing to consider whether or not HMRC was required to grant permission. It has to be recognised that this ground of appeal does not appear to have been pursued at the hearing before the FTT. In any event, the FTT made findings of fact in relation to the late appeals that were made to HMRC and HMRC's rejection of those appeals. Given my conclusions above as to HMRC's consideration of the Conditions and its failure to be satisfied for the purposes of Condition B, it is not arguable that the FTT made an error of law in not expressly addressing an issue which was not put to it of whether HMRC's decision might have been susceptible to challenge on the basis of principles applicable to a judicial review.

26. Following reconsideration, I am not persuaded that this ground of appeal identifies an arguable error of law in the FTT Decision and permission to appeal is refused.

Ground 2

27. The reasons in support of this ground in the application for permission rely heavily on the decision of the Upper Tribunal in *Medpro UT* which had been released one day before the FTT Decision was released (and was therefore not considered in the FTT Decision). The specific error of law which was alleged was said to be that the FTT had placed particular emphasis on the need to conduct litigation efficiently and enforcing compliance with statutory time limits; and that the FTT erred by giving the *Katib* factors excessive weight in their consideration of the balancing exercise.

28. In the FTT Decision the FTT expressly followed the guidance in *Martland* and *Katib*.

29. Since the date of the Application the Court of Appeal has released its decision in *Medpro CA*. Lewison LJ, in a judgment with which Whipple LJ and Miles LJ agreed, allowed HMRC's appeal and concluded that the *Martland* guidance, as amplified by *Katib*, is appropriate. It is not arguable that the FTT had applied the wrong test when considering whether to grant permission to make late appeals.

30. In the application for reconsideration, Mr Mihill referred to the decision in *Medpro CA*, emphasising what Lewison LJ had said about the weighing of various factors, and that "A time limit is not simply a target date; it is there to be respected. That in itself justifies the attribution of significant weight to it" (at [43] in *Medpro CA*). The application also referred to Lewison LJ's emphasis that guidance is just that, guidance, and that a court or tribunal may depart from it if it gives sound reasons for doing so (at [45]).

31. Mr Mihill submitted that in this case there are good reasons for departing from the guidance laid down in *Martland*, including:

(1) the amount in question exceeds £800,000;

(2) HMRC had failed to correspond with Mr Mihill consistently at any one address, meaning neither Mr Mihill, nor his advisers, were in a position to have a proper overview of his tax affairs;

(3) the FTT erred in treating all of the delays in the same way despite the fact that the longest was almost eight years and the least was 4.5 months – each assessment merited individual consideration which the FTT failed to do;

(4) the FTT failed to carry out any analysis of why, in this case, "the impediment to finality of litigation was in fact serious"; and

(5) the FTT failed to appreciate the context of HMRC's behaviour in relation to the delays. HMRC did not seek to progress the enquiries and effectively relied on the delays to make the discovery assessment.

32. It is well-established that the weight to be given to various factors in a balancing exercise is an issue for the FTT with which appellate tribunals should be slow to interfere. It is abundantly clear from *Martland* and *Medpro CA* that the FTT can attribute significant weight to the importance of time limits. Accordingly, Mr Mihill faces a high hurdle in submitting that it is arguable that the FTT made an error of law in conducting the balancing exercise or by not departing from the guidance in *Martland*.

33. For the reasons explained below, I am not persuaded that it is arguable that the matters relied upon in the application would be good reasons for departing from the guidance, and accordingly it is not arguable that the FTT erred in not departing from the guidance:

(1) The amount in question exceeds £800,000. The FTT had identified the total amount at stake and at FTT[135] described this prejudice to Mr Mihill as being an inevitable consequence of losing the opportunity to challenge an HMRC decision and decided to accord it little weight. The FTT also considered the bankruptcy proceedings at FTT[136], recognising that this was serious but also that it was a consequence of the "exceedingly long delays", and that it would be unfair to give this significant weight.

(2) Mr Mihill relies on HMRC having failed to consistently correspond with him at any one address, and submitted that neither he nor his advisers were in a position to have a "proper overview" of his tax affairs. However, the FTT had set out in detail the pattern of correspondence in the context of its consideration of whether the various decisions had been notified to Mr Mihill, and then, in the context of its application of the guidance in *Martland*, had considered both Mr Mihill's reliance on his advisers and the merits or otherwise of the appeals. Mr Mihill has not put forward any explanation of why it is that a "proper overview" of his tax affairs would have prevented the appeals being made late, and this is significant in circumstances where the FTT has considered the details of all the communications and Mr Mihill's own explanation was that he expected Haines Watts and/or Ms Griffiths to get on with his tax affairs without bothering him or requiring his involvement (FTT[129]).

(3) It is submitted that the FTT erred in treating all of the delays in the same way. However, this is not made out on reading the FTT Decision in its entirety. The FTT considered the different lengths of the delays – this can be seen from FTT[101] to [103] where it was identifying the lengths of the delays. The FTT then considered the merits of the various different decisions separately at FTT[132] to [133]. The FTT reached the

same conclusion for all of the late appeals, but this is not the same as saying it treated all of the delays in the same way.

(4) It is submitted that the FTT failed to carry out any analysis of why, in this case, the impediment to finality of litigation was in fact serious. The FTT Decision records at FTT[104] that Ms Rahman agreed that the delays were "serious". It is not arguable that the FTT then erred in not analysing this further. In any event, the FTT identified that in the context of tax decisions the taxpayer is required to appeal within 30 days so HMRC knows whether the decision is under challenge.

(5) Mr Mihill submitted that the FTT had failed to appreciate the context of HMRC's behaviour in relation to the delays. No further explanation has been provided as to why it is that HMRC's behaviour in the context of the enquiries is relevant to Mr Mihill's subsequent inaction and late appeals. This is particularly significant where Mr Mihill gave evidence before the FTT including as to his reason for the delays and there is no suggestion anywhere in the FTT Decision (which is 22 pages long) that he had given this as a reason for the delays.

34. Having reconsidered this ground of appeal, I am not persuaded that it is arguable that the FTT erred by giving the *Katib* factors excessive weight or by not departing from the guidance in *Martland*. Permission to appeal on this ground is refused.

Ground 3

35. Mr Mihill submitted that the FTT erred in failing to consider, at stage 1 of *Martland*, the seriousness and significance of the delay separately, submitting that they have different meanings and denote separate and different conditions. The application says the FTT considered them as a single "composite" requirement.

36. In the UT Papers Decision I explained that the FTT had identified at FTT[97] that the first stage of *Martland* requires the FTT to "establish the length of the delay and whether it is serious and/or significant". This was repeated at FTT[100]. The FTT had clearly identified that these are separate issues.

37. The FTT then recorded at FTT[104] that Ms Rahman agreed that all the delays were "serious" but submitted they were not "significant". The issue for the FTT was therefore whether the delays were "significant", as it had been agreed that the delays were serious. The FTT referred to the decision of the Court of Appeal in *Hysaj* which gave guidance on the meaning of significant in the context of delays in proceedings, and concluded at FTT[106] that all the delays were serious and significant.

38. The application for reconsideration has not provided any further reasons in support of the submission that the FTT considered serious and significant as a simple composite requirement. Having reconsidered this ground of appeal, for the reasons above I am not persuaded that this ground identifies an arguable error of law in the FTT Decision. Permission to appeal on this ground is refused.

DECISION

39. Following reconsideration, permission to appeal is REFUSED.

Signed:

Jeanette Zaman
Issued to the parties on: 27th August 2026